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## Plan

The United States Federal Government should restrict the Executive’s war powers authority for targeted killing as a first resort outside zones of active hostilities.

## CT

Advantage 1: CT

The plan is key to prevent collapse of the drone program

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In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial coun- terterrorism practices, **it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies**. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and inter- national humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but **between drone policy reforms by design or drone policy reforms by** default. Recent history demonstrates that domestic **political pressure could** severely limit **drone strikes in** ways that the CIA or JSOC **have not anticipated**. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, **and they are even more susceptible to political constraints because they occur in plain sight.** Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 per- cent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal **overwhelming opposition** to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. **If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced**, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gun- ships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forc- ing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making signifi- cant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allow- ing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resis- tance—such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attack- ing Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

Europe will end coop – that destroys CT effectiveness

Cullis 14 (Tyler Cullis, BU Law School, specializes in international law. His work has been featured at CNN's Global Public Square, Muftah, Opinio Juris, and his personal blog, News From The Gutter., 2/28/2014, "Europe Shows Resistance to US Drone Policies", www.lobelog.com/europe-shows-resistance-to-us-drone-policies/)

Earlier this week the European Parliament passed a resolution condemning the US drone program and expressing its concern over the desire of some European states to build a program of their own. Here in the US few have paid attention. But if the resolution signals a more serious commitment on the part of Europe to publicly disclaim the legal and policy architecture of the US’s “targeted killing” program, then the White House’s legal footing, which is already on thin ice, could become untenable in the face of near-unanimous global opposition.

The resolution, which is non-binding as a matter of European law, “expresses…grave concern over the use of armed drones outside the international legal framework,” which goes against US pretensions of acting within the bounds of law in conducting its “targeted killing” program. In doing so the European Parliament rejects the novel legal doctrines that the US has used to support its activities in the “global war on terror,” arguing that traditional jus ad bellum and jus in bello rules do not need to be revised in light of the threat posed by transnational terror groups (as the US has long alleged). This is a striking challenge to the United States and its claims to compliance with international norms, and is a sharp reminder of the twin reports from UN Special Rapporteurs last year (whose work is cited in the resolution itself).

This also comes on the heels of a New York Times report that the US is considering adding a US citizen, Abdullah al-Shami, to the White House’s “kill list”. Besides the significant constitutional issues at stake in a unilateral presidential decision to kill a US citizen without due process, international human rights law is implicated as well. The focus on human rights law as the appropriate legal frame, which is evident throughout the Parliament’s resolution, thus takes on added significance in the wake of this report.

More importantly, the resolution signals to other EU bodies that now is the time for unified European action to publicly oppose the US’s “targeted killing” program; to limit the use of drones both globally and in a distinctly European context; and to hold criminally responsible those that assist what the Parliament regards a potentially criminal action on the part of the United States. In fact, as part of its “action program” the Parliament’s resolution “urges the [European] Council to adopt an EU common position on the use of armed drones,” which would be binding on all EU member-states. Such a legislative gambit could include provisions providing for “judicial review of drone strikes…and effective access to remedies [for victims].” Both have thus far largely been barred in European courts.

Such would spell serious trouble for the United States and its continued ability to conduct drone warfare across international borders. It is one thing for official criticism to be done in private and for US and European legal scholars to haggle over applicable laws in the US’s conflict with al-Qaeda. It is entirely another thing for the US’s closest allies to so publicly rebuke the White House (especially one that professes to care as much about toeing the line of the law as this one does) and to threaten to open its court system to the victims of what it regards as “unlawful drone strikes.” While legislative action from the European Council and Commission remains unlikely, the vote count on the Parliament’s resolution (534-49) suggests that sentiment against “targeted killings” has begun to overcome Europe’s squeamishness about upsetting its powerful ally.

This week also saw the respected British human rights organization, Reprieve, submit a communication to the International Criminal Court to start an investigation of NATO personnel complicit in the CIA drone program. Of course, none of this bodes well for the United States. Whereas the Bush administration expressed contempt towards international law and thus was treated in kind from its practitioners, the Obama administration has at least demonstrated concern for international norms and struggled to describe its drone policies as compliant with the law. But as US allies and human rights NGOs close in on the White House, the Obama administration will be forced to either proclaim its adherence to international law and end its “targeted killing” policies, or abandon any pretension to international law-compliance altogether. The sooner the better, too, because the growing outcry against the US’ drone policies shows no signs of losing steam.

Only the plan solves allied backlash

Dworkin 12

Anthony Dworkin is a Senior Policy Fellow at the European Council on Foreign Relations, European Council on Foreign Relations, June 19, 2012, "Obama’s Drone Attacks: How the EU Should Respond", http://ecfr.eu/content/entry/commentary\_obamas\_drone\_attacks\_how\_the\_eu\_should\_respond

Obama’s Concession to European Views

In a speech on the subject last autumn, Obama’s chief counter-terrorism advisor John Brennan gave a glimpse into the administration’s discussions with some of its European allies. Brennan acknowledged that a number of the United States’ closest partners took a different view about the scope of the armed conflict against al-Qaeda, rejecting the use of force outside battlefield situations except when it was the only way to prevent the imminent threat of a terrorist attack. He went on to say that the United States depended on the assistance and cooperation of its allies in fighting terrorism, and that this was much easier to obtain when there was a convergence between their respective legal views. Increasingly, Brennan argued, such convergence was taking place as a matter of practice, as the United States chose to pursue an approach to targeting that was aligned with its partners’ vision. In a further speech this year, Brennan developed this point. He said that even though the United States believed in general it had a legal right under the laws of war to shoot to kill anyone who was part of al-Qaeda, the Taliban or associated forces, in practice it followed a more restrictive approach. “We do not engage in lethal action in order to eliminate every single member of al-Qaeda in the world,” Brennan said. “Rather, we conduct targeted strikes because they are necessary to mitigate an actual ongoing threat – to stop plots, prevent future attacks, and save American lives.” In other words, the Obama administration presents itself as following a policy of voluntary restraint – deliberately confining its use of targeted killing to those cases where officials believe it is necessary to prevent an imminent attack, in part out of respect for its allies’ sensibilities and to make cooperation easier. There are two reasons why this concession, on its own, is unlikely to – and ought not to – satisfy European concerns. It is true that many European states would accept that the use of lethal force is permissible when it is the only way to prevent the imminent loss of innocent life. Indeed the European Court of Human Rights endorsed such a standard several years ago in an influential ruling on the shooting by British special forces of three IRA members in Gibraltar. But if the United States is indeed following the principle of imminent threat in making targeting decisions outside the “hot battlefield” of Afghanistan and the Pakistani border region, it seems to interpret the concept of imminence in a rather more permissive way than most Europeans would be comfortable with. The sheer number of strikes testifies to the accommodating nature of the administration’s analysis: the New America Foundation estimates that there have been 265 drone strikes in Pakistan and 28 in Yemen since Obama took office. Moreover, in both Pakistan and now Yemen, Obama has reportedly given permission for so-called “signature strikes” in which attacks are carried against targets on the basis of a pattern of behavior that is indicative of terrorist activity without identifying the individuals involved – a policy that seems particularly hard to justify under an imminence test outside battlefield conditions. Over time, the United States and its European allies might be able move closer to a common understanding of the concept of imminence through a process of discussion. But in any case there is an independent reason why the Obama administration’s policy of claiming expansive legal powers, while limiting them in practice on a voluntary basis, is a dangerous one. Precisely because he has greater international credibility than President Bush, the claims that Obama makes are likely to be influential in setting global standards for the use of the use of this new and potentially widely available technology. The United States is currently the only country that uses armed drones for targeted killing outside the battlefield, but several other countries already have remotely controlled pilotless aircraft or are in the process of acquiring them. The United States is unlikely to remain alone in this practice for long. At the same time, there have been several other examples in recent years of countries engaging in military campaigns against non-state groups outside their borders – as with Israel in Lebanon and Ethiopia in Somalia. For this reason, there is a strong international interest in trying to establish clear and agreed legal rules (not merely a kind of pragmatic best practice) to govern the use of targeted killing of non-state fighters.

Drones solve safe havens – prevents a terrorist attack

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.

Drones are operationally effective and alternatives are worse—establishing a clear strike policy solves criticism.

Byman 13 (Daniel Byman, Brookings Institute Saban Center for Middle East Policy, Research Director, and Foreign Policy, Senior Fellow, July/Aug 2013, “Why Drones Work: The Case for the Washington's Weapon of Choice”, www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman)

Despite President Barack Obama’s recent call to reduce the United States’ reliance on drones, they will likely remain his administration’s weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have **devastated** al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused. Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage. So drone warfare is here to stay, and it is likely to expand in the years to come as other countries’ capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid. NOBODY DOES IT BETTER The Obama administration relies on drones for one simple reason: they work. According to data compiled by the New America Foundation, since Obama has been in the White House, U.S. drones have killed an estimated 3,300 al Qaeda, Taliban, and other jihadist operatives in Pakistan and Yemen. That number includes over 50 senior leaders of al Qaeda and the Taliban—top figures who are not easily replaced. In 2010, Osama bin Laden warned his chief aide, Atiyah Abd al-Rahman, who was later killed by a drone strike in the Waziristan region of Pakistan in 2011, that when experienced leaders are eliminated, the result is “the rise of lower leaders who are not as experienced as the former leaders” and who are prone to errors and miscalculations. And drones also hurt terrorist organizations when they eliminate operatives who are lower down on the food chain but who boast special skills: passport forgers, bomb makers, recruiters, and fundraisers. Drones have also undercut terrorists’ ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to “maintain complete silence of all wireless contacts” and “avoid gathering in open areas.” Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda’s command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders. Critics of drone strikes often fail to take into account the fact that the alternatives are either too risky or unrealistic. To be sure, in an ideal world, militants would be captured alive, allowing authorities to question them and search their compounds for useful information. Raids, arrests, and interrogations can produce vital intelligence and can be less controversial than lethal operations. That is why they should be, and indeed already are, used in stable countries where the United States enjoys the support of the host government. But in war zones or unstable countries, such as Pakistan, Yemen, and Somalia, arresting militants is highly dangerous and, even if successful, often inefficient. In those three countries, the government exerts little or no control over remote areas, which means that it is highly dangerous to go after militants hiding out there. Worse yet, in Pakistan and Yemen, the governments have at times cooperated with militants. If the United States regularly sent in special operations forces to hunt down terrorists there, sympathetic officials could easily tip off the jihadists, likely leading to firefights, U.S. casualties, and possibly the deaths of the suspects and innocent civilians. Of course, it was a Navy SEAL team and not a drone strike that finally got bin Laden, but in many cases in which the United States needs to capture or eliminate an enemy, raids are too risky and costly. And even if a raid results in a successful capture, it begets another problem: what to do with the detainee. Prosecuting detainees in a federal or military court is difficult because often the intelligence against terrorists is inadmissible or using it risks jeopardizing sources and methods. And given the fact that the United States is trying to close, rather than expand, the detention facility at Guantánamo Bay, Cuba, it has become much harder to justify holding suspects indefinitely. It has become more politically palatable for the United States to kill rather than detain suspected terrorists. Furthermore, although a drone strike may violate the local state’s sovereignty, it does so to a lesser degree than would putting U.S. boots on the ground or conducting a large-scale air campaign. And compared with a 500-pound bomb dropped from an F-16, the grenade like warheads carried by most drones create smaller, more precise blast zones that decrease the risk of unexpected structural damage and casualties. Even more important, drones, unlike traditional airplanes, can loiter above a target for hours, waiting for the ideal moment to strike and thus reducing the odds that civilians will be caught in the kill zone. Finally, using drones is also far less bloody than asking allies to hunt down terrorists on the United States’ behalf. The Pakistani and Yemeni militaries, for example, are known to regularly torture and execute detainees, and they often indiscriminately bomb civilian areas or use scorched-earth tactics against militant groups.

Otherwise a nuclear terror attack is inevitable

Tobey 14 (William Tobey is a senior fellow at Harvard University's Belfer Center for Science and International Affairs. Major General Pavel Zolotarev is a retired member of the Russian Armed Forces and deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences., 1/13/2014, "The Nuclear Terrorism Threat", belfercenter.ksg.harvard.edu/files/nuclearterrorismthreatthailand2014.pdf)

A joint U.S.-Russian View q  First ever U.S.-Russian joint threat assessment q  Concludes the danger is real, urgent action is needed to reduce it q  Endorsed by broad range of retired military, intelligence experts Could terrorists cause a “security Fukushima”? q  Fukushima caused by inadequate preparation and an extraordinary natural disaster q  Reaffirmed that a nuclear accident can cause extraordinary terror, disruption, and cost q Al Qaeda, Chechens, and other terrorist groups have considered sabotaging nuclear reactors. Nuclear safety and security are closely linked – you can’t be safe without being secure. Cs-137 “dirty bomb” q  Potentially dangerous sources used in hospitals, industry, in almost every country q Al Qaeda, Chechens have repeatedly considered dirty bomb attacks With nuclear material, terrorists may be able to make crude nuclear bombs q With HEU, gun-type bomb – as obliterated Hiroshima – very plausibly within capabilities of sophisticated terrorist group q  Implosion bomb (required for plutonium) more difficult, still conceivable (especially if they got help) –  Doesn’t need to be as complex as Nagasaki bomb Source: NATO Doesn’t take a Manhattan Project -- >90% of the effort was focused on producing nuclear material. And making a crude terrorist bomb is far easier than making a safe, reliable weapon With nuclear material, terrorists may be able to make crude nuclear bombs (II) q Government studies – in the United States and elsewhere – have repeatedly concluded that a sophisticated terrorist group could plausibly make a nuclear bomb. “A small group of people, none of whom have ever had access to the classified literature, could possibly design and build a crude nuclear explosive device... Only modest machine-shop facilities that could be contracted for without arousing suspicion would be required.” -- U.S. Office of Technology Assessment, 1977 q U.S. security rules for some types of material based on preventing adversaries from setting off a nuclear blast while they are still in the building Al Qaeda has actively sought to get nuclear bombs q  Repeated attempts to purchase nuclear material or nuclear weapons q  Repeated attempts to recruit nuclear expertise q  Focused program that reported directly to Zawahiri q  Reached the point of carrying out crude (but sensible) explosive tests for the nuclear program in the Afghan desert Al Qaeda has actively sought to get nuclear bombs (II) q  2001: Bin Laden and Zawahiri meet with 2 senior Pakistani nuclear scientists to discuss nuclear weapons -  Now-sanctioned UTN network was helping with chemical, biological, nuclear efforts – also offered nuclear weapons technology to Libya q  2003: -  bin Laden gets fatwa from radical Saudi cleric authorizing use of nuclear weapons against civilians -  Saudi al Qaeda cell negotiating to buy 3 nuclear devices – if “Pakistani expert” confirms they are real q  2008: Zawahiri reiterates, elaborates arguments of nuclear fatwa North Caucasus terrorists have pursued nuclear and radiological terrorism q Multiple cases: –  2 cases of teams carrying out reconnaissance at nuclear weapon storage sites – 2 more on nuclear weapon transport trains –  Repeated threats to attack nuclear reactors – terrorists who seized Moscow theater in 2002 considered seizing reactor at the Kurchatov Institute –  Repeated threats to use radiological “dirty bombs” – buried Cs-137 source in Moscow park –  Captured documents indicate plan to seize a Russian nuclear submarine (possibly with nuclear weapons on board) Aum Shinrikyo sought nuclear weapons before its nerve gas attacks q Aum’s efforts –  Cult leader Shoko Asahara was obsessed with nuclear weapons –  Repeated shopping trips to former Soviet Union – acquired wide range of conventional weapons, recruited thousands of followers, sought to buy nuclear weapons and materials –  Purchased farm in Australia, stole enrichment documents – idea to mine, enrich its own uranium –  Turned to chemical and biological weapons when nuclear proved too slow –  No intelligence agency was aware of their nuclear, biological, or chemical work until after nerve gas attacks Has the threat disappeared? q  Bin Laden dead, core al Qaeda profoundly disrupted, key North Caucasus terrorist leaders killed q Nuclear security is substantially improved at many sites – many sites have no weapons-usable material left q  But: —  al Qaeda has proved resilient – could resurge —  “Emirate Kavkaz” terrorists in North Caucasus strengthening –  Other groups have pursued nuclear weapons as well – with 2-3 groups having gone the nuclear path in last 15 years, cannot expect they will be the last –  Intent is enduring; capability may increase as technology spreads; strong nuclear security needed to remove opportunity –  The problem of nuclear terrorism and the need for nuclear security will be with us for decades – no room for complacency The scale of the catastrophe q  Tens of thousands killed; tens of thousands more burned, injured, irradiated –  Radioactive fallout would require large-scale evacuation q  Terrorists may claim they had more bombs hidden in cities, threaten to detonate them unless their demands were met –  Potential for widespread panic, flight from major cities, resulting economic and social chaos q Huge pressure on leaders of attacked state to take any action necessary to prevent further attacks – and to retaliate –  Effects on international affairs likely far larger than 9/11 Notions of sovereignty and civil liberties may be radically altered – every state’s behavior affects every other Nuclear terrorism anywhere would be a global catastrophe q Not just a risk to the United States q  Economic, political, military consequences would reverberate worldwide –  Likely shut-down of much of world trade, for a period “Were such an attack to occur, it would not only cause widespread death and destruction, but would stagger the world economy and thrust tens of millions of people into dire poverty…. [A]ny nuclear terrorist attack would have a second death toll throughout the developing world.” – Kofi Annan, “A Global Strategy for Fighting Terrorism,” March 10, 2005 q  Political consequences would doom prospects for large-scale nuclear growth, putting nuclear industry at risk Insecure nuclear material anywhere is a threat to everyone, everywhere.

Extinction

Hellman 8 (Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, <http://www.nuclearrisk.org/paper.pdf>)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

Causes US-Russia miscalc—extinction

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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

## Norms

Advantage 2: Norms

Unrestrained drone use outside zones of active hostilities collapses legal norms governing targeted killing – only the plan solves

Rosa Brooks, Professor of Law, Georgetown University Law Center, Bernard L. Schwartz Senior Fellow, New America Foundation, 4/23/13, The Constitutional and Counterterrorism Implications of Targeted Killing, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

Mr. Chairman, I would like to turn now to the legal framework applicable to US drone strikes. Both the United States and the international community have long had rules governing armed conflicts and the use of force in national self-defense. These rules apply whether the lethal force at issue involves knives, handguns, grenades or weaponized drones. When drone technologies are used in traditional armed conflicts—on “hot battlefields” such as those in Afghanistan, Iraq or Libya, for instance – they pose no new legal issues. As Administration officials have stated, their use is subject to the same requirements as the use of other lawful means and methods of warfare.28 But if drones used in traditional armed conflicts or traditional self-defense situations present no “new” legal issues, some of the activities and policies enabled and facilitated by drone technologies pose significant challenges to existing legal frameworks. As I have discussed above, the availability of perceived low cost of drone technologies makes it far easier for the US to “expand the battlefield,” striking targets in places where it would be too dangerous or too politically controversial to send troops. Specifically, drone technologies enable the United States to strike targets deep inside foreign states, and do so quickly, efficiently and deniably. As a result, drones have become the tool of choice for so-called “targeted killing” – the deliberate targeting of an individual or group of individuals, whether known by name or targeted based on patterns of activity, inside the borders of a foreign country. **It is when drones are used in targeted killings outside of traditional or “hot” battlefields that their use challenges existing legal frameworks**. Law is almost always out of date: we make legal rules based on existing conditions and technologies, perhaps with a small nod in the direction of predicted future changes. As societies and technologies change, law increasingly becomes an exercise in jamming square pegs into round holes. Eventually, that process begins to do damage to existing law: it gets stretched out of shape, or broken. Right now, I would argue, US drone policy is on the verge of doing significant damage to the rule of law. A. The Rule of Law At root, the idea of “rule of law” is fairly simple, and well understood by Americans familiar with the foundational documents that established our nation, such as the Declaration of Independence, the Constitution and the Bill of Rights. The rule of law requires that governments follow transparent, clearly defined and universally applicable laws and procedures. The goal of the rule of law is to ensure predictability and stability, and to prevent the arbitrary exercise of power. In a society committed to the rule of law, the government cannot fine you, lock you up, or kill you on a whim -- it can restrict your liberty or take your property or life only in accordance with pre-established processes and rules that reflect basic notions of justice, humanity and fairness. Precisely what constitutes a fair process is debatable, but most would agree that at a minimum, fairness requires that individuals have reasonable notice of what constitutes the applicable law, reasonable notice that they are suspected of violating the law, a reasonable opportunity to rebut any allegations against them, and a reasonable opportunity to have the outcome of any procedures or actions against them reviewed by some objective person or body. These core values are enshrined both in the US Constitution and in international human rights law instruments such as the International Covenant on Civil and Political Rights, to which the United States is a party. In ordinary circumstances, this bundle of universally acknowledged rights (together with international law principles of sovereignty) means it is clearly unlawful for one state to target and kill an individual inside the borders of another state. Recall, for instance, the 1976 killing of Chilean dissident Orlando Letelier in Washington DC. When Chilean government intelligence operatives planted a car bomb in the car used by Letelier, killing him and a US citizen accompanying him, the United States government called this an act of murder—an unlawful political assassination. B. Targeted Killing and the Law of Armed Conflict Of course, sometimes the “ordinary” legal rules do not apply. In war, the willful killing of human beings is permitted, whether the means of killing is a gun, a bomb, or a long-distance drone strike. The law of armed conflict permits a wide range of behaviors that would be unlawful in the absence of an armed conflict. Generally speaking, the intentional destruction of private property and severe restrictions on individual liberties are impermissible in peacetime, but acceptable in wartime, for instance. Even actions that a combatant knows will cause civilian deaths are lawful when consistent with the principles of necessity, humanity, proportionality,29 and distinction.30 It is worth briefly explaining these principles. The principle of necessity requires parties to a conflict to limit their actions to those that are indispensible for securing the complete submission of the enemy as soon as possible (and that are otherwise permitted by international law). The principle of humanity forbids parties to a conflict to inflict gratuitous violence or employ methods calculated to cause unnecessary suffering. The principle of proportionality requires parties to ensure that the anticipated loss of life or property incidental to an attack is not excessive in relation to the concrete and direct military advantage expected to be gained. Finally, the principle of discrimination or distinction requires that parties to a conflict direct their actions only against combatants and military objectives, and take appropriate steps to distinguish between combatants and non-combatants.31 This is a radical oversimplification of a very complex body of law.32 But as with the rule of law, the basic idea is pretty simple. When there is no war -- when ordinary, peacetime law applies -- agents of the state aren't supposed to lock people up, take their property or kill them, unless they have jumped through a whole lot of legal hoops first. When there is an armed conflict, however, everything changes. War is not a legal free-for-all33 -- torture, rape are always crimes under the law of war, as is killing that is willful, wanton and not justified by military necessity34 -- but there are far fewer constraints on state behavior. Technically, the law of war is referred to using the Latin term “lex specialis” – special law. It is applicable in—and only in -- special circumstances (in this case, armed conflict), and in those special circumstances, it supersedes “ordinary law,” or “lex generalis,” the “general law” that prevails in peacetime. We have one set of laws for “normal” situations, and another, more flexible set of laws for “extraordinary” situations, such as armed conflicts. None of this poses any inherent problem for the rule of law. Having one body of rules that tightly restricts the use of force and another body of rules that is far more permissive does not fundamentally undermine the rule of law, as long as we have a reasonable degree of consensus on what circumstances trigger the “special” law, and as long as the “special law” doesn’t end up undermining the general law. To put it a little differently, war, with its very different rules, does not challenge ordinary law as long as war is the exception, not the norm -- as long as we can all agree on what constitutes a war -- as long as we can tell when the war begins and ends -- and as long as we all know how to tell the difference between a combatant and a civilian, and between places where there's war and places where there's no war. Let me return now to the question of drones and targeted killings. When all these distinctions I just mentioned are clear, the use of drones in targeted killings does not necessarily present any great or novel problem. In Libya, for instance, a state of armed conflict clearly existed inside the borders of Libya between Libyan government forces and NATO states. In that context, the use of drones to strike Libyan military targets is no more controversial than the use of manned aircraft. That is because our core rule of law concerns have mostly been satisfied: we know there is an armed conflict, in part because all parties to it agree that there is an armed conflict, in part because observers (such as international journalists) can easily verify the presence of uniformed military personnel engaged in using force, and in part because the violence is, from an objective perspective, widespread and sustained: it is not a mere skirmish or riot or criminal law enforcement situation that got out of control. We know who the “enemy” is: Libyan government forces. We know where the conflict is and is not: the conflict was in Libya, but not in neighboring Algeria or Egypt. We know when the conflict began, we know who authorized the use of force (the UN Security Council) and, just as crucially, we know whom to hold accountable in the event of error or abuse (the various governments involved).35 Once you take targeted killings outside hot battlefields, it’s a different story. The Obama Administration is currently using drones to strike terror suspects in Pakistan, Somalia, Yemen, and –perhaps—Mali and the Philippines as well. Defenders of the administration's increasing reliance on drone strikes in such places assert that the US is in an armed conflict with “al Qaeda and its associates,” and on that basis, they assert that the law of war is applicable -- in any place and at any time -- with regard to any person the administration deems a combatant. The trouble is, no one outside a very small group within the US executive branch has any ability to evaluate who is and who isn’t a combatant. The war against al Qaeda and its associates is not like World War II, or Libya, or even Afghanistan: it is an open-ended conflict with an inchoate, undefined adversary (who exactly are al Qaeda’s “associates”?). What is more, targeting decisions in this nebulous “war” are based largely on classified intelligence reporting. **As a result, Administration assertions** about who is a combatant and what constitutes a threat **are entirely non-falsifiable, because they're based wholly on undisclosed evidence**. Add to this still another problem: most of these strikes are considered covert action, so although the US sometimes takes public credit for the deaths of alleged terrorist leaders, most of the time, the US will not even officially acknowledge targeted killings. This leaves all the key rule-of-law questions related to the ongoing war against al Qaeda and its "associates" unanswered.36 Based on what criteria might someone be considered a combatant or directly participating in hostilities? What constitutes “hostilities” in the context of an armed conflict against a non-state actor, and what does it mean to participate in them? And just where is the war? Does the war (and thus the law of war) somehow "travel" with combatants? Does the US have a “right” to target enemy combatants anywhere on earth, or does it depend on the consent of the state at issue? Who in the United States government is authorized to make such determinations, and what is the precise chain of command for such decisions? I think the rule of law problem here is obvious: when “armed conflict” becomes a term flexible enough to be applied both to World War II and to the relations between the United States and “associates” of al Qaeda such as Somalia’s al Shabaab, the concept of armed conflict is not very useful anymore. And **when we lack clarity and consensus on how to recognize “armed conflict,” we no longer have a clear or principled basis for deciding how to categorize US** t**argeted** k**illing**s. Are they, as the US government argues, legal under the laws of war? Or are they, as some human rights groups have argued, unlawful murder? C. Targeted Killing and the International Law of Self-Defense When faced with criticisms of the law of war framework as a justification for targeted killing, Obama Administration representatives often shift tack, arguing that international law rules on national self-defense provide an alternative or additional legal justification for US targeted killings. Here, the argument is that if a person located in a foreign state poses an "imminent threat of violent attack" against the United States, the US can lawfully use force in self-defense, provided that the defensive force used is otherwise consistent with law of war principles. Like law of war-based arguments, this general principle is superficially uncontroversial: if someone overseas is about to launch a nuclear weapon at New York City, no one can doubt that the United States has a perfect right (and the president has a constitutional duty) to use force if needed to prevent that attack, regardless of the attacker's nationality. But once again, the devil is in the details. To start with, what constitutes an "imminent" threat? Traditionally, both international law and domestic criminal law understand that term narrowly: 37 to be "imminent," a threat cannot be distant or speculative.38 But much like the Bush Administration before it, the Obama Administration has put forward an interpretation of the word “imminent” that bears little relation to traditional legal concepts. According to a leaked 2011 Justice Department white paper39—the most detailed legal justification that has yet become public-- the requirement of imminence "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future." This seems, in itself, like a substantial departure from accepted international law definitions of imminence. But the White Paper goes even further, stating that "certain members of al Qaeda are continually plotting attacks...and would engage in such attacks regularly [if] they were able to do so, [and] the US government may not be aware of all... plots as they are developing and thus cannot be confident that none is about to occur." For this reason, it concludes, anyone deemed to be an operational leader of al Qaeda or its "associated forces" presents, by definition, an imminent threat even in the absence of any evidence whatsoever relating to immediate or future attack plans. In effect, the concept of "imminent threat" (part of the international law relating to self-defense) becomes conflated with identity or status (a familiar part of the law of armed conflict). That concept of imminence has been called Orwellian, and although that is an overused epithet, in this context it seems fairly appropriate. According to the Obama Administration, “imminent” no longer means “immediate,” and in fact the very absence of clear evidence indicating specific present or future attack plans becomes, paradoxically, the basis for assuming that attack may perpetually be “imminent.” The 2011 Justice Department White Paper notes that the use of force in self-defense must comply with general law of war principles of necessity, proportionality, humanity, and distinction. The White Paper offers no guidance on the specific criteria for determining when an individual is a combatant (or a civilian participating directly in hostilities), however. It also offers no guidance on how to determine if a use of force is necessary or proportionate. From a traditional international law perspective, this necessity and proportionality inquiry relates both to imminence and to the gravity of the threat itself, but so far there has been no public Administration statement as to how the administration interprets these requirements. Is any threat of "violent attack" sufficient to justify killing someone in a foreign country, including a U.S. citizen? Is every potential suicide bomber targetable, or does it depend on the gravity of the threat? Are we justified in drone strikes against targets who might, if they get a chance at some unspecified future point, place an IED that might, if successful, kill one person? Ten people? Twenty? 2,000? How grave a threat must there be to justify the use of lethal force against an American citizen abroad -- or against non-citizens, for that matter? As I have noted, it is impossible for outsiders to fully evaluate US drone strikes, since so much vital information remains classified. In most cases, we know little about the identities; activities or future plans of those targeted. Nevertheless, given the increased frequency of US targeted killings in recent years, it seems reasonable to wonder whether the Administration conducts a rigorous necessity or proportionality analysis in all cases. So far, the leaked 2011 Justice Department White Paper represents the most detailed legal analysis of targeted killings available to the public. It is worth noting, incidentally, that this White Paper addresses only the question of whether and when it is lawful for the US government to target US citizens abroad. We do not know what legal standards the Administration believes apply to the targeting of non-citizens. It seems reasonable to assume, however, that the standards applicable to non-citizens are less exacting than those the Administration views as applicable to citizens. Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41 No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should not depend solely on the good faith and benevolence of government officials. As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness. The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable? 5. Setting Troubling International Precedents **Here is an a**dditional **reason to worry** about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice. Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. **We should use this window to advance a robust legal** and normative **framework that will help protect against abuses by those states whose leaders can rarely be trusted**. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder. Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack." The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an ill- defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

That solves global war – US precedent is key

Roberts 13 (Kristen, news editor for the National Journal, master in security studies from Georgetown, “When the Whole World Has Drones”, 3/22/2013, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>)

The proliferation of drone technology has moved well beyond the control of the United States government and its closest allies. The aircraft are too easy to obtain, with barriers to entry on the production side crumbling too quickly to place limits on the spread of a technology that promises to transform warfare on a global scale. Already, more than 75 countries have remote piloted aircraft. More than 50 nations are building a total of nearly a thousand types. At its last display at a trade show in Beijing, China showed off 25 different unmanned aerial vehicles. Not toys or models, but real flying machines. It’s a classic and common phase in the life cycle of a military innovation: An advanced country and its weapons developers create a tool, and then others learn how to make their own. But what makes this case rare, and dangerous, is the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use. This technology is snowballing through a global arena where the main precedent for its application is the one set by the United States; it’s a precedent Washington does not want anyone following. America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts. To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order. Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan. This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself that would at minimum create a globally relevant standard for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation. THE WRONG QUESTION The United States is the indisputable leader in drone technology and long-range strike. Remote-piloted aircraft have given Washington an extraordinary ability to wage war with far greater precision, improved effect, and fewer unintended casualties than conventional warfare. The drones allow U.S. forces to establish ever greater control over combat areas, and the Pentagon sees the technology as an efficient and judicious force of the future. And it should, given the billions of dollars that have gone into establishing and maintaining such a capability. That level of superiority leads some national security officials to downplay concerns about other nations’ unmanned systems and to too narrowly define potential threats to the homeland. As proof, they argue that American dominance in drone warfare is due only in part to the aircraft itself, which offers the ability to travel great distances and loiter for long periods, not to mention carry and launch Hellfire missiles. The drone itself, they argue, is just a tool and, yes, one that is being copied aggressively by allies and adversaries alike. The real edge, they say, is in the unparalleled intelligence-collection and data-analysis underpinning the aircraft’s mission. “There is what I think is just an unconstrained focus on a tool as opposed to the subject of the issue, the tool of remotely piloted aircraft that in fact provide for greater degrees of surety before you employ force than anything else we use,” said retired Lt. Gen. David Deptula, the Air Force’s first deputy chief of staff for intelligence, surveillance, and reconnaissance. “I think people don’t realize that for the medium altitude aircraft—the MQ-1 [Predator] and MQ-9 [Reaper] that are generally written about in the press—there are over 200 people involved in just one orbit of those aircraft.… The majority of those people are analysts who are interpreting the information that’s coming off the sensors on the aircraft.” The analysts are part of the global architecture that makes precision strikes, and targeted killing, possible. At the front end, obviously, intelligence—military, CIA, and local—inform target decisions. But in as near-real time as technologically possible, intel analysts in Nevada, Texas, Virginia, and other locations watch the data flood in from the aircraft and make calls on what’s happening on target. They monitor the footage, listen to audio, and analyze signals, giving decision-makers time to adjust an operation if the risks (often counted in potential civilian deaths) outweigh the reward (judged by the value of the threat eliminated). “Is that a shovel or a rifle? Is that a Taliban member or is this a farmer? The way that warfare has advanced is that we are much more exquisite in our ability to discern,” Maj. Gen. Robert Otto, commander of the Air Force Intelligence, Surveillance, and Reconnaissance Agency, told National Journal at Nellis Air Force Base in Nevada. “We’re not overhead for 15 minutes with a fighter that’s about to run out of gas, and we have to make a decision. We can orbit long enough to be pretty sure about our target.” Other countries, groups, and even individuals can and do fly drones. But no state or group has nearly the sophisticated network of intelligence and data analysis that gives the United States its strategic advantage. Although it would be foolish to dismiss the notion that potential U.S. adversaries aspire to attain that type of war-from-afar, pinpoint-strike capability, they have neither the income nor the perceived need to do so. That’s true, at least today. It’s also irrelevant. Others who employ drones are likely to carry a different agenda, one more concerned with employing a relatively inexpensive and ruthlessly efficient tool to dispatch an enemy close at hand. “It would be very difficult for them to create the global-strike architecture we have, to have a control cell in Nevada flying a plane over Afghanistan. The reality is that most nations don’t want or need that,” said Peter Singer, director of the Brookings Institution’s Center for 21st Century Security and Intelligence and one of the foremost experts in advanced military technology. “Turkey’s not looking to conduct strikes into the Philippines.... But Turkey is looking to be able to carry out long-duration surveillance and potentially strike inside and right on its border.” And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.” BEHIND CLOSED DOORS The argument against public debate is easy enough to understand: Operational secrecy is necessary, and total opacity is easier. “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things,” said Dennis Blair, Obama’s former director of national intelligence. “The reason it’s not been undertaken by the administration is that they just make a cold-blooded calculation that it’s better to hunker down and take the criticism than it is to get into the public debate, which is going to be a hard one to win.” But by keeping legal and policy positions secret, only partially sharing information even with congressional oversight committees, and declining to open a public discussion about drone use, the president and his team are asking the world to just trust that America is getting this right. While some will, many people, especially outside the United States, will see that approach as hypocritical, coming from a government that calls for transparency and the rule of law elsewhere. “I know these people, and I know how much they really, really attend to the most important details of the job,” said Barry Pavel, a former defense and security official in the Bush and Obama administrations who is director of the Brent Scowcroft Center on International Security at the Atlantic Council. “If I didn’t have that personal knowledge and because there isn’t that much really in the press, then I would be giving you a different rendering, and much more uncertain rendering.” That’s only part of the problem with the White House’s trust-us approach. The other resides in the vast distance between the criteria and authorization the administration says it uses in the combat drone program and the reality on the ground. For example, according to administration officials, before a person is added to the targeted strike list, specific criteria should be met. The target should be a 1) senior, 2) operational 3) leader of al-Qaida or an affiliated group who presents 4) an imminent threat of violent attack 5) against the United States. But that’s not who is being targeted. Setting aside the administration’s redefining of “imminence” beyond all recognition, the majority of the 3,500-plus people killed by U.S. drones worldwide were not leaders of al-Qaida or the Taliban; they were low- or mid-level foot soldiers. Most were not plotting attacks against the United States. In Yemen and North Africa, the Obama administration is deploying weaponized drones to take out targets who are more of a threat to local governments than to Washington, according to defense and regional security experts who closely track unrest in those areas. In some cases, Washington appears to be in the business of using its drone capabilities mostly to assist other countries, not to deter strikes against the United States (another precedent that might be eagerly seized upon in the future). U.S. defense and intelligence officials reject any suggestion that the targets are not legitimate. One thing they do not contest, however, is that the administration’s reliance on the post-9/11 Authorization for Use of Military Force as legal cover for a drone-strike program that has extended well beyond al-Qaida in Afghanistan or Pakistan is dodgy. The threat that the United States is trying to deal with today has an ever more tenuous connection to Sept. 11. (None of the intelligence officials reached for this article would speak on the record.) But instead of asking Congress to consider extending its authorization, as some officials have mulled, the administration’s legal counsel has chosen instead to rely on Nixon administration adviser John Stevenson’s 1970 justification of the bombing of Cambodia during the Vietnam War, an action new Secretary of State John Kerry criticized during his confirmation hearing this year. Human-rights groups might be loudest in their criticism of both the program and the opaque policy surrounding it, but even the few lawmakers who have access to the intelligence the administration shares have a hard time coping with the dearth of information. “We can’t always assume we’re going to have responsible people with whom we agree and trust in these positions,” said Sen. Angus King, I-Maine, who sits on the Senate Intelligence Committee. “The essence of the Constitution is, it shouldn’t matter who is in charge; they’re still constrained by principles and rules of the Constitution and of the Bill of Rights.” PEER PRESSURE Obama promised in his 2013 State of the Union to increase the drone program’s transparency. “In the months ahead, I will continue to engage Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world,” the president said on Feb. 12. Since then, the administration, under pressure from allies on Senate Intelligence, agreed to release all of the legal memos the Justice Department drafted in support of targeted killing. But, beyond that, it’s not certain Obama will do anything more to shine light on this program. Except in situations where leaks help it tell a politically expedient story of its skill at killing bad guys, the administration has done little to make a case to the public and the world at large for its use of armed drones. Already, what’s become apparent is that the White House is not interested in changing much about the way it communicates strike policy. (It took Sen. Rand Paul’s 13-hour filibuster of CIA Director John Brennan’s nomination to force the administration to concede that it doesn’t have the right to use drones to kill noncombatant Americans on U.S. soil.) And government officials, as well as their surrogates on security issues, are actively trying to squash expectations that the administration would agree to bring the judicial branch into the oversight mix. Indeed, judicial review of any piece of the program is largely off the table now, according to intelligence officials and committee members. Under discussion within the administration and on Capitol Hill is a potential program takeover by the Pentagon, removing the CIA from its post-9/11 role of executing military-like strikes. Ostensibly, that shift could help lift the secret-by-association-with-CIA attribute of the program that some officials say has kept them from more freely talking about the legitimate military use of drones for counterterrorism operations. But such a fix would provide no guarantee of greater transparency for the public, or even Congress. And if the administration is not willing to share with lawmakers who are security-cleared to know, it certainly is not prepared to engage in a sensitive discussion, even among allies, that might begin to set the rules on use for a technology that could upend stability in already fragile and strategically significant places around the globe. Time is running out to do so. “The history of technology development like this is, you never maintain your lead very long. Somebody always gets it,” said David Berteau, director of the International Security Program at the Center for Strategic and International Studies. “They’re going to become cheaper. They’re going to become easier. They’re going to become interoperable,” he said. “The destabilizing effects are very, very serious.” Berteau is not alone. Zenko, of the Council on Foreign Relations, has urged officials to quickly establish norms. Singer, at Brookings, argues that the window of opportunity for the United States to create stability-supporting precedent is quickly closing. The problem is, the administration is not thinking far enough down the line, according to a Senate Intelligence aide. Administration officials “are thinking about the next four years, and we’re thinking about the next 40 years. And those two different angles on this question are why you see them in conflict right now.” That’s in part a symptom of the “technological optimism” that often plagues the U.S. security community when it establishes a lead over its competitors, noted Georgetown University’s Kai-Henrik Barth. After the 1945 bombing of Hiroshima and Nagasaki, the United States was sure it would be decades before the Soviets developed a nuclear-weapon capability. It took four years. With drones, the question is how long before the dozens of states with the aircraft can arm and then operate a weaponized version. “Pretty much every nation has gone down the pathway of, ‘This is science fiction; we don’t want this stuff,’ to, ‘OK, we want them, but we’ll just use them for surveillance,’ to, ‘Hmm, they’re really useful when you see the bad guy and can do something about it, so we’ll arm them,’ ” Singer said. He listed the countries that have gone that route: the United States, Britain, Italy, Germany, China. “Consistently, nations have gone down the pathway of first only surveillance and then arming.” The opportunity to write rules that might at least guide, if not restrain, the world’s view of acceptable drone use remains, not least because this is in essence a conventional arms-control issue. The international Missile Technology Control Regime attempts to restrict exports of unmanned vehicles capable of carrying weapons of mass destruction, but it is voluntary and nonbinding, and it’s under attack by the drone industry as a drag on business. Further, the technology itself, especially when coupled with data and real-time analytics, offers the luxury of time and distance that could allow officials to raise the evidentiary bar for strikes—to be closer to certain that their target is the right one. But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions. A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs. Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists. The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

The plan’s norm is key to solve Chinese miscalculation

Kreps and Zenko 14 (SARAH KREPS is Stanton Nuclear Security Fellow at the Council on Foreign Relations and Assistant Professor of Government at Cornell University. MICAH ZENKO is Douglas Dillon Fellow in the Center for Preventive Action at the Council on Foreign Relations., March/April, "The Next Drone Wars", www.foreignaffairs.com/articles/140746/sarah-kreps-and-micah-zenko/the-next-drone-wars)

Nearly seven decades later, Arnold’s prophecy is slowly being realized: armed drones are starting to rule the skies. So far, the United States has had a relative monopoly over the use of such drones, but it cannot count on maintaining that for much longer. Other states are quickly catching up. And although these new weapons will not transform the international system as fundamentally as did the proliferation of nuclear weapons and ballistic missiles, they could still be used in ways that are highly destabilizing and deadly.

Countries will not be deterred from launching drone attacks simply because an adversary has drones in its arsenal, too. If anything, the inherent advantages of drones -- most of all, not placing pilots or ground forces at risk of being killed or captured -- have lowered the threshold for the use of force. Spurred by the United States’ example, other countries are likely to threaten or conduct drone strikes in ways that are harmful to U.S. interests, whether by provoking regional adversaries or targeting domestic enemies.

Fortunately for the United States, it still has the ability to shape how and whether the use of drones will spread and whether these threatening scenarios will come to pass. Countries adopt new military capabilities based on how other states have -- or have not -- already used them and on their perceived effectiveness. Therefore, as other countries develop their own drone technology, they could follow Washington’s lead.

In 2004, only 41 states had drones of any kind. By 2011, that number had reached 76.

John Brennan, director of the CIA and chief architect of the Obama administration’s drone policy, acknowledged as much in a speech in April 2012: “If we want other nations to use these technologies responsibly, we must use them responsibly.” Yet so far, the Obama administration has ignored its own advice, failing to develop a comprehensive strategy to limit the proliferation of armed drones and promote their responsible use. The longer the United States delays, the less influence it will have to shape the rules of the game. Without U.S. leadership, it will be extremely difficult to get an international coalition to agree on a credible arrangement governing the use of armed drones.

Such an arrangement would not necessarily require new treaties or international laws; rather, it would necessitate a more broadly accepted understanding of which existing laws apply and when and a faithful and transparent adherence to them. It would also require updating the multilateral regime that was originally designed to prevent the proliferation of nuclear weapons and their delivery systems. Taken together, these measures would help minimize the spread of the most capable and lethal drones to countries that are the most conflict-prone and increase the likelihood that emerging drone powers would adopt policies that reduce the prospects for violent confrontations.

MOVING TARGET

In a speech last November, Thomas Lawson, Canada’s chief of the defense staff, equated missiles fired from a drone with those fired from a piloted aircraft, because they both reach their target as intended. This view -- that drones represent not a paradigm shift but just a different way for states to do what they have done for decades -- has become widespread. As Norton Schwartz, then chief of staff of the U.S. Air Force, said in May 2012, “If it is [a legitimate target], then I would argue that the manner in which you engage that target, whether it be close combat or remotely, is not a terribly relevant question.” But that view ignores how drones create a particular moral hazard by keeping pilots away from danger. Because the costs of launching deadly strikes with drones are lower than with piloted aircraft, civilian officials are more willing to authorize them.

Compare the relative caution with which the Clinton administration approached al Qaeda with the steady spike in the use of drones against the group since 9/11. In the 1990s, the U.S. military presented the White House with a number of plans to kill Osama bin Laden, including using long-range bombers, AC-130 gunships, U.S. special operations forces, and non-Taliban tribal groups. But the Clinton administration reasoned that they all posed too many risks to U.S. personnel, noncombatants, and diplomatic relations with neighboring states. Without the availability of armed drone technology, in August 1998, Washington resorted to two very limited strikes, firing some 70 cruise missiles at a training camp in Afghanistan and some 13 cruise missiles at a pharmaceutical factory in Sudan (none of which killed any al Qaeda leaders).

Presidents George W. Bush and Barack Obama, by contrast, have shown far less restraint in their use of violent force against suspected members of al Qaeda and other groups, sending armed drones to launch strikes in Afghanistan, Iraq, Libya, Pakistan, the Philippines, Somalia, and Yemen. Beyond reducing the risk to pilots, drones offer other attractive benefits. Predator and Reaper drones can now hover over a target for up to 14 hours without refueling. Since armed drones attach missiles to a surveillance platform, they offer an unmatched responsiveness when time-sensitive targets appear. Moreover, drones can detect when noncombatants enter the blast radius, enabling drone-fired missiles to be diverted at the last moment to avoid civilian casualties. The general public has also recognized these benefits: a Gallup poll conducted last March found that roughly two-thirds of Americans approved of drone strikes on suspected terrorists abroad, unless the target was a U.S. citizen.

RISE OF THE MACHINES

Understanding just how many countries currently maintain their own drones is difficult, since these programs are invariably shrouded in secrecy and misinformation. Some countries hide the existence of their drones in order to maintain a surprise capability; others, hoping to raise their prestige, boast about drones that are not yet operational. To date, only the United States, Israel, and the United Kingdom are believed to have used armed drones.

The U.S. drone program has the greatest reach. Since 2008, the United States has conducted more than 1,000 drone strikes in Afghanistan. From 2008 to 2012, the United States conducted 48 drone strikes in Iraq; in 2011, it launched at least 145 drone strikes in Libya. The use of armed drones in more traditional conflicts has been far less controversial, even if it is more prevalent, than their use off the battlefield. Nonetheless, Washington has conducted almost 400 drones strikes in Pakistan, over 100 in Yemen, around 18 in Somalia, and at least one (in 2006) in the Philippines.

For too long, using drones has seemed to be an easy way to satisfy the desire for absolute security.

Israel and the United Kingdom, meanwhile, have also deployed armed drones, although in far smaller numbers. As of July 2013, the British military had launched 299 drone strikes in Afghanistan. Israeli drones conducted an estimated 42 strike missions in the 2008–9 Gaza conflict, according to a joint investigation by Israeli and Palestinian human rights organizations, and Israeli drones were also used to target suspected terrorists in the Sinai Peninsula in August 2013, with the consent of the Egyptian government.

Although the number of drone-equipped states is currently small, it will grow as other countries play catch-up. In 2004, only 41 states had drones of any kind, armed or unarmed. But by 2011, that number had reached 76, according to the last reliable public estimate by the U.S. Government Accountability Office. According to a 2005 report by the Teal Group, an aerospace and defense industry consulting firm, it was projected that the United States would account for 90 percent of all drone expenditures worldwide over the coming decade; according to 2013 projections, that figure stood at 64 percent. For now, in addition to Israel and the United Kingdom, China and Iran appear to be the only other countries with operationally deployed armed drones (based on the evidence of public demonstrations, such as military parades and air shows). China has been showing the media various drones for half a decade, and it now spends so much on drones that its drone budget will equal the United States’ by 2020. Iran has revealed a drone that it claims has a range of 2,000 kilometers, which would cover much of the Middle East.

Still other countries are catching up. India’s government has reported that it will soon equip its existing drones with precision-guided munitions and hopes to mass-produce others to conduct cross-border attacks on suspected terrorists. Pakistan, not to be outdone by its rival, has declared that it will develop armed drones on its own or with China’s help in order to target the Taliban and al Qaeda in its lawless tribal areas. Turkey currently has about 24 drones in use or development, including what Ankara hopes will be an armed drone equivalent of a Reaper (last year it was thwarted in its efforts to buy armed drones from the United States). Meanwhile, Australia, Japan, and Singapore have developed unarmed surveillance drones that could be used for more military purposes -- some of them in highly volatile regions, such as in the area of the disputed islands known as the Senkaku in Japan and the Diaoyu in China.

LIMITED ENGAGEMENT

Given the intrinsic advantages of armed drones over conventional airpower, it is surprising that more countries have not acquired or used them already. But a closer look at the costs of drone warfare makes it clear why. First, using drones is still risky. They might lower the threshold for the use of force, but they do not eliminate it altogether. One reason some countries that have armed drones, such as China and Iran, have not yet used them is that they are not involved in major international conflicts that would justify their deployment. If either China or Iran considered starting a militarized dispute, however, the availability of drones could push its leaders to escalate.

Drone technology is also more complex than it may appear. There is a qualitative difference between the rudimentary unmanned aircraft used as far back as World War II -- and even the unarmed Predators that flew in the Balkans in the mid-1990s -- and the armed drones that the United States deploys over Afghanistan, Pakistan, and elsewhere today. These advanced drones require far more than a pilot at a base in the Horn of Africa or the Nevada desert to make them effective. They need actionable intelligence, sophisticated communications, access to satellite bandwidth, and complex systems engineering -- all assets presently beyond the reach of most states.

It is no coincidence that the countries that possess advanced drones have also already mastered other complex military technologies, such as nuclear weapons and satellite communications. But even some states that have developed such technologies are having difficulties with drones. Russia, for example, has seen its drone efforts derailed by sharp reductions in aerospace funding and a long-declining aerospace industry. France and Italy have also been unable to pursue their own programs and have had to settle for an unarmed variant of the U.S.-made Reaper, which France has been using for reconnaissance missions in Mali.

A third explanation for the slow spread of drones is diplomatic. Conducting drone strikes in foreign countries, as the United States does, requires bilateral relations that are good enough to get the host nations to grant basing and overflight rights. Drone strikes in Somalia and Yemen require the use of airfields in Djibouti, Ethiopia, Saudi Arabia, and the Seychelles, which the United States has secured with aid (both overt and covert) and security commitments. Few other countries have such reliable access to foreign bases. And the oceans do not offer an alternative. The United States should be able to conduct drone strikes from its ships within five years, but it will take other countries decades to have that capability.

Domestic opposition to the development or use of drones creates additional problems in other states, even some with the technological capacity to build and field them. Officials in Washington take relatively little flak for supporting the U.S. targeted-killing program, but the politics of drones are considerably different in other countries. In Germany, for example, politicians who advocate drones have faced harsh criticism from a public worried about compromising Germany’s long-standing defense-only national security policies. Developing lethal drone capabilities, many German critics contend, could increase the prospects of military interventions more generally.

Defense budgets are a final factor. The worldwide civilian and military drone market, which researchers predict will reach $8.4 billion by 2018, accounts for only a fraction of global defense spending, which estimates say will hit $1.9 trillion by the end of 2017. But drones’ costs are still prohibitive at a time when austerity dominates military spending decisions in most countries. Unless they discover unforeseen threats that require the use of armed drones, most states will not reallocate precious defense dollars to unmanned systems anytime soon.

HOSTILE ACTS

These obstacles will likely keep the number of drone powers low, but even a few more states fielding a few armed drones could seriously threaten international security. Drones have already been used in ways that go beyond their originally intended applications. For example, the U.S. Customs and Border Protection at first deployed drones to watch the Canadian and Mexican borders, but it has since repurposed them so that other agencies could use them for surveillance missions, and they have, for nearly 700. And drones themselves have created new and unforeseen missions: actual human forces must protect and recover downed drones, for example. It would therefore be myopic and misguided to assume that other states will use drones in the future only in the way the United States has.

The mere possession of drones will not make traditional interstate warfare, which is already relatively rare these days, more likely. Having armed drones, given their limitations, is unlikely to convince states to go to war, attempt to capture or control foreign territory, or try to remove a foreign leader from power. But armed drones could still increase the possibility of more limited military conflicts, especially in disputed areas where the slightest provocation could lead to strife.

In such settings, drones could encourage countries to act in ways that they might not if they had only manned aircraft. China already flies drones over the Senkaku/Diaoyu Islands, which has prompted the Japanese Defense Ministry to develop drone-specific rules of engagement. Japanese officials say they would be less hesitant to shoot down Chinese drones than they would manned Chinese aircraft. A similar dynamic can be seen in practice in the Persian Gulf, where Iran has fired on U.S. drones while carefully avoiding attacking manned American planes. In November 2012, for example, an Iranian fighter jet fired on a Predator drone that it claimed had entered Iran’s airspace (the U.S. military contended that the drone was over international waters). Martin Dempsey, chairman of the Joint Chiefs of Staff, called Iran’s behavior “clearly a hostile act against our assets” necessitating “a measured response,” which included using additional, manned U.S. military assets to protect the drones and the information they collect.

The fact that drones heighten the potential for miscalculation and military escalation is especially worrisome in maritime disputes. The CIA has identified 430 bilateral maritime boundaries, most of which are not defined by formal agreements between states. In the East China and South China seas, nationalist sentiments and the discovery of untapped oil and gas reserves have already made armed conflict over disputed borders among the littoral states more likely. And that prospect would only increase if these countries deployed drones in the area, which they would likely do more aggressively than if they were deploying piloted aircraft.

That solves miscalculation and war in the South and East China Seas

Brimley 13 (Shawn Brimley, Ben FitzGerald, and Ely Ratner are, respectively, vice president, director of the Technology and National Security Program, and deputy director of the Asia Program at the Center for a New American Security., 9/17/2013, "The Drone War Comes to Asia", www.foreignpolicy.com/articles/2013/09/17/the\_drone\_war\_comes\_to\_asia)

It's now been a year since Japan's previously ruling liberal government purchased three of the Senkaku Islands to prevent a nationalist and provocative Tokyo mayor from doing so himself. The move was designed to dodge a potential crisis with China, which claims "indisputable sovereignty" over the islands it calls the Diaoyus. Disregarding the Japanese government's intent, Beijing has reacted to the "nationalization" of the islands by flooding the surrounding waters and airspace with Chinese vessels in an effort to undermine Japan's de facto administration, which has persisted since the reversion of Okinawa from American control in 1971. Chinese incursions have become so frequent that the Japanese Air Self-Defense Forces (JASDF) are now scrambling jet fighters on a near-daily basis in response. In the midst of this heightened tension, you could be forgiven for overlooking the news early in September that Japanese F-15s had again taken flight after Beijing graciously commemorated the one-year anniversary of Tokyo's purchase by sending an unmanned aerial vehicle (UAV) toward the islands. But this wasn't just another day at the office in the contested East China Sea: this was the first known case of a Chinese drone approaching the Senkakus. Without a doubt, China's drone adventure 100-miles north of the Senkakus was significant because it aggravated already abysmal relations between Tokyo and Beijing. Japanese officials responded to the incident by suggesting that Japan might have to place government personnel on the islands, a red line for Beijing that would have been unthinkable prior to the past few years of Chinese assertiveness. But there's a much bigger and more pernicious cycle in motion. The introduction of indigenous drones into Asia's strategic environment -- now made official by China's maiden unmanned provocation -- will bring with it additional sources of instability and escalation to the fiercely contested South and East China Seas. Even though no government in the region wants to participate in major power war, there is widespread and growing concern that military conflict could result from a minor incident that spirals out of control. Unmanned systems could be just this trigger. They are less costly to produce and operate than their manned counterparts, meaning that we're likely to see more crowded skies and seas in the years ahead. UAVs also tend to encourage greater risk-taking, given that a pilot's life is not at risk. But being unmanned has its dangers: any number of software or communications failures could lead a mission awry. Combine all that with inexperienced operators and you have a perfect recipe for a mistake or miscalculation in an already tense strategic environment. The underlying problem is not just the drones themselves. Asia is in the midst of transitioning to a new warfighting regime with serious escalatory potential. China's military modernization is designed to deny adversaries freedom of maneuver over, on, and under the East and South China Seas. Although China argues that its strategy is primarily defensive, the capabilities it is choosing to acquire to create a "defensive" perimeter -- long-range ballistic and cruise missiles, aircraft carriers, submarines -- are acutely offensive in nature. During a serious crisis when tensions are high, China would have powerful incentives to use these capabilities, particularly missiles, before they were targeted by the United States or another adversary. The problem is that U.S. military plans and posture have the potential to be equally escalatory, as they would reportedly aim to "blind" an adversary -- disrupting or destroying command and control nodes at the beginning of a conflict. At the same time, the increasingly unstable balance of military power in the Pacific is exacerbated by the (re)emergence of other regional actors with their own advanced military capabilities. Countries that have the ability and resources to embark on rapid modernization campaigns (e.g., Japan, South Korea, Indonesia) are well on the way. This means that in addition to two great powers vying for military advantage, the region features an increasingly complex set of overlapping military-technical competitions that are accelerating tensions, adding to uncertainty and undermining stability. This dangerous military dynamic will only get worse as more disruptive military technologies appear, including the rapid diffusion of unmanned and increasingly autonomous aerial and submersible vehicles coupled with increasingly effective offensive cyberspace capabilities. Of particular concern is not only the novelty of these new technologies, but the lack of well-established norms for their use in conflict. Thankfully, the first interaction between a Chinese UAV and manned Japanese fighters passed without major incident. But it did raise serious questions that neither nation has likely considered in detail. What will constrain China's UAV incursions from becoming increasingly assertive and provocative? How will either nation respond in a scenario where an adversary downs a UAV? And what happens politically when a drone invariably falls out of the sky or "drifts off course" with both sides pointing fingers at one another? Of most concern, how would these matters be addressed during a crisis, with no precedents, in the context of a regional military regime in which actors have powerful incentives to strike first? These are not just theoretical questions: Japan's Defense Ministry is reportedly looking into options for shooting down any unmanned drones that enter its territorial airspace. Resolving these issues in a fraught strategic environment between two potential adversaries is difficult enough; the United States and China remain at loggerheads about U.S. Sensitive Reconnaissance Operations along China's periphery. But the problem is multiplying rapidly. The Chinese are running one of the most significant UAV programs in the world, a program that includes Reaper- style UAVs and Unmanned Combat Aerial Vehicles (UCAVs); Japan is seeking to acquire Global Hawks; the Republic of Korea is acquiring Global Hawks while also building their own indigenous UAV capabilities; Taiwan is choosing to develop indigenous UAVs instead of importing from abroad; Indonesia is seeking to build a UAV squadron; and Vietnam is planning to build an entire UAV factory. One could take solace in Asia's ability to manage these gnarly sources of insecurity if the region had demonstrated similar competencies elsewhere. But nothing could be further from the case. It has now been more than a decade since the Association of Southeast Asian Nations (ASEAN) and China signed a declaration "to promote a peaceful, friendly and harmonious environment in the South China Sea," which was meant to be a precursor to a code of conduct for managing potential incidents, accidents, and crises at sea. But the parties are as far apart as ever, and that's on well-trodden issues of maritime security with decades of legal and operational precedent to build upon. It's hard to be optimistic that the region will do better in an unmanned domain in which governments and militaries have little experience and where there remains a dearth of international norms, rules, and institutions from which to draw. The rapid diffusion of advanced military technology is not a future trend. These capabilities are being fielded -- right now -- in perhaps the most geopolitically dangerous area in the world, over (and soon under) the contested seas of East and Southeast Asia. These risks will only increase with time as more disruptive capabilities emerge. In the absence of political leadership, these technologies could very well lead the region into war.

It escalates – their defense is wrong

Auslin 13 (Michael Auslin is a resident scholar at the American Enterprise Institute, 11/5/2013, "Tensions Are Escalating in the East China Sea", online.wsj.com/news/articles/SB10001424052702303482504579178850122997242)

The East China Sea may see the world's first war started by aerial drones. Unless China and Japan quickly find some way to settle their territorial dispute, they are moving toward a military clash. And with Barack Obama wounded abroad and at home by everything from NSA spying to ObamaCare implementation, America is playing no role in this dangerous affair. The result is an Asia more prone to conflict than at any time in recent memory. The Japanese-Chinese territorial dispute over the Senkaku/Diaoyu Islands was botched last year by Tokyo, led at the time by the now-discredited Democratic Party of Japan. Reacting to China's increasingly intrusive presence in the waters around the Japanese-administered islands, and fearing that maverick former Tokyo Governor Shintaro Ishihara would carry through his threat to purchase the islands, then-Prime Minister Yoshihiko Noda nationalized several of the islands after buying them from their private owners in September 2012. China responded instantly with anti-Japanese riots and a freezing of diplomatic relations. Chinese patrol vessels and fishing boats began tense face-offs with Japan's Coast Guard. Within months, both nations' air forces began more active aerial patrols. Two months ago, China upped the ante by flying surveillance drones in such contested airspace. Japan responded by saying it would shoot down any drone that refused to leave the skies above the islands. Beijing says that any attack on its drones would be an act of war. This conflict is accelerated partly by technology. By sending naval flotillas through international waters that pass between Japanese islands, flying early-warning airborne-control planes near strategic choke points, and ramping up its use of drones, China is flexing the military might it has developed (and stolen from the U.S.) over the past two decades. Japan's military is also modernizing after years of stagnation, and now it has to come up with rules of engagement for unmanned military systems, something few other countries have had to do. China's rise is challenging traditional military doctrine in this way and others, from its cyber aggression to its capabilities in space (such as anti-satellite weapons). The United States, Russia, India and others are watching the East China Sea confrontation for clues about China's operational capabilities, military doctrine and confidence to confront advanced nations. The drone scare has highlighted the lack of any diplomatic relationship between Tokyo and Beijing. Japanese Prime Minister Shinzo Abe is again subordinating necessary economic reforms to his desire to restore Japan's standing in the world. Chinese President Xi Jinping has shown no desire to ease tensions with Japan since taking full power earlier this year. And with Beijing's Central Committee plenum this weekend, no Chinese leader will want to appear to be backing down in the face of Mr. Abe's apparent nationalism. Across Asia, the Chinese-Japanese dynamic raises concerns that regional disputes will be settled only by might. That makes smaller countries nervous—especially those facing their own territorial disputes with China—and it makes it more difficult to develop any meaningful regional political mechanisms. China's use of drones and advanced aircraft is also certain to drive Asia's arms spending even higher. Washington may want to avoid endorsing the territorial claims of either Tokyo or Beijing, but war is in no one's interest—especially when America's treaty alliance with Japan puts U.S. troops (let alone U.S. credibility) on the line. One way or another, this crisis will change the balance of power in East Asia: Either Japan will surrender territory it has controlled for a generation, or China will back down, becoming more resentful of today's international system than before.

SCS conflict causes extinction

Wittner 11 (Lawrence S. Wittner, Emeritus Professor of History at the State University of New York/Albany, Wittner is the author of eight books, the editor or co-editor of another four, and the author of over 250 published articles and book reviews. From 1984 to 1987, he edited Peace & Change, a journal of peace research., 11/28/2011, "Is a Nuclear War With China Possible?", [www.huntingtonnews.net/14446](http://www.huntingtonnews.net/14446))

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction.

Senkaku conflict causes extinction

Baker 12 (Kevin R., Member of the Compensation Committee of Calfrac, Chair of the Corporate Governance and Nominating Committee, served as President and Chief Executive Officer of Century Oilfield Services Inc. from August 2005 until November 10, 2009, when it was acquired by the Corporation. He also has served as the President of Baycor Capital Inc., 9/17/2012, “What Would Happen if China and Japan Went to War?”, http://appreviews4u.com/2012/09/17/what-would-happen-if-china-and-japan-went-to-war/)

China is not an isolationist country but it is quite nationalistic. Their allies include, Russia, which is a big super power, Pakistan and Iran as well as North Korea. They have more allies than Japan, although most relations have been built on economic strategies, being a money-centric nation. Countries potentially hostile toward China in the event of a Japan vs. China war include Germany, Britain, Australia and South Korea. So even though Japan does not outwardly build relationships with allies, Japan would have allies rallying around them if China were to attack Japan. The island dispute would not play out as it did in the UK vs. Argentina island dispute, as both sides could cause massive damage to each other, whereas the UK was far superior in firepower compared to Argentina. Conclusion Even though China outweighs Japan in numbers, the likelihood that a war would develop into a nuclear war means that numbers don’t really mean anything anymore. The nuclear capabilities of Japan and China would mean that each country could destroy each other many times over. The island dispute would then escalate to possible mass extinction for the human race. The nuclear fall out would affect most of Asia and to a certain extent the West. If the allies were then to turn on each other it would spell the end of the human race. Bear in mind that it will take an estimated 10,000 years for Chernobyl to become safe to walk around and you’ll get an idea of what state land masses will be in after a war of such magnitude. I say ‘land masses’ as countries and nations would cease to exist then and it would be a case of ‘if’ and ‘where’ could human beings, plant life and animals could exist, if at all possible, which is very doubtful. Even with underground bunkers, just how long could people survive down there? With plant and animal life eradicated above? I would say maybe 20 years at best, if there are ample supplies of course.

The best scholarship validates our theory of arms races–unless norms precede formal agreements, they’ll be ineffective

Robert Farley 11, assistant professor at the Patterson School of Diplomacy and International Commerce at the University of Kentucky, Over the Horizon: U.S. Drone Use Sets Global Precedent, October 12, http://www.worldpoliticsreview.com/articles/10311/over-the-horizon-u-s-drone-use-sets-global-precedent

Is the world about to see a "drone race" among the United States, China and several other major powers? Writing in the New York Times, Scott Shane argued that just such an arms race is already happening and that it is largely a result of the widespread use of drones in a counterterror role by the United States. Shane suggests that an international norm of drone usage is developing around how the United States has decided to employ drones. In the future, we may expect that China, Russia and India will employ advanced drone technologies against similar enemies, perhaps in Xinjiang or Chechnya. Kenneth Anderson agrees that the drone race is on, but disagrees about its cause, arguing that improvements in the various drone component technologies made such an arms race inevitable. Had the United States not pursued advanced drone technology or launched an aggressive drone campaign, some other country would have taken the lead in drone capabilities. So which is it? Has the United States sparked a drone race, or was a race with the Chinese and Russians inevitable? While there's truth on both sides, on balance Shane is correct. Arms races don't just "happen" because of outside technological developments. Rather, they are embedded in political dynamics associated with public perception, international prestige and bureaucratic conflict. China and Russia pursued the development of drones before the United States showed the world what the Predator could do, but they are pursuing capabilities more vigorously because of the U.S. example. Understanding this is necessary to developing expectations of what lies ahead as well as a strategy for regulating drone warfare. States run arms races for a variety of reasons. The best-known reason is a sense of fear: The developing capabilities of an opponent leave a state feeling vulnerable. The Germany's build-up of battleships in the years prior to World War I made Britain feel vulnerable, necessitating the expansion of the Royal Navy, and vice versa. Similarly, the threat posed by Soviet missiles during the Cold War required an increase in U.S. nuclear capabilities, and so forth. However, states also "race" in response to public pressure, bureaucratic politics and the desire for prestige. Sometimes, for instance, states feel the need to procure the same type of weapon another state has developed in order to maintain their relative position, even if they do not feel directly threatened by the weapon. Alternatively, bureaucrats and generals might use the existence of foreign weapons to argue for their own pet systems. All of these reasons share common characteristics, however: They are both social and strategic, and they depend on the behavior of other countries. Improvements in technology do not make the procurement of any given weapon necessary; rather, geostrategic interest creates the need for a system. So while there's a degree of truth to Anderson's argument about the availability of drone technology, he ignores the degree to which dramatic precedent can affect state policy. The technologies that made HMS Dreadnought such a revolutionary warship in 1906 were available before it was built; its dramatic appearance nevertheless transformed the major naval powers' procurement plans. Similarly, the Soviet Union and the United States accelerated nuclear arms procurement following the Cuban Missile Crisis, with the USSR in particular increasing its missile forces by nearly 20 times, partially in response to perceptions of vulnerability. So while a drone "race" may have taken place even without the large-scale Predator and Reaper campaign in Pakistan, Yemen and Somalia, the extent and character of the race now on display has been driven by U.S. behavior. Other states, observing the effectiveness -- or at least the capabilities -- of U.S. drones will work to create their own counterparts with an enthusiasm that they would not have had in absence of the U.S. example. What is undeniable, however, is that we face a drone race, which inevitably evokes the question of arms control. Because they vary widely in technical characteristics, appearance and even definition, drones are poor candidates for "traditional" arms control of the variety that places strict limits on number of vehicles constructed, fielded and so forth. Rather, to the extent that any regulation of drone warfare is likely, it will come through treaties limiting how drones are used. Such a treaty would require either deep concern on the part of the major powers that advances in drone capabilities threatened their interests and survival, or widespread revulsion among the global public against the practice of drone warfare. The latter is somewhat more likely than the former, as drone construction at this point seems unlikely to dominate state defense budgets to the same degree as battleships in the 1920s or nuclear weapons in the 1970s. However, for now, drones are used mainly to kill unpleasant people in places distant from media attention. So creating the public outrage necessary to force global elites to limit drone usage may also prove difficult, although the specter of "out of control robots" killing humans with impunity might change that. P.W. Singer, author of "Wired for War," argues that new robot technologies will require a new approach to the legal regulation of war. Robots, both in the sky and on the ground, not to mention in the sea, already have killing capabilities that rival those of humans. Any approach to legally managing drone warfare will likely come as part of a more general effort to regulate the operation of robots in war. However, even in the unlikely event of global public outrage, any serious effort at regulating the use of drones will require U.S. acquiescence. Landmines are a remarkably unpopular form of weapon, but the United States continues to resist the Anti-Personnel Mine Ban Convention. If the United States sees unrestricted drone warfare as being to its advantage -- and it is likely to do so even if China, Russia and India develop similar drone capabilities -- then even global outrage may not be sufficient to make the U.S. budge on its position. This simply reaffirms the original point: Arms races don't just "happen," but rather are a direct, if unexpected outcome of state policy. Like it or not, the behavior of the United States right now is structuring how the world will think about, build and use drones for the foreseeable future. Given this, U.S. policymakers should perhaps devote a touch more attention to the precedent they're setting.

## Solvency

Solvency

Status quo administration policy delineates between geographic zones, but our legal justification for war everywhere remains in place

Anthony Dworkin 13, senior policy fellow at the European Council on Foreign Relations, “Drones And Targeted Killing: Defining A European Position”, July, <http://ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf>

Two further points are worth noting. First, the administration has acknowledged that in the case of American citizens, even when they are involved in the armed conflict, the US Constitution imposes additional requirements of due process that bring the threshold for targeted killing close to that involved in a self-defence analysis. These requirements were listed in a Department of Justice white paper that became public earlier this year.26 Second, **the administration has** at times **suggested** that even in the case of non-Americans **its policy is to concentrate its efforts against individuals who pose a significant and imminent threat to the US**. For example, John Brennan said in his Harvard speech in September 2011 that the administration’s counterterrorism efforts outside Afghanistan and Iraq were “focused on those individuals who are a threat to the United States, whose removal would cause a significant – even if only temporary – disruption of the plans and capabilities of al-Qaeda and its associated forces”.27 However, the **details** that have emerged about US targeting practices in the past few years **raise questions about how closely this approach has been followed in practice**. An analysis published by McClatchy Newspapers in April, based on classified intelligence reports, claimed that 265 out of 482 individuals killed in Pakistan in a 12-month period up to September 2011 were not senior al-Qaeda operatives but instead were assessed as Afghan, Pakistani, and unknown extremists.28 It has been widely reported that in both Pakistan and Yemen the US has at times carried out “signature strikes” or “Terrorist Attack Disruption Strikes” in which groups are targeted based not on knowledge of their identity but on a pattern of behaviour that complies with a set of indicators for militant activity. It is widely thought that these attacks have accounted for many of the civilian casualties caused by drone strikes. In both Pakistan and Yemen, there may have been times when some drone strikes – including signature strikes – could perhaps best be understood as counterinsurgency actions in support of government forces in an internal armed conflict or civil war, and in this way lawful under the laws of armed conflict. Some attacks in Pakistan may also have been directly aimed at preventing attacks across the border on US forces in Afghanistan. However, **by presenting its drone programme overall as part of** a global armed conflict. the **Obama** administration **continues to set** an expansive precedent **that is damaging to the international rule of law**. Obama’s new policy on drones It is against this background that Obama’s recent counterterrorism speech and the policy directive he announced at the same time should be understood. On the subject of remotely piloted aircraft and targeted killing, there were two key aspects to his intervention. First, he suggested that the military element in US counterterrorism may be scaled back further in the coming months, and that he envisages a time in the not-too-distant future when the fight against the al-Qaeda network will no longer qualify as an armed conflict. He said that “the core of al Qaeda in Afghanistan and Pakistan is on the path to defeat” and that while al-Qaeda franchises and other terrorists continued to plot against the US, “the scale of this threat closely resembles the types of attacks we faced before 9/11”.29 Obama promised that he would not sign legislation that expanded the mandate of the AUMF, and proclaimed that the United States’ “systematic effort to dismantle terrorist organizations must continue […] but this war, like all wars, must end”. The tone of Obama’s speech contrasted strongly with that of US **military officials** who testified before the Senate Committee on Armed Services the week before; Michael Sheehan, the Assistant Secretary of Defence for Special Operations and Low-Intensity Conflict, **said** then that **the end of the armed conflict was “a long way off**” and appeared to say that **it might continue for 10 to 20 years**.30 Second, the day before his speech, **Obama set out regulations** for drone strikes that appeared to restrict them beyond previous commitments (the guidance remains classified but a summary has been released). The guidance set out standards and procedures for drone strikes “that are either already in place or will be transitioned into place over time”.31 **Outside areas of active hostilities, lethal force will only be used “when capture is not feasible and no other reasonable alternatives exist to address the threat effectively”. It will only be used against a target “that poses a continuing, imminent threat to US persons”. And there must be “near certainty that non-combatants will not be injured or killed**”. In some respects, these standards remain unclear: the president did not specify how quickly they would be implemented, or how “areas of active hostilities” should be understood. Nevertheless, **taken at face value,** they **seem to** represent a meaningful change**, at least on a conceptual level**. Effectively, they bring the criteria for all targeted strikes into line with the standards that the administration had previously determined to apply to US citizens. **Where the administration had previously said on occasions that it focused in practice on those people who pose the greatest threat,** this is **now formalised as** official policy. In this way, the standards are **significantly** more restrictive than the limits that the laws of armed conflict set for killing in wartime, and represent a shift towards a threat-based rather than status-based approach. **In effect, the new policy endorses a self-defence standard as the** de facto basis **for US drone strikes**, even if the continuing level of attacks would strike most Europeans as far above what a genuine self-defence analysis would permit.32 The new standards would seem to prohibit signature strikes in countries such as Yemen and Somalia and confine them to Pakistan, where militant activity could be seen as posing a cross-border threat to US troops in Afghanistan. According to news reports, signature strikes will continue in the Pakistani tribal areas for the time being.33 However, the impact of the new policy will depend very much on how the concept of a continuing, imminent threat is interpreted. The administration has not given any definition of this phrase, and the leaked Department of Justice white paper contained a strikingly broad interpretation of imminence; among other points, the white paper said that it “does not require the United States to have clear evidence that a specific attack on US persons or interests will take place in the immediate future” and that it “must incorporate considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”.34 The presidential policy guidance captures the apparent concerns behind the administration’s policy more honestly by including the criterion of continuing threat, but this begs the question of how the notions of a “continuing” and “imminent” threat relate to each other. Even since Obama’s speech, the US is reported to have carried out four drone strikes (two in Pakistan and two in Yemen) killing between 18 and 21 people – suggesting that the level of attacks is hardly diminishing **under the new guidelines**.35 It is also notable that the new standards **announced by Obama** represent a policy decision **by the US** rather than **a** revised **interpretation of its** legal obligations. In his speech, **Obama drew a distinction between legality and morality**, pointing out that “to say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance”. The suggestion was that the US was scaling back its use of drones out of practical or normative considerations, not because of any new conviction that the its previous legal claims went too far. The **background** assertion that the US **is engaged in an armed conflict with al-Qaeda and associated forces, and** might **therefore** lawfully kill any member **of the opposing forces** wherever they were found, remains in place **to serve** as a precedent **for other states that wish to claim it**.

Limiting the use of force as a first resort is critical to sustainable consensus-building on targeted killing standards

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

Legal scholars, policymakers, and state actors are embroiled in a heated debate about whether the conflict with al Qaeda is concentrated within specific geographic boundaries or extends to wherever al Qaeda members and associated forces may go. The United States' expansive view of the conflict, coupled with its broad definition of the enemy, has led to a legitimate concern about the creep of war. Conversely, the European and human rights view, which confines the conflict to a limited geographic region, ignores the potentially global nature of the threat and unduly constrains the state's ability to respond. Neither the law of international armed conflict (governing conflicts between states) nor the law of noninternational armed conflict (traditionally understood to govern intrastate conflicts) provides the answers that are so desperately needed. The zone approach proposed by this Article fills the international law gap, effectively mediating the multifaceted liberty and security interests at stake. It recognizes the broad sweep of the conflict, but distinguishes between zones of active hostilities and other areas in determining which rules apply. Specifically, it offers a set of standards that would both limit and legitimize the use of out-of-battlefield targeted killings and law of war-based detentions, subjecting their use to an individualized threat assessment, a least-harmful-means test, and significant procedural safeguards. This approach confines the use of out-of-battlefield targeted killings and detention without charge to extraordinary situations in which the security of the state so demands. It thus limits the use of force as a first resort, protects against the unnecessary erosion of peacetime norms and institutions, and safeguards individual liberty. At the same time, the zone approach ensures that the state can effectively respond to grave threats to its security, wherever those threats are based. The United States has already adopted a number of policies that distinguish between zones of active hostilities and elsewhere, implicitly recognizing the importance of this distinction. By adopting the proposed framework as a matter of law, the United States can begin to set the standards and build an international consensus as to the rules that ought to apply, not only to this conflict, but to future conflicts. The likely reputational, security, and foreign policy gains make acceptance of this framework a worthy endeavor.

Legal clarity is key to both advantages – only congress solves

Pritchard 3/18 (Llewelyn G. Pritchard, Chair of the American Bar Association Center for Human Rights, 3/18/2014, "Discussion Paper on the Legality of Drone Strikes Under International Law", www.cnss.org/data/files/War\_Powers/ABA\_CHRDiscussion\_Paper\_Drones\_03\_18.pdf)

The U.S. government has acknowledged concerns about its use of lethal drone strikes and asserts that it strictly adheres to the law when using such lethal force.3 But the U.S. has not articulated clearly the limiting principles applicable to a government’s use of lethal force against suspected terrorists outside a traditionally recognizable war zone.4 President Obama on May 23, 2013, gave a seminal speech promising to end the war against al Qaeda and “discipline” the use of drones.5 He issued a presidential directive that set forth restrictions on the use of drones by the U.S. outside “areas of active hostilities.” While the President’s policy decision, when fully implemented, should result in fewer drone strikes, neither his speech nor the directive outlined limits that the law imposes on the use of military force, including targeted strikes outside “areas of active hostilities.”6 Background Since September 2001, the U.S. has been engaged in combat operations in Afghanistan with al Qaeda and the Taliban. As of this writing, fighting continues in Afghanistan; U.S., North Atlantic Treaty Organization (NATO) and Afghan security forces continue to be engaged in active hostilities there and suffer almost daily casualties. In the past decade, the U.S. has expanded its use of military force to places outside Afghanistan, claiming that its armed conflict with al Qaeda is not geographically limited to Afghanistan.7 It has also expanded its lethal operations to target “associated forces” of al Qaeda, located outside of Afghanistan, claiming that such groups are part of the armed conflict with al Qaeda. It defines such associated forces as organized armed groups that have entered the fight with al Qaeda against the U.S. or its coalition partners.8 During the Bush administration, the U.S. also seized individuals located in various countries around the world and held them in military detention without trial, claiming the right to do so as part of the war against al Qaeda and the Taliban. During the Obama administration, the military seized one individual in a place where the U.S. is not using military force (Libya), initially detained him as an “unprivileged belligerent” and then transferred him for civilian trial in the U.S.9 In addition, the Obama administration has continued to claim that individuals seized in places like Bosnia by the previous administration, who are now held in Guantanamo, are legally detained pursuant to the laws of war. This position has contributed to the confusion and lack of coherence in the U.S. government’s articulation of the geographic scope of the armed conflict with al Qaeda beyond Afghanistan. The U.S. government has stated that international humanitarian law (IHL) covers U.S. military operations against al Qaeda, the Taliban, or associated forces.10 The Obama administration asserts that the U.S. complies with IHL, in all of its operations against these groups, including those conducted by the Central Intelligence Agency (CIA).11 However, the application of IHL to a conflict between a State and non-state actors occurring on the territory of multiple third-party States that are not themselves at war with the State has generated significant controversy in the international community. The United States’ articulation of how IHL applies in this context is disputed as a legal matter. From a policy standpoint, there is concern that the U.S. drone killings in particular may create precedents for arbitrary killings by other governments.12 There is also evidence that concerns about the legality of such operations threaten to interfere with the United States’ ability to garner support from countries whose cooperation is essential to effective counterterrorism operations.13 Summary recommendation As noted above, the U.S. acknowledges that targeted lethal operations must comply with international law, including international humanitarian law, wherever they take place.14 But it has not articulated the concrete and specific limits on when and where such operations may take place outside the recognizable war zone of Afghanistan. To prevent erosion of important limits on the permissible use of force, the U.S. should clearly state that it will only use lethal force against al Qaeda or organized armed groups associated with al Qaeda in countries where al Qaeda or such groups are involved in hostilities targeting the United States and where there is an ongoing armed conflict in which al Qaeda or such groups are participating. Outside such existing areas of armed conflict, the United States may only resort to the use of force against al Qaeda or associated organized armed groups in self-defense against an armed attack on the U.S., when lethal force is being used only as a last resort and the force used is proportional to the threat posed by the target. The U.S. should also state clearly that it will use lethal force in self-defense to prevent an armed attack only when such attack is imminent. As the U.S. has acknowledged, the use of force must also comply with the further requirements of international humanitarian law, including those that prohibit the targeted killing of civilians who are not directly participating in hostilities. Any supporters or members of al Qaeda or associated forces who are not engaged in a “continuous combat function” must be accorded the protections afforded civilians, unless and for such time as they directly participate in hostilities. Legal analysis The current controversies concerning targeted killing operations by the U.S. arise in applying the traditional concepts of “armed conflict” and a State’s right to self-defense against attacks by a non-state terrorist organization, and in distinguishing civilians from combatants in these situations. Extrajudicial killing constitutes murder under international law,15 with two exceptions: first, during wartime, or when a State acts in self-defense against an armed attack;16 and, second, when a law enforcement officer or individual acts in self-defense. The second circumstance – when, for example, a police officer kills someone in the course of making an arrest to prevent that person from injuring the officer or a third person – is not relevant here. The U.S. use of drones or other forms of targeted killing against suspected al Qaeda or associates is not such a use of law enforcement. Rather, the drone attacks are deliberate and premeditated uses of military force intended to kill individuals. As such, they must be consistent with international law restrictions on resort to the use of force (jus ad bellum) and conducted in accordance with international humanitarian law requirements (IHL) (jus in bello). Specifically, these requirements of IHL include: “(1) military necessity, which requires that the use of military force (including all measures needed to defeat the enemy as quickly and efficiently as possible, which are not forbidden by the law of war) be directed at accomplishing a valid military purpose; (2) humanity, which forbids the unnecessary infliction of suffering, injury, or destruction; (3) distinction, which requires that only lawful targets—such as combatants and other military objectives— be intentionally targeted; and (4) proportionality, which requires that the anticipated collateral damage of an attack not be excessive in relation to the anticipated concrete and direct military advantage from the attack.”17 The U.S. acknowledges the IHL requirements in its commitment to “comply with the law of war during all armed conflicts, however such conflicts are characterized, and in all other military operations”.18 Accordingly, the U.S. recognizes correctly that IHL restrictions apply to its use of force in the war against al Qaeda in Afghanistan. The U.S. also asserts that the armed conflict with al Qaeda extends beyond Afghanistan (and Pakistan) and that the U.S. is entitled to use lethal force in this conflict, consistent with IHL principles. Some other governments apparently argue that the U.S. is entitled to use lethal force against al Qaeda beyond Afghanistan as part of its right of self-defense under Article 51 of the U.N. Charter. Both of these claims are discussed below. Use of Force in an Armed Conflict: what constitutes an armed conflict justifying the application of IHL rules allowing targeted killing? An armed conflict exists when there is a resort to armed force between States.19 International law also recognizes that armed conflict may exist in situations where only one party to the conflict is a State and the other party is one or more organized armed groups, called a “non-international armed conflict.” The States in which the organized armed groups operate may or may not be parties to the armed conflict. The determination whether there is an armed conflict depends upon the facts on the ground.20 Outside the traditional situation of a war between two or more nations, an armed conflict exists only when the necessary factual threshold has been met. It is generally accepted that an armed conflict exists under international law when there is protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. 21 Mere “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature” do not meet the criteria for an armed conflict.22 The scope of the existing armed conflict in which the United States is engaged. There seems little doubt that war continues in Afghanistan as of this writing and it is generally agreed that the U.S. and others are currently engaged in an armed conflict there. The U.S. apparently views that armed conflict as spilling over into at least some border areas of Pakistan. The U.S. has also defended expanding its theatre of military operations beyond Afghanistan by pointing to the fact that al Qaeda and its allies, especially al Qaeda in the Arabian Peninsula, have moved their terrorist operations to other countries, in particular Yemen, and have launched attacks against the U.S. from those places. It characterizes such groups as “associated forces” and invokes the doctrine of co-belligerency against them.23 However, the geographical borders and scope of the existing armed conflict (which continues to claim the lives of both combatants and civilians on an almost daily basis) are disputed. In particular, the U.S. claims that the armed conflict extends beyond “areas of active hostilities.” As a senior U.S. official explained: The United States does not view our authority to use military force against al-Qa’ida as being restricted solely to “hot” battlefields like Afghanistan. Because we are engaged in an armed conflict with al-Qa’ida, the United States takes the legal position that —in accordance with international law—we have the authority to take action against al-Qa’ida and its associated forces without doing a separate self-defense analysis each time. And as President Obama has stated on numerous occasions, we reserve the right to take unilateral action if or when other governments are unwilling or unable to take the necessary actions themselves. That does not mean we can use military force whenever we want, wherever we want. International legal principles, including respect for a State’s sovereignty and the laws of war, impose important constraints on our ability to act unilaterally—and on the way in which we can use force—in foreign territories.24 Yet, while acknowledging the existence of “constraints” on its use of military force against al Qaeda and associated forces, the U.S. government has not articulated what those constraints are. A leaked Justice Department white paper acknowledged that “the determination of whether a particular operation would be part of an ongoing armed conflict would require consideration of the particular facts and circumstances in each case.”25 The white paper claimed that a lethal operation occurring in a location where al Qaeda has a significant and organized presence, including senior operational leaders, and from which al Qaeda plans attacks against U.S. persons or interests, would be part of the armed conflict between the U.S. and al Qaeda.26 It remains unclear, however, whether the Justice Department would apply this standard to every location in the world, as the white paper was written to justify the use of lethal force in Yemen, where additional factors support such use. Otherwise, as discussed below, the standard as articulated in that white paper would be too broad because it does not require that al Qaeda be involved in ongoing hostilities in a place in order to find that the armed conflict with al Qaeda extends to that place. International law does not permit the U.S., as part of the war against al Qaeda, to carry out lethal operations against members of al Qaeda or an associated armed group under the more permissive rules of international humanitarian law except in States where there is an ongoing armed conflict and al Qaeda or an associated armed group is a party to that conflict. This limitation on the geographic scope of the war against al Qaeda serves two significant purposes: It protects against incursions on State sovereignty27 and against the expansion of armed conflict (thereby protecting human rights and humanitarian values). The U.S. argues that the existence of an armed conflict anywhere justifies the use of targeted lethal force against members of al Qaeda or affiliates wherever they are a significant and organized presence and are plotting attacks. But it provides no positive authority for that position; it only cites an absence of contrary judicial or other authority.28 Its position, however, is inconsistent with the fundamental purpose of international treaties, including the U.N. Charter, that limit the use of force and the situations where the more permissive wartime rules for the use of force under international humanitarian law apply. These treaties permit the use of wartime rules in a particular country only when there is an armed conflict in that country warranting such use of force.29 Any broader rule would be inconsistent with the object and purpose of the international agreements intended to limit the situations in which it is legal for a State to use military force.30 The mere presence of members of al Qaeda in a country, even members planning attacks, is not by itself sufficient to meet the threshold requirement of the existence of an armed conflict in that country. The existence of an armed conflict in another country (such as Afghanistan) cannot justify the use of wartime force in a country where there is no armed conflict.31 At the other end of the spectrum, IHL criteria for the existence of an armed conflict could be met in places where organized and armed al Qaeda groups are engaged in protracted and intense violence. Whether the circumstances in Pakistan, Yemen or Somalia satisfy this threshold requirement is a factual question on which this paper states no opinion. In those countries where there is no armed conflict involving al Qaeda, a threat from al Qaeda would have to be met with law enforcement or intelligence-gathering capabilities unless, as discussed below, the threat were of such a magnitude as to threaten an “armed attack” against the U.S. giving rise to a right to use lethal force in self-defense in a particular country independent of any existing right to use force in self-defense against al Qaeda in Afghanistan. There are myriad examples of multi-lateral intelligence and law enforcement cooperation leading to prevention of al Qaeda attacks through arrest of al Qaeda suspects. Use of Lethal Force in Self-Defense As outlined above, international law requires that resort to force be justified under jus ad bellum principles and be consistent with the U.N. Charter, which permits the use of force in limited circumstances, including in self-defense against an “armed attack.”32 An “armed attack” will not include every at of terrorist violence. States have asserted the right to respond in self-defense to terrorist acts depending on the scope and magnitude of the acts. 33 In addition, resort to force must be necessary: peaceful mechanisms of resolution must be exhausted; lethal force is legal only as the last resort to stop an imminent threat. Moreover, the kind and amount of force used must be proportional to the attack; “the means, duration, and intensity of the force used cannot exceed that which is reasonably necessary to address the precipitating wrong.”34 These requirements of necessity and proportionality in relation to the threat mean that a State may not resort to force in response to an armed attack or to prevent an imminent attack until other remedies have been reasonably exhausted and there is no reasonable possibility of peaceful means of resolution. Whether the right to self-defense would justify the use of lethal force by the U.S. outside Afghanistan is both a legal and factual question, and a matter of dispute. The U.S. has offered no detailed analysis of the issue because it relies instead on its assertion that the armed conflict with al Qaeda extends beyond Afghanistan. It appears, however, that some U.S. allies who disagree with the U.S. that the current armed conflict extends beyond Afghanistan or Afghanistan and Pakistan, take the position that outside those areas the use of military force in self-defense in response to an imminent threat of an armed attack by non-state actors may be permissible under international law.35 Imminence IHL jus in bello rules governing the use of force in armed conflict allow the use of force without any determination that an attack by the other party is imminent. In contrast, jus ad bellum rules governing the resort to force based on self-defense limit the use of force to situations where force is necessary to prevent an imminent attack by the other party. The U.S. contends that all of its uses of force are part of an armed conflict and that therefore it does not need to conduct a “separate self-defense” analysis each time it uses force against al-Qaeda.36 Nonetheless, the leaked Justice Department white paper concerning targeting a U.S. citizen deemed a “senior operational leader” of al Qaeda contains a detailed discussion of “imminence,” without explaining why that concept is relevant to the legality of targeting the U.S. citizen. The leaked white paper argues that the determination of imminence must take into account the special problems posed by the terrorist activities of senior operational leaders of al Qaeda and associated forces.37 It contends that these leaders are continually plotting attacks against the U.S.; that the U.S. cannot always know when these attacks are going to take place; and that the U.S. “may have a limited opportunity within which to strike in a manner that both has a high likelihood of success and reduces the probability of American casualties.” The white paper therefore calls for a “broader concept of imminence” in determining when the use of force is appropriate against such leaders who are U.S. citizens.38 The U.S. should clarify whether, in its view: i) the U.S. Constitution requires consideration of imminence in an armed conflict when the target is a U.S. citizen; ii) the U.S. is engaged in an armed conflict and is applying the concept of imminence as a matter of policy; or iii) the white paper’s broader concept satisfies the general requirement of imminence needed to justify the use of force in self-defense to prevent an armed attack. The last position is not supportable. In the context of self-defense, the broader understanding of imminence outlined by the white paper does not sufficiently account for the possibility of preventing armed attacks through other means or establish the requisite likelihood that the threatened attacks will ever occur. Therefore, it does not meet the requirement of international law for initiating the use of force in self-defense against an armed attack. Individuals Who May be Targeted Legally. Once it has been determined that the use of military force, including drone strikes, is permissible under international law in a particular location, there remains the question of who can be subjected to such military force. All targeting decisions must comply with – at a minimum – the IHL jus in bello requirements outlined above. A core requirement is “distinction,” the requirement that “Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”39 However, if civilians directly participate in hostilities, they lose protection against military attack for the duration of such participation. The International Committee of the Red Cross has issued Interpretive Guidance concluding that direct participation includes any preparations and geographical deployments or withdrawals constituting an integral part of a specific hostile act.40 The U.S. asserts that its use of drone strikes complies with this principle of distinction and that it does not target civilians. Nonetheless, questions have been raised about the ways in which those targeting decisions are made or carried out, including whether the U.S. is taking adequate care to avoid killing civilians, as required by the principle of proportionality.41 In addition, there is controversy about who may be targeted on the basis of their status as a member of an organized armed group where one party is not a State with regular armed forces. The ICRC Interpretive Guidance also addresses this issue: whether members of armed terrorist groups may, like enemy soldiers, lawfully be targeted based on their status as members. The Guidance does not agree with some commentators that such individuals are civilians who may be targeted only if they are directly participating in such hostilities and only for such time as they are participating in hostilities. Rather, the Guidance asserts that “members of organized armed groups belonging to a party to the conflict lose protection against direct attack for the duration of their membership (i.e., for as long as they assume a continuous combat function).”42 The Guidance lends support to the U.S. position that members of al Qaeda and associated forces generally engaged in hostilities against the U.S. are not civilians. The U.S. claims they are “unprivileged belligerents” who accordingly can be targeted without regard to whether they are directly participating in hostilities at the time they are targeted. (The U.S. and the ICRC agree that such fighters are not “combatants” who enjoy the privilege of immunity for killing enemy soldiers as they do not comply with the requirements of the Geneva Conventions that they take specific steps to openly distinguish themselves from civilians.)43 International law has long recognized that individuals who are not members of the armed forces and who support hostilities only indirectly may not be targeted; otherwise the vast majority of the civilian population potentially could be targetable.44 Following this principle, the ICRC Interpretive Guidance states that “financiers” and “propagandists” should not be considered to be members of organized armed groups.45 The U.S. therefore should make clear that it will not use lethal force against financiers or propagandists and others who do not directly engage in hostilities (unless they are also members of the organized armed group engaging in a continuous combat function). Conclusion International law has long recognized that the use of lethal force is an extreme measure that should be utilized only when the facts on the ground warrant its use, namely where there is an armed conflict or where it is necessary to prevent an armed attack. To ensure it complies with international law, the U.S. should acknowledge these limits on the use of targeted lethal force and conform its operations to them. Any congressional authorization of military force, including drone strikes, must comply with these U.S. treaty obligations.

Congressional restriction key to credibility and signal

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What Should Congress Do?

Does this analysis offer any practical policy prescriptions for Congress and the administration? The problem is not so much a need for new legislation to create new structures or new policies. The legislative category in which many instances of targeted killing might take place in the future already exists. The task for Congress and the administration, rather, is instead to preserve a category that is likely to be put under pressure in the future and, indeed, is already seen by many as a legal non-starter under international law. Before addressing what Congress should do in this regard, we might ask from a strictly strategic political standpoint whether, given that the Obama Administration is committed to this policy anyway, whether it is politically prudent to draw public attention to the issue at all. Israeli officials might be threatened with legal action in Spain; but so far no important actor has shown an appetite for taking on the Obama Administration. Perhaps it is better to let sleeping political dogs lie. These questions require difficult political calculations. However, the sources cited above suggest that even if no one is quite prepared at this moment to take on the Obama Administration on targeted killing, the intellectual and legal pieces of the challenge are already set up and on the table. Having asserted certain positions concerning human rights law and its application and the United States having unthinkingly abandoned its self-defense rationale for its policy, the play can be made at any time—at some later time in the Obama Administration or in the next Republican administration, prying apart the “American” position to create a de facto alliance among Democrats and Europeans and thereby undermining the ability of the United States to craft a unified American security strategy.101 The United States would be best served if the Obama Administration did that exceedingly rare thing in international law and diplomacy: Getting the United States out in front of the issue by making plain the American position, rather than merely reacting in surprise when its sovereign prerogatives are challenged by the international soft-law community. The deeper issue here is not merely a strategic and political one about targeted killing and drones but goes to the very grave policy question of whether it is time to move beyond the careful ambiguity of the CIA’s authorizing statute in referring to covert uses of force under the doctrines of vital national interest and self-defense. Is it time to abandon strategic ambiguity with regards to the Fifth Function and assert the right to use force in self-defense and yet in “peacetime”—that is, outside of the specific context of an armed conflict within the meaning of international humanitarian law? Quite possibly, the strategic ambiguity, in a world in which secrecy is more and more difficult, and in the general fragmentation of voice and ownership of international law, has lost its raison d’etre. This is a larger question than the one undertaken here, but on a range of issues including covert action, interrogation techniques, detention policy, and others, a general approach of overt legislation that removes ambiguity is to be preferred. The single most important role for Congress to play in addressing targeted killings, therefore, is the open, unapologetic, plain insistence that the American understanding of international law on this issue of self-defense is legitimate. The assertion, that is, that the United States sees its conduct as permissible for itself and for others. And it is the putting of congressional strength behind the official statements of the executive branch as the opinio juris of the United States, its authoritative view of what international law is on this subject. If this statement seems peculiar, that is because the task—as fundamental as it is—remains unfortunately poorly understood. Yet if it is really a matter of political consensus between Left and Right that targeted killing is a tool of choice for the United States in confronting its non-state enemies, then this is an essential task for Congress to play in support of the Obama Administration as it seeks to speak with a single voice for the United States to the rest of the world. The Congress needs to backstop the administration in asserting to the rest of the world— including to its own judiciary—how the United States understands international law regarding targeted killing. And it needs to make an unapologetic assertion that its views, while not dispositive or binding on others, carry international authority to an extent that relatively few others do—even in our emerging multi-polar world. International law traditionally, after all, accepts that states with particular interests, power, and impact in the world, carry more weight in particular matters than other states. The American view of maritime law matters more than does landlocked Bolivia’s. American views on international security law, as the core global provider of security, matter more than do those of Argentina, Germany or, for that matter, NGOs or academic commentators. But it has to speak—and speak loudly—if it wishes to be heard. It is an enormously important instance of the need for the United States to re-take “ownership” of international law— not as its arbiter, nor as the superpower alone, but as a very powerful, very important, and very legitimate sovereign state. Intellectually, continuing to squeeze all forms and instances of targeted killing by standoff platform under the law of IHL armed conflict is probably not the most analytically compelling way to proceed. It is certainly not a practical long-term approach. Not everyone who is an intuitively legitimate target from the standpoint of self-defense or vital national security, after all, will be already part of an armed conflict or combatant in the strict IHL sense. Requiring that we use such IHL concepts for a quite different category is likely to have the deleterious effect of deforming the laws of war, over the long term—starting, for example, with the idea of a “global war,” which is itself a certain deformation of the IHL concept of hostilities and armed conflict.

Only congressional action on the scope of hostilities sends a clear signal that the US abides by the laws of armed conflict

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• First, the United States government urgently needs publicly to declare the legal rationale behind its use of drones, and defend that legal rationale in the international community, which is increasingly convinced that parts, if not all, of its use is a violation of international law. • Second, the legal rationale offered by the United States government needs to take account, not only of the use of drones on traditional battlefields by the US military, but also of the Obama administration’s signature use of drones by the CIA in operations outside of traditionally conceived zones of armed conflict, whether in Pakistan, or further afield, in Somalia or Yemen or beyond. This legal rationale must be certain to protect, in plain and unmistakable language, the lawfulness of the CIA’s participation in drone-related uses of force as it takes place today, and to protect officials and personnel from moves, in the United States or abroad, to treat them as engaged in unlawful activity. It must also be broad enough to encompass the use of drones (under the statutory arrangements long set forth in United States domestic law) by covert civilian agents of the CIA, in operations in the future, involving future presidents, future conflicts, and future reasons for using force that have no relationship to the current situation. • Third, the proper legal rationale for the use of force in drone operations in special, sometimes covert, operations outside of traditional zones of armed conflict is the customary international law doctrine of self-defense, rather than the narrower law of armed conflict. • Fourth, Congress has vital roles to play here, mostly in asserting the legality of the use of drones. These include: (i) Plain assertion of the legality of the programs as currently used by the Obama administration, as a signal to courts in the US as well as the international community and other interested actors, that the two political branches are united on an issue of vital national security and foreign policy. (ii) Congressional oversight mechanisms should also be strengthened in ensuring Congress’s meaningful knowledge and ability to make its views known. (iii) Congress also should consider legislation to clarify once and for all that that covert use of force is lawful under US law and international law of self-defense, and undertake legislation to make clear the legal protection of individual officers. (iv) Congress should also strongly encourage the administration to put a public position on the record. In my view, that public justification ought to be something (self-defense, in my view) that will ensure the availability of targeted killing for future administrations outside the context of conflict with Al Qaeda – and protect against its legal erosion by acquiescing or agreeing to interpretations of international law that would accept, even by implication, that targeted killing by the civilian CIA using drones is per se an unlawful act of extrajudicial execution. The Multiple Strategic Uses of Drones and Their Legal Rationales 4. Seen through the lens of legal policy, drones as a mechanism for using force are evolving in several different strategic and technological directions, with different legal implications for their regulation and lawful use. From my conversations and research with various actors involved in drone warfare, the situation is a little bit like the blind men and the elephant – each sees only the part, including the legal regulation, that pertains to a particular kind of use, and assumes that it covers the whole. The whole, however, is more complicated and heterogeneous. They range from traditional tactical battlefield uses in overt war to covert strikes against non-state terrorist actors hidden in failed states, ungoverned, or hostile states in the world providing safe haven to terrorist groups. They include use by uniformed military in ordinary battle but also use by the covert civilian service. 5. Although well-known, perhaps it bears re-stating the when this discussion refers to drones and unmanned vehicle systems, the system is not “unmanned” in the sense that human beings are not in the decision or control loop. Rather, “unmanned” here refers solely to “remote-piloted,” in which the pilot and weapons controllers are not physically on board the aircraft. (“Autonomous” firing systems, in which machines might make decisions about the firing of weapons, raise entirely separate issues not covered by this discussion because they are not at issue in current debates over UA Vs.) 6. Drones on traditional battlefields. The least legally complicated or controversial use of drones is on traditional battlefields, by the uniformed military, in ordinary and traditional roles of air power and air support. From the standpoint of military officers involved in such traditional operations in Afghanistan, for example, the use of drones is functionally identical to the use of missile fired from a standoff fighter plane that is many miles from the target and frequently over-the-horizon. Controllers of UAVs often have a much better idea of targeting than a pilot with limited input in the cockpit. From a legal standpoint, the use of a missile fired from a drone aircraft versus one fired from some remote platform with a human pilot makes no difference in battle as ordinarily understood. The legal rules for assessing the lawfulness of the target and anticipated collateral damage are identical. 7. Drones used in Pakistan’s border region. Drones used as part of the on-going armed conflict in Afghanistan, in which the fighting has spilled over – by Taliban and Al Qaeda flight to safe havens, particularly – into neighboring areas of Pakistan likewise raise relatively few questions about their use, on the assumption that the armed conflict has spilled, as is often the case of armed conflict, across an international boundary. There are no doubt important international and diplomatic questions raised about the use of force across the border – and that is presumably one of the major reasons why the US and Pakistan have both preferred the use of drones by the CIA with a rather shredded fig leaf, as it were, of deniability, rather than US military presence on the ground in Pakistan. The **legal questions are important**, but (unless one takes the view that the use of force by the CIA is always and per se illegal under international law, even when treated as part of the armed forces of a state in what is unquestionably an armed conflict) there is nothing legally special about UAVs that would distinguish them from other standoff weapons platforms. 8. Drones used in Pakistan outside of the border region. The use of drones to target Al Qaeda and Taliban leadership outside of places in which it is factually plain that hostilities are underway begins to invoke the current legal debates over drone warfare. From a strategic standpoint, of course, the essence of much fighting against a raiding enemy is to deny it safe haven; as safe havens in the border regions are denied, then the enemy moves to deeper cover. The strategic rationale for targeting these leaders (certainly in the view of the Obama administration) is overwhelming. Within the United States, and even more without, arguments are underway as to whether Pakistan beyond the border regions into which overt fighting has spilled can justify reach to the law of armed conflict as a basis and justification for drone strikes. 9. Drones used against Al Qaeda affiliates outside of AfPak – Somalia, Yemen or beyond. The President, in several major addresses, has stressed that the United States will take the fight to the enemy, and pointedly included places that are outside of any traditionally conceived zone of hostilities in Iraq or AfPak – Somalia and Yemen have each been specifically mentioned. And indeed, the US has undertaken uses of force in those places, either by means of drones or else by human agents. The Obama administration has made clear – entirely correctly, in my view – that it will deny safe haven to terrorists. As the president said in an address at West Point in fall 2009, we “cannot tolerate a safe-haven for terrorists whose location is known, and whose intentions are clear.”1 In this, the President follows the long-standing, traditional view of the US government endorsing, as then-State Department Legal Advisor Abraham Sofaer put it in a speech in 1989, the “right of a State to strike terrorists within the territory of another State where terrorists are using that territory as a location from which to launch terrorist attacks and where the State involved has failed to respond effectively to a demand that the attacks be stopped.”2 10. The United States might assert in these cases that the armed conflict goes where the combatants go, in the case particularly of an armed conflict (with non-state actors) that is already acknowledged to be underway. In that case, those that it targets are, in its view, combats that can lawfully be targeted, subject to the usual armed conflict rules of collateral damage. One says this without knowing for certain whether this is, in fact, the US view – although the Obama administration is under pressure for failing to articulate a public legal view, this was equally the case for the preceding two administrations. In any case, however, that view is sharply contested as a legal matter. The three main contending legal views at this point are as follows: • One legal view (the traditional view and that presumably taken by the Obama administration, except that we do not know for certain, given its reticence) is that we are in an armed conflict. Wherever the enemy goes, we are entitled to follow and attack him as a combatant. Geography and location – important for diplomatic reasons and raising questions about the territorial integrity of states, true – are irrelevant to the question of whether it is lawful to target under the laws of war; the war goes where the combatant goes. We must do so consistent with the laws of war and attention to collateral damage, and other legal and diplomatic concerns would of course constrain us if, for example, the targets fled to London or Istanbul. But the fundamental right to attack a combatant, other things being equal, surely cannot be at issue. • A second legal view directly contradicts the first, and says that the legal rights of armed conflict are limited to a particular theatre of hostilities, not to wherever combatants might flee throughout the world. This creates a peculiar question as to how, lawfully, hostilities against a non-state actor might ever get underway. But the general legal policy response is that if there is no geographic constraint consisting of a “theatre” of hostilities, then the very special legal regime of the laws of armed conflict might suddenly, and without any warning, apply – and overturn – ordinary laws of human rights that prohibit extrajudicial execution, and certainly do not allow attacks subject merely to collateral damage rules, with complete surprise and no order to it. Armed conflict is defined by its theatres of hostilities, on this view, as a mechanism for limiting the scope of war and, importantly, the reach of the laws of armed conflict insofar as the displace (with a lower standard of protection) ordinary human rights law. Again, this leaves a deep concern that this view, in effect, empowers the fleeing side, which can flee to some place where, to some extent, it is protected against attack. • A third legal view (to which I subscribe) says that armed conflict under the laws of war, both treaty law of the Geneva Conventions and customary law, indeed accepts that non-international armed conflict is defined, and therefore limited by, the presence of persistent, sustained, intense hostilities. In that sense, then, an armed conflict to which the laws of war apply exists only in particular places where those conditions are met. **That is not the end of the legal story, however**. Armed conflict as defined under the Geneva Conventions (common articles 2 and 3) is not the only international law basis for governing the use of force. The international law of self-defense is a broader basis for the use of force in, paradoxically, more limited ways that do not rise to the sustained levels of fighting that legally define hostilities. • Why is self-defense the appropriate legal doctrine for attacks taking place away from active hostilities? From a strategic perspective, a large reason for ordering a limited, pinprick, covert strike is in order to avoid, if possible, an escalation of the fighting to the level of overt intensity that would invoke the laws of war – the intent of the use of force is to avoid a wider war. Given that application of the laws of war, in other words, requires a certain level of sustained and intense hostilities, that is not always a good thing. It is often bad and precisely what covert action seeks to avoid. The legal basis for such an attack is not armed conflict as a formal legal matter – the fighting with a non-state actor does not rise to the sustained levels required under the law’s threshold definition – but instead the law of self-defense. • Is self-defense law simply a standardless license wantonly to kill? This invocation of self-defense law should not be construed as meaning that it is without limits or constraining standards. On the contrary, it is not standardless, even though it does not take on all the detailed provisions of the laws of war governing “overt” warfare, including the details of prison camp life and so on. It must conform to the customary law standards of necessity and proportionality – necessity in determining whom to target, and proportionality in considering collateral damage. The standards in those cases should essentially conform to military standards under the law of war, and in some cases the standards should be still higher. 11. The United States government seems, to judge by its lack of public statements, remarkably indifferent to the increasingly vehement and pronounced rejection of the first view, in particular, that the US can simply follow combatants anywhere and attack them. The issue is not simply collateral damage in places where no one had any reason to think there was a war underway; prominent voices in the international legal community question, at a minimum, the lawfulness of even attacking what they regard as merely alleged terrorists. In the view of important voices in international law, the practice outside of a traditional battlefield is a violation of international human rights law guarantees against extrajudicial execution and, at bottom, is just simple murder. On this view, the US has a human rights obligation to seek to arrest and then charge under some law; it cannot simply launch missiles at those it says are its terrorist enemies. It shows increasing impatience with US government silence on this issue, and with the apparent – but quite undeclared – presumption that the armed conflict goes wherever the combatants go. 12. Thus, for example, the UN special rapporteur on extrajudicial execution, NYU law professor Philip Alston, has asked in increasingly strong terms that, at a minimum, the US government explain its legal rationales for targeted killing using drones. The American Civil Liberties Union in February 2010 filed an extensive FOIA request (since re-filed as a lawsuit), seeking information on the legal rationales (but including requests for many operational facts) for all parts of the drones programs, carefully delineating military battlefield programs and CIA programs outside of the ordinary theatres of hostilities. Others have gone much further than simply requests that the US declare its legal views and have condemned them as extrajudicial execution – as Amnesty International did with respect to one of the earliest uses of force by drones, the 2002 Yemen attack on Al Qaeda members. The addition of US citizens to the kill-or-capture list, under the authorization of the President, has raised the stakes still further. The stakes, in this case, are highly unlikely to involve President Obama or Vice-President Biden or senior Obama officials. They are far more likely to involve lower level agency counsel, at the CIA or NSC, who create the target lists and make determinations of lawful engagement in any particular circumstance. It is they who would most likely be investigated, indicted, or prosecuted in a foreign court as, the US should take careful note, has already happened to Israeli officials in connection with operations against Hamas. **The reticence of the US government on this matter is frankly hard to justify**, at this point; this is not a criticism per se of the Obama administration, because the George W. Bush and Clinton administrations were equally unforthcoming. But this is the Obama administration, and **public silence on the legal legitimacy of targeted killings especially in places** and ways **that are not obviously** by the military in obvious **battlespaces is increasingly problematic**. 13. Drones used in future circumstances by future presidents against new non-state terrorists. A government official with whom I once spoke about drones as used by the CIA to launch pinpoint attacks on targets in far-away places described them, in strategic terms, as the “lightest of the light cavalry.” He noted that if terrorism, understood strategically, is a “raiding strategy” launched largely against “logistical” rather than “combat” targets – treating civilian and political will as a “logistical target” in this strategic sense – then how should we see drone attacks conducted in places like Somalia or Yemen or beyond? We should understand them, he said, as a “counter-raiding” strategy, aimed not at logistical targets, but instead at combat targets, the terrorists themselves. Although I do not regard this use of “combat” as a legal term – because, as suggested above, the proper legal frame for these strikes is self-defense rather than “armed conflict” full-on – as a strategic description, this is apt. 14. This blunt description suggests, however, that it is a profound mistake to think that the importance of drones lies principally on the traditional battlefield, as a tactical support weapon, or even in the “spillover” areas of hostilities. In those situations, it is perhaps cheaper than the alternatives of manned systems, but is mostly a substitute for accepted and existing military capabilities. Drone attacks become genuinely special as a form of strategic, yet paradoxically discrete, air power outside of overt, ordinary, traditional hostilities – the farthest project of discrete force by the lightest of the light cavalry. As these capabilities develop in several different technological direction – on the one hand, smaller vehicles, more contained and limited kinetic weaponry, and improved sensors and, on the other hand, large-scale drone aircraft capable of going after infrastructure targets as the Israelis have done with their Heron UAVs – it is highly likely that they will become a weapon of choice for future presidents, future administrations, in future conflicts and circumstances of self- defense and vital national security of the United States. Not all the enemies of the United States, including transnational terrorists and non-state actors, will be Al Qaeda or the authors of 9/11. Future presidents will need these technologies and strategies – and will need to know that they have sound, publicly and firmly asserted legal defenses of their use, including both their use and their limits in law.

# 2ac

## 2AC AT: Circumvention

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#### Circumvention is based on a misunderstanding of zones of active hostilities

Anderson 11 (Kenneth Anderson is a professor of international law at Washington College of Law, American University, Washington, DC, and a visiting fellow at the Hoover Institution, where he is also a member of Hoover’s Koret-Taube Task Force on National Security and Law. He is the author of Living with the UN: American Responsibilities and International Order (2011) and specializes in international law, human rights and the laws of war, and international business law., 4/26/2011, "Targeted Killing and Drone Warfare How We Came to Debate Whether There Is a ‘Legal Geography of War’", media.hoover.org/sites/default/files/documents/FutureChallenges\_Anderson.pdf)

That “legal geography” could be proposed in different ways. One is found in newspapers and many journalistic sources, academic writings, and NGO statements over the many years since the debate emerged in policy, legal, and advocacy circles: references to “theaters of war” or “zones of conflict” or locales of “active battlefields.” Sometimes the reference is to a whole country—Afghanistan—as the theater of conflict; other times the reference is to the much more limited zone of a battlefield. However framed, these are operational terms, not legal ones. The proper legal referent is not geography as such but, rather, the “conduct of hostilities.” A few critics focus on national boundaries as the markers of a particular armed conflict and argue that the applicable law for the conduct of hostilities is set by the question of the resort to force as a sovereignty issue: illegal violation of sovereignty, no armed conflict for purposes of jus in bello. Many more critics regard the sovereignty question as separate from the jus in bello issue. No matter what the spatial scope, however, the implication is that, once out of that zone, wide or narrow, defined by sovereign boundaries or by the existence of large-scale conventional fighting by military forces, the law of war no longer applies (or at least is significantly intermingled with human rights law in some way that, granted, is hard to specify). No matter what geographic constraint is adopted as the legal criterion, the point is that armed conflict against terrorism is not “global” with respect to the application of the laws of war.

#### No circumvention

David J. Barron 8, Professor of Law at Harvard Law School and Martin S. Lederman, Visiting Professor of Law at the Georgetown University Law Center, “The Commander in Chief at the Lowest Ebb -- A Constitutional History”, Harvard Law Review, February, 121 Harv. L. Rev. 941, Lexis

In addition to offering important guidance concerning the congressional role, our historical review also illuminates the practices of the President in creating the constitutional law of war powers at the "lowest ebb." Given the apparent advantages to the Executive of possessing preclusive powers in this area, it is tempting to think that Commanders in Chief would always have claimed a unilateral and unregulable authority to determine the conduct of military operations. And yet, as we show, for most of our history, the presidential practice was otherwise. Several of our most esteemed Presidents - Washington, Lincoln, and both Roosevelts, among others - never invoked the sort of preclusive claims of authority that some modern Presidents appear to embrace without pause. In fact, no Chief Executive did so in any clear way until the onset of the Korean War, even when they confronted problematic restrictions, some of which could not be fully interpreted away and some of which even purported to regulate troop deployments and the actions of troops already deployed. Even since claims of preclusive power emerged in full, the practice within the executive branch has waxed and waned. No consensus among modern Presidents has crystallized. Indeed, rather than denying the authority of Congress to act in this area, some modern Presidents, like their predecessors, have acknowledged the constitutionality of legislative regulation. They have therefore concentrated their efforts on making effective use of other presidential authorities and institutional [\*949] advantages to shape military matters to their preferred design. n11 In sum, there has been much less executive assertion of an inviolate power over the conduct of military campaigns than one might think. And, perhaps most importantly, until recently there has been almost no actual defiance of statutory limitations predicated on such a constitutional theory. This repeated, though not unbroken, deferential executive branch stance is not, we think, best understood as evidence of the timidity of prior Commanders in Chief. Nor do we think it is the accidental result of political conditions that just happened to make it expedient for all of these Executives to refrain from lodging such a constitutional objection. This consistent pattern of executive behavior is more accurately viewed as reflecting deeply rooted norms and understandings of how the Constitution structures conflict between the branches over war. In particular, this well-developed executive branch practice appears to be premised on the assumption that the constitutional plan requires the nation's chief commander to guard his supervisory powers over the military chain of command jealously, to be willing to act in times of exigency if Congress is not available for consultation, and to use the very powerful weapon of the veto to forestall unacceptable limits proposed in the midst of military conflict - but that otherwise, the Constitution compels the Commander in Chief to comply with legislative restrictions. In this way, the founding legal charter itself exhorts the President to justify controversial military judgments to a sympathetic but sometimes skeptical or demanding legislature and nation, not only for the sake of liberty, but also for effective and prudent conduct of military operations. Justice Jackson's famous instruction that "with all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations" n12 continues to have a strong pull on the constitutional imagination. n13 What emerges from our analysis is how much pull it seemed to [\*950] have on the executive branch itself for most of our history of war powers development.

## 2AC Safe Havens (Corn)

#### Squo disproves – actual administration practice is geographically restricted now, so terrorists should’ve already priced in the advantage to relocating and the DA is not unique

Chesney 14 (Robert M. Chesney, Charles I. Francis Professor in Law, University of Texas School of Law., January 2014, "Postwar", harvardnsj.org/wp-content/uploads/2014/01/Chesney-Final.pdf)

A. Policy Constraints on Attacks Outside the Hot Battlefield It is tempting to assume that the answer must be yes, that the postwar model surely would be a narrower affair—a much narrower affair —than the status quo when it comes to lethal force. On close inspection, however, that proves not to be the case. Why? For two seemingly contradictory reasons. First, the government for reasons of policy already embraces an approach that is more restrictive than the armed-conflict model arguably would require. Second, the legal framework the government most likely would apply in the absence of the armed-conflict model is considerably less restrictive than one might expect. Indeed, it is the same framework that applies already as a matter of policy. To explain this, it helps to begin by clarifying the U.S. government’s baseline position on what legal boundaries follow for the use of lethal force —that is, for targeting—under the armed-conflict model. Setting aside important issues such as proportionality (that is, the prohibition on attacks that will have an impact on civilians or civilian objects exceeding what is necessary to achieve the concrete and direct military objective of the attack) and questions involving the sovereignty rights of a state in which an attack occurs, the U.S. government’s position is straightforward. It maintains that it is in an armed conflict with al Qaeda, the Afghan Taliban, and certain “associated forces”; that LOAC governs its uses of force against those groups irrespective of the location of an attack; and that the members of these organizations as a result may lawfully be targeted based simply on their membership status, as opposed to only targeting them while they are directly participating in hostilities or having to attempt to capture such persons alive.36 This analysis has no shortage of critics, to be sure, but the important point here is that this has been the position of the U.S. government over the past dozen years, and it is an approach that leaves the government with considerable targeting flexibility. Or at least it would, if the government’s policy was to exploit those legal boundaries to the maximum extent. But that is not current U.S. government policy outside of Afghanistan, nor has it been for some time. Simply put, the U.S. government years ago decided not to use the full scope of its LOAC-based targeting authority outside of “hot battlefields” such as Afghanistan. That is, it decided not to make full use of the status-based targeting authority in places like Yemen and Somalia, even while maintaining that LOAC did indeed govern those strikes. John Brennan made this clear in a speech at Harvard Law School in the fall of 2011, more than a year before Johnson’s Oxford Union address.37 Brennan at that time was the White House’s top counterterrorism official, and he was at Harvard to deliver a robust defense of the Administration’s policies. When he turned to the topic of lethal force, he opened by reminding the audience that the government did not view its “authority to use military force against [al Qaeda] as being restricted solely to ‘hot battlefields’ like Afghanistan,” but rather saw the conflict as extending to those locations where al Qaeda might be found.38 That said, Brennan observed that there nonetheless was much less of a gap between the government and its critics than many assume.39 Outside of Afghanistan and Iraq, he asserted, the U.S. government chose as a matter of policy not to embrace the full scope of its claimed authority under LOAC (which allows for targeting of all members of al Qaeda and its associated forces). Instead, the government chose to focus on “those individuals who are a threat to the United States” and “whose removal would cause a significant—even if only temporary—disruption of the plans and capabilities of [al Qaeda] and its associated forces.”40

#### Obama says the DA is wrong but if he changes his mind, he could pursue a new, specific authorization which solves the link – self-defense and law enforcement also solve the impact

Daskal and Vladeck 14 (Jennifer Daskal, Assistant Professor of Law, American University Washington College of Law. B.A., Brown University, 1994; B.A., University of Cambridge, 1996; M.A., University of Cambridge, 2001; J.D., Harvard Law School, 2001., and Stephen I. Vladeck, Professor of Law and Associate Dean for Scholarship, American University Washington College of Law. B.A., Amherst College, 2001; J.D., Yale Law School, 2004., January 2014, "After the AUMF", harvardnsj.org/wp-content/uploads/2014/01/Daskal-Vladeck-Final1.pdf)

The underlying assumption behind the Hoover proposal and other similar undertakings seems to be that **expansion**, not curtailment, **of** the military response to terrorism—including the targeted killing program and detention without charge—is required to keep the nation safe. These efforts, however, **should be rejected** for at least five reasons.

**First , it is not** at all **clear that the threat** these “**extra-AUMF” groups pose** has evolved to **justify a new declaration of armed conflict**; notably, the Executive not only is not saying it is needed, but the President has recently spoken about the possibility of “refin[ing], and ultimately repeal[ing]” the AUMF’s mandate. 45 **Second** , repeated claims to the contrary notwithstanding, **law enforcement tools, coupled with international** counterterrorism **cooperation, capacity building** of partner states, **and strategic initiatives** to reduce violent extremism, are and **have proven** to be a **highly effective** means of deterring, incapacitating, and gathering intelligence from terrorists; they can, and should, be the tools of first resort against these groups and their members. **Third** , to the extent that law enforcement tools are insufficient to prevent terrorist attacks against U.S. interests in a particular circumstance, the President’s **self-defense authorities**, appropriately applied, should **provide more than adequate authority to take necessary action**. **Fourth** , if an organized armed group emerges that poses the type of sustained, intense threat that justifies a declaration of armed conflict, **Congress can pass a new** and appropriately **circumscribed authorization** to use military force—just as it did with the AUMF. **Fifth** , and most importantly, **it is not** at all **clear** that the expanded use of **military force as a** matter of **first resort achieves** the United States’ ultimate **security** goal of protecting the nation from terrorist threats; to the contrary, it likely undermines it.

#### Corn agrees—the plan is a mitigation measure that is necessary to resolve international backlash, not the “arbitrary geographic limitation” their offense assumes

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.]

## 2AC AT: NSA

#### Backlash is short term and won’t effect intel coop

Francis 13 (David Francis is national correspondent for The Fiscal Times, 11/4/2013, "Why Europe Won’t Punish the U.S. over NSA Scandal", finance.yahoo.com/news/why-europe-won-t-punish-101500877.html)

Similar anger has been expressed around the European continent. Some are saying that irreparable damage has been done to the relationship between the United States and its European partners.

But is this truly the case? **Expressing anger over NSA practices is one thing; actually making policy changes because of the behavior is entirely another**. A **close examination** of statements made by European officials shows **their tone softening**.

There is not likely to be any long-term fallout in two key areas: economic negotiations over a $287 billion EU/U.S. trade pact are going to continue, and intelligence is still likely to pass back and forth across the Atlantic. The **only real damage** has been to the standing of the United States with the European public and fringe lawmakers.

1) Economic cooperation. There are growing concerns that the European Union could make it tougher for private businesses to operate in Europe. According to reports, some European lawmakers are considering suspending the “Safe Harbor” agreement that allows American firms to process European personal data, effectively ending the ability of companies like Apple to sell their products in Europe.

But the cornerstone of EU/U.S. economic ties is the Transatlantic Trade and Investment Partnership, a deal currently being negotiated. According to a study by the U.S. Chamber of Commerce, the agreement would increase trade between the partners by $120 billion within five years. At the same time, it would add some $180 billion to U.S.-EU gross domestic product.

After the initial reports on U.S. snooping, some European lawmakers called for the EU to abandon the deal. But the economic reality in the European Union makes this impossible. The euro zone s struggling to grow, and Europe needs the help more than America. Estimates put forth by the European Commission suggest a new trade pact could increase annual GDP by 0.5 percent in the EU and 0.4 percent in the U.S. by 2027.

Even Merkel dismissed any thought of abandoning the deal, saying on Friday, “Maybe the talks are more important right now considering the current situation.”

2) Intelligence sharing. Reports out of Germany indicate that Berlin and Washington are set to sign an agreement forbidding espionage against one another some time next year. **This agreement would go a long way toward placating Germany anger**.

But each side will not stop sharing intelligence. Numerous reports indicate that the German foreign intelligence service uses NSA information to track terrorist on German soil. In fact, authorities have used this information to foil attacks in Germany.

The same kind of exchange is also set to continue among other NATO allies. All partners share information that could be used to prevent attacks. Some former European intelligence officials have even admitted that European NATO members also spy on the United States.

## 2AC Bioterror

#### The plan sovles impending bioterror attacks – extinction

Mhyrvold ‘13

Nathan, Began college at age 14, BS and Masters from UCLA, Masters and PhD, Princeton “Strategic Terrorism: A Call to Action,” Working Draft, The Lawfare Research Paper Series

Research paper NO . 2 – 2013

As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 1970s technology because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances, utterly transforming the field in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. Tomorrow’s terrorists will have vastly more deadly bugs to choose from. Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. A team of researchers at Saint Louis University led by Mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too. Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done. This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14 Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included.

## 2AC Asia D

#### Nationalism ensures escalation

The Guardian 14 (1/19/2014, "Sino-Japanese tensions: the dangerous drum of nationalism", www.theguardian.com/commentisfree/2014/jan/19/china-japanese-tensions-dangerous-drum-of-nationalism)

Japanese premier Shinzo Abe called today for "frank talks" with neighbouring powers China and South Korea to defuse regional tensions. But the governments of Xi Jinping and Park Geun-hye have as yet refused to meet him, not least because of his Boxing Day visit to the Yasukuni shrine, which commemorates the spirits of 14 high-ranking war criminals among other Japanese war dead. The visit elicited a well-telegraphed diplomatic response. According to the Chinese, Mr Abe had raised the "spectre of militarism" by visiting the shrines of the "Nazis of Asia" and had put his country on a path that could threaten global peace. The South Koreans were furious, the Singaporeans regretful, and even Japan's staunch ally the US was disappointed.

Why, then, did Mr Abe do it? Critics say the Yasukuni visit fitted a pattern of provocative nationalist behaviour: in a previous stint as prime minister he suggested that the 200,000 women used as sex slaves by the Japanese imperial army had not been coerced. Mr Abe's principal aim in his return to the prime minister's office in 2012 was to reinvigorate the stagnant Japanese economy, and in this he has had some success. He also believes Japan has apologised enough for the war and thinks it should now take its place at the top table of world politics. This is why, in December, his government approved an ambitious new defence strategy with a shopping list that includes submarines and fighter jets as well as surveillance drones and amphibious assault vehicles.

Mr Abe has also reiterated his intention to reinterpret a key passage of the Japanese constitution that has kept the country pacifist since 1947. "As it has been 68 years since its enactment," he said in a new year speech, "national debate should be further deepened toward a revision [of the constitution] to grasp the changing times."

Mr Abe's defenders say his policies must be taken in the context of the security threat facing Japan, an island nation dependent for its survival on open skies and clear sea lanes, both of which an expanding China is encroaching upon. China's defence budget, they point out, dwarfs that of Japan, and its leaders have not fought shy of using anti-Japanese sentiment themselves as a diversion from domestic issues. Add into the mix a nuclear-armed and unstable North Korea, the rumbling dispute over the Senkaku or Diaoyu islands and the fading might of the US, and Mr Abe's actions, they say, are justified.

Few would argue that Japan has no right to look after its own national security in the face of a threat. Nevertheless, in the increasingly tense East China Sea, any number of actors could provoke an incident. In such a scenario, heightened nationalism will only make it much harder for either country to step back.

## 2ac must prohibit

#### We meet – we prohibit the current authority to kill anywhere

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

Of course, there are a number of possible ways to define the threat. For lethal targeting, I suggest two such categories: (1) those involved in the active planning or operationalization of specific, imminent, and externally focused attacks, regardless of their relative hierarchical position in the organization; and (2) operational leaders who present a significant, ongoing, and externally focused threat, even if they are not implicated in the planning of a specific, imminent attack. n141 The first definition is a conduct-based test **that** prohibits [\*1211] the use of lethal force absent a specific, imminent, and significant threat. The second definition encompasses those who pose a continuous and significant threat given their leadership roles within an organization. n142 Whether an individual meets this threat requirement depends on the individual's role within the organization, his capacity to operationalize an attack, and the degree to which the threat is externally focused. For example, an al Shabaab operational leader, whose attacks are focused on the internal conflict between al Shabaab and Somalia's Transnational Federal Government, would not qualify as a legitimate target in the separate conflict between the United States and al Qaeda, even if he had demonstrated associations with al Qaeda. He might, however, be a legitimate target if he were involved in the planning of externally focused attacks and had demonstrated the capacity and will to operationalize the attacks. n143¶ Such restrictions serve the important purpose of limiting state authority to target and kill to instances in which the individual poses an active, ongoing, and significant threat. The low-level foot soldier who is found thousands of miles from the hot conflict zone could not be targeted unless involved in the planning or preparation of a specific, imminent attack. Even mid-level operatives, such as the prototypical terrorist recruiter, would be off-limits, unless they were plotting, or recruiting for, a specific, imminent attack. n144 Such recruiters could, however, be prosecuted for providing material support to a terrorist organization. n145

#### “Restrictions” are on time, place, and manner – this includes geography

Lobel, professor of law at the University of Pittsburgh, 2008

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf)

Throughout American history, Congress has placed restrictions on the President’s power as Commander in Chief to conduct warfare. On numerous occasions, **Congress has authorized the President to conduct warfare but placed significant restrictions on the time**, **place and manner of warfare**. Congress has regulated the tactics the President could employ, the armed forces he could deploy, the geographical area in which those forces could be utilized, and the time period and specific purposes for which the President was authorized to use force. Its regulations have both swept broadly and set forth detailed instructions and procedures for the President to follow. This historical practice is consistent with the Constitution’s text and Framers’ intent, which made clear that the President was not to have the broad powers of the British King, but was subject to the control and oversight of Congress in the conduct of warfare.

#### “On” means there’s no limits disad

Dictionary.com, http://dictionary.reference.com/browse/on

On

preposition

1.so as to be or remain supported by or suspended from: Put your package down on the table; Hang your coat on the hook.

2.so as to be attached to or unified with: Hang the picture on the wall. Paste the label on the package.

## 2AC War fighting

#### Squo disproves – actual administration practice is geographically restricted now the DA is not unique

Chesney 14 (Robert M. Chesney, Charles I. Francis Professor in Law, University of Texas School of Law., January 2014, "Postwar", harvardnsj.org/wp-content/uploads/2014/01/Chesney-Final.pdf)

A. Policy Constraints on Attacks Outside the Hot Battlefield It is tempting to assume that the answer must be yes, that the postwar model surely would be a narrower affair—a much narrower affair —than the status quo when it comes to lethal force. On close inspection, however, that proves not to be the case. Why? For two seemingly contradictory reasons. First, the government for reasons of policy already embraces an approach that is more restrictive than the armed-conflict model arguably would require. Second, the legal framework the government most likely would apply in the absence of the armed-conflict model is considerably less restrictive than one might expect. Indeed, it is the same framework that applies already as a matter of policy. To explain this, it helps to begin by clarifying the U.S. government’s baseline position on what legal boundaries follow for the use of lethal force —that is, for targeting—under the armed-conflict model. Setting aside important issues such as proportionality (that is, the prohibition on attacks that will have an impact on civilians or civilian objects exceeding what is necessary to achieve the concrete and direct military objective of the attack) and questions involving the sovereignty rights of a state in which an attack occurs, the U.S. government’s position is straightforward. It maintains that it is in an armed conflict with al Qaeda, the Afghan Taliban, and certain “associated forces”; that LOAC governs its uses of force against those groups irrespective of the location of an attack; and that the members of these organizations as a result may lawfully be targeted based simply on their membership status, as opposed to only targeting them while they are directly participating in hostilities or having to attempt to capture such persons alive.36 This analysis has no shortage of critics, to be sure, but the important point here is that this has been the position of the U.S. government over the past dozen years, and it is an approach that leaves the government with considerable targeting flexibility. Or at least it would, if the government’s policy was to exploit those legal boundaries to the maximum extent. But that is not current U.S. government policy outside of Afghanistan, nor has it been for some time. Simply put, the U.S. government years ago decided not to use the full scope of its LOAC-based targeting authority outside of “hot battlefields” such as Afghanistan. That is, it decided not to make full use of the status-based targeting authority in places like Yemen and Somalia, even while maintaining that LOAC did indeed govern those strikes. John Brennan made this clear in a speech at Harvard Law School in the fall of 2011, more than a year before Johnson’s Oxford Union address.37 Brennan at that time was the White House’s top counterterrorism official, and he was at Harvard to deliver a robust defense of the Administration’s policies. When he turned to the topic of lethal force, he opened by reminding the audience that the government did not view its “authority to use military force against [al Qaeda] as being restricted solely to ‘hot battlefields’ like Afghanistan,” but rather saw the conflict as extending to those locations where al Qaeda might be found.38 That said, Brennan observed that there nonetheless was much less of a gap between the government and its critics than many assume.39 Outside of Afghanistan and Iraq, he asserted, the U.S. government chose as a matter of policy not to embrace the full scope of its claimed authority under LOAC (which allows for targeting of all members of al Qaeda and its associated forces). Instead, the government chose to focus on “those individuals who are a threat to the United States” and “whose removal would cause a significant—even if only temporary—disruption of the plans and capabilities of [al Qaeda] and its associated forces.”40

No Arctic War - economics and cooperation check

Exner-Pirot 3/17/13

Heather Exner-Pirot is a PhD candidate in the Department of Political Science at the University of Calgary, interested in Arctic security, circumpolar relations and northern governance issues. She is a former program assistant with the University of the Arctic Undergraduate Office, Alaska Dispatch, March 17, 2013, "Myth of fresh Cold War in Arctic won't die", http://www.alaskadispatch.com/article/20130317/myth-fresh-cold-war-arctic-wont-die

My first post on Eye on the Arctic, writing back in May 2010, addressed the concern that was pervasive at that time that the Arctic was heading for conflict over oil and shipping routes. The concern was fuelled by a series of events – exhibit A, the Russian flag planting at the North Pole; exhibit B, Canada PM Harper calling for Canadians to “use it or lose it," “it” being the Arctic -- that occurred in the Summer of 2007.

These were magnified by the stupendously high prices of oil and gas of July 2008 which peaked at the same time that the United States Geological Survey released its bullish assessment of the undiscovered oil and gas resources of the area north of the Arctic Circle. China, South Korea, Japan and the EU all applied for observer status in the Arctic Council, and regional politics started to receive a fair amount of attention in foreign policy circles.

Evolving Arctic strategy

Inasmuch as there was legitimate concern of a conflict, the Arctic epistemic community responded in kind. A blizzard of conferences, forums, meetings and working groups to discuss Arctic security were formed, and I’ve been privileged to attend a few. In Canada in particular, we discussed ad nauseam the nature and limitations of our Arctic sovereignty and security and come through on the other side with as full and complete an assessment of the situation as could ever be needed. And the story here is that all of this collective brainstorming has actually produced some pretty remarkable results: the tension that was legitimately felt in 2007 has dissipated as each and every Arctic state has put forth an Arctic Strategy that proclaims their commitment and preference for peace, the legal resolution of disputes and regional cooperation. These words have been followed by action with the resolution of the Barents Sea dispute between Russia and Norway in 2010; the signing of a Search and Rescue Agreement of May 2011, the first legally binding agreement to be negotiated under the auspices of the Arctic Council; the establishment of a Permanent Secretariat of the Arctic Council in January 2013; and continued efforts on an Oil Spill Response Agreement, expected in 2013; and mandatory IMO Polar Code for shipping, expected in 2014.

This is not to say that there is no longer any risk of conflict in the Arctic; but it is minimal and increasingly so. As a transnational community, the Arctic has been more proactive, and I would argue more successful, than any in recent history in creating an environment where dialogue and trust are fostered and mutual interests are sought. Let us remember that the Arctic was not much more, from an international relations perspective, than a theatre for the Cold War 30 years ago. It is now a model of good regional governance, respect for indigenous rights, and commitment to sustainable development. The Arctic is not perfect; but I can’t think of a region that is more so. And the debate has moved on from discussing an Arctic Cold War, even in mainstream newspapers.

The Arctic in the media

But apparently the New York Times never got the memo. This week it ran two op-eds that leave little room for doubt for its over 1.5 million daily readers that the Arctic is still on the verge of some kind of conflict. The first, “China Knocks on Iceland’s Door”, written by Einar Benediktsson, former Iceland ambassador to the United States; and Thomas Pickering, former U.S. undersecretary of state for political affairs and ambassador to Russia and the United Nations; makes the case that Chinese interest in Iceland and the Arctic should spur the US to forge a closer relationship with Iceland on Arctic affairs, which is fine. But they describe Chinese interests in a ham-fisted way, arguing that “it is not likely to support the unilateral decisions of the Arctic Council” in the context of UNCLOS and claims to the continental shelf and transit rights. First, UNCLOS is the very antithesis of unilateral; it is one of the most successful multilateral treaties in international law, and the Arctic states have legal rights to make claims under it; and second, it is a stretch to describe the Arctic Council as acting unilaterally in any sense of the word.

They go on to describe China as “reaching out for a position in the Arctic, beginning in Greenland, followed by support facilities in Iceland ... with potential use for naval vessels patrolling the Arctic and the Northeast Polar Passage” offering as proof a link to another op-ed piece in the NYT that actually describes speculation on Chinese military bases coming to Greenland as “farfetched” and “less than helpful”. It is a caricature of Chinese interests in the Arctic and beneath the standards of both newspaper journalism and common sense.

The other piece, “Preventing an Arctic Cold War”, seems to have been written in 2008 but only made publication this week, as it ignores all of the progress made in the Arctic in the past five years. The author, Paul Arthur Berkman, writes that while “there has been cooperation on extracting the region’s oil, gas and mineral deposits, and exploiting its fisheries, there has been little effort to develop legal mechanisms to prevent or adjudicate conflict…The most fundamental challenge for the Arctic states is to promote cooperation and prevent conflict. Both are essential, but a forum for achieving those goals does not yet exist.”

The facts

Has he heard about the Arctic Council?

He has. But he states that the Arctic Council shelved discussions on maintaining the peace when it was established in 1996, and “nations are still too timid to discuss peace in the region.” I can only assume he is referring to the stipulation that the Arctic Council not discuss military security matters; but this certainly doesn’t preclude talking about peace. Among the questions Berkman seems to think the Arctic Council has not considered:

“How will each nation position its military and police its territory?”

See: SAR Agreement 2011; SAR TTX in Whitehorse, October 2011; Arctic Military Chiefs Meeting, Goose Bay, April 2012; and SAREX, Greenland, September 2012.

“How will the Arctic states deal with China and other nations that have no formal jurisdictional claims but have strong interests in exploiting Arctic resources?”

Have the SAOs (Senior Arctic Officials) discussed anything but this question in the past 6 years? See: Criteria for Admitting Observers, issued in 2011; further, definitive decisions are anticipated in 2013.

“How will Arctic and non-Arctic states work together to manage those resources beyond national jurisdictions, on the high seas and in the deep sea?”

See: Arctic Council Experts Group on Eco-System Based Management

“Without ratifying the Convention on the Law of the Sea, a 1982 treaty governing use of the world’s oceans, how can the United States cooperate with other nations to resolve territorial disputes in the ocean?”

See: Ilulissat Declaration, 2008

Talk of Arctic conflict at what cost?

The point is not that everything is settled and the Arctic Council has no room for improvement; it does. The point is that these op-eds, and the portrayal of the Arctic region and Arctic Council they deliver in a high-profile platform, is counter-productive. As SAO Chair Gustav Lind wrote in the latest edition of The Arctic Herald, this kind of portrayal of the Arctic “distracts public attention from the great and sometimes difficult challenges the region is facing ... not military conflict but the protection of the sensitive Arctic environment and improvement of the life of its citizens.”

The Arctic Council is no longer at a crossroads, wondering what should be done to avert conflict; it has chosen a clear path, one towards greater institutionalization of international relations and more meaningful cooperation. What an achievement it would be if in the same six-year time span it took to move Arctic security concerns off the regional agenda, we could claim a similar level of success in environmental protection and human development. And what a disappointment if the discussion still centered around the possibilities of an Arctic Cold War.

## 2AC Congress Key

#### Object fiat is a voter – avoids the core question of pres powers by fiating away obama’s behavior in the squo – justifies the end war cp which means the neg wins every debate – it’s not in the lit which is key

Hansen 12 (Victor, Professor of Law, New England Law, New England Law Review, Vol. 46, pp. 27-36, 2011, “Predator Drone Attacks”, February 22, 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009313>, PDF, ZBurdette)

Any checks on the President’s use of drone attacks must come domestically. In the domestic arena the two options are either the courts or Congress. As discussed above, the courts are institutionally unsuited and incapable of providing appropriate oversight. Congress is the branch with the constitutional authority, historical precedent, and institutional capacity to exercise meaningful and effective oversight of the President’s actions.

#### Links to politics – makes Obama a lightning rod

Phillip Cooper 97, Prof of Public Administration @ Portland State, Nov 97, “Power tools for an effective and responsible presidency” Administration and Society, Vol. 29, p. Proquest

Interestingly enough, the effort to avoid opposition from Congress or agencies can have the effect of turning the White House itself into a lightning rod. When an administrative agency takes action under its statutory authority and responsibility, its opponents generally focus their conflicts as limited disputes aimed at the agency involved. Where the White House employs an executive order, for example, to shift critical elements of decision making from the agencies to the executive office of the president, the nature of conflict changes and the focus shifts to 1600 Pennsylvania Avenue or at least to the executive office buildings The saga of the OTRA battle with Congress under regulatory review orders and the murky status of the Quayle Commission working in concert with OIRA provides a dramatic case in point.

#### First – Public and allies

Wainstein 9/18/13

Kenneth L. Wainstein is the Sheila and Milton Fine distinguished visiting fellow at The Washington Institute, focusing on counterterrorism issues, a partner with the law firm of Cadwalader, Wickersham, and Taft, LLP, The Heritage Foundation, September 18, 2013, "The Changing Nature of Terror: Law and Policies to Protect America", http://www.heritage.org/research/reports/2013/09/the-changing-nature-of-terror-law-and-policies-to-protect-america

Call for Congressional Action

While it is important that the Administration undergo this strategic reorientation, it is also important that Congress participate in that process. Over the past 12 years, Congress has made significant contributions to the post-9/11 reforms of our counterterrorism program. First, it has been instrumental in strengthening our counterterrorism capabilities. From the Authorization for Use of Military Force to the PATRIOT Act and its reauthorization to the critical 2008 amendments to the Foreign Intelligence Surveillance Act, Congress has repeatedly answered the government’s call for strong but measured authorities to fight the terrorist adversary. Second, congressional action has gone a long way toward institutionalizing measures that were hastily adopted after 9/11, and is creating a lasting framework for what will be a “long war” against international terrorism. Some argue against such legislative permanence, citing the hope that today’s terrorists will go the way of the radical terrorists of the 1970s and largely fade from the scene over time. That, I’m afraid, is a pipe dream. The reality is that international terrorism will remain a potent force for years and possibly generations to come. Recognizing this reality, both Presidents Bush and Obama have made a concerted effort to look beyond the threats of the day and focus on regularizing and institutionalizing our counterterrorism measures for the future—as most recently evidenced by the Obama Administration’s effort to develop lasting procedures and rules of engagement for the use of drone strikes. Finally, congressional action has provided one other very important element to our counterterrorism initiatives—a measure of political legitimacy that could never be achieved through unilateral executive action. At several important junctures since 9/11, Congress has considered and passed legislation in sensitive areas of executive action, such as the authorization of the Military Commissions and the amendments to our Foreign Intelligence Surveillance Act. On each such occasion, Congress’s action had the effect of calming public concerns and providing a level of political legitimacy to the executive branch’s counterterrorism efforts. That legitimizing effect—and its continuation through meaningful oversight—is critical to maintaining the public’s confidence in the counterterrorism means and methods that our government uses. It also provides assurance to our foreign partners and thereby encourages them to engage in the operational cooperation that is so critical to the success of our combined efforts against international terrorism. These post-9/11 examples speak to the value that congressional involvement can bring to the national dialogue and to the current reassessment of our counterterrorism strategies and policies. It is heartening to see Members of Congress starting to ratchet up their engagement in this area. For example, certain Members are expressing views about our existing targeting and detention authorities and whether they should be revised in light of the new threat picture. Some have asked whether Congress should pass legislation governing the executive branch’s selection of targets for its drone program, with some suggesting that Congress establish a judicial process by which a court reviews and approves any plan for a lethal strike against a U.S. citizen. Others have proposed legislation more clearly directing the executive branch to hold terrorist suspects in military custody, as opposed to in the criminal justice system. While these ideas have varying strengths and weaknesses, they are a welcome sign that Congress is poised to become substantially engaged in counterterrorism matters once again.

## 2ac Iran

No Israeli strike regardless of deal collapse

Keck 11/28/13

Zachary, associate editor of The Diplomat, “Five Reasons Israel Won't Attack Iran,” http://nationalinterest.org/print/commentary/five-reasons-israel-wont-attack-iran-9469

Although not a member of the P5+1 itself, Israel has always loomed large over the negotiations concerning Iran’s nuclear program. For example, in explaining French opposition to a possible nuclear deal earlier this month, French Foreign Minister Laurent Fabius [3]stated [3]: “The security concerns of Israel and all the countries of the region have to be taken into account.” Part of Fabius’ concern derives from the long-held fear that Israel will launch a preventive strike against Iran to prevent it from obtaining nuclear weapons. For some, this possibility remains all too real despite the important interim agreement the P5+1 and Iran reached this weekend. For example, when asked on ABC’s This Week whether Israel would attack Iran while the interim deal is in place, [4]William Kristol responded [4]: “I don't think the prime minister will think he is constrained by the U.S. deciding to have a six-month deal. […] six months, one year, I mean, if they're going to break out, they're going to break out.” Israeli prime minister Benjamin Netanyahu has done little to dispel this notion. Besides blasting the deal as a “historic mistake,” Netanyahu said [5] Israel “is not obliged to the agreement” and warned “the regime in Iran is dedicated to destroying Israel and Israel has the right and obligation to defend itself with its own forces against every threat.” **Many dismiss this talk as bluster, however**. Over at Bloomberg View, for instance, Jeffrey Goldberg [6]argues that the [6] nuclear deal has “boxed-in Israeli Prime Minister Benjamin Netanyahu so comprehensively that it's unimaginable Israel will strike Iran in the foreseeable future.” Eurasia Group's Cliff Kupchan similarly argued: “The chance of Israeli strikes during the period of the interim agreement drops to virtually zero.” Although the interim deal does further reduce Israel’s propensity to attack, the truth is that the likelihood of an Israeli strike on Iran’s nuclear facilities has always been greatly exaggerated. There are at least five reasons why Israel isn’t likely to attack Iran. 1. You Snooze, You Lose First, if Israel was going to strike Iran’s nuclear facilities, **it would have done so a long time ago.** Since getting caught off-guard at the beginning of the Yom Kippur War in 1973, Israel has generally acted proactively to thwart security threats. On no issue has this been truer than with **nuclear-weapon programs**. For example, Israel bombed Saddam Hussein’s program when it consisted of just a single nuclear reactor. [7]According to [7]ABC News [7], Israel struck Syria’s lone nuclear reactor just months after discovering it. The IAEA had been completely in the dark about the reactor, and took years to confirm the building was in fact housing one. Contrast this with Israel’s policy toward Iran’s nuclear program. The uranium-enrichment facility in Natanz and the heavy-water reactor at Arak first became public knowledge in 2002. For more than a decade now, Tel Aviv has watched as the program has expanded into two fully operational nuclear facilities, a budding nuclear-research reactor, and countless other well-protected and -dispersed sites. Furthermore, America’s [8]**extreme reluctance to** [8] **initiate strikes** on Iran was made clear to Israel at least as far back as 2008. It would be **completely at odds** with how Israel operates for it to standby until the last minute when faced with what it views as an existential threat. 2. Bombing Iran Makes an Iranian Bomb More Likely Much like a U.S. strike, only with much less tactical impact, an Israeli air strike against Iran’s nuclear facilities would only increase the likelihood that Iran would build the bomb. At home, Supreme Leader Ali Khamenei could use the attack to justify rescinding his fatwa against possessing a nuclear-weapons program, while using the greater domestic support for the regime and the nuclear program to mobilize greater resources for the country’s nuclear efforts. Israel’s attack would also give the Iranian regime a legitimate (in much of the world’s eyes) reason to withdraw from the Nuclear Non-Proliferation Treaty (NPT) and kick out international inspectors. If Tehran’s membership didn’t even prevent it from being attacked, how could it justify staying in the regime? Finally, support for international sanctions will crumble in the aftermath of an Israeli attack, giving Iran more resources with which to rebuild its nuclear facilities. 3. Helps Iran, Hurts Israel Relatedly, an Israeli strike on Iran’s nuclear program would be a net gain for Iran and a huge loss for Tel Aviv. Iran could use the strike to regain its popularity with the Arab street and increase the pressure against Arab rulers. As noted above, it would also lead to international sanctions collapsing, and an outpouring of sympathy for Iran in many countries around the world. Meanwhile, a strike on Iran’s nuclear facilities would leave Israel in a far worse-off position. Were Iran to respond by attacking U.S. regional assets, this could greatly hurt Israel’s ties with the United States at both the elite and mass levels. Indeed, a war-weary American public is adamantly opposed to its own leaders dragging it into another conflict in the Middle East. Americans would be even more hostile to an ally taking actions that they fully understood would put the U.S. in danger. Furthermore, the quiet but growing cooperation Israel is enjoying with Sunni Arab nations against Iran would **evaporate overnight**. Even though many of the political elites in these countries would secretly support Israel’s action, their explosive domestic situations would force them to distance themselves from Tel Aviv for an extended period of time. Israel’s reputation would also take a further blow in Europe and Asia, neither of which would soon forgive Tel Aviv. 4. Israel’s Veto Players Although Netanyahu may be ready to attack Iran’s nuclear facilities, he operates **within a democracy** **with a strong elite structure,** particularly in the field of national security. It seems unlikely that he would **have enough elite support for him to** seriously consider such a daring and risky operation. For one thing, Israel has **strong institutional checks on using military force**. As then vice prime minister and current defense minister Moshe Yaalon [9]explained last year [9]: “In the State of Israel, any process of a military operation, and any military move, undergoes the approval of the security cabinet and in certain cases, the full cabinet… the decision is not made by two people, nor three, nor eight**.” It’s far from clear Netanyahu,** a fairly divisive figure in Israeli politics, **could gain this support**. In fact, Menachem Begin struggled to gain sufficient support for the 1981 attack on Iraq even though Baghdad presented a more clear and present danger to Israel than Iran does today. What is clearer is that **Netanyahu lacks** the **support of much of Israel’s highly respected national security establishment**. Many former top intelligence and military officials [10]have spoken [10] out publicly against Netanyahu’s hardline Iran policy, with at least one of them questioning whether Iran is actually seeking a nuclear weapon. Another former chief of staff of the Israeli Defense Forces told [11] The Independent that, “It is quite clear that much if not all of the IDF [Israeli Defence Forces] leadership **do not support military action** at this point…. **In the past the advice of the head of the IDF and the head of Mossad had led to military action being stopped**.”

#### Sanctions push will be in response to deal collapse, not the plan

Rebecca Shabad, The Hill, 3/18/14, Congress fires warning shot at Iran, thehill.com/blogs/global-affairs/middle-east-north-africa/201074-83-senators-outline-preferred-requirements-for

More than two-thirds of the Senate and nearly 400 House members on Tuesday promised to pursue "dramatic sanctions" against Iran if it continues its nuclear program. In a letter sent to President Obama, 83 senators — well above the two-thirds required to override a presidential veto — warned there would be serious consequences for Iran if it fails to reach a nuclear agreement with the United States. “We must signal unequivocally to Iran that rejecting negotiations and continuing its nuclear weapon program will lead to much more dramatic sanctions, including further limitations on Iran’s exports of crude oil and petroleum products,” the letter says. Several hours later, a letter to Obama signed by 394 House members was released that said Congress was ready to "act swiftly to consider additional sanctions and steps necessary to change Iran's calculation" if negotiations falter or Iran violates the interim nuclear deal reached last year. The unified push from both chambers of Congress came as world powers, including the United States, gathered in Vienna, Austria, to try and hammer out the details of a final agreement with Iran. An interim six-month deal to limit Iran’s nuclear capabilities took effect in January, and was intended to buy time for more negotiations. The senators said any final agreement should state that Iran has no inherent right to nuclear enrichment while requiring the country to dismantle its nuclear program, give up its heavy water reactor and submit to a long-term system of inspections, among other principles. “We believe that Iran has no inherent right to enrichment under the Nuclear Non-Proliferation Treaty,” the first principle said. A requirement of zero enrichment, however, was not included in the Senate letter. Obama administration officials have acknowledged that Iran would be unlikely to agree to that standard, because some enrichment is required for nuclear power. The letter was spearheaded by Sens. Robert Menendez (D-N.J.), Lindsey Graham (R-S.C.), Mark Kirk (R-Ill.), Chris Coons (D-Del.) and Kelly Ayotte (R-N.H.). Menendez is chairman of the Senate Foreign Relations Committee. He and Kirk authored legislation last year that would impose tougher sanctions against Iran. Of the 17 senators who did not sign Tuesday’s letter, eight were Democratic committee chairmen who wrote to Senate Majority Leader Harry Reid (D-Nev.) in December urging him to hold off a vote on new Iran sanctions. Reid, who stood by the White House in opting not to allow a vote on the Menendez-Kirk sanctions bill, also did not sign Tuesday’s letter to Obama. Other notable names missing from Tuesday’s letter were Armed Services Committee Chairman Carl Levin (Mich.), Intelligence Committee Chairwoman Dianne Feinstein (Calif.) and Banking Committee Chairman Tim Johnson (S.D.). Calls for bringing an Iran bill to the floor have died down, with lawmakers abiding by the White House's request for time. “For diplomacy to succeed, however, we must couple our willingness to negotiate with a united and unmistakable message to the Iranian regime,” the senators warned in the letter. The House letter was led by Majority Leader Eric Cantor (R-Va.) and Minority Whip Steny Hoyer (D-Md.). The House letter also laid out conditions for the final deal similar to those outlined by the upper chamber. If a final deal is reached by July, the lawmakers say Obama administration officials must work with Congress to enact legislation that would provide “longer term sanctions relief” in case Iran reneges on a final agreement’s terms. “Should negotiations fail or Iran violate the Joint Plan of Action, Congress will need to ensure that the legislative authority exists to rapidly and dramatically expand sanctions,” the senators wrote. “We need to work together now to prepare for either eventuality.”

If Obama is focusing capital on \_\_\_­­­­\_\_\_\_\_\_\_, it disproves Obama would initiate a fight over the plan

William Howell and Jon Pevehouse, Associate Professors at the Harris School of Public Policy at the University of Chicago, 2007, When Congress Stops Wars, Foreign Affairs, EBSCO

After all, when presidents anticipate congressional resistance they will not be able to overcome, they often abandon the sword as their primary tool of diplomacy. More generally, when the White House knows that Congress will strike down key provisions of a policy initiative, it usually backs off. President Bush himself has relented, to varying degrees, during the struggle to create the Department of Homeland Security and during conflicts over the design of military tribunals and the prosecution of U.S. citizens as enemy combatants. Indeed, by most accounts, the administration recently forced the resignation of the chairman of the Joint Chiefs of Staff, General Peter Pace, so as to avoid a clash with Congress over his reappointment.

#### Obama’s NSA proposal triggers it

Paul Waldman, WaPo, 3/25/14, NSA may give up on phone records. But they’re still watching., www.washingtonpost.com/blogs/plum-line/wp/2014/03/25/nsa-may-give-up-on-phone-records-but-theyre-still-watching/

At a presser today in the Netherlands, President Obama confirmed reports that his administration is preparing to release a plan to end National Security Agency bulk information collection and leave that information with phone companies instead — albeit not for a longer duration than they are already required to hold the information for. Obama described the plan as “workable,” adding: “This insures that the government is not in possession of that bulk data.” What makes this surprising is that old axiom about presidents: they don’t relinquish power willingly. No matter what they might say about the appropriate limits of executive authority before they take office, once they’re actually in the White House, they want to hold on to every shred they can. Obama is now poised to give up some of his power. But it needs to be restated that this would not have happened without all those revelations from Edward Snowden. What will Obama’s proposal look like? Charlie Savage of the New York Times reported: The Obama administration is preparing to unveil a legislative proposal for a far-reaching overhaul of the National Security Agency’s once-secret bulk phone records program in a way that — if approved by Congress — would end the aspect that has most alarmed privacy advocates since its existence was leaked last year, according to senior administration officials. Under the proposal, they said, N.S.A. would end its systematic collection of data about Americans’ calling habits. The records would be stay in the hands of phone companies, which would not be required to retain the data for any longer than they normally would. And the N.S.A. could obtain specific records only with permission from a judge, using a new kind of court order.

#### CIA larger issue than the plan—it’ll keep escalating

Conor Friedersdorf, The Atlantic, 3/24/14, False Equivalence and the Feud Between the CIA and the Senate, www.theatlantic.com/politics/archive/2014/03/false-equivalence-and-the-feud-between-the-cia-and-the-senate/284596/

But now that the Justice Department is involved in the dispute between Feinstein’s Intelligence Committee staff and the CIA—deciphering whether the CIA violated the Constitution or federal law by searching Senate computers, or whether Democratic staffers hacked into the CIA’s system to obtain classified documents—things have escalated to an unprecedented level. What vexes me about how this dispute is being covered—not just in this Politico story, but in many media outlets—is the false equivalence implicit in the juxtaposition: as if the CIA and the Senate committee stand accused of like transgressions. If the charges against the CIA are true, our nation's foreign spy agency, which is forbidden from conducting any surveillance in the U.S., snooped on our legislature. That's a transgression against our constitutional framework. If the accusations against the Senate intel committee are accurate, its staffers, who have security clearances, obtained documents that the CIA ought to have turned over anyway. Are we prepared to accept that, during a comprehensive congressional inquiry into torture, the CIA was justified withholding torture documents? Senate staffers committed no great sin getting documents wrongly denied them. To its credit, the Politico article quotes Majority Leader Harry Reid articulating some of these points about the separation of powers. But the analysis next offered is the following: With no clear resolution in sight, Capitol Hill and the CIA are stuck in the awkward spot of trying to maintain business as usual, when the reality is it’s anything but. “This is the most serious feud since the Intelligence committees were established,” said Amy Zegart, a former National Security Council staffer and senior fellow at Stanford University’s Hoover Institution. Most alarming, Zegart explained, is Feinstein’s Senate floor broadside earlier this month against the CIA. The senator’s remarks broke from her well-established reputation as a staunch defender of another wing of the intelligence community, the National Security Agency, amid scores of Edward Snowden-inspired leaks to the media. “When someone who says they can be trusted now says they can’t, it’s really bad,” Zegart said. Incredible. "Business as usual" is implicitly defined as the desirable state of affairs. And what's deemed "most alarming"? Not CIA torture. Not the CIA withholding torture documents from a Senate investigation. Not the CIA spying on Congress, or trying to intimidate oversight staffers with criminal charges for doing their jobs. Bizarrely, the thing declared "most alarming" are Feinstein's words! By attacking rather than deferring to the CIA, she disrupted business as usual. Her act of "saying" is emphasized as the important factor. Then a bit farther on: Feinstein and [CIA Director John] Brennan are standing by their contradictory explanations of what happened in the course of the Democratic staff’s investigation into the Bush-era CIA programs. Absent a meeting of the minds, some say the only way for the chairwoman to save face is for Brennan to go. The article might have said, "Absent a meeting of the minds, some say the Senate intel committee should show its oversight ability is intact by forcing Brennan to resign." Instead, the focus is on Feinstein's ability to save face, as if her face-saving itself—not its implications for good governance—is what's important. Perhaps face-saving is what they're gossiping about in Washington, D.C.? In the article's defense, it then goes on to quote former Representative Pete Hoekstra, who has a far more sensible analysis of the stakes: "The real question it will come down to is whether Dianne Feinstein believes she can have a working relationship with John Brennan. And if she believes that relationship is beyond repair and it’s going to be difficult to rebuild that trust between the oversight committee and the CIA … then there’s really only one alternative. And that’s Brennan has to step aside." The reporter also quotes House Intelligence Committee Chairman Mike Rogers: “Our oversight is alive and well and robust. That won’t change,” House Intelligence Committee Chairman Mike Rogers said in an interview. But the Michigan Republican also warned that the dispute needed to be resolved, and soon—otherwise there could be consequences. “I think if this doesn’t get handled right in the next short period of time this has the potential of having other broader implications, and I hope it doesn’t get to that,” Rogers said. “You don’t want everything to become adversarial,” he added. “The oversight will continue. If it’s adversarial or not, it will continue. It’s always better when both sides agree to a framework on what will be provided; otherwise, it becomes a subpoena exchange, and that’s just not helpful.” This is why the Tea Party should subject Rogers to a primary challenge: A man charged with overseeing the CIA actually believes that the spy agency would agree to a framework where it voluntarily provided overseers with all they needed to know! It's hard to say whether he's been co-opted or is staggeringly naive. The article goes astray again by putting forth the following passage without rebuttal: In the absence of answers of what happened, several intelligence veterans said the Feinstein-CIA dispute is taking up lawmakers’ limited oxygen supply on complex issues ranging from Snowden’s revelations about government surveillance overreach to cybersecurity threats and tensions flaring in Ukraine, Syria, Egypt and other global hotspots. Implicit in this treatment is the notion that CIA spying on Congress is a tertiary concern, a controversy distracting us from more important issues. I'd argue that, if there's a limited oxygen supply in Washington, D.C., safeguarding the separation of powers and adequate oversight of the CIA is far more important than, say, Syria. It is troubling, but unsurprising, that intelligence veterans think otherwise.

#### PC theory is no longer true

Ryan Lizza, The New Yorker's Washington correspondent, 1/30 [Obama Breaks Up with Congress,” http://www.newyorker.com/online/blogs/comment/2014/01/the-state-of-the-union-or-obama-breaks-up-with-congress.html]

Several generations of political leaders and journalists have been taught to believe that, in the words of the political scientist Richard Neustadt, “Presidential power is the power to persuade.” Presidents always come into office believing that, with bargaining, cajoling, and pure reason, they can bring members of Congress around to the idea that passing the White House’s agenda is in their interest. Obama believed this in his bones; his 2008 campaign was premised on it.¶ But modern political scientists have abandoned some of Neustadt’s core claims. They’ve settled on a far less exciting analysis, which casts the President as a more passive victim of circumstance who can do little to move Congress unless he already has a majority of votes. Instead of emphasizing the potential of great Presidential leadership and heroic abilities of persuasion, this more structural view emphasizes the limits of a system in which Congress and the President—despite the way it looked on TV on Tuesday night—are co-equal branches of government. Congress contains land mines that the White House has almost no ability to defuse: the extreme polarization of the House, based on a geographic sorting of the public; the rural-state tilt in the Senate that gives Republicans an advantage; the filibuster, and more.¶ It has taken Obama years to transform from a Neustadtian into a structuralist, but Tuesday night marked the completion of the cycle. That metamorphosis has forced the White House to think hard about how Obama can effect change on his own, and it’s one reason that the President recently asked John Podesta to come aboard. (Podesta, who has long advised the White House to use more executive authority, watched the speech with other top Obama aides from the back of the chamber. He seemed pleased.)¶ It’s prudent to be skeptical when listening to the White House’s new claims about what it can accomplish without Congress. After all, if Presidents could solve America’s biggest problems on their own, they would. But every modern President pushes the boundaries of executive authority, and Obama laid out some creative ideas last night that are not just token reforms. For instance, his climate-change policies—which rely on E.P.A. regulations—can be implemented with no input whatsoever from Congress, though of course Congress can try to undo them. Obama also hinted that he may use his pen to preserve more wilderness and other sensitive lands, an environmental tool that Bill Clinton often used, but which Obama has not. His push to encourage businesses and states to raise the minimum wage and his own executive order to raise the minimum wage for future federal contractors are not trivial. He has wide latitude to reform the practices of the N.S.A.¶ But many of the other actions that he outlined will have limited impact. The White House can’t implement gun control by fiat, and it can’t fix the tax code or repair the immigration system on its own. Obama’s new realism is necessary and appropriate, but at some point this year he will need to rekindle his relationship with Congress.

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## impact

Russia doesn’t want aggression

Gorenburg, PhD political science, senior analyst – Davis Center for Russian and East European Studies @ Harvard University, 2/12/’14

(Dmitry, “How to understand Russia’s Arctic strategy,” Monkey Cage Blog—WaPo)

Russian actions in the Arctic are governed by a combination of factors. The highest priority is undoubtedly economic development of Russia’s Arctic region. Russia’s natural resources ministry has stated that the parts of the Arctic Ocean claimed by Russia may hold more petroleum deposits than those currently held by Saudi Arabia. Russia has already put in place plans to exploit resources in this region, beginning with deposits on the Yamal Peninsula and adjacent offshore areas. The first offshore development is the Prirazlomnoye oil field south of Novaia Zemlia, which started production in December 2013. Russian companies face several challenges in developing these oil and gas resources. Because most of these deposits are offshore in the Arctic Ocean, where extraction platforms will be subject to severe storms and the danger of sea ice, the exploitation of these resources will require significant investment and in some cases the development of new technology, and will only be economically feasible if prices for oil and natural gas remain high.

The future economic potential of the region is not limited to the extraction of natural resources. In recent decades, it has become clear that climate change is leading to the rapid melting of the polar ice cap, which has already improved access to the Russian Arctic. Russian planners are banking on the relatively rapid development of the Northern Sea Route (NSR), which they hope might compete with the Suez Canal route for commercial maritime traffic. This will require a serious investment in icebreakers, new and expanded port facilities, places of refuge and other services.

While much of the recent increase in attention paid to the region and investment in it is the result of perceptions of the Arctic’s economic potential, Russian leaders also see the Arctic as a location where they can assert Russia’s status as a major international power. This is done by claiming sovereignty over Arctic territory and through steps to assure Russian security in the region. Many of the actions designed to promote Russian sovereignty claims to the Arctic have been highly symbolic in nature. The planting of a titanium flag on the sea floor at the North Pole in 2007 is typical of these types of actions, as are the highly publicized occasional air patrols along the Norwegian, Canadian and Alaskan coastlines. The recent action against Greenpeace protesters who sought to scale the Prirazlomnoye offshore oil rig is also highly symbolic in nature. While an almost identical protest in 2012 resulted in nothing more than the protesters being removed from the platform and their ship escorted out of Russian territory, the 2013 incident resulted in Russia impounding the Greenpeace ship and highly charged statements by Russian officials accusing the protesters of engaging in piracy. These actions are indicative of an effort by the country’s leadership to ensure that the Russian public perceives Russian sovereignty over the Arctic as uncontested.

Russian policy is thus pursued on two divergent tracks. The first track seeks international cooperation to ensure the development of the region’s resources. This includes efforts to settle maritime border disputes and other conflicts of interest in the region. The second track uses bellicose rhetoric to highlight Russia’s sovereignty over the largest portion of the Arctic. This is combined with declarations of a coming military buildup in the region. This second track is primarily aimed at shoring up support among a domestic audience. Managing the lack of alignment between these strategic and policy positions, and their potential for counter-productiveness, is an important challenge for Russia’s leadership.

On the whole, Russia seeks cooperative international relationships in the Arctic. Although Russian leaders’ rhetoric is at times confrontational, it is primarily targeted at maintaining their popularity with their domestic base. Bellicose statements by President Putin and his subordinates about ensuring Russian sovereignty in the Arctic should not be treated as indicators of an expansionist or militarist agenda in the region. Although Russia is planning to improve its military and border patrol capabilities in the Arctic, these improvements are primarily focused on areas such as protection of coastlines and offshore energy extraction installations, search-and-rescue operations and icebreaker capabilities, and should therefore not be viewed as inherently threatening to other Arctic states.

## \*\*\*politics

## impact

No escalation

Yadlin October ‘13

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assistant to the Director of INSS, “If Attacked, How Would Iran Respond?,” Strategic Assessment

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Assessment of the Iranian Response Strategy

There are two signiﬁcant parameters for assessing an Iranian response. The ﬁrst concerns the identity of the attacker: is it an American attack, an Israeli attack without US backing, or a combined attack (American backing for an Israeli strike would almost certainly be perceived as such a scenario by the regime in Tehran). **The main Iranian interest is** in regime survival, and therefore the regime would consider whether its response would enhance the threat against it. If the scope of the ﬁrst attack had already threatened the regime, there would be fewer inhibitions about a response. Thus with an Israeli strike, for example, the danger is that an Iranian response would drag the United States into involvement **that would threaten the regime**, while in an American attack limited to nuclear targets, the concern is that a response would lead to a counter-response that would threaten the regime. If in Tehran’s assessment the United States had decided to use its full power in order to topple the regime, this would reduce Iran’s inhibitions, and the scope of the Iranian response could be expected to increase. If Tehran’s assessment is that the United States is limiting its attack to Iran’s nuclear infrastructure and that it is likely to broaden its attack against the regime only in response to an Iranian response, the chances would increase of Iran’s exercising restraint in order to avoid escalation that would threaten the survival of the regime. The second parameter concerns the nature of the attack. The greater the force and scope of the Western strike – if it included economic assets such as the oil and gas industry or government and military assets such as government and religious buildings, headquarters, and strategic military forces – the more pressure Tehran would face to respond with signiﬁcant force in order to deter its enemies from future strikes and restore its honor. The two parameters are connected, since an American response in the event of escalation would include a broader and more powerful attack on regime assets as well. For this reason, it would be a more credible and effective threat that would encourage Iranian restraint in response to a Western attack. Against this background a scale of ﬁve possible Iranian strategies can be posited (from the limited and measured to the very massive): a. **Total military restraint**: This is an extreme scenario in which the Iranian regime chooses not to respond immediately after an attack on its facilities. Two examples of this strategy are the lack of immediate Iraqi response following the Israel Air Force attack on the Osirak nuclear reactor in 1981, and the absence of a Syrian response to the attack on the Deir ez-Zor nuclear reactor in 2007.13 However, there is little likelihood of Iran adopting such a strategy. In contrast to Iraq and Syria, Iran is aware that the West knows about its nuclear program, and an attack would not be a strategic surprise. Even if the timing and nature of the attack are a surprise, Tehran has likely prepared a response in the event of a strike. Tehran would presumably decide to use this plan, even if it were partial and restrained, to show the strength of the regime, deter Iran’s enemies from additional actions in the future, and restore the country’s honor after the attack on its nuclear project. In other words, there is a high level of certainty that there would be an Iranian response, and the question is about its scope. b. **Tit for tat**:14 This is the classic reactive strategy because it mimics the strategy of the attacker. Iran’s response to a strike against the country’s nuclear facilities would be an attack on Israel’s nuclear facilities. In this scenario, a signiﬁcant number of missiles would be launched from Iran and Lebanon in the direction of Dimona or any other target in Israel perceived as “nuclear associated,” in order to convey a message of parity between Iran and Israel, and perhaps even to damage Israel’s facilities. There is a high likelihood that this method of operation would be chosen, independently or as part of a broader Iranian response. c. A response that is limited in scope but more signiﬁcant: A broader Iranian response would include the use of terrorist cells and a restrained launch of missiles – one or two missiles volleys at Israel’s cities, and perhaps also Saudi and Western targets in the Gulf. Suicide missions from the air and the sea are also possible in this limited response scenario. If the Western strike damages Iran’s nuclear infrastructure but does not harm other regime assets, there is a **high likelihood of such an Iranian response,** because the regime in Tehran will seek to balance the need to respond to an attack with the fear of escalation that would threaten regime assets not directly connected to Iran’s military nuclear program. Again, **the main interest of the regime of the ayatollahs is to preserve their power**.

Therefore, it seems that they would not carry out an action that is perceived as likely to threaten the stability of the regime. Thus, in a scenario involving a pinpoint strike on the Iranian nuclear program, **the regime would seek to respond without causing escalation and signiﬁcant American intervention in the crisis.** d. The maximalist response against Israeli targets: Despite what has been noted thus far, it is possible that Iran would seek an aggressive, maximalist response to a strike against its military nuclear project and its national honor, while attempting to isolate Israel from the United States. It could launch dozens of missiles a day against Israeli cities in a number of volleys spread throughout the day. The strategic purpose would be to punish Israel for the attack, paralyze life in Israel, exact as heavy a price as possible from Israel, and increase the psychological effect of the attack on the Israeli populace. Iran would attempt to achieve the maximum deterrent effect and deter Israel regarding a future conﬂict. The regime in Tehran likely assumes that such a response would lead to a signiﬁcant Israeli response and could lead to escalation of the conﬂict between the two countries – which in turn could allow another strike against the nuclear infrastructure and a broad and comprehensive attack on Iranian economic and government assets. Such escalation could spiral out of control and encourage American military intervention, which could threaten the continued survival of the regime. Given this, the Iranian regime will likely **refrain from such a response** against Israel as long as a Western strike focuses on the nuclear program. If the Iranian regime feels that the attack reﬂects an effort to threaten its survival or that Israel and the United States are less willing to respond with force, it is liable to believe that it has less to lose from possible escalation. This scenario, in an extreme conﬁguration, could also include Iranian use of nonconventional weapons. However, the operational limitations of Iranian weapons, together with Tehran’s ambition to prevent a massive Israeli response and American intervention, would serve as deterrents regarding use of this type of weapon. Accordingly, there seems to be limited probability that Tehran would use nonconventional weapons at the start of a future crisis resulting from an attack on Iran, or in a scenario of conﬂict with Israel that does not develop into an all-out clash that clearly threatens the survival of the regime. e. Regional escalation: Iran responds to a Western attack with full force and against all its enemies – the United States, the Gulf states, and Israel. In such a scenario, Iran could attack Israeli and American targets in the Gulf with all of its (limited) capabilities, including threatening to close or actually closing the Strait of Hormuz. However, an assessment that an attack on Iran’s military nuclear facilities would necessarily lead to a large scale, prolonged regional war is highly questionable.15 A scenario of regional escalation would require the United States to intervene and would signiﬁcantly change the regional balance of power. Therefore, Tehran would choose such a response **only** if it did not fear that such a move would lead to further signiﬁcant harm to regime assets, because it would already feel a real threat to the survival of the regime, or as a last resort in an attempt to set the entire region ablaze in order to press for international intervention (apparently led by Russia) to achieve a ceaseﬁre as quickly as possible, and before the regime loses a large portion of its assets. Since this would be a **dangerous gamble**, the assessment is that Iran would seek to avoid such a response, and hence at the start of the crisis this is a scenario with very low probability.

No US strikes

Walt 13 (Stephen M. Walt is the Robert and Renée Belfer professor of international relations at Harvard University, 3/18/2013, "Why I Hope Obama is Bluffing",walt.foreignpolicy.com/posts/2013/03/18/why\_i\_hope\_obama\_is\_bluffing)

Suppose there were a massive intelligence failure on the part of the IAEA and all of America's intelligence agencies and that Iran had a totally secret nuclear weapons development program. (This is precisely the scenario that hawks routinely warn about, by the way, especially whenever National Intelligence Estimates reach more optimistic conclusions). Suppose further that we got up one morning next week and discovered that Iran had successfully tested a nuclear bomb. And then suppose Iran provided us with additional information demonstrating that they had already manufactured a dozen more and that we had no idea where they were hidden. In short, imagine that the hawks' worst fears had all come true and that the Islamic Republic had become a nuclear weapons state overnight. What do you suppose we would do? Would President Obama (or anyone else) immediately order a preventive war? Not on your life, because he could not be sure that Iran wouldn't find some way to get a bomb on American soil or use it against some close U.S. ally. Would Obama immediately announce a blockade or threaten an invasion, in order to persuade Iran to voluntarily give up its weapons? Hardly, because we couldn't put enough pressure on them to force compliance. Would the U.S. decide to abandon its regional allies and let Iran dominate the Persian Gulf? Of course not -- for the same reasons that it didn't abandon NATO when the Soviets tested a bomb in 1949 and it didn't abandon Japan and South Korea when China and North Korea tested nuclear weapons. No, if Iran ever did cross the nuclear weapons threshold, the United States would do what it has always done when an adversary went nuclear: It would fall back on containment and deterrence. We would extend our far more potent nuclear umbrella over key regional allies, and we would send clear and unmistakable messages to Tehran about the dire consequences that would befall them if their new arsenal were ever used by anyone. Getting a bomb wouldn't transform Iran into a global superpower, and it certainly wouldn't allow them to blackmail their neighbors or launch a war of conquest. The only thing this situation would prevent the United States from doing is forcible regime change, which is something we shouldn't be contemplating in any case.

No impact to prolif

Colin H. **Kahl 12**, security studies prof at Georgetown, senior fellow at the Center for a New American Security, was Deputy Assistant Secretary of Defense for the Middle East, “Not Time to Attack Iran”, January 17, <http://www.foreignaffairs.com/articles/137031/colin-h-kahl/not-time-to-attack-iran?page=show>

Kroenig argues that there is an urgent need to attack Iran's nuclear infrastructure soon, since Tehran could "produce its first nuclear weapon within six months of deciding to do so." Yet that last phrase is crucial. The International Atomic Energy Agency (IAEA) has documented Iranian efforts to achieve the capacity to develop nuclear weapons at some point, but there is no hard evidence that Supreme Leader Ayatollah Ali Khamenei has yet made the final decision to develop them. In arguing for a six-month horizon, Kroenig also misleadingly conflates hypothetical timelines to produce weapons-grade uranium with the time actually required to construct a bomb. According to 2010 Senate testimony by James Cartwright, then vice chairman of the U.S. Joint Chiefs of Staff, and recent statements by the former heads of Israel's national intelligence and defense intelligence agencies, even if Iran could produce enough weapons-grade uranium for a bomb in six months, it would take it at least a year to produce a testable nuclear device and considerably longer to make a deliverable weapon. And David Albright, president of the Institute for Science and International Security (and the source of Kroenig's six-month estimate), recently told Agence France-Presse that there is a "low probability" that the Iranians would actually develop a bomb over the next year even if they had the capability to do so. Because there is no evidence that Iran has built additional covert enrichment plants since the Natanz and Qom sites were outed in 2002 and 2009, respectively, any near-term move by Tehran to produce weapons-grade uranium would have to rely on its declared facilities. The IAEA would thus detect such activity with sufficient time for the international community to mount a forceful response. As a result, the Iranians are unlikely to commit to building nuclear weapons until they can do so much more quickly or out of sight, which could be years off.

#### No escalation

Fettweis, Asst Prof Poli Sci – Tulane, Asst Prof National Security Affairs – US Naval War College, ‘7

(Christopher, “On the Consequences of Failure in Iraq,” *Survival*, Vol. 49, Iss. 4, December, p. 83 – 98)

Without the US presence, a second argument goes, nothing would prevent Sunni-Shia violence from sweeping into every country where the religious divide exists. A Sunni bloc with centres in Riyadh and Cairo might face a Shia bloc headquartered in Tehran, both of which would face enormous pressure from their own people to fight proxy wars across the region. In addition to intra-Muslim civil war, cross-border warfare could not be ruled out. Jordan might be the first to send troops into Iraq to secure its own border; once the dam breaks, Iran, Turkey, Syria and Saudi Arabia might follow suit. The Middle East has no shortage of rivalries, any of which might descend into direct conflict after a destabilising US withdrawal. In the worst case, Iran might emerge as the regional hegemon, able to bully and blackmail its neighbours with its new nuclear arsenal. Saudi Arabia and Egypt would soon demand suitable deterrents of their own, and a nuclear arms race would envelop the region. Once again, however, none of these outcomes is particularly likely.

Wider war

No matter what the outcome in Iraq, the region is not likely to devolve into chaos. Although it might seem counter-intuitive, by most traditional measures the Middle East is very stable. Continuous, uninterrupted governance is the norm, not the exception; most Middle East regimes have been in power for decades. Its monarchies, from Morocco to Jordan to every Gulf state, have generally been in power since these countries gained independence. In Egypt Hosni Mubarak has ruled for almost three decades, and Muammar Gadhafi in Libya for almost four. The region's autocrats have been more likely to die quiet, natural deaths than meet the hangman or post-coup firing squads. Saddam's rather unpredictable regime, which attacked its neighbours twice, was one of the few exceptions to this pattern of stability, and he met an end unusual for the modern Middle East. Its regimes have survived potentially destabilising shocks before, and they would be likely to do so again.

The region actually experiences very little cross-border warfare, and even less since the end of the Cold War. Saddam again provided an exception, as did the Israelis, with their adventures in Lebanon. Israel fought four wars with neighbouring states in the first 25 years of its existence, but none in the 34 years since. Vicious civil wars that once engulfed Lebanon and Algeria have gone quiet, and its ethnic conflicts do not make the region particularly unique.

The biggest risk of an American withdrawal is intensified civil war in Iraq rather than regional conflagration. Iraq's neighbours will likely not prove eager to fight each other to determine who gets to be the next country to spend itself into penury propping up an unpopular puppet regime next door. As much as the Saudis and Iranians may threaten to intervene on behalf of their co-religionists, they have shown no eagerness to replace the counter-insurgency role that American troops play today. If the United States, with its remarkable military and unlimited resources, could not bring about its desired solutions in Iraq, why would any other country think it could do so?17

Common interest, not the presence of the US military, provides the ultimate foundation for stability. All ruling regimes in the Middle East share a common (and understandable) fear of instability. It is the interest of every actor - the Iraqis, their neighbours and the rest of the world - to see a stable, functioning government emerge in Iraq. If the United States were to withdraw, increased regional cooperation to address that common interest is far more likely than outright warfare.

## nsa

He’s already losing

Brendan Sasso, National Journal, 3/25/14, Why Obama and His NSA Defenders Changed Their Minds, www.nationaljournal.com/tech/why-obama-and-his-nsa-defenders-changed-their-minds-20140325

It was only months ago that President Obama, with bipartisan backing from the heads of Congress's Intelligence committees, was insisting that the National Security Agency's mass surveillance program was key to keeping Americans safe from the next major terrorist attack. They were also dismissing privacy concerns, saying the program was perfectly legal and insisting the necessary safeguards were already in place.

But now, Obama's full-speed ahead has turned into a hasty retreat: The president and the NSA's top supporters in Congress are all pushing proposals to end the NSA's bulk collection of phone records. And civil-liberties groups—awash in their newly won clout—are declaring victory. The question is no longer whether to change the program, but how dramatically to overhaul it.

Will cause a big fight

Tom Cohen, CNN, 3/25/14, Obama, Congress working on changes to NSA, www.cnn.com/2014/03/25/politics/white-house-nsa/

President Barack Obama and congressional leaders described similar proposals Tuesday for ending the National Security Agency's sweeping collection of bulk telephone records. Obama told reporters in The Netherlands that his intelligence team gave him a "workable" option for NSA reform that he said would "eliminate " concerns about how the government keeps the records known as metadata. At a news conference in Washington, the leaders of the House Intelligence Committee said they worked out their own bipartisan compromise on a similar proposal intended to alleviate what they characterized as unfounded fears of excessive government surveillance. The nearly simultaneous remarks demonstrated progress toward Obama's call in January for NSA changes in the aftermath of last year's classified leaks by former agency contractor Edward Snowden that revealed the magnitude of surveillance programs created in response to the September 11, 2001, terrorist attacks. Congressional battle coming However, the issue touches on deep political and ideological fissures between Republicans and Democrats, promising an extended battle in Congress over the necessary legislation -- especially in an election year.

Executive authority retreat now

Tom Cohen, CNN, 3/25/14, Obama, Congress working on changes to NSA, www.cnn.com/2014/03/25/politics/white-house-nsa/

Democratic Sen. Ron Wyden of Oregon, a leading critic of the NSA surveillance programs, said news of the White House plan amounted to an executive branch retreat. "For years, the executive branch said it was essential to have this information, that it was indispensable," Wyden said, noting he and colleagues argued against that notion. "Today's exciting news for the constitutional rights of the American people is the administration said they agree with us." Michelle Richardson, legislative counsel for the American Civil Liberties Union, called the reported White House plan "a crucial first step towards reining in the NSA's overreaching surveillance."