# 1AC

### PLAN

#### Plan:  The United States Federal Judiciary should conduct judicial ex post review of United States’ targeted killing operations that use drones, with liability falling on the government for any constitutional violation, on the grounds that the political question doctrine should not bar justiciability of cases against the military.

### 1AC – Allies

#### Advantage 1 is Allied Cooperation –

#### U.S. drone policy is more important than the spying and data scandal to European partners – it threatens the trans-atlantic relationship

Dworkin 7/17/13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “Actually, drones worry Europe more than spying” <http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/>)

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages. Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease. In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change. Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level. But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim. However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time. European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks. First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States. Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes. But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely. For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

#### Accountability over standards of imminence are impossible from executive internal measures – no one trusts Obama on drones – only the plans court action solves

Goldsmith 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with 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." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

#### Offering a remedy is key to solve backlash

Cullis 14 (Tyler, JD from the Boston University School of Law, specialized in international law, “Europe Shows Resistance to US Drone Policies”, http://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.

#### It is a legal problem not a political one – collapses NATO.

Parker 9/17/12 (Tom, former policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service (MI5), “U.S. Tactics Threaten NATO” <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461?page=1>)

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention. The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the United States and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future. As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts. The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

#### NATO prevents global nuclear war

Zbigniew Brzezinski 9, former U.S. National Security Adviser, Sept/Oct 2009, “An Agenda for NATO,” Foreign Affairs, 88.5, EBSCO

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

#### Courts don’t leak intel methods or classified information—this fear has been repeatedly dispelled by hundreds of successfully tried terrorism cases

Jaffer-director ACLU’s National Security Project-12/9/08 <http://www.salon.com/2008/12/09/guantanamo_3/> Don’t replace the old Guantánamo with a new one

The contention that the federal courts are incapable of protecting classified information — “intelligence sources and methods,” in the jargon of national security experts — is another canard. When classified information is at issue in federal criminal prosecutions, a federal statute — the Classified Information Procedures Act (CIPA) — generally permits the government to substitute classified information at trial with an unclassified summary of that information. It is true that CIPA empowers the court to impose sanctions on the government if the substitution of the unclassified summary for the classified information is found to prejudice the defendant, and in theory such sanctions can include the dismissal of the indictment. In practice, however, sanctions are exceedingly rare, and of the hundreds of terrorism cases that have been prosecuted over the last decade, none has been dismissed for reasons relating to classified information. Proponents of new detention authority, including Waxman and Wittes, invoke the threat of exposing “intelligence sources and methods” as a danger inherent to terrorism prosecutions in U.S. courts, but the record of successful prosecutions provides the most effective rebuttal.

#### No over-deterrence of military operations- government liability is rooted in the FTCA and it avoids the chilling associated with individual liability.

Kent, Constitutional Law prof, 13 (Andrew, Faculty Advisor-Center on National Security at

Fordham Law School, prof @ Fordham University School of Law- constitutional law, foreign relations law, national security law, federal courts and procedure, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” October 8, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330476>) \*\* Evidence is gender paraphrased

Because of sovereign immunity, federal officials are sued under Bivens in their so-called personal rather than official capacities.43 In theory, persons injured by actions of a federal official could also seek compensation by suing the agent’s employer, the United States Government for damages, but the sovereign immunity of the federal government blocks this route.44 The Federal Tort Claims Act (FTCA), originally enacted in 1946 and frequently amended since,45 effects a partial waiver of sovereign immunity by allowing suits directly against the federal government instead of officers (who might be judgment proof) and making the United States liable for injuries caused by the negligent or wrongful act or omission of any federal employee acting within the scope of ~~his~~ employment, in accordance with the law of the state where the act or omission occurred.46 Under the Westfall Act of 1988, the FTCA is the exclusive remedy for torts committed by federal officials within the scope of their employment, except for suits brought for violations of the Constitution.47 In other words, state law tort claims against individual official defendants are now generally barred. The Supreme Court takes the prospect of individual liability in damages for officials very seriously and has crafted immunity doctrines to soften the blow. The Court’s rulings provide the President of the United States and certain classes of officials defined functionally—prosecutors doing prosecutorial work, legislators legislating, judges doing judicial work and certain persons performing “quasijudicial” functions—with absolute immunity from money damages suits, generally for the reason that such suits would be likely to be frequent, frequently meritless, and uniquely capable of disrupting job performance.48 All other government officials are entitled to only “qualified immunity” from money damages suits. Under the qualified immunity doctrine, officials are liable only when they violate “clearly established” federal rights, that is, when “[t]he contours of [a] right [are] sufficiently clear that every reasonable official would have understood that what ~~he is~~ [they are] doing violates that right.”49 Because qualified immunity is not just a defense to liability but also “a limited entitlement not to stand trial or face the other burdens of litigation,”50 the Court’s doctrine encourages speedy resolution of immunity questions by judges. The policy reasons for the Court’s active protection of federal officials through a robust immunity doctrine, including fear of dampening the zeal with which officials perform their jobs because of fear of personal liability, are discussed below in Section V.A.

### 1AC – Yemen

#### Executive control over the definition of “imminence” makes its scope totally unlimited- makes drone overuse and abuse inevitable.

**Greenwald 13** (Glenn, J.D. from NYU, award-winning journalist, February 5th, 2013, "Chilling legal memo from Obama DOJ justifies assassination of US citizens," www.theguardian.com/commentisfree/2013/feb/05/obama-kill-list-doj-memo)

4. **Expanding the concept of "imminence" beyond recognition The memo claims that the president's assassination power applies to a senior al-Qaida member who "poses an imminent threat** of violent attack against the United States". **That is designed to convince citizens to accept this power by leading them to believe it's similar to** common and **familiar domestic uses of lethal force on US soil**: if, for instance, an armed criminal is in the process of robbing a bank or is about to shoot hostages, then the "imminence" of the threat he poses justifies the use of lethal force against him by the police. **But this rhetorical tactic is totally misleading**. **The memo is authorizing** assassinations against citizens in **circumstances far beyond this understanding of "imminence**". Indeed, **the memo expressly states that it is inventing "a broader concept of imminence"** than is typically used in domestic law. **Specifically, the president's** assassination **power "does not require that the US have clear evidence that a specific attack . . . will take place in the immediate future".** **The US routinely assassinates its targets not when they are engaged in or plotting attacks** but when they are at home, with family members, riding in a car, at work, at funerals, rescuing other drone victims, etc. **Many** of the early **objections to this new memo have focused on this warped and incredibly broad definition of "imminence**". The ACLU's Jameel **Jaffer told Isikoff that the memo "redefines the word imminence in a way that deprives the word of its ordinary meaning".** **Law Professor** Kevin Jon **Heller called Jaffer's objection "an understatement", noting that the memo's understanding of "imminence" is "wildly overbroad" under international law**. Crucially, Heller points out what I noted above: **once you accept the memo's reasoning** - that the US is engaged in a global war, that the world is a battlefield, and the president has the power to assassinate any member of al-Qaida or associated forces - **then there is no way coherent way to limit this power to places where capture is infeasible or to persons posing an "imminent" threat.** The legal framework adopted by the memo means the president can kill anyone he claims is a member of al-Qaida regardless of where they are found or what they are doing. The only reason to add these limitations of "imminence" and "feasibility of capture" is, as Heller said, purely political: to make the theories more politically palatable. But **the definitions for these terms are so vague and broad that they provide no real limits on the president's assassination power**. As the ACLU's **Jaffer says: "This is a chilling document" because** "it argues that the government has the right to carry out the extrajudicial killing of an American citizen" and **the purported limits "are elastic and vaguely defined, and it's easy to see how they could be manipulated."**

#### Indiscriminate strikes create Yemen instability and swell AQAP ranks – reducing strikes is key

Boyle Ph.D in Political Science, 13 (Michael J., Assistant Professor of Political Science at La Salle University in Philadelphia. “The costs and consequences of drone warfare,” International Affairs 89 : 1 (2013) 1–29. <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>)

The second major claim for the effectiveness of drone strikes is based on their ability to kill HVTs, defined as key operational and political leaders of Al-Qaeda and related groups. From the campaign trail to his time in office, Presi - dent Obama has consistently maintained that he would not hesitate to use lethal force to remove leading figures in Al-Qaeda. 44 Yet the actual record of drone strikes suggests that forces under his command have killed far more lower-ranked operatives associated with other Islamist movements and civilians than HVTs from Al-Qaeda. Peter Bergen has estimated that the drone strikes have killed 49 high-ranking ‘militant’ leaders since 2004, only 2 per cent of the total number of deaths from drone strikes. 45 The remaining 98 percent of drone strikes have been directed against lower-ranking operatives, only some of whom are engaged in direct hostilities against the United States, and civilians. Many of these actors pose no direct or imminent threats, but rather speculative ones, such as individ - uals who might some day attack the US or its interests abroad. 46 Even as Presi - dent Obama has increased the number of drone strikes, the number of HVTs killed has ‘slipped or barely increased’. 47 In 2010, a mid-ranking Haqqani network fighter concluded that ‘it seems they really want to kill everyone, not just the leaders’. 48 The decision to expand targeted killing to this scale and take aim at even low-ranking ‘foot soldiers’ is unprecedented and sets the Obama administra - tion’s drone programme apart in both scale and character from targeted killing operations elsewhere. 4 The extent to which the Obama administration has targeted lower-ranked operatives is not without consequences. Many of these lower-ranked operatives are densely connected to local tribal and clan structures. Their deaths in drone strikes may lead those connected to them by family and tribal ties to seek revenge, thus swelling the ranks of Al-Qaeda and its affiliate groups. As David Kilcullen and Andrew Exum have argued, ‘every one of these dead noncombatants repre - sents an alienated family, a new desire for revenge, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased’. 50 Moreover, the vast increase in the number of deaths of low-ranking operatives has deepened political resistance to the US programme in Pakistan, Yemen and other countries. For example, while Pakistani officials have supported and even celebrated drone strikes against high-ranking operatives such as Baitullah Mehsud, they have taken a dimmer view of CIA attempts to kill mere foot soldiers with similar strikes. 51 Such strikes tend to generate more political pressure on the Pakistani government to oppose the US than strikes against well-known figures whose leadership in militant networks was indisputable. Pakistani opposition leader Imran Khan has pointed directly to the deaths of civilians and low-level operatives as the reason why, if elected to office, he would order the air force to shoot down US drones. 52 A similar dynamic has occurred in Yemen, where US drone strikes have driven more civilians into the ranks of Al-Qaeda and strength - ened local insurgent forces challenging the Yemeni government. 53

#### The plan balances good strikes with bad ones---solves overuse while preserving the option

Jonathan Hafetz 13, Associate Professor of Law, Seton Hall University School of Law, 3/8/13, “Reviewing Drones,” http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html

Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge. Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate. Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed. Government officials, moreover, would be liable only if they violate clearly established legal standards. This limitation helps avoid chilling the use of drones where the law is uncertain, while still deterring their misuse.

#### AQAP poses the largest threat to the United States – they have the means and motive for attack

Cilluffo et al 13 Subcommittee Hearing: Understanding the Threat to the Homeland from AQAP, September 18, 2013, Mr. Frank J. Cilluffo, Associate Vice President, Director, Homeland Security Policy Institute, The George Washington University, Ms. Katherine Zimmerman, Senior Analyst, The American Enterprise Institute, Mr. Brian Katulis, Senior Fellow, Center for American Progress, http://www.securityassistance.org/content/understanding-threat-homeland-aqap#sthash.0ztnhYSX.dpuf

Yet to do so would be a real mistake. Notwithstanding the importance of Syria as a threat to (U.S.) national, regional, and international security—and as a situation that terrorists may seek to exploit, there is a broader range of forces and factors that pose serious and ongoing threats to the United States. One critical example is the terrorist group AQAP which is currently the al Qaeda affiliate that poses the greatest threat to the U.S. homeland. Why AQAP Matters  AQAP is the most active of al Qaeda’s affiliate groups. AQAP has directly targeted the U.S. homeland as well as U.S. interests abroad on multiple occasions. AQAP (and Yemen) is home to one of the world’s most dangerous and innovative bomb- makers who has actively tried and shown himself to be able to circumvent U.S. countermeasures intended to thwart his improvised explosive devices. AQAP has invested significantly in encouraging radicalization and “lone wolf” homegrown attacks, including “Inspire” magazine. AQAP’s efforts in this regard propagate the ideology that underpins al Qaeda as a movement, and provide the “how- to” do it yourself in terrorist tactics, techniques, and procedures. AQAP is currently led by Nasser al-Wuhayshi, formerly a direct confidant of Osama bin Laden, who was recently named the number two figure within al Qaeda writ large. The number two leadership slot is symbolically important but also operationally so, particularly as the boundaries between al Qaeda components (core and affiliates) fade away and their activities converge. AQAP has for some time assumed a leadership role within al Qaeda as a whole, and has cooperated with multiple al Qaeda affiliates. AQAP’s leadership position offers a conduit to foster intent in others to attack the U.S. homeland and U.S. interests. AQAP was established in 2009 by the merger of Yemeni al Qaeda with Saudi al Qaeda elements that were driven out of the Kingdom. The influence of Yemeni al Qaeda was felt long before, however, and pre-dated 9/11. Bear in mind that Yemen, the birthplace of Osama bin Laden, was the host country of the terrorist attack on the U.S.S. Cole in 2000, in which seventeen U.S. sailors perished. Since its creation, AQAP has demonstrated ample evidence of intent to attack the U.S. homeland and U.S. interests, including the 2009 Christmas Day airliner bomb attempt by “underwear bomber” Umar Farouk Abdulmutallab the 2010 cargo / plane bomb attempt in which explosives were concealed in printer cartridges; and the spring 2012 concealed explosives plot.1 The first two of these attempted attacks were overseen by AQAP’s former external operations leader Anwar al-Awlaki. AQAP has managed to attract western recruits or others with the ability to travel, to facilitate such attacks. In addition to Abdulmutallab, examples include American Sharif Mobley, who is in the custody of the Yemeni government following his shooting of two Yemeni security guards, and British national Minh Qhang Pham, who was indicted on terrorism charges in New York in 2012. Most recently, this August (before all eyes turned to Syria and the regime’s use of chemical weapons on its own people there), there was much discussion of a threat stream emanating from Yemen, where AQAP is based. A spate of articles appeared in the press reporting on a so-called “conference call” between al Qaeda Senior Leadership (AQSL) figure Ayman al- Zawahiri and a dozen chiefs of al Qaeda affiliates including AQAP’s Nasser al-Wuhayshi.2 The intelligence suggested that a major terrorist plot directed against western targets was afoot and prompted a range of countermeasures including a U.S. decision to shut temporarily nineteen embassies and consulates. The plot is said to have involved “a new generation of liquid explosive, currently undetectable,” which U.S. officials described as “`ingenious’.”3 In addition to these various demonstrations of intent to attack, AQAP has also evidenced a record of innovation in terror tradecraft. AQAP’s lead bomb-maker Ibrahim al-Asiri personifies this, as the mastermind behind the devices used in the 2009 attempted assassination of the Saudi Interior Minister, the 2009 Christmas Day attack, the 2010 cargo printer bomb, and plots that involve surgically implanted explosives. Over and above his own considerable expertise, al-Asiri has been training the next generation of bomb-makers.4 AQAP has also expressed an interest in attacks using biological warfare agents, including ricin.5 Encouraging radicalization and “lone wolf” homegrown attacks has been a further hallmark and focus of AQAP. Cases of this type inspired by AQAP—and Anwar al-Awlaki in particular— include the attack on Fort Hood in 2009 by Major Nidal Hasan, the attack on a military recruiting center in Arkansas in the same year by Carlos Bledsoe, the 2010 attack on a British parliamentarian by student Roshonara Choudhry, and the Boston marathon bombing earlier this year. AQAP “bridge figure” Anwar al-Awlaki possessed an almost unmatched ability to recruit and inspire new and existing members to al Qaeda’s cause and ideology. Though killed in a drone strike in 2011, Awlaki’s voice lives on including in the many radical and violent “sermons” that he recorded in multiple media formats—and continues to resonate. Ideology is the lifeblood that sustains al Qaeda, and instruments such as “Inspire” magazine are intended to fuel the fire, including the “homegrown” component. Although the original authors and publishers of “Inspire” (Awlaki and colleague Samir Khan) are now deceased, the magazine continues and its production values have improved recently. Immediately following the death of Awlaki and Khan, there was a highly noticeable degradation of “Inspire”; the more recent issues of Inspire, including the 11th issue released after the Boston marathon attack, once again demonstrate high production quality and appear to be written by a native English speaker. The linkages between AQAP and other al Qaeda affiliates and terrorist groups are another source of significant concern. As mentioned, current AQAP leader al-Wuhayshi is the overall number two in al Qaeda.6 He is also directly connected to Osama bin Laden, having served as his secretary until 2001. For him, the battle may be personal; being a direct protégé of bin Laden may add an extra layer of resolve and determination to his actions. Other important links exist, however, beyond al-Wuhayshi’s connection with AQSL. These include AQAP ties to al- Shabaab in Somalia, as discussed by convicted terrorist leader Ahmed Warsame in his guilty plea7; and a reported AQAP role in the attack on the U.S. mission in Benghazi.8

#### And, terrorism escalates and causes extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

#### Terrorists have means and motive now-expertise and materials are widespread and multiple attempts prove.

**Jaspal, Quaid-i-Azam University IR professor, 2012**

(Zafar, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, <http://pu.edu.pk/images/journal/pols/pdf-files/Nuclear%20Radiological%20terrorism%20Jaspa_Vol_19_Issue_1_2012.pdf>, ldg)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dual-use nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth.x Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187)

#### AQAP will attack Saudi oil

Ahram 2013 (“Saudi oil facing security threats: Report”, 11-27, <http://english.ahram.org.eg/NewsContent/2/8/87627/World/Region/Saudi-oil-facing-security-threats-Report.aspx>, ldg)

The Washington-based Institute for Gulf Affairs has issued a report highlighting security threats facing Saudi Arabia's oil infrastructure in a domestic and regional context. The report, Security Threats to Saudi Arabia’s Oil Infrastructure, calls on the government to enhance its security measures to ensure the protection of oil wells, refineries, export terminals and other facilities, despite an already "impressive array" of protective steps. "As the world's oil 'super power', any threat to Saudi Arabia's oil security could significantly affect the international energy market," the report says. As an example, the 71-page document refers to the "failed attack" on the Abqaiq processing plant in 2006 that saw a rise in Brent crude oil prices from $60.54 to $62.60 on London's ICE futures exchange. Though mentioning the "ongoing conflicts" in Bahrain, Yemen and Iran's nuclear issue, the report highlights domestic issues affecting the kingdom. "Sections of the pipeline network run through unstable population centres. Violence across the region demonstrates the facility with which attacks on pipelines can negatively impact crude oil output," it says. The report says the interrelationship between domestic conditions and oil security has been rooted in widespread poverty and corruption in the oil-rich state that had led to the emergence of "vigilante groups and disaffected Saudi citizens unconnected to any particular religious or nationalist agenda." Al-Qaeda The document devotes four pages to Al-Qaeda Organisation in the Arabian Peninsula's (AQAP) role in endangering the country's oil industry. Instability in Saudi Arabia would directly benefit Al-Qaeda because it would target the energy sector, undermine the Al-Saud monarchy and exploit the US dependence on Saudi crude oil, the report states, adding that there have been subtle strategic shifts in Al-Qaeda's paradigm since the death of its founder Osama Bin Laden. "No longer is the terrorist organisation focused on large scale attacks against the United States but instead emphasising regional struggles at a time when that message is more likely to resonate with Muslims in the Middle East and specifically in Saudi Arabia," it points out. The report says AQAP has been able to recruit members from "prominent Sunni families with high positions in government," referring to two suicide bombers who attacked the Abqaiq facility from the families of government ministers. The first suicide bomber, Abdullah Abdulaziz Al-Twaijiri, is related to Khaled Al-Twaijri, King Abdullah's personal secretary and closest advisor, the report asserts, and says many members of the Al-Twaijiri family also enjoy senior positions in the military and security apparatus. On the fifth anniversary of the 11 September 2001 attacks, Al-Jazeera broadcasted a video message from Ayman Al-Zawahiri which reiterated this threat. Zawahiri said: "There must be a focus on [the West's] economic interests and in particular on stopping the theft of Muslims' plundered petroleum."

#### Attacks on Saudi oil facilities collapse the global economy

Gartenstein-Ross, Center for the Study of Terrorist Radicalization director, 2011 (Daveed, “Osama’s Oil Obsession”, 5-23, <http://www.foreignpolicy.com/articles/2011/05/23/osamas_oil_obsession>, ldg)

Bin Laden long believed that undermining the U.S. economy was central to his war against the United States -- an outlook that has permeated al Qaeda's ranks and will outlive him. Al Qaeda views attacking the oil supply as a smart strategy for good reason: America's reliance on oil for its transportation needs makes it a commodity that, if disrupted or made unaffordable, will cause the U.S. economy to collapse. The United States holds only 3 percent of conventional global oil reserves, yet uses 25 percent of the world's daily production. It imports more than 66 percent of its oil, amounting to a daily purchase of 12 million barrels of imported oil. A significant rise in the price of oil due to a terrorist attack would deal al Qaeda's main enemy a severe economic blow. The threat that keeps counterterrorism officials up at night is a massive strike on Saudi oil installations, taking advantage of the limited number of production hubs to knock a significant amount of oil off the world market. The kingdom relies on its Abqaiq facility to process two-thirds of its crude oil, and on two primary terminals (Ras Tanura and Ras al-Ju'aymah) to export its oil to the world. The economic impact of a successful attack on one of these targets would be tremendous: Gal Luft and Anne Korin of the Institute for the Analysis of Global Security estimate that, if a terrorist cell hijacked a plane and crashed it into either the Abqaiq or Ras Tanura facilities in a 9/11-style attack, it could "take up to 50% of Saudi oil off the market for at least six months and with it most of the world's spare capacity, sending oil prices through the ceiling." Former CIA case officer Robert Baer agrees, writing his 2004 book Sleeping with the Devil, "A single jumbo jet with a suicide bomber at the controls, hijacked during takeoff from Dubai and crashed into the heart of Ras Tanura, would be enough to bring the world's oil-addicted economies to their knees, America's along with them." The prospect of a terrorist strike is so worrying because of the critical role that Saudi oil production plays in the world economy. Saudi Arabia produces almost 10 million barrels of oil per day, and is the only country able to maintain excess daily production capacity of around 1.5 million barrels per day (a "swing reserve") to keep world prices stable. Al Qaeda has certainly tried to attack the kingdom's key oil targets. The threat of terrorist attacks on Saudi oil infrastructure first became a reality in September 2005, when a 48-hour shootout with Islamic militants at a villa in the Saudi seaport of al-Dammam ended with Saudi police introducing light artillery. When police entered the compound in the aftermath of the battle, they found not only what Newsweek described as "enough weapons for a couple of platoons of guerilla fighters," but also forged documents that would have given the terrorists access to the country's key oil and gas facilities. Saudi Interior Minister Prince Nayef bin Abdul Aziz confirmed to the newspaper Okaz that the cell had planned to attack energy facilities, noting that "there isn't a place that they could reach that they didn't think about."

#### Nuclear war

Kemp 10 Geoffrey, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, pg. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### 1AC - PQD

#### Invocation of the political question doctrine in national security contexts unravels attempts to apply civilian justice to the military—line drawing fails, only a clear signal solves

Vladeck 12 (Stephen, Professor of Law and Associate Dean for Scholarship, American University, Washington College of Law, “THE NEW NATIONAL SECURITY CANON,” June 14, http://www.aulawreview.org/pdfs/61/61-5/Vladeck.website.pdf)

But if what in fact has taken place over the last decade is a testament to a longer-term pattern, one that neither the political branches nor the Supreme Court disrupt in the near future, then we must confront a more alarming possibility: that as these “national security”-based exceptions increasingly become the rule in contemporary civil litigation against government officers—whether with regard to new “special factors” under Bivens, new bases for contractor preemption under Boyle, proliferation of the political question doctrine, or even more expansive reliance upon the qualified immunity defense—the line between the unique national security justifications giving rise to these cases and ordinary civil litigation will increasingly blur. Thus, wherever one comes down on the virtues and vices of this new national security canon, perhaps the most important point to take away is the need to carefully cabin its scope. Otherwise, exceptions articulated in the guise of such unique fact patternss could serve more generally to prevent civil liability for government misconduct and to thereby dilute the effectiveness of judicial review as a deterrent for any and all unlawful government action—not just those actions undertaken in ostensibly in defense of the nation.

#### Japanese posturing is inevitable—but the constitutional scope of using force is key to stability in East Asia

Ryo 1/16/14 (Correspondent for Waseda Opinions, “Why Article 9 of Japan’s Constitution should be amended” <http://wui.weblogs.jp/advanced/2014/01/why-article-9-o-5fac.html>)

The government has dodged the question of the constitutionality of engaging in war with a tricky interpretation of Article 9, saying that it restricts the possession of forces with strike capability, but not the minimum forces necessary for self-defense. Of course, this interpretation has a fault. It is difficult to distinguish “the minimum forces necessary for self-defense” from “strike capability.” There is no weapon limited to defensive use. No one knows for sure where the line is drawn that the government cannot cross, and this raises a question on the normative power of the Constitution. It should also be noted that Japan has kept its own large-scale standing army: the Japan Self-Defense Forces (JSDF). While the Self-Defense Forces Act and other acts set limitations on JSDF activities, it is just a law passed in normal proceedings and can be easily amended. When the JSDF was established, its geographical sphere was limited only to Japan. In fact however, the role of the JSDF has expanded. At the height of the Afghanistan and Iraq wars, the JSDF was mobilized abroad to support U.S forces. In Somalia, the JSDF sent its warships abroad to protect maritime security. It is also worth noting that Japan is fifth in the world in terms of military spending. This year Japan announced a 49 billion dollar defense budget. Some do have concerns over Japan’s constitutional recognition of the JSDF. As mentioned, the JSDF has operated abroad in places like Iraq, Afghanistan, and Somalia. The concern is if the JSDF continues to operate outside of Japan, the government will no longer abide by the Constitution’s stipulation of only maintaining “the minimum forces necessary for self-defense,” and that there is a risk that a transient nationalistic fever will lead to Japan repeating the same mistakes it made in World War II. A member of the Communist Party in China told me, “Japan has a history of aggression and a constitutional remilitarization will spread fear in Asia the same as it did in the past.” He also said, “The difference of historical awareness, which is evident in a number of politicians’ visits to Yasukuni shrine as well as their historical take on the Nanjing atrocity, causes mistrust towards Japan.” It is certainly quite understandable that the JSDF unnerves neighboring countries fearing the risk of war. Therefore, Japan needs to reflect on its possession of the JSDF and on its Constitution, and the Constitution should set limitations on the role of the JSDF. However, the LDP’s revision draft shows that Prime Minister Abe does not intend to rewrite all provisions in Article 9. The draft only amends Article 9 (2), which bars the possession of armed forces, but still upholds Article 9 (1), which renounces war. Also, Abe said in the Diet that he upholds the Murayama statement, issued by former Prime Minister Tomiichi Murayam in 1995 on the 50th anniversary of the end of World War II, which recognizes Japan’s history and apologizes for its past colonizations and atrocities. No prime minister since Murayama has tried to amend the Murayama statement officially. Although rewriting the constitution is contentious, it is the reasonable answer to the reality Japan faces. If Article 9 is not revised, then the contradictory roles of Japan’s JSDF will continue to cause uncertainty in determining what it means to defend one’s own security. Also, perhaps the lack of clear constitutional provisions might lead to Japan undermining the rule of law and repeating the history no one wants repeated. A face-to-face meeting with China and Korea to clearly state Japan’s position may allow the revision to move forward without unwanted repercussions.

#### Japan currently models the U.S. political question doctrine – that stifles judicial review and results in expansive interpretations of Japanese war powers in Article 9

Martin 8/4/12 (Craig, associate professor of Law at the Washburn University School of Law, and frequent visiting lecturer at Osaka University Graduate School of Law and Politics, “Why Japan should amend its war-renouncing Article 9” <http://www.japantimes.co.jp/opinion/2012/08/04/commentary/why-japan-should-amend-its-war-renouncing-article-9/#.Uu2DIxCwIax>)

Such constitutional war powers provisions, which date back to the U.S. Constitution, and which have theoretical origins in the writings of Kant, Madison and others, are becoming increasingly common in the constitutions of democracies all around the world. Such provisions are based on the idea that it is important for the direct representatives of the people, who will be paying for and often dying in the wars decided upon by executive branch of government, to have a direct say in the decision-making process. Moreover, requiring legislative approval, and thus a separation of the power to decide on making war, ensures wide public debate with intense interrogation of the government’s rationales for wanting to use force. This makes for better decisions, and makes military misadventure less likely. The convention for Diet approval already exists in Japan, and it is indeed criticized as being cumbersome and time consuming. But the decision to engage in armed conflict should be difficult, and if the government cannot convince the legislature that such use of force is necessary, then it suggests that the policy is indeed not required. Finally, a new paragraph four would establish an explicit authority and responsibility for the courts to exercise their power of judicial review of government decisions or actions alleged to be in violation of Article 9. The Constitution already confers upon the Japanese courts robust powers of judicial review, and establishes that the courts are the ultimate authority for interpreting the Constitution, but the Supreme Court has largely abdicated this authority in the context of enforcing Article 9. Through dubious application of the “political question” doctrine (a controversial doctrine developed by American courts to insulate certain types of issue as being non-justiciable by the courts, primarily because their resolution falls under the authority of another branch of government), and the creation of increasingly narrow grounds for “standing” (the legitimate legal basis upon which one can commence constitutional claims) the Supreme Court has almost entirely insulated Article 9 from any possible enforcement by the courts. This has greatly weakened the provision, and has more generally undermined the scheme of constitutional separation of powers. An explicit provision is thus required to establish judicial review powers with respect to Article 9 itself. It should provide for a broad range of possible remedies, and it should grant broad standing so that regular citizens could advance claims when the government is perceived to have violated the provision. This is just the summary of one proposal, offered as a basis for further discussion. But such discussion among defenders of Article 9 is urgently required. When the language of Article 9 was being debated in the Diet in 1946, it was argued that Article 9 would put Japan in the vanguard of a new movement toward international peace. The constraint on the use of force in paragraph one has indeed effectively operated to shape Japanese foreign policy, such that it has not been in an armed conflict in 65 years. Moreover, Article 9 has helped to foster pacifism as a central strand of Japan’s post-war national identity. Nonetheless, the international system has not evolved as envisioned in 1946. The world and Japan’s role in it have changed, and the conflicts over the proper interpretation of the Constitution have only grown over time. Article 9 itself must be amended in recognition of these shifting realities if it is not to be revised into oblivion or made utterly irrelevant by policies that violate it with impunity. In short, Article 9 must be amended to help preserve it.

#### Japanese court activism checks executive re-interpretation of article 9– only this prevents regional misperceptions that spark conflict

Martin 7 (Craig, associate professor of Law at the Washburn University School of Law, and frequent visiting lecturer at Osaka University Graduate School of Law and Politics, “The Case Against “Revising Interpretations” of the Japanese Constitution” <http://japanfocus.org/-craig-martin/2434>)

It is not within the authority of the executive to mandate interpretations of the Constitution. But if it is not within the authority of the executive to mandate constitutional interpretations, at least the executive is a branch of government. The “panel of experts” established by the executive, to the extent that it is being called upon to provide an interpretation that will be relied upon by the government as a means of legitimizing its policies and persuading the other branches of government that the “re-interpretation” is valid and correct, has no legitimacy or authority whatsoever to engage in constitutional interpretation, and is a body not contemplated in any manner by the Constitution. Of course, policies and laws based on new interpretations of the Constitution can be challenged in court, and so some may think that the concern being expressed here is exaggerated. But given the timidity of the courts – particularly the Supreme Court – when called upon to enforce Article 9, there is good reason to question whether the courts would step in to correct any such “re-interpretation”. Moreover, as we will discuss in the next section, there is cause for concern that the government is seeking to use this “panel of experts” to further exclude the courts from any discourse on Article 9 issues.[13] The Legitimate Interpreters – the Courts How has the judiciary, as the branch of government with the authority under the Constitution to interpret the Constitution, actually performed in enforcing Article 9 of the Constitution? We should begin by reviewing briefly the power of judicial review that the courts enjoy under the Constitution. As noted above, Article 81 provides that the courts are vested with the authority to interpret the Constitution and determine the constitutionality of any law, order, regulation or other act of government. In the very first case to come before it on the issue of Article 9, the Supreme Court in 1952 decided that judicial review generally was limited to ex post facto consideration of concrete cases, in the American tradition, as opposed to permitting requests, either by private litigants or the government, for determination of hypothetical questions on the constitutionality of prospective events.[14] Thus, the government cannot refer the question of whether, for example, a government policy permitting the deployment of Maritime Self Defense Force (MSDF) ships in defense of US vessels in international waters would violate Article 9, as would be possible in Germany or Canada, to name just a couple of constitutional democracies with a system that permits constitutional references. Justices of the Supreme Court of Japan, those with the constitutional authority to interpret the Constitution Nonetheless, the courts in countries that have followed the American model of judicial review, in which courts are limited to the consideration of concrete cases, not only function as the final guardian and interpreter of the nation’s constitution, but many have done so in a very robust fashion. The Supreme Court of the Unites States is itself a prime example. What is more, where there is no general “reference” jurisdiction of the courts, it may be argued that it is all the more important that the courts establish a broad basis for standing (that is, the criteria for permitting one to commence constitutional claims), so that concrete cases involving the constitutionality of government acts can be brought before the courts. It is precisely because the courts of Japan, particularly the Supreme Court, have so narrowed both their own jurisdiction and the basis for standing to commence constitutional claims, that one has to be concerned about the Abe government’s “re-interpretation” efforts. There are two significant Supreme Court decisions on Article 9. In the Sunakawa case, decided in 1959, shortly before the US-Japan Security Treaty was to be renewed, the defendants to criminal proceedings for trespassing on a US Forces base challenged the constitutionality of the US-Japan Security Treaty and the presence of US military forces in Japan. Article 9(2) provides that “land, sea, and air forces as well as other war potential will never be maintained”, and the defendants argued that US Forces in Japan offended this clause. The trial court acquitted them on the basis of this argument, but the Supreme Court overturned the decision on the grounds that the status of the treaty was a “political consideration” best left to the cabinet and the legislature, and that only if government policy was “obviously unconstitutional” (whatever that means) should the courts intervene. The Court went on to comment, however, that Article 9 did not deprive Japan of the inherent right of self-defense, and that such measures or arrangements that were limited to the purpose of protecting Japan would not therefore be inconsistent with Article 9. Finally, the Court noted that the US Forces in Japan were not under the command and control of the Japanese government, and thus could not constitute military forces or “war potential” maintained by Japan so as to offend Article 9.[15] The clear implications of these comments, of course, were that actions or arrangements that were not strictly for the defense of Japan, and military forces or other war potential that were under the command of the Japanese government, might be held to be in violation of Article 9. When the constitutionality of the SDF itself came before the Supreme Court in 1982, however, the Court again dodged the issue, and in the process narrowed the standing for claims under Article 9 to a degree that makes them all but impossible. In the Naganuma case a number of residents in Hokkaido challenged the constitutionality of the SDF and the US-Japan Security Treaty within the context of a plan to develop a missile site on a forestry reserve. They did so on the basis that the decision of the Minister of Agriculture and Forestry to convert the forestry reserve had been made for an improper purpose, and one not in the public interest; and also that they would suffer harm, both in terms of direct damage to the water table caused by the construction, and more indirect harm in that their neighborhood would be thereby transformed into a high-value target in the event of armed conflict. While their arguments were accepted by the lower court,[16] on final appeal the Supreme Court dismissed their application on the basis that none of the applicants had a direct legal interest implicated by either the decision of the Minister or the construction of the missile site, since the SDF had (after the judgment on the application by the lower court) taken special measures to ensure that there would be no harm to the water table. Thus, regardless of whether the Minister’s decision had been for an improper purpose, or whether the SDF itself existed in violation of Article 9, the applicants had no standing to make a claim.[17] The Supreme Court has not explicitly relied upon the “political question” doctrine since the Sunakawa decision, but it has in other constitutional cases emphasized the importance of deferring to the discretion of the cabinet or legislature. Moreover, just last year it relied on the narrowest interpretation of direct legal standing as a basis for dismissing a constitutional challenge to the Prime Minister’s visits to Yasukuni Shrine.[18] It is with this history in mind that one must consider the intentions of the Abe government in establishing the “panel of experts”, and question how its “re-interpretation” will be used. The courts have so narrowed the basis for standing that virtually no one other than an SDF member ordered to deploy in some collective security operation in accordance with the new policy, would have standing to challenge the policies and laws flowing from the “re-interpretation”. In the unlikely event that a claim actually got past those preliminary hurdles, one can see how the government’s arguments to invoke the “political question” doctrine and deference to government discretion would be squarely based on how the government established the “panel of experts”. The argument would be made that not only is the question of how the government deploys its forces, in accordance with its treaty obligations to the US and under the UN Charter, entirely within the realm of politics and foreign policy rather than law, but that the government established its policy in the most careful and deliberate fashion, taking the advice of a “panel of experts” that deliberated for months on the issue before advising cabinet on its views. Thus, so the argument would run, the courts should not interfere in this complex area of governmental discretion. In my view such an argument is not in the least bit convincing, since the question that would be before the court is in fact a purely legal one.[19] The question would be whether the actions of the government in engaging in some collective security operation, and the enabling regulations or laws pursuant to which such action was undertaken, constituted a violation of the prohibition in Article 9 against the use or threat of use of force for the purposes of settling international disputes. It is a mischaracterization to argue that the question is “political”, unless one merely means that it has political ramifications. That of course does not alter the fundamentally legal nature of the issue at hand. There are, indeed, few important constitutional questions that are not politically sensitive, or the deciding of which will not have significant political ramifications. But that does not make the question a “political question” that is therefore outside of the jurisdiction of the courts. The point, however, is that the Supreme Court of Japan has been persuaded by such arguments in the past, or perhaps more accurately, has relied upon such arguments as a cover for avoiding the risks of confrontation with the other branches of government. And the effort to develop this “re-interpretation” has to be examined in that context. In the circumstances of a weak Court and limited standing to advance claims for court interpretations of the Constitution, expert “re-interpretations” have the potential to assume an importance and an air of validity that can be exploited by the government, notwithstanding how illegitimate the exercise may be. The “Re-Interpretation” Sought is Unreasonable The final argument to be made against this attempt by the Abe government to “re-interpret” Article 9 is that the specific interpretation that the government seeks to obtain is simply not one that can be reasonably reconciled with the language of the Constitution. Massive amounts have been written on the interpretation of Article 9, and it is obviously an issue of considerable controversy, which we can only touch on here. But it is well to begin by recalling that Article 9 specifically provides that: (i) Japan renounces war as a sovereign right of the nation, and the use or threat of use of force as a means of settling international disputes; (ii) Japan will not maintain land, sea and air forces, as well as any other war potential; and (iii) the rights of belligerency of the state will not be recognized. The Cabinet Legislation Bureau in 1954 provided the government with an interpretation of Article 9 according to which Japan was not denied the right to self-defense under Article 9, and Japan was entitled to maintain such limited military forces that comprised the minimum necessary to defend the country against direct attack. Thus, pursuant to this understanding of Article 9, Japan could not maintain “offensive” weapons systems, or deploy forces abroad.[20] The government developed its policies in accordance with that interpretation, and as we have seen earlier, the Supreme Court obliquely acknowledged the validity of that interpretation in the Sunakawa decision. This interpretation leads, of course, to all kinds of tortured arguments over what constitutes defensive weapons as opposed to offensive weapons, what exactly “war potential” means, and when defensive weapons systems might cross the line to become war potential.[21] But putting aside questions of whether, for instance, Japan’s Kongo Class Aegis guided-missile-system destroyers and its fleet of 16 submarines constitute offensive weapons, this is and has long been the accepted interpretation in Japan. It was departed from with the passage of legislation in 1992 to permit support activities in UN peace keeping missions, and to deploy support forces for the Afghanistan and Iraq campaigns, but the prohibition against collective self-defense remains the prevailing understanding of Article 9.[22] Thus, while Japanese SDF troops were deployed to Iraq under special legislation for “support” purposes, the troops were classified as “non-combat” and operated under strict self-defense rules of engagement, to the point that they were under the “protection” of the Australian forces.[23] The Kirishima, one of Japan's 4 Kongo Class Aegis guided-missile-system destroyers, and part of a fleet of 44 destroyers It is precisely this restriction on Japanese participation in collective security operations that the Abe government wants to escape. The “panel of experts” has been asked to consider specifically such scenarios as Japanese missiles being used to intercept intercontinental ballistic missiles targeting the United States or US targets outside of Japan, and MSDF vessels engaging the naval forces of some third country in joint defense of US assets outside of Japanese territorial waters.[24] Thus, could Japanese MSDF Aegis destroyers currently deployed in the Indian Ocean engage the forces of Iran, for instance, were they to be in the process of attacking US forces in the area? Or, if Australians came under attack in Iraq, or some other country’s contingent in a UN peacekeeping mission came under attack, could the SDF troops deployed nearby engage the attackers in defense of their coalition partners? Of course, these questions, and the answers that the government is looking for, lead naturally to more significant issues governed by the same principles, such as could Japan come to the defense of US and Taiwanese forces in the event that hostilities break out with China in the Taiwan Straits? For no one should be under any illusion that the answers to the seemingly narrow questions put to the “panel of experts” will not be used to establish more general principles governing defense policy. These scenarios would of course constitute the use of armed force in armed conflict. The SDF would be engaged in the application of deadly military force against enemy forces, for purposes that are not directly related to the defense of Japan, or in response to any attack on Japan. They would, in short, be involved in the use of force for purposes of settling international disputes, the very thing prohibited by Article 9(1). Naturally, in the context of such armed conflict Japan would expect the laws of war to apply to its forces, such that, for instance, SDF personnel would both obey and enjoy the benefits of the Geneva Conventions. Similarly, it would expect that the Hague Conventions would govern such things as the weapons that could be used against its troops. In other words, Japan would expect that it would enjoy the status of a belligerent state under international law in the event that its forces were involved in military combat as part of collective security operations. While many scholars tend to ignore or dismiss the significance of the clause stating that “the rights of belligerency shall not be recognized” in Article 9(2), belligerency is a status enjoyed under international law that triggers the application of the laws of war. There is simply no way that Article 9 can be interpreted in any reasonable fashion that is not utterly inconsistent with such armed conflict that is unrelated to a direct attack on Japan. “Re-interpreting” Article 9 to allow for Japanese forces to engage in armed conflict for the purposes of collective security, would not only render Article 9 meaningless, but would throw into question the normative power and meaning of all other provisions of the Constitution. A perverse interpretation of one provision cannot help but bleed through and influence the extent to which other provisions are taken seriously. The reasoning behind attempts to justify “re-interpretations” that would permit such collective security operations is almost entirely result-oriented. The starting proposition is that Japan ought to be able to engage in such collective security operations, that other “normal countries” do engage in such operations, that Japan has international obligations that require it to engage in such operations, from which it follows that the most reasonable interpretation of the Constitution must be that that Japan can engage in such operations. Prime Minister Abe himself has complained that “a military alliance is an ‘alliance of blood’” and that while American troops will shed blood for Japan, “the Japanese Self Defense Forces are not asked to be prepared to shed blood when the United States comes under attack”.[24] These are certainly legitimate considerations for the debate on whether to or how to amend Article 9 of the Constitution, but they are absolutely and entirely irrelevant to how Article 9 as it currently reads is to be interpreted. Constitutional interpretation is a legal matter, not one of foreign policy or military imperatives. And as a legal matter, the “re-interpretation” that Mr. Abe wants, in order to permit Japanese troops to shed blood for the defense of others, is utterly inconsistent with any reasonable interpretation of Article 9, and is inconsistent with the closest thing to an interpretation of Article 9 that has been provided by the Supreme Court.[25] Of course, there is already a considerable gulf between the reality of Japan’s defense posture and any reasonable reading of Article 9. While the accepted interpretation of Article 9 in Japan is that Japan is entitled to defend itself, and thus some minimal level of military force for self-defense is permitted under Article 9, the fact is that Japan’s military spending is the 4th or 5th largest in the world, (depending on how one estimates the defense expenditures of China), and it has the most sophisticated navy in Asia.[26] It is in the process of developing the two-tiered BMD system discussed above, and recent headlines reflect how threatening Russia views the deployment of similar BMD systems in Eastern Europe. It is often argued that BMD systems are not purely defensive, as they increase the vulnerability of those states whose deterrence power is thereby undermined. Even if one accepts that some minimal level of defense capability is permitted, therefore, it becomes very difficult to reconcile Japan’s current military capability with the language of Article 9(2) renouncing the maintenance of military forces or other war potential. As the gulf between the constitutional norm and the reality increases, of course, the integrity and normative power of the Constitution is undermined. The great danger in the effort to develop a further “re-interpretation” that would essentially make nonsense of the constitutional provision is that it would undermine and erode the validity of the constitutional order much more broadly. If the government can ignore, or interpret out of existence, one provision, what is to stop it from so subverting any other provision? How are citizens to have any confidence in the rule of law and the value of constitutional rights if the government can, in Orwellian fashion, define constitutional norms into oblivion? Moreover, it undermines the efforts to convince both Japan’s citizens and its neighbors that the amendments proposed for Article 9 in the legitimate amending process are designed merely to allow Japan to play a more responsible role in international society as a mature constitutional democracy. If it reveals itself willing to disregard or distort existing constitutional constraints on its military power, how is anyone to take at face value the representations made by the government regarding the measured developments proposed in the amending process? Herein lie the grave dangers inherent in Mr. Abe’s announced “re-interpretation” process. Conclusion The Constitution of Japan has operated without amendment for a longer period than any other constitution in modern history. There are some good reasons to consider amending it now. Concerns over the growing gap between the clear language of Article 9 and the reality of Japan’s defense posture and capabilities is one. The desire to have Japan play a more active role in the international collective security system, in order to bring Japan’s defense posture more in line with its treaty obligations, and to raise its diplomatic influence to a level that is commensurate with its economic power, is another. The governing party has tabled amendment proposals, and the government has developed the legislative procedures and a timetable, for amending the Constitution. The intervening period should be used for thorough debate of the competing ideas and for careful consideration of not only whether Article 9 should be amended, but if so, precisely how it should be amended and what additional provisions may be required to ensure democratic accountability, civilian control, and other constraints on exactly how the military may be used. If the government fails to achieve the amendments it desires, however, then it will have to accept that that is the will of the people of Japan. The government ought not to be permitted to hedge against that possibility by developing an alternate track for changing the constitutional constraints on defense policy, a process that circumvents the legitimate amending procedures and frustrates the sovereign will of the people. It is a process that appears to be designed to both exploit and further entrench the weakness of the courts when it comes to questions of Article 9, yet it is the courts that hold the legitimate authority to interpret the Constitution. It is particularly dangerous for the government to employ extra-constitutional bodies to develop new interpretations that may be used to usurp or suppress the voice of the courts in interpreting the Constitution. Ultimately, it is not overstating the issue to say that for all these reasons, the process of changing the Constitution by “expert re-interpretation” could do serious violence to the constitutional order of Japan. And while the primary reason for opposing the process should be to prevent such harm to the constitutional order, the impact of the process on Japan’s neighbors, and thus Japan’s foreign policy, should not be overlooked. A perception (and one that is likely to be exploited by nationalists elsewhere) that Japan is re-militarizing through extra-constitutional means, and that Japan’s so-called “Pacifist Constitution” has lost its power to constrain nationalist governments, would be very destabilizing for the region, and inimical to Japan’s national security interests.

#### Re-interpreting article 9 results in war China over the Senkaku islands – historical factors and economic interdependence doesn’t check

Carpenter 13 (Ted, senior fellow at the Cato Institute, June 17 2013, “Japan’s Containment Strategy against China”, CATO, <http://www.cato.org/publications/commentary/japans-containment-strategy-against-china>)

Japan has begun to play a more vigorous role in East Asia’s security affairs, and China is responding with a mixture of wariness and outright hostility. That development puts the United States in an awkward position. Japan is Washington’s most important political and military ally in the region, as well as a long-standing, crucial economic partner. But China’s economic importance to the United States, already substantial, is likely to become even more so in the coming years. And U.S. officials understand that China is a fast-rising geopolitical player in East Asia and globally. “ Washington needs to proceed with great caution, lest it find itself in the middle of a growing power struggle between Japan and China.” Washington wants to maintain friendly, productive relations with both countries, but that task may prove extremely challenging in the coming decade. Because of historical factors, especially Imperial Japan’s brutal treatment of a weak China during the 1930s and early 1940s, Sino-Japanese relations have typically been rather cool, despite substantial economic ties. Overall bilateral relations have become even frostier over the past year or so. The proximate cause of that chill is the territorial dispute over the Diaoyu/Senkaku Islands in the East China Sea. That simmering quarrel flared in mid and late 2012 when the Japanese government purchased some of the islands from a private owner and proceeded to tighten its administrative control. Anti-Japanese riots erupted in several Chinese cities during that period. Chinese leaders see Tokyo’s actions regarding the islands as symptomatic of a broader, worrisome trend in the country’s behavior. The emergence of the nationalistic Shinzo Abe as Japan’s prime minister adds to Beijing’s concerns. Indications that Tokyo might end its self-imposed limit of spending no more than one percent of the country’s annual gross domestic product on the military provoke strongly negative reactions in Beijing. The same is true of signs that Abe’s government might seek to modify article 9 of Japan’s post-World War II constitution, which places severe restrictions on the country’s use of military force. “Given the Japanese government’s refusal to apologize for Japan’s aggression during World War II, any revision of Japan’s constitution,” an editorial in China Daily warned, would be “a cause for concern in the rest of the world.” Japan is fast embracing a more active foreign policy, especially with regard to security matters, and much of the policy appears aimed at curbing China’s power and influence in the region. Even ostensibly non-military measures seem to have that goal. In late May, Japan canceled the remaining debt that Myanmar owed to Tokyo and then extended a new loan for $504 million. That was an unsubtle effort to dilute Beijing’s influence with a long-standing economic and security client. Japan’s direct moves regarding security issues have spooked Chinese leaders even more, as the Japanese government has established or strengthened security ties with several countries. In January 2013, Tokyo and Manila agreed to enhance their cooperation on maritime security. Collaboration also is growing between Japan and both Singapore and Australia on such matters. In the recent summit between Prime Minister Abe and Indian Prime Minister Manmohan Singh, the first steps were taken toward cooperation between their two countries on the highly sensitive issue of nuclear technology. Tokyo’s rhetoric is also noticeably more assertive—and not just on its territorial dispute with China. In early April, former defense minister Shigeru Ishiba, a leading figure in the governing Liberal Democratic Party, insisted that Japan had a right to launch preemptive military strikes against North Korea—another prominent Chinese client—if officials concluded that an act of aggression was imminent. China has recently softened its overall policy in East Asia in an attempt to appear more reasonable to its neighbors and to focus attention (and suspicion) on Japan’s ambitions. Speaking to the Shangri-La Dialogue, an annual security conference in Singapore, in early June, Lt. Gen. Qi Jianguo, deputy chief of staff of the People’s Liberation Army, affirmed that China recognized Japan’s sovereignty over Okinawa and the other islands in the Ruyuku chain. His statement repudiated an earlier editorial in People’s Daily, the Chinese Communist Party’s main publication, which questioned Japan’s historical claim to those islands. The People’s Daily comment had sparked widespread worries that the Diaoyu/Senkaku dispute might escalate dramatically, with unpleasant ramifications for the entire region. Beijing’s diplomatic olive branch, though, is accompanied by pressure on the United States to rein-in its Japanese ally. And there is an undertone of suspicion that Washington is actually encouraging Tokyo’s bolder stance. China rebuked then-Secretary of State Hillary Clinton for supporting Japan’s right to administer the disputed islands. “We urge the U.S. side to take a responsible attitude towards dealing with the Diaoyu Islands,” stated Foreign Ministry spokesman Hong Lei, adding that U.S. officials needed to “be cautious in what they say and do and take concrete steps to maintain regional stability.” Other Chinese opinion leaders have been more caustic regarding U.S. policy. In October, veteran Chinese diplomat Chen Jia charged that Washington was deliberately using Japan as a strategic tool aimed at containing China. Chen, who earlier served as China’s ambassador to Japan, accused the United States of encouraging the revival of Japanese militarism. The Obama administration will continue to be buffeted by such conflicting pressures from East Asia’s two leading powers. Japan is insisting on stronger backing from its American ally, not only regarding its territorial dispute with China but on such matters as dealing with North Korea. Tokyo is seeking nothing less than Washington’s endorsement of a more active, vigorous Japanese security role in East Asia. It has already secured U.S. backing for the Diaoyu/Senkaku dispute, and it is clear that the Obama administration sees Japan as a crucial component of the U.S. strategic pivot to East Asia. But if the United States embraces a more assertive Japanese regional security role, it risks antagonizing an already worried and annoyed China. Washington needs to proceed with great caution, lest it find itself in the middle of a growing power struggle between Japan and China.

#### Results in escalation and nuclear war – the U.S. will be drawn in

Eland 12/10/13 (Ivan, senior fellow and director of the center on peace and liberty at the independent institute, Ph.D in Public Policy – George Washington University, “Stay Out of Petty Island Disputes in East Asia” <http://www.huffingtonpost.com/ivan-eland/stay-out-of-petty-island-_b_4414811.html>)

One of the most dangerous international disputes that the United States could get dragged into has little importance to U.S. security -- the disputes nations have over small islands (some really rocks rising out of the sea) in East Asia. Although any war over these islands would rank right up there with the absurd Falkland Islands war of 1982 between Britain and Argentina over remote, windswept sheep pastures near Antarctica, any conflict in East Asia always has the potential to escalate to nuclear war. And unlike the Falklands war, the United States might be right in the atomic crosshairs. Of the two antagonists in the Falklands War, only Britain had nuclear weapons, thus limiting the possibility of nuclear escalation. And although it is true that of the more numerous East Asian contenders, only China has such weapons, the United States has formal alliance commitments to defend three of the countries in competition with China over the islands -- the Philippines, Japan, and South Korea -- and an informal alliance with Taiwan. Unbeknownst to most Americans, those outdated alliances left over from the Cold War implicitly still commit the United States to sacrifice Seattle or Los Angeles to save Manila, Tokyo, Seoul, or Taipei, should one of these countries get into a shooting war with China. Though a questionable tradeoff even during the Cold War, it is even less so today. The "security" for America in this implicit pledge has always rested on avoiding a faraway war in the first place using a tenuous nuclear deterrent against China or any other potentially aggressive power. The deterrent is tenuous, because friends and foes alike might wonder what rational set of U.S. leaders would make this ridiculously bad tradeoff if all else failed. Of course these East Asian nations are not quarreling because the islands or stone outcroppings are intrinsically valuable, but because primarily they, depending on the particular dispute involved, are in waters that have natural riches -- fisheries or oil or gas resources. In one dispute, the Senkaku or Diaoyu dispute -- depending on whether the Japanese or Chinese are describing it, respectively -- the United States just interjected itself, in response to the Chinese expansion of its air defense zone over the islands, by flying B-52 bombers through this air space to support its ally Japan. The United States is now taking the nonsensical position that it is neutral in the island kerfuffle, even though it took this bold action and pledged to defend Japan if a war ensues. Predictably and understandably, China believes that the United States has chosen sides in the quarrel.

Tension-based factors overcome economic integration

Panda 12/12/13 (Ankit, Associate Editor of The Diplomat. He was previously a Research Specialist at Princeton University where he worked on international crisis diplomacy, international security, technology policy, and geopolitics, “Rationalist Explanations for War in the East China Sea” <http://thediplomat.com/2013/12/rationalist-explanations-for-war-in-the-east-china-sea/>)

Events in the East China Sea since 2009 have thrust to the forefront the following frightening question: will China and Japan imminently go to war? Conventional answers in the affirmative point to the deep level of historical mistrust and a certain level of “unfinished business” in East Asian international politics, stemming from the heyday of Showa Japan’s imperialism across Asia. Those on the negative often point to the astronomical economic costs that would follow from a war that pinned the world’s first and third largest economies against its second in a fight over a few measly islands, undersea hydrocarbon reserves be damned. I can’t pretend to arbitrate between these two camps but I find that far too many observers sympathize with the second camp based on rational impulse. Of course China and Japan wouldn’t fight a war! That’d ruin their economies! I sympathize with the Clausewtizean notion of war being a continuation of politics “by other means,” and the problems caused by information asymmetries (effectively handicapping rational decision-making), but the situation over the Senkaku/Diaoyu islands can result in war even if the top leaders in Tokyo and Beijing are eminently rational. Political scientist James D. Fearon’s path-breaking article “Rationalist Explanations for War” provides a still-relevant schema that’s wonderfully applicable to the contemporary situation between China and Japan in the East China Sea. Fearon’s paper was initially relevant because it challenged the overly simplistic rationalist’s dogma: if war is so costly, then there has to be some sort of diplomatic solution that is preferable to all parties involved — barring information asymmetries and communication deficits, such an agreement should and will be signed. Of course, this doesn’t correspond to reality where we know that many incredibly costly wars have been fought (from the first World War to the Iran-Iraq War). So, if wars are costly — as one over the Senkaku/Diaoyu islands is likely to be — why do they still occur? Well, the answer isn’t Japanese imperialism or because states just sometimes irrationally dislike each other (as the affirmative camp would argue). It’s more subtle. Fearon’s “bargaining model” assumes a few dictums about state knowledge, behavior and expectations ex ante. I’ll cast the remainder of the model in terms of Japan and China since they’re our subjects of interest (and to avoid floating off into academic abstractions). First, China and Japan both know that there is an actual probability distribution of the likely outcomes of the war. They don’t know what the actual distribution is, but they can estimate what is likely in terms of the costs and outcomes of going to war. For example, Japan can predict that it would suffer relatively low naval losses and would strengthen its administrative control of the islands; China could predict the same outcome, or it could interpret things in its favor. In essence, they acknowledge that war is predictable in its unpredictability. Second, China and Japan want to limit risk or are neutral to risk, but definitely do not crave risk. War is fundamentally risky so this is tantamount to an acknowledgement that war is costlier than maintaining peace or negotiating an ex ante diplomatic solution. The third assumption is a little dressed up in academic jargon: there can be no “issue indivisibility.” In plain English, this essentially means that whatever the states are fighting over (usually territory, but it could be a pot of gold) can be divided between them in an infinite number of ways on a line going from zero to one. Imagine that zero is Japan’s ideal preference (total Japanese control of the Senkakus and acknowledgement as such by China) and one is China’s ideal preference (total Chinese control of Diaoyu and acknowledgement by Japan). Fearon’s assumption requires that there exist points like 0.23 and 0.83 (and so forth) which set up some sort sharing between the warring parties. Even solutions, such as one proposed by Zheng Wang here at The Diplomat to establish a “peace zone,” could sit on this line. If the third assumption sounds the shakiest to you that’s probably because it is. “Issue indivisibility” is a nasty problem and a subject of quite some research. It usually is at the heart of wars that seek to decide which state should control a territory such as a Holy City (the intractability of the Arab-Israeli conflict is said to be plagued by indivisible issues). So, is the dispute over the Senkaku/Diaoyu fundamentally indivisible? Probably in the sense of splitting sovereignty over the islands, but probably not in the sense of some ex ante bargain similar to what Zheng proposed. Even if the set of solutions isn’t infinitely divisible, whatever finite solutions exist might not fall within whatever range of solutions either Japan or China is willing to tolerate — leading to war. Fearon actually doesn’t buy the indivisibility-leading-to-war theory himself. He reasons that generally almost every issue is complex enough to be divisible to a degree acceptable by each party (undermining the infinite divisibility requirement), and that states can link issues and offer payments to offset any asymmetrical outcome. In the Senkaku/Diaoyu case, this would mean a solution could hinge upon Japan making a broader apology for its aggression against China in the 20th century or China taking a harsher stance on North Korea (both unlikely). Relevant to the Air Defense Identification Zone is Fearon’s description of war arising between rational states due to incentives to misrepresent capabilities. China and Japan’s leaders know more about their country’s actual willingness to go to war than anyone else, and it benefits to signal strong resolve on the issue to extract more concessions in any potential deal. Japan announcing its willingness to shoot down Chinese drones earlier this year and its most recent defense plans are example of this, and China’s ADIZ is probably the archetype of such a signal. Instead of extracting a good deal, what such declarations can do is force rational hands to war over the Senkaku/Diaoyu islands. Fearon’s final explanation — regarding commitment problems leading to war — is slightly ancillary to the core discussion about the Senkaku/Diaoyu islands given Japan’s constitutional restraints on the use of force (rendering preemptive, preventative, and offensive wars largely irrelevant in the Japanese case). Regardless, the point remains that even if the Senkaku/Diaoyu islands might seem like a terribly silly thing for the world’s second and third largest economies to go to war over, war can still be likely. As I observe events in the East China Sea, I mostly recall Fearon’s warnings on certain types of signals leading to brinksmanship (the divisibility issue is far murkier). Both Japan and China don’t seem to be relenting on these sorts of deleterious signals. Additionally, given that Chinese and Japanese diplomats haven’t had high-level contact in fourteen months, even the more primitive rationalist’s explanation, that war occurs because a lack of communication leads to rational miscalculations, becomes plausible. A reflection on the possible rational reasons for China and Japan to go to war over the Senkaku/Diaoyu islands highlights the seriousness of the ongoing brinksmanship in the East China Sea. If a war is fought over these long-contested islands, it will have an eminently rational explanation underlying all the historical mistrust and nationalism on the surface. War in the East China Sea is possible, despite the economic costs.

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### AT: NATO Bad

#### No war with Russia – NATO enlargement won’t happen and Russia will cooperate instead of miscalculate with NATO

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Key areas of disagreement Despite positive efforts to cooperate on a practical level in Afghanistan, there are number of areas where the attitudes of Russia and NATO diverge. Among the most contentious one’s is the issue of Georgian war and Russian recognition of South Ossetia and Abkhazia. The second is NATO’s open door policy, especially towards Georgia and Ukraine. The third challenge is cooperation on missile defence in Europe. These three issues concern strategic interests of both entities. Further, these problematic issues are long-term and probably will last into the future as well. However, there are disagreements in other areas, as was shown during the recent Syria crisis, where their strategic interests diverged due to the broader geopolitical interests of both entities in the Middle East. NATO’s position towards the Georgian war is well described on the official NATO website stating, that “Alliance expressed particular concern over Russia’s disproportionate military action which was incompatible with Russia’s peacekeeping role in the breakaway regions of South Ossetia and Abkhazia” (NATO 2012a). Following the 2008 war, NATO-Russia relations reached the lowest point in a decade and they were gradually and slowly improving in the following years. The war definitely caused a rift in their mutual relations, which were formally re-built in 2010, when NATO invited Russia to the Lisbon summit. Another issue critical to NATO-Russia relations is Alliance’s continuing commitment to future enlargement. The less Moscow obstructs potential memberships of the Balkan states, the more it is against accession of countries from “near abroad.” NATO confirmed many times (Bucharest Summit in 2008, Lisbon Summit in 2010, and the latest summit in Chicago), that Georgia is a real candidate for NATO membership. Georgia is also actively contributing to the ISAF as the second largest non-NATO troop contributor nation (NATO 2012a). However, within the Alliance there is a strong group of member states led by France and Germany who see Georgia’s accession as unacceptable. Despite the fact that the NATO summit in Chicago is considered to be the “last NATO summit without enlargement,” it is more focused on the Balkans. An Intensified Dialogue on Ukraine’s membership aspirations and related reforms was launched in 2005. Nevertheless, Ukraine’s membership in the Alliance is not realistic in the foreseeable future. The reason is primarily that under the current President Viktor Yanukovych, Ukraine is not pursuing NATO membership as a foreign policy goal. Secondly, according to numerous independent polls, NATO membership has low public support (40% of Ukrainians see NATO as a threat) (Gallup 2010). For more than three years Ukraine has been out of NATO’s accession discussions. The change may eventually occur, depending on the results of the Ukrainian parliamentary elections, which will take place in October 2012. However, based on the present situation, such a shift is not realistic. It is important to mention that both Georgian and Ukrainian membership are just theoretical possibilities at the moment. Missile defence in Europe can be a catalyst for mutual NATO-Russia relations. It could either lead to pragmatic cooperation or to deterioration of relations. As Russian foreign policy expert Dmitri Trenin expressed in an interview for NATO Review – “Missile defence can be a game changer [a bridge towards the future that leads to real cooperation] or a game breaker [bridge towards the past where the danger of sliding back is very real]” (Trenin 2010). When NATO leaders met almost two years ago in Lisbon, the possibilities for cooperation looked promising. They attempted to neutralize the most disputed issue in NATO-Russia relations. The NATO-Russian Council, with the participation of Russian President Dmitri Medvedev, specifically “agreed on joint ballistic missile threat assessment and to continue dialogue in this area” (Chicago Summit Declaration 2012). However the promising political declaration was not further translated into real steps. Until there is some concrete binding document, any real progress on this issue cannot be expected. Russia would like to participate on the missile defence plan as a partner on the basis of complete reciprocity and transparency. Thus, Moscow wants an equal participation in NATO’s decision-making process. To this effect Russia proposed that NATO creates a “sectoral” missile defence, with each entity responsible for providing missile defence protection for their own sector in Europe. Such conditions are naturally unacceptable for the Alliance. Moreover, Russian officials have expressed concerns about any deployments close to their borders because the fast interceptor missiles can possibly threaten Moscow’s nuclear deterrence. Therefore Kremlin requires from NATO “more transparency” about missile defence capabilities and plans, which would assure them that it poses no threat. Whereas the Alliance seeks to develop two separate systems working independently of each other, Russia wants to lock the two systems, thereby effectively securing itself a veto. This in turn clashes with the provisions of The NATO-Russia Founding Act that rules out any “right of veto over the actions of the other” or any restriction on “the rights of NATO or Russia to independent decision-making and action” (Sherr 2011). Currently, pragmatic cooperation is feasible. On the one hand, this sort of cooperation requires trust that just isn’t there. On the other hand, further developing of practical cooperation will help increase mutual trust and improve relations. If Russia misses the chance to collaborate with NATO on common missile defence, for sure the US and NATO will create their own system without Russia and that’s what Kremlin has to take into account. The challenges are tremendous, but returning to the status quo is not a sustainable, longer-term option (Trenin 2012). Future platforms of cooperation In the post-ISAF period, the importance of Afghanistan will decrease and cooperation in other areas will gain in prominence. Nevertheless, Afghanistan will be important for Moscow in the future as well. According to the results of the Chicago NATO Summit, there will be a new operation where NATO forces will gradually move into a more supportive role (Chicago Summit Declaration 2012). So far, there is no NATO official information about the numbers of troops, which will stay there after the deadline, but it is estimated that it will be around 50,000 troops. The force generation procedure will start next year and Russia will have an opportunity once again to be involved in the process of Afghanistan’s transition. Leaving aside Afghanistan, the cooperation will most probably continue in key areas of shared interests including the fight against terrorism, counter-narcotics, counter-piracy, nuclear weapons issues (New START – a nuclear arms reduction treaty between the US and Russia, signed on 8 April 2010, ratified on 5 February 2011), crisis management [between 1996 and 2003, Russia was the largest non-NATO troop contributor to NATO-led peacekeeping operations (NATO 2012b)], Cooperative Airspace Initiative, non-proliferation and arms control, military-to-military cooperation, submarine-crew search and rescue, defence transparency, strategy and reform, defence industrial cooperation, logistics, civil emergencies, and raising public awareness of the NRC. NATO-Russia cooperation in combating terrorism has taken the form of regular exchanges of information, in-depth consultations, joint threat assessments, civil emergency planning for terrorist attacks, high-level dialogue on the role of the military in combating terrorism, lessons learned from recent terrorist attacks, and scientific and technical cooperation. NRC members also cooperate in areas related to terrorism such as border control, non-proliferation, airspace management, and nuclear safety. A concrete example of cooperation in this field is the “Stand-off Detection of Explosive Devices” project aimed at confronting and countering the threat of attacks on mass transit and possibly other public gathering places through jointly developing technology to detect explosives. Part of the struggle against terrorism is also Cooperative Airspace Initiative (CAI) for air traffic coordination. This project significantly contributes to building mutual trust between NATO and Russia (NATO 2012b). In the area of counter-narcotics cooperation, NATO and Russia cooperate within the framework of NATO-Russia Council through joint projects such as the NRC Counter Narcotics Training Project. Since 2006, the NRC has been assisting in building regional capacity against narcotics trafficking by training counter narcotics personnel from Afghanistan, Central Asian nations and Pakistan. The initiative seeks to build local capacity and to promote regional networking and cooperation by sharing the expertise (NATO 2012b). Since December 2004 Russia supports NATO’s maritime counter-piracy operation in the Mediterranean Sea – Operation Active Endeavour. Piracy and armed robbery at sea continue to pose a significant and growing threat to maritime security. Taking into account, that the share of maritime transport accounts for 38% of all freight (Cargo.ru 2012), it is in Russian direct interest to keep sea waters secure from pirates which could threaten the country’s export. The NRC member states expand existing tactical level co-operation, including through joint training and exercises. The more Russia and NATO will cooperate in different areas, the better the relationship will be. Diversification of areas where they cooperate means that they are feeling and perceiving the same threat in the same view, which results in more trust on both sides (NATO 2012b). Role of the United States and Putin’s return to Kremlin The United States as the leader of the Alliance is an important element in NATO-Russia relations, as the US-Russia relationship has always determined the NATO-Russia relations. Generally, if Moscow’s relations with Washington are going the right way, they are also on the right path with the Alliance. In Russia the perception of the Alliance is even more simplified, where the US equates to NATO. After all, much will depend on the outcome of the November 2012 US Presidential elections. If Barack Obama becomes re-elected US, it is probable that cooperation will go on in the same direction. For President Putin it would be much to his advantage, because he can expect some concession from the US side, as it was already visible during Obama’s 1st administration (efforts for realignment via “reset policy,” the decision to cancel Bush administration’s plans for European missile defence system). Should Obama be voted out of office, however, there will be a greater probability that US-Russian relations may sour, given that all leading Republican contenders advocate a tougher stance on issues of importance to Russia, including missile defence. Toughening of US policy towards Russia will force Putin to reciprocate also in order to secure support in the State Duma, where all opposition parties are more anti-Western than the party of power (Saradzhyan – Abdullaev 2012). Furthermore, some statements made by US representatives do not help Russians to understand the “West” thinking and position. A case in point is the interview for CNN with Mitt Romney, nominee of the Republican Party for President, who recently charged Russia with being America’s “number one geopolitical foe” (Romney 2012). Such contradictions produce only confusion on the Russian side and poison even more NATO’s relations with Russia. Moreover, treating Moscow like a foe will make Russia more suspicious of NATO’s relationship. Washington should not give Moscow additional reasons to indulge its paranoia. Regarding future prospects of cooperation, we also have to take into account the results of Russian presidential elections and Putin’s return to Kremlin. Foreign policy under the new-old President should not radically change the strategic course, though the tone and style will likely differ from that of Dmitry Medvedev. Even as Prime Minister, Vladimir Putin was the principal architect of the Russian foreign policy, therefore we can expect a significant degree of continuity. Nevertheless, President Putin will have to confront domestic political and economic challenges that may affect his foreign policy choices: he could resort to the traditional Russian tactic of depicting a foreign adversary to rally domestic support as during his election campaign, or he could pursue a more accommodating foreign policy so that he can focus on issues at home (Katz 2012). The domestic political challenges have begun late last year when the results of Duma elections were accompanied by massive demonstrations. These events led Putin to project himself as a more fervent guardian of Russia’s interests on the international scene as a way to increase his support at home. His foreign policy pragmatism has a long-term goal of making Russia strong and restoring its role as a great world power. Unlike his predecessor, Putin has deliberately cultivated his image as a strong leader ready to defend Russia’s national interests. Conclusion Although it has been more than two decades since the Cold War ended, the attitudes from that period have continued to influence the political thinking in Russia and NATO. There is still a lingering feeling of distrust and the level of cooperation is not up to its full potential. The animosities of the Cold War years proved difficult to overcome, and each side’s suspicions of the other’s motives persist. While there have been improvements in the relationship, it is still stuck halfway between former enmity and the aspired strategic partnership. The ISAF mission enabled Russia to play an important role due to the transit through Russian territory and enhanced both entities’ ability to work together in areas of common interest. Common security challenges demand unified responses, which is why cooperation between NATO and Russia is inevitable for ensuring the Euro-Atlantic zone’s security. Both Russia and NATO should deepen mutual cooperation where common interests exist and put on ice differences in conflict areas. The most developed areas of cooperation remain Afghanistan, counter-terrorism, nuclear arms, crisis management, counter-narcotics, and counter-piracy. From a strategic point of view, cooperation on missile defence has the potential to either move NATO-Russia relations down a common path or it could end up in a deadlock. While, the technical hurdles are not inconsiderable, it is mostly the political considerations and Russia’s delusion about the danger of missile defence that block cooperation. Failure to see eye to eye on this issue will not mean another Cold War ‒ it will definitely lead to deeper and more pronounced hostility and further isolation of Russia.

#### CSDP shift fails – EU defense alone can’t solve the impacts and won’t fill in for NATO

Coffey 6/6/13 (Luke, Margaret Thatcher Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation, “EU Defense Integration: Undermining NATO, Transatlantic Relations, and Europe’s Security” <http://www.heritage.org/research/reports/2013/06/eu-defense-integration-undermining-nato-transatlantic-relations-and-europes-security>)

Developments within the European Union’s Common Security and Defence Policy (CSDP) threaten to undermine transatlantic security cooperation between the U.S. and its European partners. Far from improving the military capabilities of European countries, the CSDP decouples the U.S. from European security and will ultimately weaken the NATO alliance. U.S. policymakers should watch CSDP developments closely and discourage the EU from deepening defense integration. It is clear that an EU Army is the ultimate goal of the CSDP. The consequences would be great: The U.S. would lose influence in European security matters, and NATO would become a second-tier priority for most European countries. Finally, it would mean an end to Europe being a serious security actor on the global stage. The veto power of the EU’s five neutral members, coupled with the bureaucratic inertia of Brussels, would lead to paralysis in decision making and likely mean that EU forces would rarely, if ever, be sent on overseas combat operations. The CSDP does more harm than good, and the U.S. should oppose it. When it comes to defense and military capability in the 21st century, it is clear that Europe is not pulling its weight. Spending and investment in defense across Europe has steadily declined since the end of the Cold War. The political will to deploy troops into harm’s way when it is in the national interest has all but evaporated for most EU countries. During the recent Libya operation, European countries were literally running out of munitions.[1] Many European nations are racing for the exit in Afghanistan.[2] In Mali, European countries have been able to scrape together only 150 instructors to train the Malian military. The EU is not the answer to Europe’s military woes. Instead, the U.S. should be pushing for more NATO-centric solutions ensuring that all advancements in European defense capabilities are done through NATO or at least on a multilateral basis. This will ensure NATO’s primacy over, and the right of first refusal for, all Europe-related defense matters, and will guarantee that the U.S. has the amount of influence relative to the level of resources the U.S. has committed to Europe.

### AT: Nuke Deterrence

#### --Other protections apply – even without PQD, the case wouldn’t be heard – your ev.

Damrosch ‘86 Lori, Assistant Professor of Law, Columbia, “BANNING THE BOMB: LAW AND ITS LIMITS.,” 86 Colum. L. Rev. 653

It is not just that the law suit would inevitably founder for threshold reasons such as standing, ripeness, or the political question doctrine, as noted in the brief [\*657] comments following Professor Miller's piece. n13 Nor is it that judges are temperamentally resistant to becoming involved in controversial issues or breaking new ground, as some of Professor Miller's characterizations imply

### AT: Unit Cohesion

#### **--No impact to unit cohesion – commanders will adapt to litigation to maintain chain of command**

Dunlap 9 (Charles J., Major General, USAF, is Deputy Judge Advocate General, Headquarters U.S. Air Force, “Lawfare: A Decisive Element of 21st-Century Conflicts?” Joint Force Quarterly – issue 54, 3d

 quarter 2009, www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA515192‎)

Of course, the availability of expert legal advice is absolutely necessary in the age of lawfare. The military lawyers (judge advocates) responsible for providing advice for combat operations need schooling not only in the law, but also in the characteristics of the weapons to be used, as well as the strategies for their employment. Importantly, commanders must make it unequivocally clear to their forces that they intend to conduct operations in strict adherence to the law. Helping commanders do so is the job of the judge advocate. Assuring troops of the legal and moral validity of their actions adds to combat power. In discussing the role of judge advo- cates, Richard Schragger points out: Instead of seeing law as a barrier to the exercise of the clients power, [military lawyers] understand the law as a prerequisite to the meaning- ful exercise of power.... Law makes just wars possible by creating a well-defined legal space within which individual soldiers can act without resorting to their own personal moral codes}\* That said, commanders should aim not to have a judge advocate at the elbow of every rifleman, but rather to imbue troops with the right behaviors so they instinctively do the right thing on the battlefield. The most effective way is to carefully explain the enemy's lawfare strategies and highlight the pragmatic, real-world impact of Abu Ghraib-type incidents on the overall success of the mission. One of the most powerful motivators of troop conduct is the desire to enhance the security of fellow soldiers. Making the connection between adherence to law and troop safety is a critical leader- ship task. Integral to defensive lawfare operations is the education of the host nation population and, in effect, the enemy themselves. In many 21\*-century battlespaces, these audiences are not receptive to what may appear as law imposed by the West. In 1999, for example, a Chinese colonel famously argued that China was "a weak country, so do we need to fight according to your rules? No. War has rules. but those rules arc set by the West……[I]f you use those rules, then weak countries have no chance." To counter such beliefs, it is an essential lawfare technique to look for touchstones within the culture of the target audience. For example, in the early 1990s, the International Committee of the Red Cross produced an illustrated paperback that matched key provi- sions of the Geneva Convention "with bits of traditional Arab and Islamic wisdom!\*" Such innovations ought to be reexamined, along with creative ideas that would get the messages to the target audience. One way might be to provide audio cassettes in local languages that espouse what arc really Geneva Convention values in a context and manner that tit with community religious and cultural imperatives. The point is to delegitimize the enemy in the eyes of the host nation populace. This is most effectively accomplished when respected indigenous authorities lead the effort. Consider Thomas Friedman's favor- able assessment to the condemnation by Indian Muslim leaders to the November 2008 Mumbai attacks: The only effective way to stop (terrorism) is tor "the village"—the Muslim community itself— to say "no more" When a culture and a faith community delegitimize this kind of behavior, openly, loudly and consistently, it is more impor- tant than metal detectors or extra police.\* Moreover, it should not be forgotten that much of the success in suppressing violence in Iraq was achieved when Sunnis in Anbar Province and other areas realized that al Qaeda operatives were acting contrary to Iraqi, and indeed Islamic, sensibilities, values, and law. It also may be possible to use educa- tional techniques to change the attitudes of enemy lighters as well. Finally, some critics believe that "lawfare\* is a code to condemn anyone who attempts to use the courts to resolve national security issues. For example, lawyer-turned- journalist Scott Horton charged in the luly 2007 issue ot Harper's Magazine that "lawfare theorists\* reason that lawyers who present war-related claims in court "might as well be terrorists themselves."™ Though there are those who object to the way the courts have been used by some litigants.\*0 it is legally and morally wrong to paint anyone legitimately using legal processes as the "enemy." Indeed, the courageous use of the courts on behalf of unpopular clients, along with the insistence that even our vilest enemies must be afforded due process of law. is a deeply embedded American value, and the kind of principle the Armed Forces exist to preserve. To be clear, recourse to the courts and other legal processes is to be encouraged: if there are abuses, the courts are well equipped to deal with them. It is always better to wage legal battles, however vicious, than it is to fight battles with the lives of young Americans. Lawfare has become such an indel- ible feature of 21st-century conflicts that commanders dismiss it at their peril. Key leaders recognize this evolution. General James Jones. USMC (Ret.), the Nation's new National Security Advisor, observed several years ago that the nature of war has changed. "It's become very legalistic and very complex." he said, adding that now "you have to have a lawyer or a dozen."\*' Lawfare. of course, is about more than lawyers, it is about the rule of law and its relation to war. While it is true, as Professor Eckhardt maintains, that adherence to the rule of law is a "center of gravity" for democratic societ- ies such as ours—and certainly there arc those who will try to turn that virtue into a vulnerability—we still can never forget that it is also a vital source of our great strength as a nation." We can—and must—meet the chal- lenge of lawfare as effectively and aggressively as we have met every other issue critical to our national security.

### 2AC Restriction

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually committed to the courts as claims brought under the Suspension Clause. Both are fundamental judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir. 1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene, 553 U.S. 723.

#### C/I – Authority is what the president may do not what the president can do

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 **Power refers to an agent's** ability or **capacity to produce a change** in a legal relation (whether or not the principal approves of the change), **and authority refers to the power given (permission granted) to the agent** by the principal to affect the legal relations of the principal; **the distinction is between what the agent can do and what the agent may do**.

#### [[Ex post review is a restriction, ex ante isn’t]]

Jaffer-Director ACLU Center for Democracy-13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), <http://www.harvardlawreview.org/issues/126/april13/forum_1002.php>)

Since 9/11, the CIA and Joint Special Operations Command (JSOC) have used armed drones to kill thousands of people in places far removed from conventional battlefields. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out. While judicial engagement with the targeted killing program is long overdue, those aiming to bring the program in line with our legal traditions and moral intuitions should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it. The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats. These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges. Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add “rigor” to the executive’s decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse. But to recognize that judicial review is indispensible in this context is not to say that Congress should establish a specialized court, still less that it should establish such a court to review contemplated killings before they are carried out. First, the establishment of such a court would almost certainly entrench the notion that the government has authority, even far away from conflict zones, to use lethal force against individuals who do not present imminent threats. When a threat is truly imminent, after all, the government will not have time to apply to a court for permission to carry out a strike. Exigency will make prior judicial review infeasible. To propose that a court should review contemplated strikes before they are carried out is to accept that the government should be contemplating strikes against people who do not present imminent threats. This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so. Proponents of a specialized targeted killing court are right to recognize that the judiciary has a crucial role to play in articulating and enforcing legal limits on the government’s use of lethal force. Congress need not establish a new court, however, in order for the judiciary to do what the Constitution already empowers and obliges it to do.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### Their interpretation is flawed

#### A. Over limits- core cases revolve around regulating behavior not banning policies. Their interp eliminates topic lit.

#### B. Affirmative Ground-Ban policies are dead against agent counterplans. Err aff because the range of good affs is small and the neg is strapped with generics.

#### ---Reasonability-competing interpretations causes substance crowd. Good is good enough when the topic is already limited and our aff is squarely in the lit

### 2AC – Executive CP

#### Links to politics- Obama will have to spend capital defending the process- specifically drains focus away from other agenda items\*\*

McNeal 13 (Gregory McNeal, Five Ways to Reform the Targeted Killing Program, April 23, 2013, <http://www.lawfareblog.com/2013/04/five-ways-to-reform-the-targeted-killing-program/>)

Reform 5: Establish an Independent Review Board The transparency related accountability reforms specified above have the ability to expose wrongdoing; however that’s not the only goal of accountability. Accountability is also designed to deter wrongdoing. By exposing governmental activity, transparency oriented reforms can influence the behavior of all future public officials—to convince them to live up to public expectations. The challenge associated with the reforms articulated above is a bias towards the status quo. Very few incentives exist for elected officials to exercise greater oversight over targeted killings and interest group advocacy is not as strong in matters of national security and foreign affairs as it is in domestic politics. To overcome the bias towards the status quo, Congress should consider creating an independent review board composed of individuals selected by the minority and majority leadership of the House and Senate, thus ensuring bi-partisan representation. The individuals on the review board should be drawn from the ranks of former intelligence and military officers, lending their report enhanced credibility. These individuals should be responsible for publishing an annual report analyzing how well the government’s targeted killing program is performing. The goal would be a strategic assessment of costs and benefits, including the fiscal costs, potential blowback, collateral damage and other details that are currently held deep within the files of the targeting bureaucracy. This board, like many prior commissions can be successful because they signal the executive’s interest in maintaining credibility and winning the support of the public. It also shows his willingness to give up control of information that allows others to subject the executive branch to critiques. Similarly, Congress may prefer this solution because it allows them to claim they are holding the executive branch accountable while at the same time shifting the blame for poor accountability decisions to others. The board could review the program in its entirety, or could conduct audits on specified areas of the program. The challenge associated with such an approach is similar to the oversight challenges we see today. Will the agencies provide information to the board members? Maybe not. However, the dynamic here is a bit different, and it suggests that that agencies may cooperate. First, for the board to be successful it will require the president to publicly support it from the outset. A failure on his part to do so may impose political costs on him by suggesting he has something to hide. That cost may be more than he wants to bear. Second, once the president publicly binds himself to the commission, he will need to ensure it is successful or he will again suffer political costs. Those costs may turn into an ongoing political drama, drawing attention away from his other public policy objectives. Third, the board members themselves, once appointed, may operate as independent investigators who will have an interest in ensuring that they are not stonewalled. Fourth, because these members will be appointed by partisan leaders in Congress, the individuals chosen are likely to have impressive credentials, lending them a platform for lodging their critiques.

### 2AC – Warfighting

#### Blowback splits US intel and military cohesion

Hudson 11 (Leila Hudson is associate professor of anthropology and history in the School of Middle Eastern & North African Studies at the University of Arizona and director of the Southwest Initiative for the Study of Middle East Conflicts, “Drone Warfare: Blowback From the New American Way of War,” Middle East Policy, <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>)

Between 2004 and 2009, our research and databases compiled by others document a dramatic spike in deaths by suicide bombings in Afghanistan and Pakistan.18 While it is impossible to prove direct causality from data analysis alone, it is probable that drone strikes provide motivation for retaliation, and that there is a substantive relationship between the increasing number of drone strikes and the increasing number of retaliation attacks.For every high-profile, purposeful attack like the Khost bombing, many more low-profile attacks take place. These types of attacks can be explained by what military strategist David Kilcullen calls the accidental-guerrilla phenomenon, a local rejection of external forces.19 By using drone warfare as the only policy tool in the FATA without any local political engagement, the United States is almost certainly creating accidental guerrillas. These new combatants, unable to retaliate against the United States within FATA, will likely cross the border into Afghanistan, where U.S. troops and NATO and Afghan security forces are concentrated and present easily identifiable targets. Or they may join the ranks of groups like the Pakistani Taliban, whose attacks within Pakistan destabilize the U.S.-Pakistani alliance. The last days of June 2011 illustrated the worst extremes of this phenomenon: a married couple carrying out a suicide attack in Pakistan, and an eight-year-old duped (not recruited) into an Afghan suicide attack.20It should be emphasized that only a small minority of those affected by drone attacks become the kinds of radicals envisioned by Kilcullen. However, with the average frequency of a drone strike every three days in 2010, this would be enough to provide a steady stream of new recruits and destabilize the region through direct violence. The less direct effect of steady drone attacks and militant counterattacks is a smoldering dissatisfaction with dead-end policy. On the U.S. military, intelligence and policy side, this results in division in the ranks, preventing a unified effort.21 In Afghanistan and Pakistan, this cycle results in anti-government agitation and anti-American sentiment, which may force sudden policy adjustments by political and military actors.

#### --Turn – whistleblowers – deference emboldens whistleblowers which causes worse leaks and restrictions than the plan

Marguilies ‘10 Peter, Professor of Law, Roger Williams University, “Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law” IOWA LAW REVIEW Vol. 96:195

The categorical-deference approach also fails to acknowledge that those stymied by the lack of formal redress can substitute for litigation other paths that pose greater danger. For example, consider the perspective of the official who leaks a document, not to advance a personal agenda, but to focus public attention on government policy.170 Whistleblowers of this kind, like Daniel Ellsberg, who leaked the Pentagon Papers to the New York Times, 171 are advancing a constitutional vision of their own in which senior officials have strayed from the limits of the original understanding.172 If the courts and Congress do not work to restore the balance, the whistleblower engages in self-help. Because leakers are risk-seekers who believe the status quo is unacceptable, they lack courts’ interest in safeguarding sensitive information. Policy shaped by blowback from leaks is far more volatile than policy reacting to judicial precedent.173 Similarly, the media has a constitutional role to play that includes investigative reporting. The media will step up its efforts if other institutions like courts take a more deferential stance.174 When government hides information, the media’s sense of its own role leads to greater distrust of government and a willingness to both uncover and publish more information. On some occasions, the First Amendment will oblige us to tolerate journalists’ disclosure of operational details of covert programs.175 Journalists will understandably view government’s claims that information is sensitive with greater skepticism when government has methodically locked down information in other settings. Similarly, shutting off damage suits regarding terrorism issues leaves other kinds of litigation, including litigation the government has initiated. Journalists and activists will seek to scrutinize and mobilize around these cases, even if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.

#### --The court would not apply an overly-restrictive standard of imminence, still allows decapitation and out-of-battlefield TK ops – Hamdi precedent proves

Kwoka 11 (Lindsay, J.D. UPenn, “TRIAL BY SNIPER: THE LEGALITY OF TARGETED KILLING IN THE WAR ON TERROR” Accessed at HeinOnline)

But this is not the end of the inquiry. Even if a targeted individual is not located on a field of battle, he may still be a threat, and tar- geted killing may potentially be necessary and appropriate in some circumstances. Applying the reasoning of" Hamdi here, a court would likely find that the use of targeted killing is only "necessary and ap- propriate" if it is the only way to prevent someone like Al-Awlaki from engaging in terrorist activity or otherwise harming the United States. The Hamdi Court was concerned with assuring that the executive used the least intrusive means in achieving its objective of preventing the enemy combatant from returning to battle. The Court made clear that the means used to achieve this objective should be no more intrusive than necessary.7\* It is consistent with the Court's concern to allow targeted killing only when it is the only means available to pre- vent harm to the United States. If the executive can demonstrate that an individual outside of a warzone will harm the United States unless he is killed, targeted kill- ing may be authorized. This is consistent with Hamdi, in which the main concern was preventing future harm to the United States while using the least intrusive means available. This is also consistent with U.S. criminal law, in which the executive branch is permitted to kill an individual if there is no peaceful means left to apprehend him. Such an approach is also consistent with the approach of the Supreme Court. Even the most stalwart protectors of constitutional rights of alleged terrorists recognize that immediate action by the executive is at times necessary to prevent attacks.7'' An approach that allows the executive to use deadly force when it is the only available means of preventing harm effectively balances the need to protect citizen's constitutional rights while affording sufficient deference to the executive.

### 2AC – NSA Politics

#### 1NC link is a docket argument about debates on the senate floor over legislation – plan doesn’t trigger it – we’re the DC Court

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011.

#### Court action shields Obama from controversy

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter

#### Not a DA- too many bills, zero chance anything comes up for a vote this year

Brown 3-27 (Hayes, Privacy Advocates Skeptical Of Obama’s New NSA Reforms, http://thinkprogress.org/world/2014/03/27/3419777/nsa-reform-schiff/)

There’s also the legislative component to the proposal that has the privacy community concerned. “The executive branch doesn’t need Congress’s permission to end a practice that it never should have started,” the Brennan Center’s Elizabeth Goitein said. “The very fact that the president’s plan requires legislation means he has something in mind other than simply ending the program.” At present, there are several bills circulating in Congress designed to reform the NSA, from the sweeping USA FREEDOM Act — which many of the privacy groups criticizing the new proposal are backing — to more modest proposals focused on pieces of the problem. Rep. Adam Schiff (D-CA), a senior member of the House Intelligence Committee, who put forward a bill in January designed to take similar action as the President’s newly-announced plans. In an interview with ThinkProgress, Schiff said that the administration should move forward on ending bulk collection even without Congress acting. “The administration is proposing that the carriers main their data in a uniform format,” Schiff said. “If we were going to compel that, you might need legislation. But assuming we were going to defray the cost of the carriers to make those changes, that’s something that can be negotiated contractually with the carriers in a process that can begin now. So I would encourage the administration to begin the process of transitioning.” With the glacial pace at which Congress has operated lately, there’s reason to be concerned about the likelihood of any bill passing soon. “Given that this legislation will not be in place by March 28 and given the importance of maintaining this capability, I have directed the Department of Justice to seek a 90-day reauthorization of the existing program,” Obama said in his statement Thursday. Since the revelation of the Section 215 collection program last June, there have been three such 90-day renewals. And in a briefing call this morning, a senior administration official tacitly confirmed that should Congress not act, the renewals of the program in its current state could continue on indefinitely.

#### Reform not sufficient to maintain sustainability and ward off legal challenges

SF Gate 3/25/14 (“Obama gives ground on NSA snooping” <http://www.sfgate.com/opinion/editorials/article/Obama-gives-ground-on-NSA-snooping-5348905.php>)

The president's outlook is clearly aimed at restoring public confidence, grown suspicious of such surveillance that spy agencies secretly launched in a wide-ranging hunt for terrorists. That restorative effort will likely take years, and easing back on phone records is only a start. The data collecting came to light through the intelligence work leaked by former NSA contractor Edward Snowden, now living in exile in Russia.

#### Low risk of cyberwar-too hard to take down multiple targets and keep them down. Only 3 percent of attacks are actually scary.

**Cavelty, Center for Security Studies, 2012**

(Myriam Dunn, “The Militarisation of Cyber Security as a Source of Global Tension”, 10-22, <http://isn.ch/Digital-Library/Articles/Special-Feature/Detail/?lng=en&id=153888&tabid=1453350669&contextid774=153888&contextid775=153903>, ldg)

However, in the entire history of computer networks, there are no examples of cyber attacks that resulted in actual physical violence against persons (nobody has ever died from a cyber incident), and only very few had a substantial effect on property (Stuxnet being the most prominent). So far, cyber attacks have not caused serious long-term disruptions. They are risks that can be dealt with by individual entities using standard information security measures, and their overall costs remain low in comparison to other risk categories such as financial risks. These facts tend to be almost completely disregarded in policy circles. There are several reasons why the threat is overrated. First, as combating cyber threats has become a highly politicised issue, official statements about the level of threat must also be seen in the context of competition for resources and influence between various bureaucratic entities. This is usually done by stating an urgent need for action and describing the overall threat as big and rising. Second, psychological research has shown that risk perception, including the perception of experts, is highly dependent on intuition and emotions. Cyber risks, especially in their more extreme form, fit the risk profile of so-called ‘dread risks’, which are perceived as catastrophic, fatal, un- known, and basically uncontrollable. There is a propensity to be disproportionally afraid of these risks despite their low probability, which translates into pressure for regulatory action of all sorts and the willingness to bear high costs of uncertain benefit Third, the media distorts the threat perception even further. There is no hard data for the assumption that the level of cyber risks is actually rising– beyond the perception of impact and fear. Some IT security companies have recently warned against over-emphasising sophisticated attacks just because we hear more about them. In 2010, only about 3 per cent of all incidents were considered so sophisticated that they were impossible to stop. The vast majority of attackers go after low-hanging fruit, which are small to medium sized enterprises with bad defences. These types of incidents tend to remain under the radar of the media and even law enforcement. Cyber war remains unlikely Since the potentially devastating effects of cyber attacks are so scary, the temptation is very high not only to think about worst-case scenarios, but also to give them a lot of (often too much) weight despite their very low probability. However, most experts agree that strategic cyber war remains highly unlikely in the foreseeable future, mainly due to the uncertain results such a war would bring, the lack of motivation on the part of the possible combatants, and their shared inability to defend against counterattacks. Indeed, it is hard to see how cyber attacks could ever become truly effective for military purposes: It is exceptionally difficult to take down multiple, specific targets and keep them down over time. The key difficulty is proper reconnaissance and targeting, as well as the need to deal with a variety of diverse systems and be ready for countermoves from your adversary. Furthermore, nobody can be truly interested in allowing the unfettered proliferation and use of cyber war tools, least of all the countries with the offensive lead in this domain. Quite to the contrary, strong arguments can be made that the world’s big powers have an overall strategic interest in developing and accepting internationally agreed norms on cyber war, and in creating agreements that might pertain to the development, distribution, and deployment of cyber weapons or to their use (though the effectiveness of such norms must remain doubtful). The most obvious reason is that the countries that are currently openly discussing the use of cyber war tools are precisely the ones that are the most vulnerable to cyber warfare attacks due to their high dependency on information infrastructure. The features of the emerging information environment make it extremely unlikely that any but the most limited and tactically oriented instances of computer attacks could be contained. More likely, computer attacks could ‘blow back’ through the interdependencies that are such an essential feature of the environment. Even relatively harmless viruses and worms would cause considerable random disruption to businesses, governments, and consumers. This risk would most likely weigh much heavier than the uncertain benefits to be gained from cyber war activities. Certainly, thinking about (and planning for) worst-case scenarios is a legitimate task of the national security apparatus. Also, it seems almost inevitable that until cyber war is proven to be ineffective or forbidden, states and non-state actors who have the ability to develop cyber weapons will try to do so, because they appear cost-effective, more stealthy, and less risky than other forms of armed conflict. However, cyber war should not receive too much attention at the expense of more plausible and possible cyber problems. Using too many resources for high- impact, low-probability events – and therefore having less resources for the low to middle impact and high probability events – does not make sense, neither politically, nor strategically and certainly not when applying a cost-benefit logic.

### 2AC – Court Politics

#### No capital loss

Gibson 8/12/2013 (James L., Sidney W. Souers Professor of Government, Director of the Program on Citizenship and Democratic Values, Washington University in St. Louis, “IS THE U.S. SUPREME COURT’S LEGITIMACY GROUNDED IN

PERFORMANCE SATISFACTION AND IDEOLOGY?”)

The overwhelming weight of the evidence we present in this paper is that the legitimacy of the U.S. Supreme Court is not much dependent upon the Court making decisions that are pleasing to the American people. The Court’s legitimacy seems not to be grounded in policy agreement with its decisions, nor is it connected to the ideological and partisan cross-currents that so wrack contemporary American politics. Whether desirable or undesirable, it seems that the current Supreme Court has a sufficiently deep reservoir of goodwill that allows it to rise above the contemporary divisions in the American polity. These empirical conclusions have enormous theoretical importance. It seems that the Court as currently configured is unlikely to consistently disappoint either the left or the right. As we have documented above, the current Supreme Court makes fairly conservative policy, but it clearly does not make uniformly conservative policy. Thus, even the Rehnquist and Roberts Courts have made many decisions that should be pleasing to liberals, even if conservatives should be slightly more pleased with the Court. Perhaps a court closely divided on ideology cannot produce the consistent decisional fuel needed to ignite a threat to the institution’s legitimacy. Some worry that an ideologically divided Court undermines the institution’s legitimacy (e.g. Liptak 2011). Perhaps the truth is exactly the opposite: an ideologically divided Court is able to please both liberals and conservatives with its decisions, and therefore decisional displeasure does not build to the point of challenging the institution’s legitimacy.

#### The Supreme Court has statistically ruled against Obama more than any other president

McLaughlin, Washington Times, 6/26 (Seth, “Obama administration has lost two-thirds of Supreme Court cases”, http://www.washingtontimes.com/news/2013/jun/26/obama-administration-lost-two-thirds-of-cases-duri/?page=all)

President Obama celebrated the Supreme Court’s decisions Wednesday on gay marriage, but overall it has been a rocky term before the court for his administration, winning just more than a third of the cases in which it was involved. Lawyers said the government traditionally averages about a 70 percent winning percentage before the high court. Its advantages are so great that the Justice Department’s chief Supreme Court attorney, the solicitor general, is dubbed the “10th Justice.” But during the 2012-13 term, which began in October and ended Wednesday, the court rejected Mr. Obama’s arguments on property rights, affirmative action, voting rights and other issues. “Despite some notable victories, the Obama administration has had an unusually poor batting average at the high court,” said Adam Winkler, a constitutional law professor at UCLA. “Like last year, the Obama administration lost more cases than it won.” By Mr. Winkler’s count, the Obama administration has won 39 percent of the cases in which it has been a party in the litigation, and won 50 percent of the cases in which the government filed a “friend of the court” brief backing one side or the other. Mr. Winkler said a good portion of the administration’s poor batting average can be traced to ideological differences between the Obama administration and the five conservative-leaning Supreme Court justices. Indeed, the administration backed the losing argument in 11 cases that were decided 5-4, and one case that was decided 5-3. “What arguments can you make to a court that is determined to overturn the Voting Rights Act?” Mr. Winkler said. “The court is hostile to the administration’s arguments and the administration is not presenting the best arguments. So there is lot of blame to go around.” Still, not all of the cases were ideological battles. The Obama administration was on the losing end of several 9-0 decisions, including last year when the court held that churches have the right to make employment decisions free from government interference over discrimination laws, and said an Idaho couple could challenge the Environmental Protection Agency over government claims that they could not build a home on private property that was deemed a protected wetland. The nine justices also agreed this month to clear the way for California raisin growers to challenge the constitutionality of a Depression-era farming law that makes them keep part of their annual crop off the market. The losses continued to pile up for Mr. Obama this week after the court went against the wishes of the White House in cases that involved affirmative action in Texas, private property rights in Florida and a challenge to the Voting Rights Act of 1965. Ilya Somin, a constitutional law professor at George Mason University, said it is striking to take into account the number of times the Obama administration has been on the losing end of unanimous decisions. “When the administration loses significant cases in unanimous decisions and cannot even hold the votes of its own appointees — Justices Sonia Sotomayor and Elena Kagan — it is an indication that they adopted such an extreme position on the scope of federal power that even generally sympathetic judges could not even support it,” said Mr. Somin, adding that presidents from both parties have a tendency to make sweeping claims of federal power. “This is actually something that George W. Bush and Obama have in common.” The president scored at least a partial victory Wednesday in perhaps the biggest cases of the term when the court invalidated the 1996 Defense of Marriage Act, which defines marriage for the purpose of federal law as a legal union between one man and one woman. The court also ruled that the supporters of California’s Proposition 8, the ban on gay marriage that voters passed by referendum in 2008, did not have the standing to argue the case in court. Relaying Mr. Obama’s reaction, White House spokesman Jay Carney said the president described the DOMA ruling as “historic” and the Proposition 8 ruling as a “tremendous victory.” The rulings, though, were not complete victories for Mr. Obama’s stances. The court did not decide whether same-sex marriage is a constitutional right or address whether the California law is unconstitutional. “They made an argument in the Prop 8 case; it was rejected,” Mr. Winkler said. “They made an argument in the DOMA case; it was rejected. So they are happy with the results of today’s cases, but their arguments were not accepted by the court.”

# 1AR

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### 1AR-Consitutional Rights = Restrictons

#### ---Judical restrictions on war powers include constitutional rights protections

Steele 76 (Sr. Dist. Judge Steel, Kovach v. Middendorf 424 F.Supp. 72, 76 -77 (D.C.Del. 1976)), from a 1976 case from a federal trial court in Delaware)

Defendants argue that in both its two year and four year aspects this case presents a political and not a judicial question within the constitutional power of the Court to decide. Defendants point out that Congress alone has the power under the Constitution “(T)o provide and maintain a Navy”, Art. I, s 8, Cl. 13 and “(T)o make \*77 Rules for the Government and Regulation of the . . . naval Forces”. Art. I, s 8, Cl. 14. Defendants argue that the Constitution has placed the power exclusively in Congress to legislate and in the President to execute in all areas relating to the conduct of the Navy, and that decisional responsibilities in those areas are beyond the constitutional limits of judicial power. Defendants rely primarily upon Orloff v. Willoughby, 345 U.S. 83, 93-94, 73 S.Ct. 534, 97 L.Ed. 842 (1953) and Gilligan v. Morgan, 413 U.S. 1, 93 S.Ct. 2440, 37 L.Ed.2d 407 (1973) to support this view. Neither of these cases nor the others referred to by plaintiffdiscuss the issue whether courts, under the power constitutionally conferred upon them, may impose restrictions upon legislative or executive decisions made in the exercise of their war powers if those decisions infringe upon constitutionally protected rights. That courts have the power to do so is settled. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 164-165, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963). See United States v. MacIntosh, 283 U.S. 605, 622, 51 S.Ct. 570, 75 L.Ed. 1302 (1931)

#### ---Constitutional rights are restrictions

Boumediene Appellete Brief 2005 (Boumediene v. Bush 476 F.3d 981, 993, 375 U.S.App.D.C. 48, 60 (C.A.D.C.,2007)- Appellate brief)

\*993 \*\*60 As against this line of authority, the dissent offers the distinction that the Suspension Clause is a limitation on congressional power rather than a constitutional right. But this is no distinction at all. Constitutional rights are rights against the government and, as such, are restrictions on governmental power. See H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 534, 69 S.Ct. 657, 93 L.Ed. 865 (1949) (“Even the Bill of Rights amendments were framed only as a limitation upon the powers of Congress.”). FN12 Consider the First Amendment. (In contrasting the Suspension Clause with provisions in the Bill of Rights, see Dissent at 995-96, the dissent is careful to ignore the First Amendment.) Like the Suspension Clause, the First Amendment is framed as a limitation on Congress: “Congress shall make no law ....” Yet no one would deny that the First Amendment protects the rights to free speech and religion and assembly.

### NATO

#### Nato still relevant----military and commerce

Charles A. Kupchan 13, D.Phil from Oxford in International Affairs, Professor of International Affairs at Georgetown, Whitney H. Shepardson Senior Fellow at the Council on Foreign Relations, 3/6/13, "Why is NATO still needed, even after the downfall of the Soviet Union?," http://www.cfr.org/nato/why-nato-still-needed-even-after-downfall-soviet-union/p30152

The North Atlantic Treaty Organization (NATO) is an international military alliance that was created to enable its members (the United States, Canada, and their European partners) to counter the threat posed by the Soviet Union. Alliances usually come to an end when the threat that led to their formation disappears. However, NATO defies the historical norm, not only surviving well beyond the Cold War's end, but also expanding its membership and broadening its mission.¶ NATO remains valuable to its members for a number of reasons. The expansion of the alliance has played an important role in consolidating stability and democracy in Central Europe, where members continue to look to NATO as a hedge against the return of a threat from Russia. In this respect, NATO and the European Union have been working in tandem to lock in a prosperous and secure Atlantic community.¶ Meanwhile, NATO has repeatedly demonstrated the utility of its integrated military capability. The alliance used force to end ethnic conflict in the Balkans and played a role in preserving the peace that followed. NATO has sustained a long-term presence in Afghanistan, helping to counter terrorism and prepare Afghans to take over responsibility for their own security. NATO also oversaw the mission in Libya that succeeded in stopping its civil war and removing the Qaddafi regime. All of these missions demonstrate NATO's utility and its contributions to the individual and collective welfare of its members, precisely why they continue to believe in the merits of membership.

#### No alternatives to NATO can fill in

Armstrong 9/17/13 (Thomas D., “IS NATO STILL RELEVANT?” <http://scinternationalreview.org/2013/09/is-nato-still-relevant/>)

NATO’s value lies in the absence of an alternative. NATO is the most formidable and sophisticated military organization in the world, thanks in large part, but not exclusively, to the US. As Ambassador Ivo Daalder and former Supreme Allied Commander Europe James Stavridis explained: “Some countries have significant military reach. But when a group of countries wants to launch a joint intervention as a coalition—which confers political legitimacy—only NATO can provide the common command structure and capabilities necessary to plan and execute complex operations.” Moreover, the EU has shown an inability to pool the security and defense resources of its member states. If the alliance were to disband, no member state besides the US would be able to assume full responsibility for their national defense.

#### No U.S.-Russia war---tensions will remain compartmentalized

Richard Weitz 11, senior fellow at the Hudson Institute and a World Politics Review senior editor, 9/27/11, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” <http://www.scribd.com/doc/66579517/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties>

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely remain limited and compartmentalized. Russia and the West do not have fundamentally conflicting vital interests of the kind countries would go to war over. And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

### A2: Balkans – 2NC

#### Impact empirically denied- 7 conflicts in 10 years

**Jessen-Petersen, former UN special representative for Kosovo, 2010**

(Soren, “Hearing Of The Commission On Security & Cooperation In Europe”, 5-4, Federal News Source, lexis, ldg)

Thank you, Mr. Chairman, and thank you very much for convening this meeting. This is my third opportunity to appear before this commission. I did it in 1996, when I was a special envoy of the U.N. High Commission for Refugees in what was then called the former Yugoslavia; then again in 2005, when I was the special representative of the U.N. secretary-general and administrator of Kosovo. And now, I'm delighted to be back. I know the role that this commission has been playing, is playing in its constant focus on not- the-least, the human dimensions of conflicts, which, over the last seven or eight years, we have tended, very often, to ignore or forget in our pursuit of what we call state security. There were seven conflicts in the Western Balkans from 1991 -- (coughs) -- excuse me -- to 2001. They had, as their objective, the forcible displacement of other groups, be they political, ethnic, social, religious or a community, or what we also call the ethnic cleansing of other groups. When the first of these conflicts erupted in 1991, there was the by-now-infamous statement by the Luxembourg foreign minister, then-chair of the EU, that the hour of Europe is now. We know today that, that hour never came. We know that, unfortunately, Europe failed to prevent and stop the conflicts that was done thanks to an initial hesitant involvement on the part of the United States, and then NATO leadership, also. And the role of the EU during the conflict was mainly relegated to humanitarian assistance, which, at the time, as a senior official in UNHCR, I, of course, appreciated, although, as many, were concerned that the humanitarian efforts during the war became a substitute for decisive political action.

#### Dayton Accords are a durable framework for peace

**Clark, former NATO supreme allied commander, 2010**

(General Wesley Clark, “Dayton Plus 15: A continuing peace”, 12-14, lexis, ldg)

Fifteen years ago today, the people of the Balkans chose peace over conflict and new beginnings over a troubled past. Many people contributed to ending the worst European conflict since World War II - including the North Atlantic Treaty Organization forces who risked their lives; Richard Holbrooke, who died suddenly Monday, and my other colleagues, who negotiated the peace and guided it through turbulent waters, and, of course, the leaders and people of the Balkans. But, ultimately, it was President Bill Clinton's decision to act, despite vocal opposition from many Americans and some allies, that saved countless lives, presented a path to economic and social progress in the region and set the standard for U.S. leadership in a post-Cold War world. Today, we know that the United States made the right decision to intervene. But in the middle of the crisis, the answer was not so clear cut. For one, the United States was only beginning to establish its new role in a post-Cold War world. Following the collapse of the Soviet Union, many Americans believed we no longer had to be world's policeman and preferred instead to keep within our own borders. For another, many officials and political leaders argued that securing the Balkans was not in our strategic interests. Clinton strongly disagreed. He knew that tensions and conflicts in other parts of the world could quickly become problems in ours if we did nothing to stop them. Not only did he say it was the best thing for our ultimate security - it was the right thing to do, period. By 1995, more than 100,000 lives had been lost and 2 million people forced to flee their homes. Murder, torture and rape were no longer isolated incidents but systematic efforts to exert control and cleanse an entire ethnicity. Clinton knew the United States could not and should not stand idly by. But he also knew that we could not put U.S. soldiers in harm's way without exhausting all other options. We imposed tough economic sanctions on Serbia, conducted the longest humanitarian air lift in history, enforced a no-fly zone and made peace between the Muslims and the Croats. But it soon became obvious that force was necessary. In 1995, the United States led NATO airstrikes and sent Richard Holbrooke and a team of officials to the region. I was privileged to be among them. We lost three of our heroic colleagues in those efforts. But their lives were not lost in vain. President Clinton directed that we go back into the region, and finish the job. As a result of our actions, the parties agreed to sit down at the negotiating table. In November, an agreement that preserved Bosnia as a single state was reached. On Dec. 14, 1995, the presidents of Serbia, Bosnia and Croatia met in Paris to sign the Dayton Accords that marked the peace that endures today. The accords weren't perfect. But they ended the killings and gave the two sides a chance to discuss a framework for peace. All sides continue to build on that framework. Though there is still much progress to be made before the region is fully integrated into Europe, we are closer than ever before. The time is ripe for economic investment in the Balkans. The young people who came of age as the Dayton Accords were signed have now carried those lessons forward into their own service and leadership. And Washington remains committed to helping the people of Balkans fully realize the accords' promise. But more than just setting the stage for peace, the Dayton Accords can serve as a model for how to respond to other conflicts today. They give us hope that divisions between ethnicities, religions and regions can heal when given the support, resources and, most important, the time to see the benefits of peace extended to all.