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## 1

Unemployment benefits will be restored, but continued pressure on the GOP is key

Jamelle Bouie 12-28, The Daily Beast, Republicans’ Unemployment Shame, <http://www.thedailybeast.com/articles/2013/12/28/republicans-unemployment-shame.html>

The prospects for fixing the lapse are mixed. Most Republicans are opposed to extending benefits, and argue that the program increases dependency, despite research that the opposite is true; with some form of support guaranteed, unemployed workers are more likely to stay in the workforce and continue their search for a job. With that said, there are Republicans in the Senate—like Dean Heller of Nevada—who support a short-term extension of three months. And House Speaker John Boehner has signaled his willingness to consider an extension, provided it’s offset with further cuts to spending.

The problem is that Congress has just passed an agreement that maintains most sequester cuts, and congressional Democrats are unlikely to sign on to another round of deficit reduction, just as Republicans are loath to consider new spending.

If the long-term unemployed have anything on their side, it’s that extending benefits is popular with the public, with 55 percent in favor and 33 percent opposed, according to a recent survey (PDF) commissioned by the National Employment Law Project. Likewise, Public Policy Polling—a Democratic firm—found that in four GOP swing districts, large bipartisan majorities supported an extension. In some areas, in fact, local news outlets are **hitting Republicans hard** for their resistance to renewing emergency unemployment insurance.

**There’s a chance that this** pressure will work **to move a few GOP lawmakers to the “yes” camp**, providing votes to help the unemployed. But, as we saw throughout 2013, you’re almost certain to lose if you bet on Republicans to do the right thing.

The plan sparks an inter-branch fight derailing the agenda

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that **costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms**. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."

While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. **Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6°

In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's **highest second-term domestic priorities**, such as Social Security and immigration reform, **failed** perhaps in large part **because the administration had to expend so much energy** and effort **waging a rear-guard action against congressional critics** of the war in Iraq.

When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If **congressional opposition in the military arena stands to** derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

Capital is key to passage – prevents economic collapse

AP 12/28 [“1.3 million are losing unemployment benefits Saturday morning,” http://www.columbiatribune.com/news/million-are-losing-unemployment-benefits-saturday-morning/article\_9d1b52ec-6f81-11e3-9033-10604b9f6eda.html?comments=focus]

WASHINGTON — More than 1 million Americans are bracing for a harrowing, post-Christmas jolt as extended federal unemployment benefits come to a sudden halt this weekend, with potentially significant implications for the recovering U.S. economy. A tense political battle likely looms when Congress reconvenes in the new, midterm election year.¶ **Nudging Congress along**, a vacationing President Barack Obama called two senators proposing an extension to offer his support. From Hawaii, **Obama** pledged yesterday **to push Congress to move quickly** next year to address the "urgent economic priority," the White House said.¶ For families dependent on cash assistance, the end of the federal government's "emergency unemployment compensation" will mean some difficult belt-tightening as enrollees lose their average monthly stipend of $1,166.¶ Jobless rates could drop, but analysts say the economy might suffer with less money for consumers to spend on everything from clothes to cars. Having let the "emergency" program expire as part of a budget deal, it's unclear if Congress has the appetite to start it anew.¶ An estimated 1.3 million people will be cut off when the federally funded unemployment payments end today.¶ Started under President George W. Bush, the benefits were designed as a cushion for the millions of U.S. citizens who lost their jobs in a recession and failed to find new ones while receiving state jobless benefits, which in most states expire after six months. Another 1.9 million people across the country are expected to exhaust their state benefits before the end of June.¶ The Obama administration says those payments have kept 11.4 million people out of poverty and benefited almost 17 million children. The cost of them since 2008 has totaled $225 billion.

Nuclear war

Harris and Burrows ‘9

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

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

## 2

Plan destroys drone effectiveness

Vladeck, professor of law – American University Washington College of Law, 2/27/’13

(Stephen I., “Statement of Stephen I. Vladeck Professor of Law and Associate Dean for Scholarship American University Washington College of Law,” TARGETING AMERICAN TERRORISTS OVERSEAS; HOUSE JUDICIARY COMMITTEE, CQ)

In my view, the adversity issue is the deepest legal flaw in "drone court" proposals. But the idea of an ex ante judicial process for signing off on targeted killing operations may also raise some serious practical concerns insofar as such review could directly interfere with the Executive's ability to carry out ongoing military operations. First, and most significantly, even though I am not a particularly strong defender of unilateral (and indefeasible) presidential war powers, I do think that, if the Constitution protects any such authority on the part of the President, it includes at least some discretion when it comes to the "defensive" war power, i.e., the President's power to use military force to defend U.S. persons and territory, whether as part of an ongoing international or non-international armed conflict or not.17 And although the Constitution certainly constrains how the President may use that power, it's a different issue altogether to suggest that the Constitution might forbid him for acting at all without prior judicial approval especially in cases where the President otherwise would have the power to use lethal force.

Drones solve terrorism

Johnston 12 (Patrick B. Johnston is an associate political scientist at the RAND Corporation, a nonprofit, nonpartisan research institution. He is the author of "Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns," published in International Security (Spring 2012)., 8/22/2012, "Drone Strikes Keep Pressure on al-Qaida", www.rand.org/blog/2012/08/drone-strikes-keep-pressure-on-al-qaida.html)

Should the U.S. continue to strike at al-Qaida's leadership with drone attacks? A recent poll shows that while most Americans approve of drone strikes, in 17 out of 20 countries, more than half of those surveyed disapprove of them.

My study of leadership decapitation in 90 counter-insurgencies since the 1970s shows that when militant leaders are captured or killed militant attacks decrease, terrorist campaigns end sooner, and their outcomes tend to favor the government or third-party country, not the militants.

Those opposed to drone strikes often cite the June 2009 one that targeted Pakistani Taliban leader Baitullah Mehsud at a funeral in the Tribal Areas. That strike reportedly killed 60 civilians attending the funeral, but not Mehsud. He was killed later by another drone strike in August 2009. His successor, Hakimullah Mehsud, developed a relationship with the foiled Times Square bomber Faisal Shahzad, who cited drone strikes as a key motivation for his May 2010 attempted attack.

Compared to manned aircraft, drones have some advantages as counter-insurgency tools, such as lower costs, longer endurance and the lack of a pilot to place in harm's way and risk of capture. These characteristics can enable a more deliberative targeting process that serves to minimize unintentional casualties. But the weapons employed by drones are usually identical to those used via manned aircraft and can still kill civilians—creating enmity that breeds more terrorists.

Yet many insurgents and terrorists have been taken off the battlefield by U.S. drones and special-operations forces. Besides Mehsud, the list includes Anwar al-Awlaki of al-Qaida in the Arabian Peninsula; al-Qaida deputy leader Abu Yahya al-Li-bi; and, of course, al-Qaida leader Osama bin Laden. Given that list, it is possible that the drone program has prevented numerous attacks by their potential followers, like Shazad.

What does the removal of al-Qaida leadership mean for U.S. national security? Though many in al-Qaida's senior leadership cadre remain, the historical record suggests that "decapitation" will likely weaken the organization and could cripple its ability to conduct major attacks on the U.S. homeland.

Killing terrorist leaders is not necessarily a knockout blow, but can make it harder for terrorists to attack the U.S. Members of al-Qaida's central leadership, once safely amassed in northwestern Pakistan while America shifted its focus to Iraq, have been killed, captured, forced underground or scattered to various locations with little ability to communicate or move securely.

Recently declassified correspondence seized in the bin Laden raid shows that the relentless pressure from the drone campaign on al-Qaida in Pakistan led bin Laden to advise al-Qaida operatives to leave Pakistan's Tribal Areas as no longer safe. Bin Laden's letters show that U.S. counterterrorism actions, which had forced him into self-imposed exile, had made running the organization not only more risky, but also more difficult.

As al-Qaida members trickle out of Pakistan and seek sanctuary elsewhere, the U.S. military is ramping up its counterterrorism operations in Somalia and Yemen, while continuing its drone campaign in Pakistan. Despite its controversial nature, the U.S. counter-terrorism strategy has demonstrated a degree of effectiveness.

The Obama administration is committed to reducing the size of the U.S. military's footprint overseas by relying on drones, special operations forces, and other intelligence capabilities. These methods have made it more difficult for al-Qaida remnants to reconstitute a new safe haven, as Osama bin Laden did in Afghanistan in 1996, after his ouster from Sudan.

Extinction

Owen B. Toon 07, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

## 3

The affirmative re-inscribes the primacy of liberal legalism as a method of restraint—that paradoxically collapses resistance to Executive excesses.

**Margulies ‘11**

Joseph, Joseph Margulies is a Clinical Professor, Northwestern University School of Law. He was counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren. He now is counsel of record for Abu Zubaydah, for whose torture (termed harsh interrogation by some) Bush Administration officials John Yoo and Jay Bybee wrote authorizing legal opinions. Earlier versions of this paper were presented at workshops at the American Bar Foundation and the 2010 Law and Society Association Conference in Chicago., Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. She has written numerous amicus briefs in support of petitioners in suits against the government arising out of counterterrorism policies, including in Munaf v. Geren and Boumediene v. Bush., “Terrorizing Academia,” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf

In an observation more often repeated than defended, we are told that the attacks of September 11 “changed everything.” Whatever merit there is in this notion, it is certainly true that 9/11—and in particular the legal response set in motion by the administration of President George W. Bush—left its mark on the academy. Nine years after 9/11, it is time to step back and assess these developments and to offer thoughts on their meaning. In Part II of this essay, we analyze the post-9/11 scholarship produced by this “emergency” framing. We argue that legal scholars writing in the aftermath of 9/11 generally fell into one of three groups: unilateralists, interventionists, and proceduralists. Unilateralists argued in favor of tilting the allocation of government power toward the executive because the state’s interest in survival is superior to any individual liberty interest, and because the executive is best able to understand and address threats to the state. Interventionists, by contrast, argued in favor of restraining the executive (principally through the judiciary) precisely to prevent the erosion of civil liberties. Proceduralists took a middle road, informed by what they perceived as a central lesson of American history.1 Because at least some overreaction by the state is an inevitable feature of a national crisis, the most one can reasonably hope for is to build in structural and procedural protections to preserve the essential U.S. constitutional framework, and, perhaps, to minimize the damage done to American legal and moral traditions. Despite profound differences between and within these groups, legal scholars in all three camps (as well as litigants and clinicians, including the authors) shared a common perspective—viz., that repressive legal policies adopted by wartime governments are temporary departures from hypothesized peacetime norms. In this narrative, metaphors of bewilderment, wandering, and confusion predominate. The country “loses its bearings” and “goes astray.” Bad things happen until at last the nation “finds itself” or “comes to its senses,” recovers its “values,” and fixes the problem. Internment ends, habeas is restored, prisoners are pardoned, repression passes. In a show of regret, we change direction, “get back on course,” and vow it will never happen again. Until the next time, when it does. This view, popularized in treatments like All the Laws but One, by the late Chief Justice Rehnquist,2 or the more thoughtful and thorough discussion in Perilous Times by Chicago’s Geoffrey Stone,3 quickly became the dominant narrative in American society and the legal academy. **This narrative also figured heavily in the many challenges to Bush-era policies,** including by the authors. The narrative permitted litigators and legal scholars to draw upon what elsewhere has been referred to as America’s “civic religion”4 and to cast the courts in the role of hero-judges5 **whom we hoped would restore legal order.**6 But by framing the Bush Administration’s response as the latest in a series of regrettable but temporary deviations from a hypothesized liberal norm, the legal academy ignored the more persistent, and decidedly illiberal, authoritarian tendency in American thought to demonize communal “others” during moments of perceived threat. Viewed in this light, what the dominant narrative identified as a brief departure caused by a military crisis is more accurately seen as part of a recurring process of intense stigmatization tied to periods of social upheaval, of which war and its accompanying repressions are simply representative (and particularly acute) illustrations. It is worth recalling, for instance, that the heyday of the Ku Klux Klan in this country, when the organization could claim upwards of 3 million members, was the early-1920s, and that the period of greatest Klan expansion began in the summer of 1920, almost immediately after the nation had “recovered” from the Red Scare of 1919–20.7 Klan activity during this period, unlike its earlier and later iterations, focused mainly on the scourge of the immigrant Jew and Catholic, and flowed effortlessly from the anti-alien, anti-radical hysteria of the Red Scare. Yet this period is almost entirely unaccounted for in the dominant post-9/11 narrative of deviation and redemption, which in most versions glides seamlessly from the madness of the Red Scare to the internment of the Japanese during World War II.8 And because we were studying the elephant with the wrong end of the telescope, we came to a flawed understanding of the beast. In Part IV, we argue that the interventionists and unilateralists came to an incomplete understanding by focusing almost exclusively on what Stuart Scheingold called “the myth of rights”—the belief that if we can identify, elaborate, and secure judicial recognition of the legal “right,” **political structures and policies will adapt their behavior to the requirements of the law** and change will follow more or less automatically.9 Scholars struggled to define the relationship between law and security primarily through exploration of structural10 and procedural questions, and, to a lesser extent, to substantive rights. And they examined the almost limitless number of subsidiary questions clustered within these issues. Questions about the right to habeas review, for instance, generated a great deal of scholarship about the handful of World War II-era cases that the Bush Administration relied upon, including most prominently Johnson v. Eisentrager and Ex Parte Quirin. 11 Regardless of political viewpoint, a common notion among most unilateralist and interventionist scholars was that when law legitimized or delegitimized a particular policy, **this would have a direct and observable effect on actual behavior**. The premise of this scholarship, in other words, was that policies “struck down” by the courts, or credibly condemned as lawless by the academy, would inevitably be changed—and that this should be the focus of reform efforts. Even when disagreement existed about the substance of rights or even which branch should decide their parameters, it reflected shared acceptance of the primacy of law, often to the exclusion of underlying social or political dynamics. Eric Posner and Adrian Vermeule, for instance, may have thought, unlike the great majority of their colleagues, that the torture memo was “standard fare.”12 But their position nonetheless accepted the notion that if the prisoners had a legal right to be treated otherwise, then the torture memo authorized illegal behavior and must be given no effect.13 Recent developments, however, cast doubt on two grounding ideas of interventionist and unilateralist scholarship—viz., that post-9/11 policies were best explained as responses to a national crisis (and therefore limited in time and scope), and that the problem was essentially legal (and therefore responsive to condemnation by the judiciary and legal academy). One might have reasonably predicted that in the wake of a string of Supreme Court decisions limiting executive power, apparently widespread and bipartisan support for the closure of Guantánamo during the 2008 presidential campaign, and the election of President Barack Obama, which itself heralded a series of executive orders that attempted to dismantle many Bush-era policies, the nation would be “returning” to a period of respect for individual rights and the rule of law. Yet the period following Obama’s election has been marked by an increasingly retributive and venomous narrative surrounding Islam and national security. **Precisely when the dominant narrative would have predicted change** and redemption, we have seen retreat and retrenchment. This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasul and Boumediene, therefore, should be seen as part (and probably only a small part) of a varied and complex collection of events, including the fiasco in Iraq, the scandal at the Abu Ghraib prison, and the use of warrantless wiretaps, as well as seemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political support for the underlying right. Since the premise of the proceduralist scholarship is that such support does not exist, it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights are a necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency.

Legalism underpins the violence of empire and creates the conditions of possibility for liberal violence.

Dossa ‘99

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

No discipline in the rationalized arsenal of modernity is as rational, impartial, objective as the province of law and jurisprudence, in the eyes of its liberal enthusiasts. Law is the exemplary countenance of the conscious and calculated rationality of modern life, **it is the** emblematic face of liberal civilization. Law and legal rules symbolize the spirit of science, the march of human progress. As Max Weber, the reluctant liberal theorist of the ethic of rationalization, asserted: judicial formalism enables the legal system to operate like a technically **rational machine**. Thus it guarantees to individuals and groups within the system a relative of maximum of freedom, and greatly increases for them the possibility of predicting the legal consequences of their action. In this reading, law encapsulates the western capacity to bring order to nature and human beings, to turn the ebb and flow of life into a "rational machine" under the tutelage of "judicial formalism".19 Subjugation of the Other races in the colonial empires was motivated by power and rapacity, but it was justified and indeed rationalized, by an appeal to the civilizing influence of religion and law: western Christianity and liberal law. To the imperialist mind, "the civilizing mission of law" was fundamental, though Christianity had a part to play in this program.20 Liberal colonialists visualized law, civilization and progress as deeply connected and basic, they saw western law as neutral, universally relevant and desirable. The first claim was right in the liberal context, the second thoroughly false. In the liberal version, the mythic and irrational, emblems of thoughtlessness and fear, had ruled all life-forms in the past and still ruled the lives of the vast majority of humanity in the third world; in thrall to the majesty of the natural and the transcendent, primitive life flourished in the environment of traditionalism and lawlessness, hallmarks of the epoch of ignorance. By contrast, liberal ideology and modernity were abrasively unmythic, rational and controlled. Liberal order was informed by knowledge, science, a sense of historical progress, a continuously improving future. But this canonical, secular, bracing self-image, is tendentious and substantively illusory: it blithely scants the bloody genealogy and the extant historical record of liberal modernity, liberal politics, and particularly liberal law and its impact on the "lower races" (Hobson). In his Mythology of Modern Law, Fitzpatrick has shown that the enabling claims of liberalism, specifically of liberal law, are not only untenable but implicated in canvassing a racist justification of its colonial past and in eliding the racist basis of the structure of liberal jurisprudence.21 Liberal law is mythic in its presumption of its neutral, objective status. Specifically, the liberal legal story of its immaculate, analytically pure origin obscures and veils not just law's own ruthless, violent, even savage and disorderly trajectory, but also its constitutive association with imperialism and racism.22 In lieu of the transcendent, divine God of the "lower races", modern secular law postulated the gods of History, Science, Freedom. Liberal law was to be the instrument for realizing the promise of progress that the profane gods had decreed. Fitzpatrick's invasive surgical analysis lays bare the underlying logic of law's self-articulation in opposition to the values of cultural-racial Others, and its strategic, continuous reassertion of liberalism's superiority and the civilizational indispensability of liberal legalism. Liberal law's self-presentation presupposes a corrosive, debilitating, anarchic state of nature inhabited by the racial Others and lying in wait at the borders of the enlightened modern West. This mythological, savage Other, creature of raw, natural, unregulated fecundity and sexuality, justified the liberal conquest and control of the racially Other regions.23 Law's violence and resonant savagery on behalf of the West in its imperial razing of cultures and lands of the others, has been and still is, justified in terms of the necessary, beneficial spread of liberal civilization. Fitzpatrick's analysis parallels the impassioned deconstruction of this discourse of domination initiated by Edward Said's Orientalism, itself made possible by the pioneering analyses of writers like Aime Cesaire and Frantz Fanon. Fitzpatrick's argument is nevertheless instructive: his focus on law and its machinations unravels the one concrete province of imperial ideology that is centrally modern and critical in literally transforming and refashioning the human nature of racial Others. For liberal law carries on its back the payload of "progressive", pragmatic, **instrumental modernity**, its ideals of order and rule of law, its articulation of human rights and freedom, its ethic of procedural justice, its hostility to the sacred, to transcendence or spiritual complexity, its recasting of politics as the handmaiden of the nomos, its valorization of scientism and rationalization in all spheres of modern life. Liberal law is not synonymous with modernity tout court, but it is the exemplary voice of its rational spirit, **the custodian of its civilizational ambitions.** For the colonized Others, no non-liberal alternative is available: a non-western route to economic progress is inconceivable in liberal-legal discourse. For even the truly tenacious in the third world will never cease to be, in one sense or another, the outriders of modernity: their human condition condemns them to **playing perpetual catch-up**, eternally subservient to Western economic and technological superiority in a epoch of self-surpassing modernity.24 If the racially Other nations suffer exclusion globally, the racially other minorities inside the liberal loop enjoy the ambiguous benefits of inclusion. As legal immigrants or refugees, they are entitled to the full array of rights and privileges, as citizens (in Canada, France, U.K., U.S—Germany is the exception) they acquire civic and political rights as a matter of law. Formally, they are equal and equally deserving. In theory liberal law is inclusive, but concretely it is routinely **partial and invidious**. Inclusion is conditional: it depends on how robustly the new citizens wear and deploy their cultural difference. Two historical facts account for this phenomenon: liberal law's role in western imperialism and the Western claim of civilizational superiority that pervades the culture that sustains liberal legalism. Liberal law, as the other of the racially Other within its legal jurisdiction, differentiates and locates this other in the enemy camp of the culturally raw, irreducibly foreign, making him an unreliable ally or citizen. Law's suspicion of the others socialized in "lawless" cultures is instinctive and undeniable. Liberal law's constitutive bias is in a sense incidental: the real problem is racism or the racist basis of liberal ideology and culture.25 The internal racial other is not the juridical equal in the mind of liberal law but the juridically and humanly inferior Other, the perpetual foreigner.

The alternative is to vote negative to endorse political, rather than legal restrictions on Presidential war powers authority.

**Goldsmith ‘12**

Jack, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 205-209

DAVID BRIN is a science-fiction writer who in 1998 turned his imagination to a nonfiction book about privacy called The Transparent Society. Brin argued that individual privacy was on a path to extinction because government surveillance tools—tinier and tinier cameras and recorders, more robust electronic snooping, and bigger and bigger databases—were growing irreversibly more powerful. His solution to this attack on personal space was not to erect privacy walls, which he thought were futile, but rather to induce responsible government action by turning the surveillance devices on the government itself. A government that citizens can watch, Brin argued, is one subject to criticism and reprisals for its errors and abuses, and one that is more careful and responsible in the first place for fear of this backlash. A transparent government, in short, is an accountable one. "If neo-western civilization has one great trick in its repertoire, a technique more responsible than any other for its success, that trick is accountability," Brin argues, "[e]specially the knack—which no other culture ever mastered—of making accountability apply to the mighty."' Brin's notion of reciprocal transparency is in some ways the inverse of the penological design known as a "panopticon," made famous by the eighteenth-century English utilitarian philosopher Jeremy Bentham. Bentham's brother Samuel had designed a prison in Paris that allowed an "inspector" to monitor all of the inmates from a central location without the prisoners knowing whether or when they were being watched (and thus when they might be sanctioned for bad behavior). Bentham described the panopticon prison as a "new mode of obtaining power of mind over mind" because it allowed a single guard to control many prisoners merely by conveying that he might be watching.' The idea that a "watcher" could gain enormous social control over the "watched" through constant surveillance backed with threats of punishment has proved influential. Michel Foucault invoked Bentham's panopticon as a model for how modern societies and governments watch people in order to control them.' George Orwell invoked a similar idea three decades earlier with the panoptical telescreen in his novel 1984. More recently, Yale Law School professor Jack Balkin used the panopticon as a metaphor for what he calls the "National Surveillance State," in which governments "use surveillance, data collection, and data mining technologies not only to keep Americans safe from terrorist attacks but also to prevent ordinary crime and deliver social services." **The direction of the panopticon can be reversed, however, creating a "synopticon" in which many can watch one, including the government**.' The television is a synopticon that enables millions to watch the same governmental speech or hearing, though it is not a terribly robust one because the government can control the broadcast. Digital technology and the Internet combine to make a more powerful synopticon that allows many individuals to record and watch an official event or document in sometimes surprising ways. Video recorders placed in police stations and police cars, cell-phone video cameras, and similar tools increase citizens' ability to watch and record government activity. This new media content can be broadcast on the Internet and through other channels to give citizens synoptical power over the government—a power that some describe as "sousveillance" (watching from below)! These and related forms of watching can have a disciplining effect on government akin to Brin's reciprocal transparency. The various forms of watching and checking the presidency described in this book constitute a vibrant presidential synopticon. Empowered by legal reform and technological change, the "many"—in the form of courts, members of Congress and their staff, human rights activists, journalists and their collaborators, and lawyers and watchdogs inside and outside the executive branch—constantly gaze on the "one," the presidency. Acting alone and in mutually reinforcing networks that crossed organizational boundaries, these institutions extracted and revealed information about the executive branch's conduct in war—sometimes to adversarial actors inside the government, and sometimes to the public. The revelations, in turn, forced the executive branch to account for its actions and enabled many institutions to influence its operations. **The presidential synopticon** also **promoted responsible executive action merely through its broadening gaze.** One consequence of a panopticon, in Foucault's words, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."' The same thing has happened in reverse but to similar effect within the executive branch, where officials are much more careful merely by virtue of being watched. The presidential synopticon is in some respects not new. Victor Davis Hanson has argued that "war amid audit, scrutiny, and self-critique" has been a defining feature of the Western tradition for 2,500 years.' From the founding of the nation, American war presidents have been subject to intense scrutiny and criticism in the unusually open society that has characterized the United States. And many of the accountability mechanisms described in this book have been growing since the 1970s in step with the modern presidency. What is new, however, is the scope and depth of these modern mechanisms, their intense legalization, and their robust operation during wartime. In previous major wars the President determined when, how, and where to surveil, target, detain, transfer, and interrogate enemy soldiers, often without public knowledge, and almost entirely without unwanted legal interference from within the executive branch itself or from the other branches of government.' Today these **decisions are known inside and outside the government to an unprecedented degree** and are heavily regulated by laws and judicial decisions that are enforced daily by lawyers and critics inside and outside the presidency. Never before have Congress, the courts, and lawyers had such a say in day-to-day military activities; never before has the Commander in Chief been so influenced, and constrained, by law. This regime has many historical antecedents, but it came together and hit the Commander in Chief hard for the first time in the last decade. It did so because of extensive concerns about excessive presidential power in an indefinite and unusually secretive war fought among civilians, not just abroad but at home as well. These concerns were exacerbated and given credibility by the rhetoric and reality of the Bush administration's executive unilateralism—a strategy that was designed to free it from the web of military and intelligence laws but that instead galvanized forces of reaction to presidential power and deepened the laws' impact. Added to this mix were enormous changes in communication and collaboration technologies that grew to maturity in the decade after 9/11. These changes helped render executive branch secrets harder to keep, and had a flattening effect on the executive branch just as it had on other hierarchical institutions, making connections between (and thus accountability to) actors inside and outside the presidency **much more extensive**.

## 4

The United States federal judicial should rule to define imminence for targeted killing outside zones of active hostilities as requiring a clear and convincing standard.

That solves the aff and legal legitmacy

Jameel Jaffer, human rights and civil liberties attorney who is deputy legal director of the American Civil Liberties Union, 13 [“JUDICIAL REVIEW OF TARGETED KILLINGS,” Harvard Law Review, April, 126 Harv. L. Rev. F. 185]

The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government's authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President's authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department's recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those **deemed to present "continuing" rather than truly imminent threats**. These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. **Even enthusiasts of the drone program have become anxious about its legal soundness**. ("People in Washington need to wake up and realize the legal foundations are crumbling by the day," Professor Bobby Chesney, a supporter of the program, recently said.) **Judicial review could clarify the limits on the government's legal authority and supply a degree of legitimacy to actions taken within those limits.** [\*186] It could also encourage executive officials to **observe these limits**. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges. Even Jeh Johnson, the Defense Department's former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add "rigor" to the executive's decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse.

Clear and convincing requirement resolves the legal controversy

Geoffrey S. Corn, Associate Professor of Law at South Texas College of Law in Houston, Texas. Previously Lieutenant Colonel, U.S. Army and Special Assistant to the U.S. Army Judge Advocate General for Law of War Matters, 2012, Targeting, Command Judgment, and a Proposed Quantum of Information Component, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1762894

Many legal experts have criticized the invocation of LOAC authority as a justification for using predator drones to attack individuals significantly removed from the area of active combat operations in Afghanistan or Iraq.224 This criticism has focused on both the inherent invalidity of characterizing the struggle against terrorism as an armed conflict225 and the invalidity of treating civilian terrorists as lawful military objectives.226 Addressing these criticisms is well beyond the scope of this article, which assumes arguendo that these characterizations are justified and that the United States will continue to invoke the LOAC to justify attack on such individuals. 227 Instead, what is critical for this analysis is the requisite quantum of information necessary to justify the military objective determination and render the attack on such individuals reasonable. While this may have been close to conclusive in the case of Osama bin Laden, it is far more complex for a deliberate attack of “day-to-day” terrorist operatives.228

One of the most complex legal issues resulting from the U.S. decision to characterize the struggle against transnational terrorism as an armed conflict is the legality of targeting nonstate belligerent actors outside of the area of active combat operations. This challenge is exemplified by the debate over the use of predator drones to attack suspected Al Qaeda operatives in places like Pakistan, Somalia, and Yemen.230 One aspect of these attacks that is straightforward is identifying the legal basis relied on by the United States: a determination that the individual subjects of attack qualify as lawful military objectives.231

The quantum related to the determination of target legality becomes critical in this decision-making process. In essence, targeting of such terrorist operatives adds new levels of complexity to this complicated issue of targeting civilians who take a direct part in hostilities. Initially, it is not even clear that if al Qaeda operatives fall within the LOAC targeting authority they should be considered presumptive civilians.232 Although the emerging concept of continuing combat function seems to accommodate the perceived need to attack such operatives, the position of the United States appears to indicate that they are instead considered enemy belligerents for targeting purposes, not civilians taking direct part in hostilities (a position which ironically finds some support in the Direct Participation Interpretive Guidance).233 Irrespective of whether the legality of targeting these individuals is analyzed by application of the direct part in hostilities rule or by application of the principle of military objective (by treating these individuals as enemy belligerents), the threat identification issue remains extremely complex. Under either category, the basis upon which the target legality judgment will be made will invariably focus on the continuing and habitual conduct of the individual.

Relying on conduct as a basis to determine target legality is unfailingly more difficult than relying on a traditional objective indication of military status such as a uniform. However, this has always been the criterion used to determine whether a civilian directly participates in hostilities.234 This conduct-based targeting determination is already complex in the context of ongoing ground combat operations. It becomes increasingly more difficult as the individual object of attack becomes further removed from the area of direct hostilities. Under the traditional restrictive definition of direct participation in hostilities, the weight of the presumption of civilian status arguably increases with attenuation from an area of active ground combat operations. This is the simple consequence of the reality that individuals can only take a direct part in hostilities in the vicinity of combat operations. But the nature of transnational terrorist operations has called into question the correlation between proximity to an area of active combat operations and the weight of the presumption of civilian status.235

This complexity is at the heart of the debate surrounding the ICRC Interpretive Guidance.236 The continuous combat function concept endorsed by that study is an implicit recognition of the effect of the asymmetrical tactics relied upon by contemporary nonstate actors engaged in armed hostilities.237 These tactics may result in the legitimate determination that individuals who are not proximate to an area of active combat operations may nonetheless directly participate in hostilities. The controversy associated with this proposition is ostensibly based in part on the risk of error associated with the determination of target legality rather than the conclusion that direct participation in hostilities does not always require proximity to actual combat operations.238 Recognizing this concern justifies a demanding quantum of information to warrant the determination that an individual is taking a direct part in hostilities (and therefore may be attacked) when attenuated from active military operations. In short, the controversy associated with engaging in these attacks when coupled with the inherent risk of error in the determination of target legality warrants a quantum requirement that will contribute to accuracy and legitimacy.

Commanders cannot be expected to achieve absolute accuracy in their judgments. Still, it does seem legitimate to require that the information available be sufficient to clearly support the target legality conclusion that such individuals are in fact lawful objects of attack.239 At least one scholar has proposed imposing a proof beyond a reasonable doubt standard,240 which would certainly be the most demanding quantum standard. However, the inherent judicial nature of this standard and the vagaries of its meaning call into question the utility of this proposal. **A clear and convincing requirement seems** more **logically suited to this decision- making context**. Commanders would be required to assess available information and conclude not merely that it is more likely than not that the individual nominated for attack is an enemy belligerent, but that the information establishes this status so convincingly that the conclusion is clear. This quantum standard would require the commander to be convinced that the available information excludes any alternate hypothesis inconsistent with the conclusion that the individual nominated for attack is in fact an enemy belligerent.242 Unless available information provides that level of certitude, the commander would be required to forego attack. This demanding standard of proof would facilitate attack on enemies operating outside a conflict area while limiting such attacks to only those cases involving a high degree of certitude. **In so doing, it would mitigate the risk associated with what many believe is an overbroad assertion of the LOAC-based targeting authority, protect the government from allegations that targeting decisions are arbitrary in nature, and preserve the ability to attack** when the government is able to amass this type of compelling intelligence.

## 1nc norms

Drone court fails—empirics prove rubber stamping and circumvention.

Greenwald 13 (Glenn, The Gaurdian, 3 May 2013, “The bad joke called 'the FISA court' shows how a 'drone court' would work”, <http://www.theguardian.com/commentisfree/2013/may/03/fisa-court-rubber-stamp-drones>, ZBurdette)

From the start, the Fisa court was a radical perversion of the judicial process. It convened in total secrecy and its rulings were classified. The standard the government had to meet was not the traditional "probable cause" burden imposed by the Fourth Amendment but a significantly diluted standard. There was nothing adversarial about the proceeding: only the Justice Department (DOJ) was permitted to be present, but not any lawyers for the targets of the eavesdropping request, who were not notified. Reflecting its utter lack of real independence, the court itself was housed in the DOJ.

And, and was totally predictable, the court barely ever rejected a government request for eavesdropping. From its inception, it was the ultimate rubber-stamp court, having rejected a total of zero government applications - zero - in its first 24 years of existence, while approving many thousands. In its total 34 year history - from 1978 through 2012 - the Fisa court has rejected a grand total of 11 government applications, while approving more than 20,000.

Despite how obedient and compliant this court always was, the Bush administration decided in late 2001 that it would have its National Security Agency (NSA) intercept the calls and emails of Americans without bothering to obtain the Fisa court approval required by the criminal law, claiming - with a straight face - that complying with the law was "too cumbersome" in the age of Terrorism. Once this lawbreaking was revealed by the New York Times in late 2005, the response from the DC political class was not to punish the responsible government officials for their lawbreaking, but rather to enact a new law (called the Fisa Amendments Act of 2008) that, in essence, simply legalized the warrantless eavesdropping scheme of the Bush administration.

That new Fisa law vested vast new surveillance powers in the US government to spy on the communications of Americans without the annoyance of obtaining permission from the Fisa court. It requires warrants from the Fisa court only in the narrowest of circumstances: the ones most susceptible to abuse. Although candidate Obama pretended to have serious concerns about the law (when he voted for it) and vowed to rein in its excesses, his administration last year demanded the renewal of this law with no reforms, and Congress, on a fully bipartisan basis, complied.

One of the provisions of the new Fisa law requires the DOJ annually to disclose to Congress the number of eavesdropping applications it files and the number approved and rejected by the Fisa court. Earlier this week, that disclosure was provided to Senate Majority Leader Harry Reid for the year 2012, and this is what it reported:

Let's repeat that: "of 1,789 applications, the FISA court did not deny any applications in whole or in part." What fantastic oversight (1789 is, ironically, the year the Constitution was ratified). The court did "modify" 40 of those applications - less than 3% - but it approved every single one. The same was true of 2011, when the DOJ submitted 1,676 applications and the Fisa court, while modifying 30, "did not deny any applications in whole, or in part".

What makes all of this worse is just how extreme the US government is "interpreting" - i.e. distorting - its eavesdropping powers under the law. Two Democratic Senators, Ron Wyden and Mark Udall, have been warning for years that the Obama administration is exploiting these laws in ways far beyond what the public knows or what a reasonable reading of the laws would permit. One of the nation's most knowledgeable surveillance experts, Julian Sanchez, has documented - citing the writing of a former Obama lawyer - documented that the law is used to target even "an American citizen located within the United States, and no court or judge is required to approve or review the choice of which individuals to tap": exactly the type of warrantless surveillance we were all told this law would prohibit. And yet, the Fisa court - even for those narrow set of cases where a warrant is required - continues as it always has: rubber-stamping virtually anything and everything the government wants to do.

There are many reasons that explain this judicial obeisance. Part of it is fear and abdication of duty: no federal judge wants to be the one who rejects a surveillance request from the government only to have the target perpetrate an attack, **even though federal judges are immunized with life tenure from such political pressures** so that they can apply the law and provide a real check on government conduct. Part of it is nationalistic delirium: federal courts in general have been disgracefully subservient to the Executive Branch every time they utter the word "Terrorism" since 9/11. And part of it is just the nature of persuasion: even the most mediocre lawyers can convince someone of almost anything if they have no opposition and can unilaterally select and depict all facts without challenge. The entire process, though depicted as some kind of check on Executive Branch behavior, is virtually designed to do the opposite: ensure the Government's surveillance desires are unimpeded. These shockingly lopsided statistics attest to the success of this design.

This is significant not only because it means there is no real check on the government's surveillance power, even as they exercise those powers in much broader ways than most people suspect. It's also significant in light of recent calls that a "drone court" be created that would provide for a similar process for the president's desire to target for execution people who have been charged with no crime. The New York Times Editorial Page has been advocating this for years.

The rationale offered is the same as what was used to justify the Fisa court: the President needs some check on who he targets, but requiring that he charge the person he wants to kill with a crime and convict them in a real court is too cumbersome. Therefore, this reasoning goes, a "drone court" modeled on the Fisa court is the happy medium: he'll have some constraints on his power to kill whomever he wants, but its secretive, one-sided process and lowered levels of required proof will ensure the necessary agility and flexibility he needs as Commander-in-Chief. As the NYT Editors put it: the drone court "would be an analogue" to the Fisa court whereby: "If the administration has evidence that a suspect is a terrorist threat to the United States, it would have to present that evidence in secret to a court before the suspect is placed on a kill list."

But does anyone believe that a "drone court" would be any less of a mindless rubber-stamp than the Fisa court already is? Except for a handful of brave judges who take seriously their constitutionally assigned role of independence, the vast majority of federal judges are far too craven to tell the president that he has not submitted sufficient proof that would allow him to kill someone he claims is a Terrorist. The fact that it would all take place in secret, with only the DOJ present, further ensures that the results would mirror the embarrassing subservience of the Fisa court. As former Pentagon chief counsel Jeh Johnson put it in a speech last month discussing this proposal:

"Its proceedings would necessarily be ex parte and in secret, and, like a FISA court, I suspect almost all of the government's applications would be granted, because, like a FISA application, the government would be sure to present a compelling case. So, at the same time the New York Times editorial page promotes a FISA-like court for targeted lethal force, it derides the FISA court as a 'rubber stamp' because it almost never rejects an application. How long before a 'drone court' operating in secret is criticized in the same way?"

No drone prolif—capabilities and costs

Zenko, Douglas Dillon fellow in the Center for Preventive Action – CFR, ‘13

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

There are also few examples of armed drone sales by other countries. After the United States, Israel has the most developed and varied drone capabilities; according to the Stockholm International Peace Research Institute (SIPRI), Israel was responsible for 41 percent of drones exported between 2001 and 2011.57 While Israel has used armed drones in the Palestinian territories and is not a member of the MTCR, it has pre- dominantly sold surveillance drones that lack hard points and electrical engineering. Israel reportedly sold the Harop, a short-range attack drone, to France, Germany, Turkey, and India. Furthermore, Israel allows the United States to veto transfers of weapons with U.S.-origin technology to select states, including China.58 Other states invested in developing and selling surveillance drones have reportedly refrained from selling fully armed versions. For example, the UAE spent five years building the armed United-40 drone with an associated Namrod missile, but there have been no reported deliveries.59 A March 2011 analysis by the mar- keting research firm Lucintel projected that a “fully developed [armed drone] product will take another decade.”60

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

No impact—drones make wars less intense

McGinnis, senior professor – Northwestern Law, ‘10

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

It is not as if in the absence of AI wars or weapons will cease to exist. The way to think about the effects of AI on war is to think of the consequences of substituting technologically advanced robots for humans on the battlefield. In at least three ways, that substitution is likely to be beneficial to humans.

First, robots make conventional forces more effective and less vulnerable to certain weapons of mass destruction, like chemical and biological weapons. Rebalancing the world to make such weapons less effective, even if marginally so, must be counted as a benefit.

Second, one of the reasons that conventional armies deploy lethal force is to protect the human soldiers against death or serious injury. If only robots are at stake in a battle, a nation is more likely to use non-lethal force, such as stun guns and the like. The United States is in fact considering outfitting some of its robotic forces with non-lethal weapon-ry.

Third, AI-driven weaponry gives an advantage to the developed world and particularly to the United States, be-cause of its advanced capability in technological innovation. Robotic weapons have been among the most successful in the fight against Al-Qaeda and other groups waging asymmetrical warfare against the United States. The Predator, a robotic airplane, has been successfully targeting terrorists throughout Afghanistan and Pakistan, and more technologi-cally advanced versions are being rapidly developed. Moreover, it does so in a targeted manner without the need to launch large-scale wars to hold territory--a process that would almost certainly result in more collateral damage. n61 If one believes that the United States is on the whole the best enforcer of rules of conduct that make for a peaceful and prosperous world, this development must also be counted as a benefit.

Existing norms solve and precedent isn’t key

Anderson, professor of international law – American University, ‘13

(Kenneth, "The Case for Drones", https://www.commentarymagazine.com/articles/the-case-for-drones/)

The objection to civilian deaths draws out a related criticism: Why should the United States be able to conduct these drone strikes in Pakistan or in Yemen, countries that are not at war with America? What gives the United States the moral right to take its troubles to other places and inflict damage by waging war? Why should innocent Pakistanis suffer because the United States has trouble with terrorists?

The answer is simply that like it or not, the terrorists are in these parts of Pakistan, and it is the terrorists that have brought trouble to the country. The U.S. has adopted a moral and legal standard with regard to where it will conduct drone strikes against terrorist groups. It will seek consent of the government, as it has long done with Pakistan, even if that is contested and much less certain than it once was. But there will be no safe havens. If al-Qaeda or its affiliated groups take haven somewhere and the government is unwilling or unable to address that threat, America’s very long-standing view of international law permits it to take forcible action against the threat, sovereignty and territorial integrity notwithstanding.

This is not to say that the United States could or would use drones anywhere it wished. Places that have the rule of law and the ability to respond to terrorists on their territory are different from weakly governed or ungoverned places. There won’t be drones over Paris or London—this canard is popular among campaigners and the media but ought to be put to rest. But the vast, weakly governed spaces, where states are often threatened by Islamist insurgency, such as Mali or Yemen, are a different case altogether.

This critique often leads, however, to the further objection that the American use of drones is essentially laying the groundwork for others to do the same. Steve Coll wrote in the New Yorker: “America’s drone campaign is also creating an ominous global precedent. Ten years or less from now, China will likely be able to field armed drones. How might its Politburo apply Obama’s doctrines to Tibetan activists holding meetings in Nepal?”

The United States, it is claimed, is arrogantly exerting its momentary technological advantage to do what it likes. It will be sorry when other states follow suit. But the United States does not use drones in this fashion and has claimed no special status for drones. The U.S. government uses drone warfare in a far more limited way, legally and morally, and entirely within the bounds of international law. The problem with China (or Russia) using drones is that they might not use them in the same way as the United States. The drone itself is a tool. How it is used and against whom—these are moral questions. If China behaves malignantly, drones will not be responsible. Its leaders will be.

Global drone norms are impossible

McGinnis, senior professor – Northwestern Law, ‘10

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

It is hard to overstate the extent to which advances in robotics, which are driven by AI, are transforming the United States military. During the Afghanistan and Iraq wars, more and more Unmanned Aerial Vehicles (UAVs) of different kinds were used. For example, in 2001, there were ten unmanned "Predators" in use, and at the end of 2007, there were 180. n42 Unmanned aircraft, which depend on substantial computational capacity, are an increasingly important part of our military and may prove to be the [\*374] majority of aircraft by 2020. n43 Even below the skies, robots perform im-portant tasks such as mine removal. n44 Already in development are robots that would wield lasers as a kind of special infantryman focused on killing snipers. n45 Others will act as paramedics. n46 It is not an exaggeration to predict that war twenty or twenty-five years from now may be fought predominantly by robots. The AI-driven battlefield gives rise to a different set of fears than those raised by the potential autonomy of AI. Here, the concern is that human malevolence will lead to these ever more capable machines wreaking ever more havoc and destruction.

III. THE FUTILITY OF THE RELINQUISHMENT OF AI AND THE PROHIBITION OF BATTLEFIELD RO-BOTS

Joy argues for "relinquishment"--i.e., the abandonment of technologies that can lead to strong AI. Those who are concerned about the use of AI technology on the battlefield would focus more specifically on weapons powered by AI. But whether the objective is relinquishment or the constraint of new weaponry, any such program must be translated into a specific set of legal prohibitions. These prohibitions, at least under current technology and current geopolitics, are certain to be ineffective. Thus, nations are unlikely to unilaterally relinquish the technology behind accelerating compu-tational power or the research to further accelerate that technology.

Indeed, were the United States to relinquish such technology, the whole world would be the loser. The United States is both a flourishing commercial republic that benefits from global peace and prosperity, and the world's hegemon, capable of supplying the public goods of global peace and security. Because it gains a greater share of the prosperity that is afforded by peace than do other nations, it has incentives to shoulder the burdens to maintain a global peace that benefits not only the United States but the rest of the world. n47 By relinquishing the power of AI, the United States would in fact be giving greater incentives to rogue nations to develop it.

Thus, the only realistic alternative to unilateral relinquishment would be a global agreement for relinquishment or regulation of AI-driven weaponry. But such an agreement would face the same insuperable obstacles nuclear disarma-ment has faced. As recent events with Iran and North Korea demonstrate, n48 it seems difficult if not impossible to per-suade rogue nations [\*375] to relinquish nuclear arms. Not only are these weapons a source of geopolitical strength and prestige for such nations, but verifying any prohibition on the preparation and production of these weapons is a task beyond the capability of international institutions.

The verification problems are far greater with respect to the technologies relating to artificial intelligence. Relative-ly few technologies are involved in building a nuclear bomb, but arriving at strong artificial intelligence has many routes and still more that are likely to be discovered. Moreover, building a nuclear bomb requires substantial infrastruc-ture. n49 Artificial intelligence research can be done in a garage. Constructing a nuclear bomb requires very substantial resources beyond that of most groups other than nation-states. n50 Researching artificial intelligence is done by institu-tions no richer than colleges and perhaps would require even less substantial resources.

No Asia escalation—assumes their warrants

Xudong ‘12

Han, professor at the PLA University of National Defense, “Risk of armed Asian conflict on the rise, but trade links rule out war,” <http://www.globaltimes.cn/content/735653.shtml>

Island sovereignty and maritime interest disputes in the Asia-Pacific region have attracted an increasing amount of global attention recently. With external powers ready to intervene, conflicts among the relevant parties have intensified and the unrest has gotten worse. If the trend cannot be curbed, armed conflicts are more likely. With the US pivot to the Asia-Pacific region and the global economic focus moving toward the region, the region has gradually entered into a troubled period. The US has set the region as the focus of its overseas military deployment and is taking advantage of the unrest in the region so as to adjust the power structure. Moreover, the US has carried out military exercises with relevant countries to create unrest and instigated them to confront neighboring countries. For example, over the Huangyan Island dispute, the US backs the Philippines through holding joint military exercises on island defense, as it has done with Japan over the Diaoyu Islands dispute. This is the usual tactic by the US to back relevant countries' confront actions with China. As the territorial disputes among relevant countries are closely related to core national interests, no involved parties will compromise easily. Relevant countries usually use comprehensive national strength, especially military strength, as a lever to adjust their interests. Take the dispute over the South Kuril Islands between Russia and Japan. Russia has increased its military presence on the islands and used military power to deal with Japanese provocations. Similarly, South Korea has begun to deploy its forces on Dokdo Islands, where it has disputes with Japan. At present, while China has repeatedly advocated a peaceful settlement of the Diaoyu Islands dispute, the nation has sufficient confidence and courage to face up to the challenges and safeguard its sovereignty and interests. All those conflicts mentioned above have the potential to further deteriorate. After all, international politics is the continuation and manifestation of domestic politics. Since the beginning of this year, key players in hot issues of the Asia-Pacific region all have been confronted with the sensitivity of domestic power transition. Russia had its presidential election in March. And South Korea, Japan, the US and China will soon see elections or leadership change. At such a critical moment, attitudes on safeguarding the core interests of the nation had been used as a stake to gain support, as particularly seen in Japan. Currently, the right-wing forces in Japan are promoting the campaigners to form a consistent approach over the Diaoyu Islands dispute, that is, to take an increasingly tough stance and policy. Japan hasn't made a full reflection on its war crimes. The right-wing frequently blusters about the use of force to solve the territorial disputes. This adds to the uncertainty of the security situation in the Asia-Pacific region. But one certain thing is that a war is unlikely in the Asia-Pacific. Even if the parties in a dispute had a collision of forces, it wouldn't develop into full-blown war. The use of force is the highest means but the last resort to maintain core interests of nations. The current situation is totally different from other periods in history. With global economic integration, the expanding of armed conflicts will be no good to any country involved. Therefore, the relevant countries all hope the scale of conflicts could be restrained. Besides, the US is not willing to see a regional war in the Asia-Pacific. A turbulent situation without war is in its best interests. From this perspective, the Asia-Pacific region does face the potential danger of low intensity conflicts and operations. The possibility of an armed collision is on the rise, but the scale will be limited.

Asia doesn’t escalate

Washburn 13

Taylor, a lawyer studying Northeast Asia at the Johns Hopkins School of Advanced International Studies, “a lawyer studying Northeast Asia at the Johns Hopkins School of Advanced International Studies.,” http://journal.georgetown.edu/2013/03/10/averting-asias-great-war-by-taylor-washburn/

In a recent Financial Times essay, “The Shadow of 1914 Falls Over the Pacific,” Gideon Rachman compares the current situation in East Asia to that in Europe a century ago. Like Germany in the early 20th century, China is a country on the rise, concerned that status quo powers will seek to block its ascent. In prewar Europe, a German military buildup and growing nationalism around the region helped create a dynamic in which the assassination of an obscure Austrian noble could trigger a devastating multinational war. The parallels with East Asia today are clear, Rachman says, and “the most obvious potential spark is the unresolved territorial dispute between Japan and China over the islands known as the Diaoyu to the Chinese and the Senkaku to the Japanese.” There is no denying the gravity of the danger posed by this row. Violent anti-Japanese riots erupted across China last fall after Japan’s government purchased the islands from a private owner, and Tokyo has recently claimed that a Chinese frigate locked its missile-guidance radar on a Japanese destroyer in the East China Sea. With ships and planes from both nations mingling in the vicinity of the islands, peace depends not only on the prudence of politicians in Beijing and Tokyo, but also the temperament and skill of a handful of sailors and pilots. The U.S.-Japan security treaty has played a pivotal role in ensuring Asia’s postwar stability, and will help deter Chinese aggression going forward, but as Rachman observes, the pact also recalls the alliance network that contributed to the expansion of World War I. Nevertheless, it is important to remember that major powers have often clashed without escalation. The example of 1914, in which a seemingly insignificant event forced all of Europe’s great military machines to shudder to life, is the exception rather than the rule. Since the bloody aftermath of their 1947 partition, India and Pakistan have skirmished repeatedly–and even engaged in several limited wars–without descending into full-scale conflict. In the 1960s, China fought with first India and then the Soviet Union over land, yet on neither occasion did combat spread beyond the frontier. Indeed, large interstate wars since World War I have not generally begun with a trigger akin to an assassination or a scuffle between forces on a remote perimeter, but rather with a major attack or colonial collapse.

## 1nc accountability

Doesn’t boost accountability or transparency—the status quo is sufficient.

Mulrine 13 (Anna, CSM, “Would a US 'drone court' to authorize drone strikes be a good idea? (+video)”, <http://www.csmonitor.com/USA/DC-Decoder/2013/0524/Would-a-US-drone-court-to-authorize-drone-strikes-be-a-good-idea-video>, ZBurdette)

Critics of the drone program, however, are generally not reassured by the notion of oversight from a special drone court. They note that the FISA courts, on which the drone courts would be modeled, operate largely in secret, doing little to improve accountability to the public.

What’s more, they say, national and international laws are already in place governing when drone strikes are legal. Those laws, they add, offer greater transparency than would a secret court.

“I’m not big on this,” Sarah Holewinski, executive director of the Center for Civilians in Conflict, says of the drone courts. “The fact is, we have international laws. We have domestic laws. I would focus on those and say, ‘Look, here’s the due diligence you need to do in targeting a combatant. Here’s what you need to do in order to avoid civilians. Here’s what proportionality looks like.’ ”

Zeke Johnson, director of Amnesty International’s Security and Human Rights Campaign, argues that drone courts would do little to change critics' fundamental concerns about drone strikes.

“What’s needed on drones is not a ‘kill court,’ but a rejection of the radical redefinition of ‘imminence’ used to expand who can be killed – as well as independent investigations of alleged extrajudicial executions and remedy for victims,” he says.

Drone court doesn’t solve credibility

Hosenball 13 (Mark, Reuters, “Support grows for U.S. "drone court" to review lethal strikes”, Feb 8, 2013, <http://www.reuters.com/article/2013/02/09/us-usa-drones-idUSBRE91800B20130209>¸ZBurdette)

If the United States did set up a drone target court, human rights advocates would still likely have problems with it.

Geoffrey Robertson, one of Britain's most prominent human rights lawyers, described the current U.S. drone-strike policy as "execution without trial" and "international killing (which) ... violates the right to life."

Robertson said that in his interpretation of international law, any court set up to review candidates for possible drone attacks would have to publish target lists, so that those listed would have an opportunity either to give themselves up or be able to have friends or relatives petition for their removal from the lists.

Can't solve legitimacy

Fettweis 10

Christopher J. Fettweis is an assistant professor of political science at Tulane University, August 2010, Paper prepared for the 2010 meeting of the American Political Science Association, Washington, DC, September 1-4, "The Remnants of Honor: Pathology, Credibility and U.S. Foreign Policy", http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1657460

Both theoretical logic and empirical evidence suggest that actions taken in the present will likely not have a predictable effect on the crises of the future, for better or for worse. The almost overwhelming tendency to try to send messages through national actions increases the odds of policy mishaps and outright folly, for at least two reasons. First, and most basically, an eye toward the future prevents complete focus on the present. During a crisis, the national interest cannot be correctly ascertained unless policymakers de-link present concerns from future expectations. Second, as unsettling as it may be, the future is not subject to our control. There is much that can and will occur between the current crisis and the next, and the international environment will change in quite unpredictable ways. Target actors – whether they be superpowers or terrorist groups or vaguely-defined “threats” – are not likely to believe that the actions of a state give clues to its future actions. In other words, they believe that our actions are independent, and there is little that can be done to change that.81 Generally speaking, therefore, policymakers are wise to fight the natural temptation to look beyond the current crisis when deciding on action.

Honor is a socially determined good, in the sense that the community is the ultimate arbiter of whether any individual possesses it. Likewise, the status of its credibility is beyond the control of the United States. Neither people nor states own their reputation, which can be affected by the actions to some extent but ultimately exist primarily in the minds of others. “Credibility exists,” noted the recent U.S. politician perhaps most obsessed with its maintenance, “only in the eye of the beholder.”82 Try as they might, states cannot exert complete control over their reputations or level of credibility; target adversaries and allies will ultimately form their own perceptions, ones that will be affected by their needs and goals. Even if states were to take what appeared to be the logical actions to protect their credibility, it is possible (perhaps likely) that others will not receive the messages in the way they were intended.83 Sending messages for their consideration in future crises, therefore, is all but futile.

Legitimacy inevitable and irrelevant - not key to cooperation

Brooks and Wohlforth 09

Stephen G. Brooks is Associate Professor of Government at Dartmouth College. William C. Wohlforth is Daniel Webster Professor of Government and Chair of the Department of Government at Dartmouth College, Foreign Affairs, March/April 2009, "Reshaping the World Order", http://www.dartmouth.edu/~govt/faculty/BrooksWohlforth-FA2009.pdf

THE LEGITIMACY TO LEAD?

For analysts such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States’ ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a ﬁxed resource that can be obtained only under special circumstances. The political scientist G. John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good.

But this view is mistaken. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action—such as the Vietnam War or the invasion of Iraq—may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the ﬁrst time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan’s ﬁrst term, when he called the Soviet Union an “evil empire.” Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies, oversaw a marked improvement in relations with France, Germany, and India in recent years—even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France.

Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration’s approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled wherewithal to produce public goods that reinforce the beneﬁts of its global role. No other state has any claim to leadership commensurate with Washington’s. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system’s leader hinges on whether the system’s members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected.

Moreover, history provides abundant evidence that past leading states—such as Spain, France, and the United Kingdom—were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spain fashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe’s preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure of lucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways—notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly aªecting the development of new rules by deﬁning the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world’s agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the United States today has the necessary legitimacy to shepherd reform of the international system.

Legitimacy theory is bankrupt - empirical and psychological studies prove

Fettweis 10

Christopher J. Fettweis is an assistant professor of political science at Tulane University, August 2010, Paper prepared for the 2010 meeting of the American Political Science Association, Washington, DC, September 1-4, "The Remnants of Honor: Pathology, Credibility and U.S. Foreign Policy", http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1657460

Scholars have been struggled to identify cases where high credibility helped the United States achieve its goals during the Cold War. The short-term aftermath of the Cuban Missile Crisis, for example, included neither a string of Soviet reversals nor a display of bandwagoning with the West throughout the Third World.73 In fact, the perceived reversal in Cuba seemed to harden Soviet resolve. As the crisis was drawing to a close, Soviet diplomat Vasily Kuznetsov angrily told his counterpart “you Americans will never be able to do this to us again.”74 Kissinger commented in his memoirs that “the Soviet Union thereupon launched itself on a determined, systematic, and long-term program of expanding all categories of its military power….The 1962 Cuban crises was thus an historic turning point – but not for the reason some Americans complacently supposed.”75 The reassertion of the credibility of the United States, which was done at the brink of nuclear war, had few long-lasting benefits. The Soviets seemed to have learned the wrong lesson.

There is actually scant evidence that target states ever learn the right lessons. Cold War history contains little reason to believe that the credibility the superpowers had very much effect on their ability to influence others. Since Vietnam, a series of major scholarly studies have cast further doubt upon the fundamental assumption of interdependence across foreign policy actions. Jonathan Mercer argued that threats are far more independent than commonly believed, and therefore that reputations are not likely to form based upon individual actions.76 While policymakers may feel that their decisions send messages about their basic dispositions to others, most of the evidence from social psychology suggests otherwise. Groups tend to interpret the actions of their rivals as situational, dependent upon the constraints of place and time. Therefore they are not likely to form lasting impressions of irresolution from single, independent events. Mercer argued that the interdependence assumption had been accepted on faith, and rarely put to a coherent test – when it was, it almost inevitably failed.77

Other studies on the utility of credibility have tended to yield similar results. A reputation for belligerence has not been shown to be of much value in deterring challenges in large N analyses (which are methodologically challenging for this subject), in-depth case studies, or even in examination of behavior from ancient times.78 Although there seem to be times when credibility can help in limited ways – such as in multiple interactions with the same actor – there is no reason to believe that third parties ever learn from the actions of a state in other matters.79 The evidence suggests that international actions are much more independent than early deterrence theorists believed. It has been difficult for the imperative’s defenders to identify an instance where a post-Cold War state (or independent actor) was either encouraged by a discredited United States or discouraged by its apparent resolution. Of course one can always respond that such counterfactual argument is impossible – successful deterrence is hard to measure, of course, since the analyst can never be sure that the aggressor was deterred from attacking or simply never planned to attack in the first place.80 But the evidence that we do have does not support the belief that it is ever wise for states to be overly concerned for their reputations.

Drones mean AQAP isn't a threat now - short-term drones strategy key

Katulis 9/18/13

Brian Katulis is a Senior Fellow at the Center for American Progress, Center for American Progress, September 18, 2013, "Understanding the Threat to the Homeland from Al Qaeda in the Arabian Peninsula", http://www.americanprogress.org/issues/security/report/2013/09/18/74604/understanding-the-threat-to-the-homeland-from-al-qaeda-in-the-arabian-peninsula/

The United States became directly involved in efforts against AQAP in December 2009, when the Obama administration launched a cruise missile strike against AQAP targets in order to prevent “an imminent attack against a U.S. asset.” (This strike is also believed to have unfortunately killed dozens of civilians.) The U.S. air campaign against AQAP began in earnest in May 2011, when the United States launched the first of 14 airstrikes in Yemen that year. Subsequently, the United States conducted 54 airstrikes in Yemen in 2012 and 23 thus far in 2013.

This policy has scored several tactical successes in eliminating key AQAP leaders and helping the Yemeni government reverse AQAP’s battlefield advances. In addition to Awlaki and Khan, U.S. airstrikes in Yemen have killed a number of AQAP leaders from Abdul Munim Salim al-Fatahani, Fahd al-Quso, and Muhammad Saeed al-Umda in 2012, to Saeed al-Shehri, then AQAP’s second-in-command, and Qaeed al-Dhahab in 2013. In addition to their roles in AQAP, Fatahani and Quso were both believed to have been involved in the Cole bombing, and Quso likely was involved in supporting the 9/11 hijackers as well. Umda was believed to have been involved in the 2002 attack on the oil tanker Limburg.

The recent shift toward regional plots, as evidenced by the regional embassy closures this summer, suggests a possible degradation of AQAP’s capability to mount plots outside the Middle East.

These tactical successes, however, are not reinforced by a broader, more coherent U.S. policy to promote Yemen’s transition to democracy under President Abdo Rabu Mansour Hadi. There is an inherent tension between the long-term objective of supporting a transition to a stable democracy in Yemen and the short-term imperative of preventing terrorist attacks against the United States and our allies and partners in the region. This short-term imperative is being at a quicker speed than the more difficult problem of transitioning a developing country from authoritarianism to democracy. This transition cannot be accomplished at a pace that will solve the immediate and pressing security challenge presented by AQAP.

No impact to failed states

Patrick, senior fellow, director – program on international institutions and global governance @ CFR, 4/15/’11

(Stewart M, “Why Failed States Shouldn’t Be Our Biggest National Security Fear,” <http://www.cfr.org/international-peace-and-security/why-failed-states-shouldnt-our-biggest-national-security-fear/p24689>)

In truth, while failed states may be worthy of America's attention on humanitarian and development grounds, most of them are irrelevant to U.S. national security. The risks they pose are mainly to their own inhabitants. Sweeping claims to the contrary are not only inaccurate but distracting and unhelpful, providing little guidance to policymakers seeking to prioritize scarce attention and resources.

In 2008, I collaborated with Brookings Institution senior fellow Susan E. Rice, now President Obama's permanent representative to the United Nations, on an index of state weakness in developing countries. The study ranked all 141 developing nations on 20 indicators of state strength, such as the government's ability to provide basic services. More recently, I've examined whether these rankings reveal anything about each nation's role in major global threats: transnational terrorism, proliferation of weapons of mass destruction, international crime and infectious disease.

The findings are startlingly clear. Only a handful of the world's failed states pose security concerns to the United States. Far greater dangers emerge from stronger developing countries that may suffer from corruption and lack of government accountability but come nowhere near qualifying as failed states.

The link between failed states and transnational terrorism, for instance, is tenuous. Al-Qaeda franchises are concentrated in South Asia, North Africa, the Middle East and Southeast Asia but are markedly absent in most failed states, including in sub-Saharan Africa. Why? From a terrorist's perspective, the notion of finding haven in a failed state is an oxymoron. Al-Qaeda discovered this in the 1990s when seeking a foothold in anarchic Somalia. In intercepted cables, operatives bemoaned the insuperable difficulties of working under chaos, given their need for security and for access to the global financial and communications infrastructure. Al-Qaeda has generally found it easier to maneuver in corrupt but functional states, such as Kenya, where sovereignty provides some protection from outside interdiction.

Pakistan and Yemen became sanctuaries for terrorism not only because they are weak but because their governments lack the will to launch sustained counterterrorism operations against militants whom they value for other purposes. Terrorists also need support from local power brokers and populations. Along the Afghanistan-Pakistan border, al-Qaeda finds succor in the Pashtun code of pashtunwali, which requires hospitality to strangers, and in the severe brand of Sunni Islam practiced locally. Likewise in Yemen, al-Qaeda in the Arabian Peninsula has found sympathetic tribal hosts who have long welcomed mujaheddin back from jihadist struggles.

Al-Qaeda has met less success in northern Africa's Sahel region, where a moderate, Sufi version of Islam dominates. But as the organization evolves from a centrally directed network to a diffuse movement with autonomous cells in dozens of countries, it is as likely to find haven in the banlieues of Paris or high-rises of Minneapolis as in remote Pakistani valleys.

What about failed states and weapons of mass destruction? Many U.S. analysts worry that poorly governed countries will pursue nuclear, biological, chemical or radiological weapons; be unable to control existing weapons; or decide to share WMD materials.

These fears are misplaced. With two notable exceptions — North Korea and Pakistan — the world's weakest states pose minimal proliferation risks, since they have limited stocks of fissile or other WMD material and are unlikely to pursue them. Far more threatening are capable countries (say, Iran and Syria) intent on pursuing WMD, corrupt nations (such as Russia) that possess loosely secured nuclear arsenals and poorly policed nations (try Georgia) through which proliferators can smuggle illicit materials or weapons.

When it comes to crime, the story is more complex. Failed states do dominate production of some narcotics: Afghanistan cultivates the lion's share of global opium, and war-torn Colombia rules coca production. The tiny African failed state of Guinea-Bissau has become a transshipment point for cocaine bound for Europe. (At one point, the contraband transiting through the country each month was equal to the nation's gross domestic product.) And Somalia, of course, has seen an explosion of maritime piracy. Yet failed states have little or no connection with other categories of transnational crime, from human trafficking to money laundering, intellectual property theft, cyber-crime or counterfeiting of manufactured goods.

Criminal networks typically prefer operating in functional countries that provide baseline political order as well as opportunities to corrupt authorities. They also accept higher risks to work in nations straddling major commercial routes. Thus narco-trafficking has exploded in Mexico, which has far stronger institutions than many developing nations but borders the United States. South Africa presents its own advantages. It is a country where “the first and the developing worlds exist side by side,” author Misha Glenny writes. “The first world provides good roads, 728 airports . . . the largest cargo port in Africa, and an efficient banking system. . . . The developing world accounts for the low tax revenue, overstretched social services, high levels of corruption throughout the administration, and 7,600 kilometers of land and sea borders that have more holes than a second-hand dartboard.” Weak and failing African states, such as Niger, simply cannot compete.

Nor do failed states pose the greatest threats of pandemic disease. Over the past decade, outbreaks of SARS, avian influenza and swine flu have raised the specter that fast-moving pandemics could kill tens of millions worldwide. Failed states, in this regard, might seem easy incubators of deadly viruses. In fact, recent fast-onset pandemics have bypassed most failed states, which are relatively isolated from the global trade and transportation links needed to spread disease rapidly.

Certainly, the world's weakest states — particularly in sub-Saharan Africa — suffer disproportionately from disease, with infection rates higher than in the rest of the world. But their principal health challenges are endemic diseases with local effects, such as malaria, measles and tuberculosis. While U.S. national security officials and Hollywood screenwriters obsess over the gruesome Ebola and Marburg viruses, outbreaks of these hemorrhagic fevers are rare and self-contained.

I do not counsel complacency. The world's richest nations have a moral obligation to bolster health systems in Africa, as the Obama administration is doing through its Global Health Initiative. And they have a duty to ameliorate the challenges posed by HIV/AIDS, which continues to ravage many of the world's weakest states. But poor performance by developing countries in preventing, detecting and responding to infectious disease is often shaped less by budgetary and infrastructure constraints than by conscious decisions by unaccountable or unresponsive regimes. Such deliberate inaction has occurred not only in the world's weakest states but also in stronger developing countries, even in promising democracies. The list is long. It includes Nigeria's feckless response to a 2003-05 polio epidemic, China's lack of candor about the 2003 SARS outbreak, Indonesia's obstructionist attitude to addressing bird flu in 2008 and South Africa's denial for many years about the causes of HIV/AIDS.

Unfortunately, misperceptions about the dangers of failed states have transformed budgets and bureaucracies. U.S. intelligence agencies are mapping the world's “ungoverned spaces.” The Pentagon has turned its regional Combatant Commands into platforms to head off state failure and address its spillover effects. The new Quadrennial Diplomacy and Development Review completed by the State Department and the U.S. Agency for International Development depicts fragile and conflict-riddled states as epicenters of terrorism, proliferation, crime and disease.

Yet such preoccupations reflect more hype than analysis. U.S. national security officials would be better served — and would serve all of us better — if they turned their strategic lens toward stronger developing countries, from which transnational threats are more likely to emanate.

No African escalation

Adusei, energy expert – Swedish University of Agricultural Sciences, 1/6/’12

(Lord Aikins, “Global Energy Security and Africa's rising Strategic Importance,” <http://www.modernghana.com/news/370533/1/global-energy-security-and-africas-rising-strategi.html>)

Additionally, the prospect of major inter-state conflict in Africa involving the use of deadly weapons that could destabilise oil and gas supply looks relatively distant. Few African countries possess the destructive war machines that Middle Eastern countries have acquired over the last 10 to 20 years. In 2010 for example Saudi Arabia purchased $60 billion worth of U.S. military hardware which experts believe is geared towards countering Iran's arms build up. Again most of Africa's oil is located offshore and could be exploited and transported relatively easily with very little contact with the local population. By way of distance the parts of Africa where most of the oil and gas are located is relatively closer to the U.S. making cost of transportation and the security associated with it relatively less expensive. These factors make oil and gas from Africa more reliable than say the Middle East and remain some of the main reasons why Africa's strategic importance is growing among oil and gas importers.

Water shortages make Yemeni instability inevitable - outweighs their internal link

Heffez 7/23/13

ADAM HEFFEZ is a research assistant in the Program on Arab Politics at the Washington Institute for Near East Policy, Foreign Affairs, July 23, 2013, "How Yemen Chewed Itself Dry", http://www.foreignaffairs.com/articles/139596/adam-heffez/how-yemen-chewed-itself-dry

As policymakers butt heads over the best course for Yemen, the dwindling water supply is already leading to instability: according to Al-Thawra, one of the country's leading newspapers, 70 to 80 percent of conflicts in Yemen’s rural regions are water-related. And across the country, Yemen’s Interior Ministry estimates, water- and land-related disputes result in about 4,000 deaths each year -- 35 times the number of casualties in the deadliest al Qaeda attack in the county’s history.

THE QAT CAME BACK

The cultivation of qat, a mild narcotic plant that releases a stimulant when chewed, accounts for up to 40 percent of the water drawn from the Sana’a Basin each year, and that figure is rising. That is both because qat takes a lot of water to farm (much more than coffee, another plant that does well in Yemen’s fertile soil) and because cultivation of it increases by around 12 percent each year, according to Yemen’s Ministry of Agriculture and Water Resources. Not only is the crop drying the Sana’a Basin, it has displaced over tens of thousands of hectares of vital crops -- fruits, vegetables, and coffee -- which has sent food prices soaring. According to the World Bank, rising food prices, in turn, pushed an additional six percent of the country into poverty in 2008 alone.

Why the increasing reliance on qat production? Farmers are willing to put up with the plant’s high demand for water because it has a more regular yield than other crops and because the market for it is virtually guaranteed. Every cubic meter of water used for qat cultivation returns a profit five times as great as that for the next most lucrative crop, grapes. No wonder: according to the World Health Organization, up to 90 percent of adult men in Yemen chew qat for three to four hours daily, and women literally sing its praises. (A popular song goes: “Long live qat, which … makes us stay peacefully at home with our friends.”) At weddings and special events, a family’s social standing is gauged by the value of qat served to guests. One might think that such a popular drug would have deep roots in a culture, but its widespread use is actually relatively new: in the 1970s, when Yemen had few paved roads, qat, which has a shelf life of only 24 to 48 hours, often could not reach its markets in time, so fewer people had access to it.

Yemen cannot continue using water this way. In 2011, the rate of water consumption from the Sana’a Basin exceeded the rate of natural recharge by a factor of five. And, even understanding this, Yemenis have placed little value on conservation: much of the country’s 68 billion cubic meters of annual rainwater is wasted due to mismanagement and inadequate dams.

Part of the problem is that farmers, for whom the physical labor exerted in agriculture is a source of pride, are attached to wasteful practices, such as flood irrigation (the uncontrolled distribution of water over soil). Drip irrigation -- a practice that is about 35 percent more efficient and widely available at low cost -- could easily increase returns on water. But when asked about drip irrigation, one farmer told me that “flood irrigation is more honorable … all [drip irrigation] requires is pumping water up into the tank.”

Making things worse, the country’s decaying dams seep water that could otherwise be used productively. May 2010 saw flooding -- the worst to hit Sana’a in decades -- but very little of the water was captured for later use. Moreover, the country’s well system is a disaster. By law, only the government is allowed to dig and maintain wells. But according to some interpretations of sharia, which Yemen’s constitution specifies as the sole legal framework, a well drilled on privately owned land is the property of the landlord, not of the state. So drilling continues. Today, Yemen’s National Water and Sanitation Authority, which is tasked with urban water administration, supplies water to only 36 percent of Sana’a’s households. The other two-thirds get their supplies from groundwater wells.

The wells are a public health nightmare -- the country’s groundwater is increasingly contaminated by sewage effluent. Beyond that, the wells prevent the National Water and Resource Authority, which is responsible for managing the country’s water resources in a sustainable way, from enforcing conservation measures, such as improving irrigation efficiency.

# case

## 2nc norms

Their drones impact is hype – strategic disadvantages for use by terror groups and state on state combat

Michael Lewis, Professor of Law at Ohio Northern University Pettit College of Law, and Emily Crawford, Post-Doctoral Research Fellow, University of Sydney, 5/3/13, DRONES AND DISTINCTION: HOW IHL ENCOURAGED THE RISE OF DRONES, http://www.law.georgetown.edu/academics/law-journals/gjil/recent/upload/zsx00313001127.PDF

Many commentators have bolstered their arguments that the United States’ use of drones is illegal by “cautioning” that the rules for drone use which the United States is establishing could come back to haunt it when drones proliferate.156 After mentioning that over forty states possess drone technology, Philip Alston warns that “the rules being set today are going to govern the conduct of many States tomorrow. I’m particularly concerned that the United States seems oblivious to this fact when it asserts an ever-expanding entitlement for itself to target individuals across the globe.”157 Elsewhere he raises the specter that “[t]here are strong reasons to believe that a permissive policy on drone-fired targeted killings will come back to haunt the United States in a wide range of potential situations in the not too distant future.”158

Before discussing the legal merits of the norms that the United States is shaping through its present conduct of drone warfare, it is first necessary to dispel a pervasive misconception about drones that Alston and many other commentators have promulgated. **That misconception is that the current manner in which the U**nited **S**tates **is using drones broadly justifies any use of drones by other countries** against the United States **and that drones represent a serious threat** to the United States.159 This misconception has spread so easily because the reciprocity theme is intuitively appealing and, to a point, legally correct. It is true that whatever legal basis the United States offers for utilizing drones in Yemen, Pakistan, or Somalia must also be available to any other nation wishing to use drones as well. **However, that does not mean that drones will be appearing over New York City anytime soon**, in large part because drones are very vulnerable to air defense systems and signal interruption and because they are particularly unsuited to use by terror groups.160 Even the most advanced drones that the United States possesses are relatively slow and vulnerable to fighters or surface-to-air missiles, meaning that, as conventional weapons, **drones would have limited utility in a traditional state-on-state armed conflict.**161 Perhaps more importantly, the physical realities associated with using drones makes them of limited usefulness to terrorists. Drones that are capable of carrying any significant payload need hard surfaced runways and significant maintenance support. Any drone returning to such facilities would be closely followed by U.S. forces, meaning that any drone used by terrorists would be a single strike proposition, and quite an expensive one at that. Therefore, from a practical standpoint, car bombs, suicide bombs, and attacks on airliners remain by far the most credible threat to the United States, regardless of how it pursues its drone policy.

New drone states won’t be able to deploy effectively

Blair 13 (Dennis, Admiral, former Director of National Intelligence, Council on Foreign Relations, “U.S. Drone Strike Policies”, January 22, <http://www.cfr.org/counterterrorism/us-drone-strike-policies/p29849>, ZBurdette)

QUESTIONER: Hi. Thank you very much for doing this.

Has anybody, either you or others, given thought to what happens next? I mean, the United States owns the drone wars now, but technology tends to only trump temporarily. What happens down the road five years from now when other countries get drones, other countries have the ability to target American diplomats traveling around in cars in rural Yemen? Are we -- are we -- have we really thought through what kind of a world it's going to be when we have proliferating drone powers?

BLAIR: I think that --

MASTERS: (Micah, you want ?) --

BLAIR: This is Dennis Blair again.

QUESTIONER: Hi, Dennis.

BLAIR: I think we've partly thought that -- thought that through, but this is a -- this is a familiar syndrome in the sort of military technology cycle. When a new weapons program comes in, it's often introduced by the more advanced countries, the high-tech ones, and -- who take full advantage of that while they can and don't worry too much about what happens when others -- when others get it.

When you -- when you think about it, there are a couple of things that make me believe that this -- when drones do proliferate, they will not be as effective weapons against us as we are able to use them against others right now.

One is that they are -- that they are very dependent on a -- on an intelligence system which is incredibly worldwide, complicated and expensive. It uses the entire U.S. global intelligence system. **No other country can afford that.** It's not just the -- it's not just the money; it's the **years of practice** it takes to do that.

The second one is that -- what I do fear the most, though, is that a terrorist -- and let me say I don't fear too much other nation- states that gain this capability. It's very -- you know if another country has it and is using it against you and then you can use the full -- the full array of both defensive systems and of retaliation to keep it from being used against you effectively.

Drone prolif is inevitable, but only specific rules spillover. Plan’s mechanism can’t change Chinese behavior

AARON STEIN is an Associate Fellow at the Royal United Services Institute, 12/19/13 [“Drone Decrees,” Foreign Affairs, http://www.foreignaffairs.com/articles/140584/aaron-stein/drone-decrees]

The United States **has never had a monopoly** on drones. It was the Israeli Air Force’s use of drones during its war in Lebanon in the 1980s that first prompted a skeptical U.S. military to support fully the development of remote-controlled systems. The decision to arm them came later, during the hunt for Osama bin Laden after 2001 and the war on terrorism. By now, U.S. drone strikes are a regular occurrence in areas where terrorist organizations have taken root.¶ Drone technology and drone use **have also proliferated in other countries**. And even more are seeking to develop their own systems**. These systems are likely to be more local affairs than those of the United States**. **Most** of the emerging **drone states** -- including China -- **lack the United States’ worldwide network of military bases and satellites, which allow it to operate drones far from its own borders**. And, like the United States, emerging drones states are eager to develop armed drones for counterterrorism operations and surveillance. With more drones in more places come more security and policy challenges for the United States. To deal with them, it will have to come up with a new drone policy.¶ The tensions between China and Japan over the Senkaku (Diaoyu) Islands are a good example of how drones introduce new diplomatic questions. Chinese manned and unmanned surveillance flights routinely violate Japan’s 12-nautical-mile zone around the islands. Japan has dispatched fighter jets to intercept a Chinese manned surveillance plane and is **reported to have even contemplated shooting down Chinese drones**. In response, Wang Hongguang, the former deputy commander of China’s Nanjing Military Region, wrote in early November that **China should attack Japanese manned planes should Japan shoot down Chinese surveillance drones**. Things have become **even tenser** since China declared a so-called Air Defense Identification Zone over part of the East China Sea. Japan’s Nikkei reports that the United States plans to use Global Hawk drones for surveillance in the area in conjunction with increased Japanese manned E-2C Hawkeye early-warning aircraft.¶ Although there has always been a risk of unintended escalation in the East China Sea, the **emergence of unmanned systems adds a new twist**. For example, the 2001 aerial collision near Hainan Island in the South China Sea involved manned aircraft operating in international airspace. The American plane was flying a surveillance mission when two Chinese fighter jets began to tail it. One of the Chinese fighter jets accidently bumped the U.S. plane, prompting an emergency landing at a Chinese military facility on Hainan Island. China then detained the U.S. crew and inspected the plane, despite warnings that the aircraft was U.S. sovereign territory. The incident touched off a diplomatic row between two great world powers and was an early diplomatic test for the recently elected George W. Bush administration.¶ The rules of engagement are relatively clear for the intentional downing of a manned aircraft, **but the potential response to the shooting down of an unmanned system -- as Japan seems ready to do -- is far murkier**. On the one hand, such an act could escalate and lead to a conflict. On the other, since downing a drone would pose no danger to human life, China or Japan could conclude that the provocative use of drones -- or the intentional targeting of U.S. drones -- carries less risk of retaliation and is therefore a low-stakes means of coercion.¶ That idea is not so far off base: In the Persian Gulf, Iran has fired on U.S. drones and was even successful in spoofing the Global Positioning System (GPS) signal of the advanced RQ-170 drone flying over its territory. An Iranian engineer told The Christian Science Monitor, “By putting noise [jamming] on the communications, you force the bird into autopilot. This is where the bird loses its brain.” The U.S. Government Accountability Office has acknowledged the risk of GPS spoofing and recommends the introduction of spoof-resistant navigation systems on drones.¶ In the Gulf, the United States has sporadically opted to escort its surveillance drones with manned fighter jets, which raises the cost of such operations as well as the risk of escalation. **Absent a clear norm on the response to shooting down an unmanned system, incidents involving drones could snowball quickly**. And that is why the United States should develop a clear policy about the targeting **of** drones. It should be designed to prevent unintended escalation by defining the cost of provocatively using or targeting unmanned systems. These rules would need to apply to all parties, including the United States.¶ First, the United States should signal that it would hold the operator responsible for the actions of unmanned systems. Any retaliation need not target the actual operator, given the complexity of locating the pilot, but could include the air base from which the drone was launched. The goal would be to reintroduce the prospect of casualties and escalation into the drone equation by clearly laying out the potential American response if an adversary considers using unmanned systems in a coercive way against the United States or its allies and partners. In short, U.S. policy should be to treat drones like their manned cousins. Similarly, in the cases where a potential adversary targets a U.S. drone, Washington should make clear that it regards such an act as akin to the downing of a manned aircraft. The response, therefore, could include the use of force or strong diplomatic action.¶ In setting out this policy, the United States would tacitly accept that its own drone program could invite retaliation and that bases from which it flies drones could be targeted. Yet in most cases, the United States receives overflight rights for its drone operations, which should thereby protect the United States from potential retaliation from the countries in which it currently uses drones. The policy would, therefore, weigh more heavily on new drone-operating nations while keeping in place many of the United States’ own drone programs.¶ Holding drone bases responsible could help minimize the ways in which emerging drone states use drones coercively against U.S. interests, as well as push them to reach similar overflight arrangements to those that the United States keeps with its partners. The new policy would not address the legality of targeted killings, but such legal questions can be dealt with separately.¶ The United States should begin to prepare for a world in which it no longer has a monopoly on drone technology. Still, it should do so knowing that, for now, it will retain the unique capability to use military force on a global scale. **For the foreseeable future, potential adversaries will mostly use unmanned systems locally and in ways that affect the security of U.S. allies**. As the United States increases its own use of drones, it should be taking steps to map out a strategy to respond to provocations. Doing so would help establish new norms for everyone.

China won’t use drones offensively

Erickson, associate professor – Naval War College, associate in research – Fairbank Centre @ Harvard, 5/23/’13

(Andrew, China Has Drones. Now What?", www.foreignaffairs.com/articles/136600/andrew-erickson-and-austin-strange/china-has-drones-now-what)

Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry.

What about using drones outside of Chinese-claimed areas? That China did not, in fact, launch a drone strike on the Myanmar drug criminal underscores its caution. According to Liu Yuejin, the director of the anti-drug bureau in China's Ministry of Public Security, Beijing considered using a drone carrying a 20-kilogram TNT payload to bomb Kham's mountain redoubt in northeast Myanmar. Kham had already evaded capture three times, so a drone strike may have seemed to be the best option. The authorities apparently had at least two plans for capturing Kham. The method they ultimately chose was to send Chinese police forces to lead a transnational investigation that ended in April 2012 with Kham's capture near the Myanmar-Laos border. The ultimate decision to refrain from the strike may reflect both a fear of political reproach and a lack of confidence in untested drones, systems, and operators.

The restrictive position that Beijing takes on sovereignty in international forums will further constrain its use of drones. China is not likely to publicly deploy drones for precision strikes or in other military assignments without first having been granted a credible mandate to do so. The gold standard of such an authorisation is a resolution passed by the UN Security Council,

 the stamp of approval that has permitted Chinese humanitarian interventions in Africa and anti-piracy operations in the Gulf of Aden. China might consider using drones abroad with some sort of regional authorisation, such as a country giving Beijing explicit permission to launch a drone strike within its territory. But even with the endorsement of the international community or specific states, China would have to weigh any benefits of a drone strike abroad against the potential for mishaps and perceptions that it was infringing on other countries' sovereignty - something Beijing regularly decries when others do it.

The limitations on China's drone use are reflected in the country's academic literature on the topic. The bulk of Chinese drone research is dedicated to scientific and technological topics related to design and performance. The articles that do discuss potential applications primarily point to major combat scenarios -such as a conflagration with Taiwan or the need to attack a US aircraft carrier - which would presumably involve far more than just drones. Chinese researchers have thought a great deal about the utility of drones for domestic surveillance and law enforcement, as well as for non-combat-related tasks near China's contentious borders. Few scholars, however, have publicly considered the use of drone strikes overseas.

Yet there is a reason why the United States has employed drones extensively despite domestic and international criticism: it is much easier and cheaper to kill terrorists from above than to try to root them out through long and expensive counterinsurgency campaigns. Some similar challenges loom on China's horizon. Within China, Beijing often considers protests and violence in the restive border regions, such as Xinjiang and Tibet, to constitute terrorism. It would presumably consider ordering precision strikes to suppress any future violence there. Even if such strikes are operationally prudent, China's leaders understand that they would damage the country's image abroad, but they prioritise internal stability above all else. Domestic surveillance by drones is a different issue; there should be few barriers to its application in what is already one of the world's most heavily policed societies. China might also be willing to use stealth drones in foreign airspace without authorisation if the risk of detection were low enough; it already deploys intelligence-gathering ships in the exclusive economic zones of Japan and the United States, as well as in the Indian Ocean.

Still, although China enjoys a rapidly expanding and cutting-edge drone fleet, it is bound by the same rules of the game as the rest of the military's tools. Beyond surveillance, the other non-lethal military actions that China can take with its drones are to facilitate communications within the Chinese military, support electronic warfare by intercepting electronic communications and jamming enemy systems, and help identify targets for Chinese precision strike weapons, such as missiles. Beijing's overarching approach remains one of caution - something Washington must bear in mind with its own drone programme.

# accountability

## 2nc can't solve legitimacy

Can't control perceptions

Fettweis 10

Christopher J. Fettweis is an assistant professor of political science at Tulane University, August 2010, Paper prepared for the 2010 meeting of the American Political Science Association, Washington, DC, September 1-4, "The Remnants of Honor: Pathology, Credibility and U.S. Foreign Policy", http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1657460

There are several good reasons to doubt that credibility can help the “war against terror.” First of all, it is not clear that the United States can control the perceptions of non-state actors in the current era any more easily than it could those of states during the Cold War.91 It is quite a stretch to believe that if U.S. troops had not been pulled out of Lebanon or Somalia, Al Qaeda would have acted any differently throughout the 1990s. Did the U.S. withdrawals really embolden the terrorists? Were they insufficiently bold before then? In order for the policymaker’s conventional wisdom about the importance of credibility to be correct, Al Qaeda’s behavior would have to have been different if the United States had stayed involved with Somalia until some sort of victory had been achieved. If the terrorists would have attacked either way – and it is certainly plausible to think that they would have – then concerns for reputation are still irrelevant, and it remains unwise for policymakers to look beyond the current crisis.

Second, Al Qaeda’s perceptions will likely remain unaffected by any attempt on part of Washington to shape them. The strategy of a weak actor in extreme asymmetry must be based on the premise that although it may not be able to employ tangible assets to win the war, intangible, moral elements will prove decisive. No matter what the behavior of the strong actually is, the weak are likely to accuse it of being irresolute. Thus, Al Qaeda is pursuing a propaganda strategy nearly immune to rational influence. Since they lacked the power to force a retreat, the mujahadeen in Afghanistan needed to preach that the Soviet Union would prove morally inferior in order to convince its fighters that resistance was not utterly pointless; likewise, Bin Laden must paint the United States as a paper tiger or no one will rally to his cause. Since jihadi groups have no hope of success without a certain degree of superpower irresolution, it is unlikely that any amount of credibility will cause these groups to abandon that belief (or hope). Once again, Washington will likely not be able to control its reputation in the eyes of others. The future actions of these groups will likely remain unaffected by their perceptions of U.S. credibility.

Finally, it is quite possible that Bin Laden’s pronouncements of American irresolution are less explanations for his behavior than tools for attracting new recruits. Although Al Qaeda took credit for the Somalia adventure, for example, it disavowed any participation in the embassy bombings, perhaps since those incidents did not cause any change in U.S. behavior and therefore would not serve as well in recruitment. Might resolute, credible superpowers be able to prevent jihadi groups from recruiting new generations of terrorists? Probably not, since Al Qaeda and its allies have shown no particular interest in the accuracy of their statements. Their preposterous exaggeration of both their involvement in, and the scale of, the battles in Somalia lend credence to the argument that the true importance of the event was for propaganda rather than for the actual formulation of strategy. Although there is little evidence that the battle in Mogadishu was fought by anyone other than Somalis, to listen to Bin Laden one would think that the mujahadeen from all over the region had converged to oust the imperialists. He has repeatedly claimed that 300,000 Americans turned tail and fled after the battle, which is more than ten times the number that was ever in the country and almost one hundred times the number that actually left after Mogadishu. No matter what the United States did in Somalia, Al Qaeda would likely have continued its tangible and intangible assaults, which even in extreme exaggeration would have found eager ears among the disaffected, angry masses. Many regions of the world have populations quite sympathetic to the argument that despite its apparent strength, the United States is actually a weak, feminized, immoral, corrupt paper tiger. The Middle East, where conspiracy theories often find wide audiences, is seemingly fertile ground for Bin Laden’s lies and twisted interpretation of U.S. irresolution. In other words, U.S. actions are not likely to have direct bearing on the interpretation of its credibility in the region, or on the outcome of the war on terror, for better or for worse.

## 2nc no impact to legitimacy

Legitimacy is worthless - laundry list

Fettweis 10

Christopher J. Fettweis is an assistant professor of political science at Tulane University, August 2010, Paper prepared for the 2010 meeting of the American Political Science Association, Washington, DC, September 1-4, "The Remnants of Honor: Pathology, Credibility and U.S. Foreign Policy", http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1657460

In sum, when the credibility imperative drives policy, states fearful of catastrophic future consequences are likely to follow hawkish recommendations in otherwise irrelevant situations, attempting to send messages that other states are unlikely to receive. Policymakers would be wise to beware of the credibility imperative while devising policy, question the assumptions it contains and remain skeptical of the fantastic disasters of which it warns. Most importantly, perhaps they should be given pause by the knowledge that scholars can supply virtually no evidence supporting the conventional wisdom about its importance.

Both logic and a preponderance of the evidence suggest that the current U.S. obsession with credibility is as insecure, misplaced and mal-informed as all that have preceded it. Whether or not it will result in the kind of counter-productive policies that accompanied the Cold War credibility imperative remains to be seen. What is more assured is that there is no clear way to control the perceptions of others, whether they are superpowers, small states or loosely connected non-state groups. The impression that their thoughts can be controlled by our actions may be comforting, springing perhaps from basic human psychological needs, but in reality their perception of us is largely outside of our influence. The messages we hope to send through our actions are unlikely to be successfully received. Washington would be welladvised to avoid the understandable and natural temptation to look beyond the current crisis when making decisions. As unsettling as it may be, since the future is largely outside our control, the tangible interests of the present, therefore, must outweigh the intangible interests of the future.

Although it is no longer fashionable to name honor as a reason for war, its underlying effects are still with us. When the credibility imperative drives policymaking, the United States is likely to behave in manifestly pathological ways. No matter what term is used, concerns for honor march states toward folly. The foreign policy of the United States is not driven only by tangible, material measures of interest; however, it should be. Just because our policies have not been rational does not mean that they cannot be moving forward. One sure way to approach that goal would be to recognize, and eliminate, the urge to act in order to bolster the credibility of our commitments.

## yemen

No African escalation

Adusei, energy expert – Swedish University of Agricultural Sciences, 1/6/’12

(Lord Aikins, “Global Energy Security and Africa's rising Strategic Importance,” <http://www.modernghana.com/news/370533/1/global-energy-security-and-africas-rising-strategi.html>)

Additionally, the prospect of major inter-state conflict in Africa involving the use of deadly weapons that could destabilise oil and gas supply looks relatively distant. Few African countries possess the destructive war machines that Middle Eastern countries have acquired over the last 10 to 20 years. In 2010 for example Saudi Arabia purchased $60 billion worth of U.S. military hardware which experts believe is geared towards countering Iran's arms build up. Again most of Africa's oil is located offshore and could be exploited and transported relatively easily with very little contact with the local population. By way of distance the parts of Africa where most of the oil and gas are located is relatively closer to the U.S. making cost of transportation and the security associated with it relatively less expensive. These factors make oil and gas from Africa more reliable than say the Middle East and remain some of the main reasons why Africa's strategic importance is growing among oil and gas importers.

Water shortages make Yemeni instability inevitable - outweighs their internal link

Heffez 7/23/13

ADAM HEFFEZ is a research assistant in the Program on Arab Politics at the Washington Institute for Near East Policy, Foreign Affairs, July 23, 2013, "How Yemen Chewed Itself Dry", http://www.foreignaffairs.com/articles/139596/adam-heffez/how-yemen-chewed-itself-dry

As policymakers butt heads over the best course for Yemen, the dwindling water supply is already leading to instability: according to Al-Thawra, one of the country's leading newspapers, 70 to 80 percent of conflicts in Yemen’s rural regions are water-related. And across the country, Yemen’s Interior Ministry estimates, water- and land-related disputes result in about 4,000 deaths each year -- 35 times the number of casualties in the deadliest al Qaeda attack in the county’s history.

THE QAT CAME BACK

The cultivation of qat, a mild narcotic plant that releases a stimulant when chewed, accounts for up to 40 percent of the water drawn from the Sana’a Basin each year, and that figure is rising. That is both because qat takes a lot of water to farm (much more than coffee, another plant that does well in Yemen’s fertile soil) and because cultivation of it increases by around 12 percent each year, according to Yemen’s Ministry of Agriculture and Water Resources. Not only is the crop drying the Sana’a Basin, it has displaced over tens of thousands of hectares of vital crops -- fruits, vegetables, and coffee -- which has sent food prices soaring. According to the World Bank, rising food prices, in turn, pushed an additional six percent of the country into poverty in 2008 alone.

Why the increasing reliance on qat production? Farmers are willing to put up with the plant’s high demand for water because it has a more regular yield than other crops and because the market for it is virtually guaranteed. Every cubic meter of water used for qat cultivation returns a profit five times as great as that for the next most lucrative crop, grapes. No wonder: according to the World Health Organization, up to 90 percent of adult men in Yemen chew qat for three to four hours daily, and women literally sing its praises. (A popular song goes: “Long live qat, which … makes us stay peacefully at home with our friends.”) At weddings and special events, a family’s social standing is gauged by the value of qat served to guests. One might think that such a popular drug would have deep roots in a culture, but its widespread use is actually relatively new: in the 1970s, when Yemen had few paved roads, qat, which has a shelf life of only 24 to 48 hours, often could not reach its markets in time, so fewer people had access to it.

Yemen cannot continue using water this way. In 2011, the rate of water consumption from the Sana’a Basin exceeded the rate of natural recharge by a factor of five. And, even understanding this, Yemenis have placed little value on conservation: much of the country’s 68 billion cubic meters of annual rainwater is wasted due to mismanagement and inadequate dams.

Part of the problem is that farmers, for whom the physical labor exerted in agriculture is a source of pride, are attached to wasteful practices, such as flood irrigation (the uncontrolled distribution of water over soil). Drip irrigation -- a practice that is about 35 percent more efficient and widely available at low cost -- could easily increase returns on water. But when asked about drip irrigation, one farmer told me that “flood irrigation is more honorable … all [drip irrigation] requires is pumping water up into the tank.”

Making things worse, the country’s decaying dams seep water that could otherwise be used productively. May 2010 saw flooding -- the worst to hit Sana’a in decades -- but very little of the water was captured for later use. Moreover, the country’s well system is a disaster. By law, only the government is allowed to dig and maintain wells. But according to some interpretations of sharia, which Yemen’s constitution specifies as the sole legal framework, a well drilled on privately owned land is the property of the landlord, not of the state. So drilling continues. Today, Yemen’s National Water and Sanitation Authority, which is tasked with urban water administration, supplies water to only 36 percent of Sana’a’s households. The other two-thirds get their supplies from groundwater wells.

The wells are a public health nightmare -- the country’s groundwater is increasingly contaminated by sewage effluent. Beyond that, the wells prevent the National Water and Resource Authority, which is responsible for managing the country’s water resources in a sustainable way, from enforcing conservation measures, such as improving irrigation efficiency.

## yemen drones inevitable

Targeted Killing is inevitable in yemen despite public protests

Tik Root, staff writer, 11/30/13 [“Yemen’s New Ways of Protesting Drone Strikes: Graffiti and Poetry,” http://world.time.com/2013/11/30/yemens-new-ways-of-protesting-drone-strikes-graffiti-and-poetry/#ixzz2p5tbTCc5]

An American drone hovers along a main thoroughfare in the Yemeni capital, Sana’a. Not a real drone, but rather a 7 foot-long rendition of an unmanned aircraft spray-painted near the top of a whitewashed city wall. Below it, a stenciled-on child is writing: “Why did you kill my family?” in blood-red English and Arabic script.¶ Painted by Yemeni artist Murad Subay, the Banksy-esque mural sits beside three others also admonishing the United States’ use of drones in Yemen to track and kill terrorism suspects. This drone art is part of Subay’s latest campaign, “12 Hours”, which aims to raise awareness about twelve problems facing Yemen, including weapons proliferation, sectarianism, kidnapping and poverty. Drones are the fifth and arguably most striking “hour” yet completed.¶ “Graffiti in Yemen, or street art, is a new device to communicate with the people,” says Subay, 26, who after taking up street art two years ago in the wake of Yemen’s Arab Spring revolution has almost single-handedly sparked the growing Yemeni graffiti movement. “In one second, you can send a message.”¶ The anti-drone chorus in Yemen has grown louder since the Obama Administration took office in 2009. All but one of the dozens of reported drone strikes in Yemen have been carried out since Obama came to office (although strikes here and in Pakistan have been more sporadic in recent months). Operations are rarely acknowledged by American officials but have nonetheless stirred a global debate about the strikes’ legality, morality and effectiveness.¶ Proponents argue that drones offer an efficient way of fighting al-Qaeda in the Arabian Peninsula, a Yemen-based affiliate of the global terrorist network. The Yemeni President Abd Rabbuh Mansur Hadi has endorsed the program, praising ongoing U.S.-Yemen counterterrorism cooperation and the “high precision that’s been provided by drones.” Human rights activists in Yemen and the families of many victims are outraged by the so-called “drone war” in the country, which the Bureau of Investigative Journalism estimates has resulted in between 21 and 56 civilian deaths. Aside from more conventional methods of protest - such as demonstrations, media campaigns, and the production of often scathing reports – activists are increasingly employing art as a medium through which to express their anger.¶ “We [have] tried to be a little bit more creative on ways [that] we can really combat the fact that drones are hovering over our cities and villages,” said Baraa Shiban, a Yemeni activist and project coordinator for the British-based organization Reprieve, which advocates for the rights of prisoners to receive a fair trial. Taking their lead from Yemen’s reputation for recitation, the group organized an anti-drone poetry contest earlier this month. The top prize: $600 or, in Reprieve’s words, “1% of the cost of a hellfire missile.”¶ A panel of Yemeni poets whittled the more than 30 submissions down to six finalists and a winner. Frontrunners gathered on a recent Tuesday afternoon to share their work. One by one, contestants read their poems aloud. Some delivered their verse – containing lines such as “From above, Death descends upon us,” “Drones are the friend of our enemy” and “Do you fight terrorism with terrorism?” – more fluently than others, but the small audience of mostly friends and fellow activists greeted all of the contestants with equally boisterous applause. The winner: Drones Without Rhyme, a catchy free verse poem with a familiar theme. The winning poet, Ayman Shahari, beamed as he walked on stage.¶ Despite not winning, Raghda Gamal, a journalist and author of the entry Death Flying Around!, was glad that she had participated. “It’s great to use such art to send your case,” she said. “We can use a lot of tools rather than weapons.”¶ Reprieve’s Shiban says that creative events like this help broaden discussions in Yemen, a country with high rates of illiteracy and limited Internet penetration. “It’s a way of engaging more sectors of society,” he says.¶ Subay agrees. “[Art] galleries in Yemen belong to one class. Graffiti is for all people,” he says. Two years ago there was hardly a stencil to be seen on public walls but today, thanks largely to Subay’s campaigns, they are plastered across some of the country’s most trafficked areas. Subay estimates that, in all, millions of citizens have now been exposed to street art.¶ Shiban is optimistic that cultural forms of protest like poetry and graffiti could be a step on the path toward ending drones strikes and affecting other changes in Yemen. Subay, however, is skeptical that art will alter policy, saying that **the United States’ counterterrorism strategy will likely “carry on” regardless.¶** “Maybe I don’t expect any action [from the U.S.],” said Subay. “But I’ll always keep hoping.”¶ Whether or not the anti-drone poetry and graffiti influences American policy in Yemen, one thing seems clear: for a region whose people have so often lived under dictators and through times of violence, peaceful protest of this sort can only be healthy.

# cp

## 2nc defining imminence

Courts can define imminence

Benjamin McKelvey serves as Executive Development Editor on the Editorial Board of the Vanderbilt Journal of Transnational Law, 11 [“NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 2011, 44 Vand. J. Transnat'l L. 1353]

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the "imminence" standard. n109 **However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants** of authority. n110 In the context of targeted killing, **a federal court could evaluate the targeted killing program** to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. Targeted killing, by its very name, suggests an entirely premeditated and offensive form of military force. n111 Moreover, the overview of the CIA's targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval. n112 While the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat to the nation, the judiciary has the authority to define "imminence" as a legal standard. n113 These [\*1368] are general concepts of law, not political questions, and they are subject to judicial review. n114 Under judicial review, a court would likely determine that targeted killing does not satisfy the imminence standard for the president's authority to use force in defense of the nation. Targeted killing is a premeditated assassination and the culmination of months of intelligence gathering, planning, and coordination. n115 "Imminence" would have no meaning as a standard if it were stretched to encompass such an elaborate and exhaustive process. n116 Similarly, the concept of "defensive" force is eviscerated and useless if it includes entirely premeditated and offensive forms of military action against a perceived threat. n117 **Under judicial review, a court could easily and properly determine that targeted killing does not satisfy the imminence standard for the constitutional use of defensive force**. n118

## 2nc cp solvency

That resolves TK legitimacy and drone norms

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

This does not mean that the uncertainties created by the intersection of threat-based scope and TAC are insignificant. To the contrary, extending the concept of armed conflict to a transnational non-State opponent has resulted in significant discomfort related to the assertion of State military power. But attempting to decouple the permissible geography of armed conflict from threat driven strategy by imposing some arbitrary legal limit on the geographic scope of TAC is an unrealistic and ultimately futile endeavor. **Other solution**s to these uncertainties **must be pursued**—solutions **that mitigate** the **perceived over-breadth of authority associated with TAC.** As explained below, these solutions should focus on four considerations:

(1) managing application of the inherent right of self-defense when it results in action within the sovereign territory of a non-consenting State;

(2) adjusting the traditional targeting methodology to account for the increased uncertainties associated with TAC threat identification;

 (3) considering the feasibility of a “functional hors de combat” test to account for incapacitating enemy belligerents incapable of offering hostile resistance; and

(4) continuing to enhance the process for ensuring that preventive detention of captured belligerent operatives does not become unjustifiably protracted in duration.

This essay does not seek to develop each of these mitigation measures in depth. Instead, it proposes that focusing on these (and perhaps other innovations in existing legal norms) is a more rational approach to mitigating the impact of TAC than imposing an arbitrary geographic scope limitation. Other scholars have already begun to examine some of these concepts, a process that will undoubtedly continue in the future. Whether these innovations take the form of law or policy is another complex question, which should be the focus of exploration and debate. In short, rejecting the search for geographic limits on the scope of TAC should not be equated with ignorance of the risks attendant with this broad conception of armed conflict. Instead, it must be based on the premise that even if such a limit were proposed, it would ultimately prove ineffective in preventing the conduct of operations against transnational non-State threats where the State concludes such operations will produce a decisive effect. Instead, focusing on the underlying issues themselves and considering how the law might be adjusted to account for actual or perceived authority over-breadth is a more pragmatic response to these concerns.

A. Jus ad Bellum and the Authority to Take the Fight to the Enemy

One example of proposals to mitigate the risk of over-breadth associated with TAC is the “unable or unwilling” test highlighted by the scholarship of Professor Ashley Deeks.53 Deeks proposes a methodology for balancing a State’s inherent right to defend itself against transnational non-State threats and the sovereignty of other States where threat operatives are located. Because the law of neutrality cannot provide the framework for balancing these interests (as it does in the context of international armed conflicts), Deeks acknowledges that some other framework is necessary to limit resort to military force outside “hot zones,” even when justified as a measure of national self-defense. The test she proposes seeks to limit selfhelp uses of military force to situations of absolute necessity by imposing a set of conditions that must be satisfied to provide some objective assurance that the intrusion into another State’s territory is a genuine measure of last resort.54 This is pure lex lata,55 so is Deeks, to an extent. However, Deeks, having served in the Department of State Legal Advisor’s Office, recognizes that if TAC is a reality (which it is for the United States), these innovations are necessary to ensure it does not result in unjustifiably overbroad U.S. military action.

B. Target Identification and Engagement

This is precisely the approach that should be considered in the jus in bello branch of conflict regulation to achieve an analogous balance between necessity and risk during the execution of combat operations. Even assuming the “unable or unwilling” test effectively limits the exercise of national selfdefense in response to transnational terrorism, it in no way mitigates the risks associated with the application of combat power once an operation is authorized.

The in bello targeting framework is an obvious starting point for this type of exploration of the concept and its potential adjustment.56 Indeed, it seems increasingly apparent that while TAC suggests a broad scope of authority to employ combat power in a LOAC framework with no geographic constraint, the consternation generated by this effect is a result of the uncertainty produced by the complexity of threat recognition. This consternation is most acute in relation to three aspects of action to incapacitate terrorist belligerent operatives: the relationship between threat recognition and the authority to kill as a measure of first resort (the difficulty of applying the principle of distinction when confronting irregular enemy belligerent forces); the pragmatic illogic of asserting the right to kill as a measure of first resort to an individual subject to capture with virtually no risk to U.S. forces; and the ability to apply this targeting authority against unconventional enemy operatives located outside of “hot zones”.57

These concerns flow from the intersection of a battlespace that is functionally unrestricted by geography and the unconventional nature of the terrorist belligerent operative. The combined effect of these factors is a target identification paradigm that defies traditional threat recognition methodologies: no uniform, no established doctrine, no consistent locus of operations, and dispersed capabilities.58 It is certainly true that threat identification challenges are in no way unique to TAC; threat identification has always been difficult, especially in the context of “traditional” noninternational armed conflicts involving unconventional belligerent opponents. Yet, when this threat recognition uncertainty was confined to the geography of one State, it was never perceived to be as problematic as it is in the context of TAC. This is perplexing. In both contexts, the unconventional nature of the enemy increases the risk of mistake in the target selection and engagement process.59 Thus, employing the same approach is completely logical.

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.]

## 2nc cp solves safe havens

This standard resolves target standard clarity, and legitimizes targeting decisions

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No quantum of information can ever universally guarantee that objects of attack are lawful targets. However, the law has never required that commanders must always be correct in their assessments of target legality. Instead, the requirement that targeting judgments be reasonable accepts the inevitable reality that sometimes those judgments are, however innocently, incorrect. Reasonableness, though, is an objective standard. Accordingly, a more defined and predictable **quantum of information framework will** both **improve the assessment of target selection and guide potential post hoc critiques of such judgments**. **This framework will** also **enhance the value of operational legal advice by facilitating the legal critique of nominated targets**. This table summarizes the variable continuum this article proposes:

The battlefield is not an environment where all potential targets are of equal character. Instead, targets range over a broad spectrum of certainty. As such, the reasonableness of a target legality judgment must be responsive to this spectrum of (un)certainty, must accommodate the realities of armed conflict, and must ensure a proper balance between mitigation of risk of error and the necessity of prompt and decisive military action. Furthermore, any quantum of information component for assessing the reasonableness of target decision-making will ultimately require implementation at both the operational level and during post hoc critiques. Indeed, this requirement is already inherent in both of these aspects of assessing target legality.

**The notion of providing a** more **predictable reasonableness assessment framework is not radical.** Commanders, and the military staff officers (including military legal advisors) who advise them, instinctively focus on the facts and circumstances available at the time these decisions are made to frame their judgments as to the legality of engaging proposed targets. When these decisions are subject to post hoc critique, the investigators or tribunals assessing the decision-making process must also inevitably focus on the facts and circumstances prevailing at the time as the foundation for their determinations. The inevitability that facts and circumstances will be considered in the assessment of reasonableness absent a defined quantum of information framework undermines the legitimacy of both target decision making and subsequent critiques.

Establishing quantum framework, however, will not necessarily ensure credibility and legitimacy of the target decision-making process. That credibility and legitimacy stems first from a good faith commitment to gather as much information related to potential targets as possible and to assess that information as thoroughly as possible given the conditions of combat. The credibility and legitimacy of any subsequent critique of the target decision-making process must also begin with a good faith commitment to assess the judgment through the subjective lens of the operational decision maker. Any legitimate critique must rely on the situation that was confronted by the commander at the time of the decision, and to refuse to consider facts and circumstances that were unavailable or unknown to the commander at the time. Establishing a quantum of information framework for the target decision-making process will strengthen the effectiveness of the process at both levels. At the operational level, it will arm legal advisers with a more concrete standard of review in support of their advisory role. Even when commanders do not have the benefit of legal advice, predeployment training that incorporates these quantum requirements will facilitate quality decision making by solidifying and clarifying the standards for target decision making.

**Using a quantum framework will make a**n even more **significant contribution to the legitimacy of** post hoc critiques of **targeting decisions**. Legitimacy of such critiques is critically important for ensuring effective accountability for battlefield misconduct, but it is also important **to** ensure that commanders are able to act decisively **in the intensely chaotic environment of armed conflict**. This importance has recently been highlighted by the critical response to the Goldstone Report assessing the legality of military operations conducted during Operation Cast Lead, the 2008 Israeli incursion into Gaza.243 Much of the criticism of the findings of the Goldstone Report focused on an improper methodology utilized to assess the reasonableness of Israeli target selection and engagement.244 Establishing a quantum framework will contribute to future assessments of reasonableness and potentially **mitigate the temptation to critique battlefield decisions retrospectively**. Instead, under the quantum of information framework, such critiques would become more properly focused on the facts and circumstances available to an operational decision maker at the time of target selection to see whether the requisite quantum was met.

Providing a framework that will enhance the probability of such focus is consistent with the proper standard of review for any military operational decision. Because targeting decisions are subject to a test of reasonableness, those decisions must be assessed through the subjective lens of the decision maker. While reasonableness does require an objective assessment of the ultimate decision, the facts and circumstances upon which that objective assessment should be made are the facts and circumstances as viewed by the commander at the time of action. In this regard, the proper application of the reasonableness assessment involves a combined subjective/objective critique. The ultimate question is whether, based on the subjective perception of the commander at the time of the decision, the decision was objectively reasonable. A quantum framework will facilitate the legitimacy of the target decision, allow the commander to more effectively articulate her thought process during subsequent review, and ultimately allow the individual or tribunal conducting this critique to focus on the facts and circumstances that were available and consider those facts and circumstances through the commander’s perspective.

Status quo review is arbitrary—plan turns operational clarity

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Reasonableness is unquestionably the focal point of compliance with the military objective rule and, by implication, the principle of distinction.73 What, however, does reasonable mean in practical terms? There are two potential answers to this question. The first, which seems consistent with current practice, does not in fact define reasonableness, but merely emphasizes that each ad hoc targeting decision must be the result of a reasonable judgment. Commanders make ad hoc assessments of target legality based on instinctual assessments of the amount of information necessary to satisfy the elements of the military objective test (at times guided by the advice of a military legal staff officer, who, like the supported commander, is left with his own subjective determination of what amount of information renders the decision reasonable).74 An alternative approach is more pragmatic and would link the definition of reasonableness to a quantum of information component.

**The current ill-defined approach** is certainly flexible, but it **creates a number of deficiencies**. First is the absence of a uniform standard for assessing the quantum and quality of information to support a targeting decision. This lack of uniformity necessarily requires tolerance of potentially disparate judgments. Second, the lack of a uniform quantum standard subtly dilutes the influence of staff officers (and especially the legal advisor) in the target decision-making process. Without a defined quantum requirement, the staff officer must ultimately concede that determining whether the military objective test is satisfied is within the pure subjective discretion of the commander. This effect is related to the third deficiency: the lack of a consistent framework for post hoc critique of the reasonableness of the commander’s decision.

The lack of a defined quantum standard is most palpably detrimental to any effort to subject the target decision to post hoc review. Whether for purposes of administrative investigation, process review and refinement, or criminal sanction, assessing whether a commander acted reasonably without a defined quantum of information framework renders the assessment inherently arbitrary.75 This detrimental effect has two possible manifestations. One is that the finder of fact will be disabled in performing the objective reasonableness assessment because of an inability to effectively critique the reasonableness of the decision based on the subjective perspective of the commander at the time the decision was made. This, however, is unlikely, for the simple reason that the mandate of an investigation or adjudication is to reach a conclusion.

**The alternate and more likely manifestation is** that **the** reviewing **official** or entity **will simply apply her own subjective determination of what quantum of information renders a judgment reasonable**. **This substitution of subjective judgment is particularly troubling**, for **it contributes to disparate outcomes and subjects** the commander under scrutiny to a post hoc judgment based not on a standard of reasonableness analogous to that used at the time of the decision, but on the subjective instincts of the reviewing official or entity. In short, **without linking reasonableness to a defined quantum of information, the law invites subjective and inherently arbitrary determinations of whether a commander acted in compliance with his obligations**.

This latter effect was exposed during the recent trial of General Ante Gotovina. In 2008, General Gotovina was convicted by the International Tribunal for the Former Yugoslavia (Tribunal) for, among other things, unlawful attacks on civilian population centers as part of a joint criminal enterprise to ethnically cleanse Croatia of ethnic Serbs.76 Central to the prosecution’s theory that Gotovina engaged in ethnic cleansing of Croatian Serbs from Krajina was the allegation that he used indirect fires against the city of Knin, the capital of the Croatian Serb break-away region of Krajina.77 According to the prosecution, General Gotovina’s use of artillery and rocket fire against targets in Knin was intended to terrorize the civilian population.78 By demonstrating the inherent unreasonableness of his target selections, the prosecution hoped that proof of this indirect fire would support a circumstantial inference that the overall objective of the operation he commanded (Operation Storm) was to force Serbs from the territory. Accordingly, it was not necessary for the prosecutor to establish intent to attack protected persons and places. Instead, by demonstrating the inherent unreasonableness of his selection of methods and means of attack against targets within the city, the prosecutor would achieve the purpose of corroborating the broader illicit motive.79

In response, the defense offered evidence in the form of expert opinions that focused on the propriety of designating and subsequently attacking certain buildings and areas within Knin. Through this evidence, the defense argued that, based on the facts available at the time Gotovina approved the attacks, each nominated target qualified as a lawful military objective and the methods and means used to attack these objectives were appropriate. The defense also challenged the probative value of a report offered by the prosecution’s expert who reached the exact opposite conclusion. The defense theory was clear: it was reasonable for Gotovina to conclude that all of the nominated targets located within the city of Knin were either being utilized by Croatian Serb forces for military purposes (such as use as headquarters or barracks) or were valuable for other military purposes (such as to facilitate movement of reinforcements or supplies).80 The prosecutor challenged much of this opinion, particularly in relation to buildings and places that were not purely military in nature (such as a rail yard, or an apartment building housing the civilian leader of the Croatian Serb forces).81 The Tribunal was therefore provided with conflicting expert opinions on the reasonableness of General Gotovina’s judgments, punctuated by periodic interventions by the presiding judge who emphasized his view that reasonableness would depend on all the variables presented to General Gotovina at the time of his decisions. In its judgment, the Tribunal adopted most of the defense theory, although it ultimately concluded that evidence of artillery effects beyond the range of identified targets (combined with an unjustified use of artillery against the residence of the Croatian Serb President) proved the prosecution’s allegation.82 Currently pending appeal, this ruling may not be the final chapter in the case of General Gotovina.83 What is relevant here, however, is how the trial process revealed the consequence of an ill-defined concept of reasonableness.

Although a substantial amount of time was devoted to the presentation of evidence related to the attack on Knin, and literally hundreds of pages of the trial judgment address this issue, there was no discussion of the amount of information required to render Gotovina’s targeting judgments reasonable. As a result, four distinct conclusions were invited: the conclusions reached by General Gotovina when he approved targets, the defense conclusion based on review of the evidence available to him at that time, the prosecutor’s conclusion that the evidence did not justify Gotovina’s legality conclusions, and the inchoate conclusion of the Tribunal. The absence of a clear quantum to define reasonableness therefore leads to an inherent arbitrariness in this assessment.

For a charge of unlawful attack on civilians or civilian property, the current state of the law does arguably require a prosecutor to prove beyond a reasonable doubt that an attack on a target was intentional,84 although several decisions by the ICTY seem to have adopted a lower culpability standard.85 However, requiring a prosecutor to meet this standard and prove that a target subjected to attack was not a lawful military objective does not eliminate the disabling effect of an undefined reasonableness quantum. Proof beyond a reasonable doubt requires the prosecutor to exclude every fair and rational hypothesis except that of guilt.86 In more specific terms, it requires the prosecutor to prove that there was no fair and rational justification for concluding a target qualified as a lawful military objective. So long as the commander can point to some information relied on for the target legality judgment, the court will have to assess the reasonableness of the judgment. As such, the post hoc assessment of whether the attack was intentionally directed against a protected person or place renders the critique inherently subjective. Therefore, without a quantum standard, there is no meaningful criterion upon which to meet this heightened burden in any but the most extreme cases, and the resulting assessment will be arbitrary.

Reasonableness should not be based solely on an assessment of whether a commander considered information in support of his decision, but instead on the quality of the information that supported the decision. While this is almost certainly consistent with the application of the military objective test in current practice, it highlights the importance of defining the quantum component of reasonableness. Furthermore, the universally high standard for criminal responsibility for attacking civilians or civilian property87 should not be relied upon as a justification to avoid a more functional assessment of reasonableness in the decision- making process. Obviously, any commander who willfully (or, according to the ICTY, recklessly)88 attacks a target he knows is civilian in nature has violated the principle of distinction and the law of military objective. However, at the operational execution level, the principle of distinction along with the rule of military objective requires more of a commander—a good- faith determination that the object of attack qualifies as a military objective. It is this determination that should be the focal point of improving the decision-making process by identifying a rational quantum of information framework. Shifting the focus of compliance with the military objective test to the criminal consequence of noncompliance coupled with the high burden of proof required to establish that liability undermines the efficacy of the law to achieve its intended goal: facilitating good-faith and factually-sound attack decisions.

All this indicates that both the operational decision- making process and the post hoc critique of those decisions will be enhanced by linking the concept of target decision-making reasonableness with a quantum of information framework. There has, however, been a notable omission from the evolution of the targeting reasonableness test that raises a question: what is the requisite quantum of information that may legitimately result in a reasonable belief that a person, place, or thing qualifies as a lawful military objective? Such a framework would serve two purposes. First, the framework would facilitate good-faith operational decisions by providing commanders greater clarity on the standard against which to assess the sufficiency of available information relied on to make targeting judgments. Second, it would provide a consistent standard against which targeting decisions would subsequently be critiqued. The contemporary absence of a quantum framework contributes to the potential transformation of what is supposed to be a prospective assessment into a retrospective critique, focused not on the information available to the commander at the time of the decision, but on the actual facts discovered after the decision.89

# disad

## 1nr - impact

Terrorism is an existential risk - they have the motive and theoretical capacity to acquire nukes but drones prevent organization - one attack is sufficient to cause extinction through global nuclear winter - that's Toon

Causes US-Russia miscalc – extinction

Barrett et al. 13—PhD in Engineering and Public Policy from Carnegie Mellon University, Fellow in the RAND Stanton Nuclear Security Fellows Program, and Director of Research at Global Catastrophic Risk Institute—AND Seth Baum, PhD in Geography from Pennsylvania State University, Research Scientist at the Blue Marble Space Institute of Science, and Executive Director of Global Catastrophic Risk Institute—AND Kelly Hostetler, BS in Political Science from Columbia and Research Assistant at Global Catastrophic Risk Institute (Anthony, 24 June 2013, “Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia,” Science & Global Security: The Technical Basis for Arms Control, Disarmament, and Nonproliferation Initiatives, Volume 21, Issue 2, Taylor & Francis)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have globally catastrophic effects such as severely reducing food production for years, 1 potentially leading to collapse of modern civilization worldwide, and even the extinction of humanity. 2 Nuclear war between the United States and Russia could occur by various routes, including accidental or unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 3 (Brinkmanship strategies incorporate elements of all of the above, in that they involve intentional manipulation of risks from otherwise accidental or inadvertent launches. 4 ) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, and numerous measures also were taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side's forces and command-and-control capabilities led to both sides’ development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. 5 Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. 6 However, it also has been argued that inadvertent nuclear war between the United States and Russia has continued to present a substantial risk. 7 While the United States and Russia are not actively threatening each other with war, they have remained ready to launch nuclear missiles in response to indications of attack. 8 False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 9 Second, terrorist groups or other actors might cause attacks on either the United States or Russia that resemble some kind of nuclear attack by the other nation by actions such as exploding a stolen or improvised nuclear bomb, 10 especially if such an event occurs during a crisis between the United States and Russia. 11 A variety of nuclear terrorism scenarios are possible. 12 Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 13 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 14 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.–Russian crisis conditions, 15 with the Cuban Missile Crisis being a prime historical example. It is possible that U.S.–Russian relations will significantly deteriorate in the future, increasing nuclear tensions. There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 16

Deterrence fails

Carafano 09, [James Jay, Ph.D., Assistant Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Senior Research Fellow for National Security and Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation, “Worst-Case Scenario: Dealing with WMD Must Be Part of Providing for Common Defense,” 6/29, http://www.heritage.org/Research/HomelandSecurity/sr0060.cfm]

Nor does it make much sense to argue that terrorists will adopt "simpler" means or that enemy states can be easily deterred by the U.S. nuclear arsenal. Terrorists have already gone the WMD route. The Rajneeshee cult in Wyoming in 1984 launched a biological warfare attack. In 1995, the Aum Shinrikyo hit the Tokyo subway with poison gas. Soon after the 9/11 attacks, letters laced with anthrax began appearing in the U.S. mail. Luckily, these efforts were neither very sophisticated nor well organized. Next time, we might not be so lucky. Likewise, the U.S. nuclear deterrent has not dissuaded North Korea or Iran from pursuing very aggressive nuclear and ballistic missile programs.

## 1nr at: impact d

Nuke terror likely

Dahl 13 (Fredrik, Reuters, covers mainly nuclear-related issues, including Iran's dispute with the West over its atomic plans. I previously worked in Tehran, Iran, between 2007-2010, and have also been posted to Belgrade, Sarajevo, London, Brussels, Helsinki and Stockholm during two decades with Reuters, 7/1/2013, "Governments warn about nuclear terrorism threat", www.reuters.com/article/2013/07/01/us-nuclear-security-idUSBRE96010E20130701)

More action is needed to prevent militants acquiring plutonium or highly-enriched uranium that could be used in bombs, governments agreed at a meeting on nuclear security in Vienna on Monday, without deciding on any concrete steps.

A declaration adopted by more than 120 states at the meeting said "substantial progress" had been made in recent years to improve nuclear security globally, but it was not enough.

Analysts say radical groups could theoretically build a crude but deadly nuclear bomb if they had the money, technical knowledge and materials needed.

Ministers remained "concerned about the threat of nuclear and radiological terrorism ... More needs to be done to further strengthen nuclear security worldwide", the statement said.

The document "encouraged" states to take various measures such as minimizing the use of highly-enriched uranium, but some diplomats said they would have preferred firmer commitments.

Many countries regard nuclear security as a sensitive political issue that should be handled primarily by national authorities. This was reflected in the statement's language.

Still, Yukiya Amano, director general of the International Atomic Energy Agency (IAEA), which hosted the conference, said the agreement was "very robust" and represented a major step forward.

RADICAL GROUPS' "NUCLEAR AMBITIONS"

Amano earlier warned the IAEA-hosted conference against a "false sense of security" over the danger of nuclear terrorism.

Holding up a small lead container that was used to try to traffic highly enriched uranium in Moldova two years ago, the U.N. nuclear chief said it showed a "worrying level of knowledge on the part of the smugglers".

"This case ended well," he said, referring to the fact that the material was seized and arrests were made. But he added: "We cannot be sure if such cases are just the tip of the iceberg."

Obtaining weapons-grade fissile material - highly enriched uranium or plutonium - poses the biggest challenge for militant groups, so it must be kept secure both at civilian and military facilities, experts say.

An apple-sized amount of plutonium in a nuclear device and detonated in a highly populated area could instantly kill or wound hundreds of thousands of people, according to the Nuclear Security Governance Experts Group (NSGEG) lobby group.

But experts say a so-called "dirty bomb" is a more likely threat than a nuclear bomb. In a dirty bomb, conventional explosives are used to disperse radiation from a radioactive source, which can be found in hospitals or other places that are generally not very well protected.

More than a hundred incidents of thefts and other unauthorized activities involving nuclear and radioactive material are reported to the IAEA every year, Amano said.

"Some material goes missing and is never found," he said.

U.S. Energy Secretary Ernest Moniz said al Qaeda was still likely to be trying to obtain nuclear material for a weapon.

"Despite the strides we have made in dismantling core al Qaeda we should expect its adherents ... to continue trying to achieve their nuclear ambitions," he said.

Most qualified evidence

Us Russia Joint Threat Assessment May 11

http://belfercenter.ksg.harvard.edu/files/Joint-Threat-Assessment%20ENG%2027%20May%202011.pdf

 ABOUT THE U.S.-RUSSIA JOINT THREAT ASSESSMENT ON NUCLEAR TERRORISM The U.S.-Russia Joint Threat Assessment on Nuclear Terrorism is a collaborative project of Harvard University’s Belfer Center for Science and International Affairs and the U.S.A. and Canada Studies Institute of the Russian Academy of Sciences led by Rolf Mowatt-Larssen and Pavel Zolotarev. Authors: • Matthew Bunn. Associate Professor of Public Policy at Harvard Kennedy School and Co-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior fellow at the U.S.A and Canada Studies Institute of the Russian Academy of Sciences, chief of department at the General Staff of the Russian Armed Forces, 1995–2000. • Rolf Mowatt-Larssen. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs, director of Intelligence and Counterintelligence at the U.S. Department of Energy, 2005–2008. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer, 1993–2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration, 2006–2009. • Colonel General Viktor I. Yesin (retired Russian Armed Forces). Senior fellow at the U.S.A and Canada Studies Institute of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces, 1994–1996. • Major General Pavel S. Zolotarev (retired Russian Armed Forces). Deputy director of the U.S.A and Canada Studies Institute of the Russian Academy of Sciences and head of the Information and Analysis Center of the Russian Ministry of Defense, 1993–1997, deputy chief of staff of the Defense Council of Russia, 1997–1998. Contributor: • Vladimir Lukov, director general of autonomous non-profit organization “Counter-Terrorism Center.”

The expert community distinguishes pathways terrorists might take to the bomb (discussed in detail in the next section of the report). One is the use of a nuclear weapon that has been either stolen or bought on the black market. The probability of such a development is very low, given the high levels of physical security (guards, barriers, and the like) and technical security (electronic locks and related measures) of modern nuclear warheads. But we cannot entirely rule out such a scenario, especially if we recall the political instability in Pakistan, where the situation could conceivably develop in a way that would increase the chance that terrorist groups might gain access to a Pakistani nuclear weapon A second pathway is the use of an improvised nuclear device built either by terrorists or by nuclear specialists that the terrorists have secretly recruited, with use of weapons-usable fissile material either stolen or bought on the black market.1 The probability of such an attack is higher than using stolen nuclear warheads, because the acceleration of technological progress and globalization of information space make nuclear weapons technologies more accessible while the existence of the nuclear black market eases access of terrorists to weapons-usable fissile materials. A third pathway is the use of an explosive nuclear device built by terrorists or their accomplices with fissile material that they produced themselves—either highly enriched uranium (HEU) they managed to enrich, or plutonium they managed to produce and reprocess. Al-Qaeda and associated groups appear to have decided that enriching uranium lies well beyond the capabilities that they would realistically be able to develop. A fourth pathway is that terrorists might receive a nuclear bomb or the materials needed to make one from a state. North Korea, for example, has been willing to sell its missile technology to many countries, and transferred its plutonium production reactor technology to Syria, suffering few consequences as a result. Transferring the means to make a nuclear bomb to a terrorist group, however, would be a dramatically different act, for the terrorists might use that capability in a way that could provoke retaliation that would result in the destruction of the regime. A far more worrisome transfer of capability from state to group could occur without the witting cooperation of the regime. A future A.Q. Khan-type rogue nuclear supplier network operating out of North Korea or out of a future nuclear-armed Iran could potentially transfer such a capability to a surrogate group and/or sell it for profit to the highest bidder. Global trends make nuclear terrorism a real threat. Although the international community has recognized the dangers of nuclear terrorism, it has yet to develop a comprehensive strategy to lower the risks of nuclear terrorism. Major barriers include complacency about the threat and the adequacy of existing nuclear security measures; secrecy that makes it difficult for states to share information and to cooperate; political disputes; competing priorities; lack of funds and technical expertise in some countries; bureaucratic obstacles; and the sheer difficulty of preventing a potentially small, hard-to-detect team of terrorists from acquiring a small, hard-to-detect chunk of nuclear material with which to manufacture a crude bomb. These barriers must not be allowed to stand in the way of the panhuman universal priority of preventing this grave threat from materializing. If current approaches toward eliminating the threat are not replaced with a sense of urgency and resolve, the question will become not if, but when, where, and on what scale the first act of nuclear terrorism occurs.

## 1nr Link

Plan leads to excessive checks on the executive and makes rapid targeting decisions impossible - that's Vladeck

Too slow to act on sensitive intelligence

Charlie Savage, NYTimes, 3/18/13, Former Pentagon Lawyer Offers Pros and Cons of Drone Court, atwar.blogs.nytimes.com/2013/03/18/former-pentagon-lawyer-offers-pros-and-cons-of-drone-court/

Mr. Johnson also questioned whether it would be appropriate to ask judges to provide “top cover” for “death warrants” based on secret evidence submitted only by the executive branch, especially when **it would be difficult for them to decide whether fast-changing criteria** – like whether a threat is imminent and whether capture instead of killing is feasible have been met.

“These really are up-to-the-minute, real-time assessments,” he said, adding: “Indeed, I have seen feasibility of capture of a particular objective change several times in one night. Judges are accustomed to making legal determinations based on a defined, settled set of facts – a picture that has already been painted, **not a moving target**, which is what we are literally talking about here.”

Fast targeting decisions are key - plan kills that

Groves, senior research fellow – Institute for International Studies @ Heritage, 4/10/’13

(Steven, “Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad,” http://www.heritage.org/research/reports/2013/04/drone-strikes-the-legality-of-us-targeting-terrorists-abroad)

A Drone Court? Certain former Obama Administration officials, the editorial board of The New York Times, and at least one U.S. Senator have called for the establishment of a special oversight panel or court to review the Administration’s targeting determinations, particularly in instances in which a U.S. citizen is targeted.[49] Essentially, such a court would scrutinize the Administration’s targeting decisions, presumably including its decisions to place individuals on the “disposition matrix.” The court would apparently have the authority to overrule and nullify targeting decisions. The creation of such a court is ill advised and of doubtful constitutionality.

The proponents of a drone court apparently do not appreciate the potential unintended consequences of establishing such an authority. The idea is wrongheaded and raises more questions than it answers. For instance, could the drone court decide as a matter of law that a targeted strike is not justified because the United States is not engaged in an armed conflict with al-Qaeda? Could the drone court rule that members of a force associated with al-Qaeda (e.g., AQAP) may not be targeted because AQAP was not directly involved in the September 11 attacks and therefore the strike is not authorized under the AUMF? The proposed drone court cannot avoid these fundamental questions since the justification for the targeted strikes is dependent on the answers to these questions.

Even if the proposed drone court attempts to eschew intervention into foundational questions such as the existence of an armed conflict, it still would not be in a position to rule on the “easy” questions involved in each and every drone strike. Does the target constitute an “imminent threat” to the United States? When civilian casualties may occur as a result of the strike, does the drone court have the authority to overrule the targeting decision as a violation of the principle of proportionality? Is the target an innocent civilian or a civilian “directly participating in hostilities”? Should U.S. forces attempt to capture the target before resorting to a drone strike? Is capture feasible? Any drone court, even if constituted with former military and intelligence officials, is ill suited to weigh all of the competing factors that go into a decision to target an al-Qaeda operative and make a timely decision, particularly when there is often only a short window of time to order a strike.

Regardless, creating a judicial or quasi-judicial review process will not ameliorate, much less resolve, objections to U.S. targeted killing practices. Critics will continue to demand more judicial process, including appeals from the proposed drone court, and additional transparency no matter what kind of forum is established to oversee targeting decisions.

What the U.S. Should Do

The U.S. drone program and its practices regarding targeted strikes against al-Qaeda and its associated forces are lawful. They are lawful because the United States is currently engaged in an armed conflict with those terrorist entities and because the United States has an inherent right to defend itself against imminent threats to its security. Moreover, the available evidence indicates that U.S. military and intelligence forces conduct targeted strikes in a manner consistent with international law. Military and intelligence officials go to great lengths to identify al-Qaeda operatives that pose an imminent threat and continually reassess the level of that threat. Decisions on each potential target are debated among U.S. officials before the target is placed in the “disposition matrix.” In conducting targeted strikes U.S. forces strive to minimize civilian casualties, although such casualties cannot always be prevented.

The United States will continue to face asymmetric threats from non-state actors operating from the territory of nations that are either unwilling or unable to suppress the threats. To confront these threats, the United States must retain its most effective operational capabilities, including targeted strikes by armed drones, even if U.S. forces degrade al-Qaeda and its associated forces to such an extent that the United States no longer considers itself to be in a non-international armed conflict. Moreover, the United States must continue to affirm its inherent right to self-defense to eliminate threats to its national security, regardless of the presence or absence of an armed conflict recognized by international law.

To that end, the United States should:

Continue to affirm existing use-of-force authorities. During the past three years, senior officials of the Obama Administration have publicly set out in significant detail U.S. policies and practices regarding drone strikes. The Administration should continue to do so, emphasizing that U.S. policies adhere to widely recognized international law. Critics of the United States will continue to claim that a lack of transparency surrounds U.S. policy and actions. Such critics will likely never be satisfied, not even with full disclosure of the relevant classified legal memoranda, and their criticism will not cease until the United States abandons its practice of targeting terrorist threats in Pakistan, Yemen, and elsewhere. However, consistent repetition of the U.S. legal position on targeted drone strikes **may blunt such criticism.**

Not derogate from the AUMF. At the 2012 NATO summit in Chicago, NATO agreed that the vast majority of U.S. and other NATO forces would be withdrawn from Afghanistan by the end of 2014, a time frame that President Obama confirmed during this year’s State of the Union address. Some critics of U.S. drone policy will inevitably argue that due to the drawdown the United States may no longer credibly claim that it remains in a state of armed conflict with the Taliban, al-Qaeda, and its associated forces, whether they are located in Afghanistan, the FATA, or elsewhere. Congress should pass no legislation that could be interpreted as a derogation from the AUMF or an erosion of the inherent right of the United States to defend itself against imminent threats posed by transnational terrorist organizations.

Not create a drone court. The concept of a drone court is fraught with danger and may be an unconstitutional interference with the executive branch’s authority to wage war. U.S. armed forces have been lawfully targeting enemy combatants in armed conflicts for more than 200 years without being second-guessed by Congress or a secret “national security court.” Targeting decisions, including those made in connection with drone strikes, are carefully deliberated by military officers and intelligence officials based on facts and evidence gathered from a variety of human, signals, and imagery intelligence sources. During an armed conflict, all al-Qaeda operatives are subject to targeting; therefore, a drone court scrutinizing targeting decisions would serve no legitimate purpose.

Conclusion

Flexible drone policy is key to decapitation, confusion, and minimizing casualties—the plan’s restriction undermines legitimacy by causing a shift to more destructive tactics

Yoo, law professor – UC Berkeley, ‘12

(John, “Assassination or Targeted Killings After 9/11,” New York Law School Law Review, Volume 56)

When the United States considered terrorism to be a matter for the criminal¶ justice system, it waited until after attacks on the United States had occurred before¶ attempting to capture al-Qaeda leaders. Now that the United States is at war with¶ al-Qaeda, it is entitled to kill the enemy’s commanders. This is done in an effort to¶ demoralize the enemy, throw their troops into confusion and disarray, undermine¶ their planning, and remove their most able leaders. Such is a well-documented wartime¶ strategy. World War II and the Korean War witnessed numerous attacks on enemy¶ military leaders.35 In the 1980s, President Ronald Reagan ordered U.S. jets to bomb¶ Libyan locations where Colonel Muammar Qadhafi might be living and working.36¶ Launching a missile to kill al-Qaeda commanders like Derwish, even though he¶ was an American citizen, is legal. They are members of the enemy forces, the¶ equivalent of officers—Derwish amounted to a captain or major in command of¶ al-Qaeda cells, the equivalent of enemy military units. The U.S. military and¶ intelligence services are legally and morally free to target them for attack whether¶ they were on the front lines or behind them. Killing an enemy commander will¶ better promote the principles behind the rules of civilized war than other means.¶ Over the centuries, the laws and customs of war have developed to reduce the harm¶ to noncombatants and limit the use of force to that which is proportional to military¶ objectives. By specifically targeting enemy leaders, the United States can render¶ enemy **forces leaderless and frustrate their operations, prevent the enemy from**¶ **mounting effective plots and campaigns, and reduce both civilian and military**¶ **casualties.**¶Using targeted killing as a primary tactic also takes better account of the new¶ kind of war facing the United States. The United States has prevailed in conventional¶ wars by invading the territory of an enemy nation, destroying its armed forces on the¶ battlefield, and capturing key cities and population centers. It has won by outproducing¶ its opponents. During the lead-up to World War II, President Franklin D.¶ Roosevelt aptly declared the United States to be the great “arsenal of democracy.”37¶ Historically, the United States has deployed its large productive capacity and¶ population in war, and its large, well-equipped and well-supplied armies and navies¶ have, generally speaking, overwhelmed the soldiers of the other side.¶ The United States cannot win the war on terrorism by producing more tanks,¶ fielding more army divisions, or setting more carrier battle groups and submarines to¶ sail than this enemy. This did not work in Vietnam and it will not work against the¶ even more diffuse enemy of today. Military plans based on traditional deterrence and¶ the threat of retaliation will not be effective against this terrorist network because it¶ has no territory or armed forces to crush, and its members welcome death. The¶ amount of actual force needed to frustrate or cripple al-Qaeda is quite small, and¶ well within the capabilities of a single division of U.S. troops.¶ Indeed, the problem is not with the strength of America’s power, but how and¶ where to aim it. Al-Qaeda does not mass its operatives into units onto a battlefield,¶ or at least it has not after its setbacks in Afghanistan in the fall and winter of 2001.¶ Instead, al-Qaeda will continue to disguise its members as civilians, hide its bases in¶ remote mountains and deserts or among unsuspecting city populations, and avoid¶ military confrontation. The only way for the United States to defeat al-Qaeda is to¶ destroy its ability to function—by selectively killing or capturing its key members.¶ In fact, the unique circumstances of the war on terrorism make a compelling case¶ for taking out individual al-Qaeda leaders. Al-Qaeda is a social network of friends,¶ acquaintances, or companies interlocked through various cross-ownerships and¶ relationships; it is not unlike the Internet, which gives it remarkable resiliency. A¶ killed or captured leader seems to be quickly replaced by the promotion of a more¶ junior member and, as in Iraq, other arms of the network spring to the fore. Most¶ nation-states would have collapsed after the kinds of losses inflicted by the armed¶ forces and the CIA over the last decade: thousands of operatives killed, two thirds of¶ al-Qaeda’s leadership killed or captured, and its open bases and infrastructure¶ destroyed in Afghanistan.38 But al-Qaeda operatives continue to attempt to infiltrate¶ the United States, and they have succeeded in carrying out new terrorist attacks in¶ London, Madrid, and Bali.39¶ Al-Qaeda exhibits the typical characteristics of what is known as a free-scale¶ network.40 A free-scale network is not created at random. It is made up of nodes—¶ connected to each other for some purpose—around hubs, which are nodes with¶ multiple connections to other nodes. They are not command-and-control hierarchies¶ like the Defense Department. In terms of the Internet, hubs are highly trafficked¶ websites with connections to many other sites, such as Google.com, Yahoo.com, and¶ MSN.com. Users visit them often in order to connect to other sites, and a great many¶ other sites connect to them as well. In a social or professional network, hubs are people¶ that are widely known, who set trends or whose work influences a great many others.¶ Decentralization is another attribute. Because of decentralization, a network can¶ quickly collect and process information from a myriad of sources located in different¶ places and connected only by a common interest or affinity. If a node disappears,¶ others simply move their connections. Networks can remain remarkably immune to¶ attack. Randomly destroying its nodes will not cause it to collapse, and the loss of a¶ single hub will not bring down the whole network. Therefore, because it has no real¶ single leader, it can function even after suffering severe losses.¶ Al-Qaeda is just such a network. Each node is a terrorist seeking to connect with¶ another through a desire to promote Islamic fundamentalism in the Middle East by¶ any means necessary, including violence. Its hubs are leaders, such as bin Laden and¶ Zawahiri, and facilitators, such as Khalid Sheikh Mohammed and Ramzi¶ Binalshibh.41 Capturing or killing an al-Qaeda member is important for the discovery¶ of other cells and plots to which he is connected. However, taking out single¶ operatives is not crippling; other parts of the network can continue to function.¶ The United States must target al-Qaeda hubs. **Random**, **individual attacks** on a¶ free-scale network **will not work**. Turning off random websites will have almost no¶ effect on the Internet, but closing down a Google.com or Yahoo.com might have a¶ serious effect on Internet usage and traffic. Similarly, killing or capturing an ordinary¶ al-Qaeda operative will cripple one cell, but al-Qaeda will only replace that cell with¶ others. Even significant al-Qaeda facilitators eliminated one at a time will permit¶ replacements to be trained or communications and contacts shifted to other leaders.¶ To cripple al-Qaeda, the United States must gather timely and accurate information¶ and attack its most important planners and leaders simultaneously. Otherwise, targeted¶ killing at best will prevent an imminent attack, but it will not stop them all.¶ This raises an important difference between law and capability on the one hand,¶ and good policy on the other. Simply because the United States can kill a member of¶ al-Qaeda does not mean it always should. It can interrogate captured leaders to learn¶ not just about tomorrow’s bombing, but about other plans for the future, and the¶ identities and locations of other al-Qaeda facilitators and commanders. It was far¶ more advantageous for American intelligence that al-Qaeda leaders Abu Zubaydah,¶ Khalid Sheik Mohammed, and Ramzi Binalshibh were captured in Pakistan rather¶ than killed by missiles.42 According to former CIA director Porter Goss and senator¶ Pat Roberts, chair of the Senate Intelligence Committee, information gained from¶ their interrogation likely produced “actionable intelligence” that has prevented future¶ terrorist attacks.43¶ Other policy considerations must be taken into account when deciding whether¶ to launch a deadly attack. The United States should rely on its own police or military¶ forces, or those of its allies, to capture and detain hostiles. Strong cooperative¶ relationships with other nations are invaluable in the war on terrorism. Other nations¶ can provide more intelligence, cultural expertise, and capabilities in waging covert¶ warfare against al-Qaeda. This is one reason why effective diplomacy and strong¶ alliances are a crucial factor in wartime success. The United States also needs to¶ reduce harm to civilians found near terrorists. Strikes that kill innocent men, women,¶ and children, either by mistake or because of proximity to the target, could undermine¶ the support of the populations of allied and uncommitted nations.¶ None of these factors is or should be an absolute, however. Some friendly nations¶ may be unable or unwilling to take the necessary action to stop al-Qaeda activity¶ inside their borders.44 They might quietly allow targeted strikes, but popular anger¶ will also require them to launch formal political protests. Knowing that American¶ leaders do not want to harm civilians, terrorist leaders would intentionally surround¶ themselves with their family members whenever they travel. During the Afghanistan¶ invasion, a Central Command JAG lawyer apparently advised against a missile strike¶ on a caravan of SUVs reinforcing Kandahar. Even though intelligence reported a¶ high probability that it was an al-Qaeda and Taliban unit, the attack was put off¶ because imagery showed women and children in the convoy.45 Taliban and al-Qaeda¶ fighters in Afghanistan apparently brought their families onto the battlefield.46¶ **Decisions on whether to attack** such targets cannot be proscribed by simple rules.¶ Instead, the importance of the target must be balanced against the collateral damage¶ to innocents nearby.¶ The most important factor to consider is uncertainty. When deciding whether to¶ target someone, American intelligence officials cannot be one hundred percent sure¶ the person is in fact an al-Qaeda leader or that the information about his location¶ and timing is correct beyond any doubt. Even if it has collected all information¶ possible—and information has a cost, just like any other good or service—the United¶ States is still dealing with the probability that something will happen in the future.¶ Terrorists’ plans can change at the last minute. American intelligence may have¶ identified the wrong man, or it may have made a simple mistake (as with the¶ erroneous bombing of the Chinese embassy in Belgrade during the Kosovo war).47¶ Using force to prevent future harms can never be done perfectly. No military can¶ choose the right target every time, nor can any military hit its target every time.¶ Soldiers might shoot someone who turns out to be a noncombatant, but was lurking¶ around a known enemy location, or they might fire their cannons at the wrong¶ building. In domestic law enforcement, which is governed by tougher standards, a¶ police officer who fires his weapon on the reasonable belief that his attacker holds a¶ gun is not punished by law, even if it turns out that his belief was in error. We ask¶ that our soldiers make reasonable decisions when they choose their targets and decide¶ how much force to use. Similarly, our policymakers consider all of these factors when¶ they decide whether to use deadly force against a suspected al-Qaeda member. They¶ must balance matters like the effect of an attack on allied governments, local¶ populations, and nearby civilians against the benefit of eliminating an al-Qaeda¶ leader and frustrating the plans he might have been organizing, while also keeping in¶ mind the probability of success in the attack.

Drone flexibility is the key link to defeating Al Qaeda

Will, domestic and foreign affairs columnist – Washington Post, 12/7/’12

(George, “A case for targeted killings,” Washington Post)

Fortunately, John Yoo of California’s Berkeley School of Law has written a lucid guide to the legal and moral calculus of combating terrorism by targeting significant enemy individuals. In “Assassination or Targeted Killings After 9/11” (New York Law School Law Review, 2011-12), Yoo correctly notes that “precise attacks against individuals” have many precedents and “further the goals of the laws of war by eliminating the enemy and reducing harm to innocent civilians.” And he clarifies the compelling logic of using drones for targeted killings — attacking a specific person rather than a military unit or asset — in today’s “undefined war with a limitless battlefield.”

To be proper, any use of military force should be necessary, as discriminating as is practical, and proportional to the threat.

Waging war, says Yoo, is unlike administering criminal justice in one decisive particular. The criminal justice system is retrospective: It acts after a crime. A nation attacked, as America was on Sept. 11, goes to war to prevent future injuries, which inevitably involves probabilities and guesses.

Today’s war is additionally complicated by the fact that, as Yoo says, America’s enemy “resembles a network, not a nation.” Its commanders and fighters do not wear uniforms; they hide among civilian populations and are not parts of a transparent command-and-control apparatus. Drones enable the U.S. military — which, regarding drones, includes the CIA; an important distinction has been blurred — to wield a technology especially potent against al-Qaeda’s organization and tactics. All its leaders are, effectively, military, not civilian. Killing them serves the military purposes of demoralizing the enemy, preventing planning, sowing confusion and draining the reservoir of experience.

Most U.S. wars have been fought with military mass sustained by economic might. But as Yoo says, today’s war is against a diffuse enemy that has no territory to invade and no massed forces to crush. So the war cannot be won by producing more tanks, army divisions or naval forces. The United States can win only by destroying al-Qaeda’s “ability to function — by selectively killing or capturing its key members.”