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## Off

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#### Counterplan

#### The United States Federal Government should condition the use of the President’s authority for targeted killings as a first resort to instances of self-defense or response to attack by a non-state actor located within a state has consented to the United States’ carrying out targeted killing missions within its borders, or that is unwilling or unable to prosecute or neutralize such actors.

#### The standard of “unable or unwilling” should require offering notice, when feasible, to the targeted state and allowance of time for a good-faith effort to neutralize the threat to the United States. “Ability” should be defined by analysis of the level of sovereign control the state exercises over the territory in which the relevant non-state groups are located.

#### Net-beneficial-restricting targeted killing as a first resort outside active hostilities collapses counter-terrorism by signaling availability of safe havens and immunity from strikes-the “unable-unwilling” framework’s a distinct and better alternative

**Corn, South Texas presidential research professor, 2013**

(Geoffrey, Statement before the Senate Armed Services Committee, CQ Congressional Testimony, 5-16, lexis, ldg)

3. What is the geographic scope of the AUMF and under what circumstances may the United States attack belligerent targets in the territory of another country? In my opinion, there is no need to amend the AUMF to define the geographic scope of military operations it authorizes. On the contrary, I believe doing so would fundamentally undermine the efficacy of U.S. counter-terror military operations by overtly signaling to the enemy exactly where to pursue safe-haven and de facto immunity from the reach of U.S. power. This concern is similar to that associated with explicitly defining co- belligerents subject to the AUMF, although I believe it is substantially more significant. It is an operational and tactical axiom that insurgent and non-state threats rarely seek the proverbial "toe to toe" confrontation with clearly superior military forces. Al Qaeda is no different. Indeed, their attempts to engage in such tactics in the initial phases of Operation Enduring Freedom proved disastrous, and ostensibly caused the dispersion of operational capabilities that then necessitated the co-belligerent assessment. Imposing an arbitrary geographic limitation of the scope of military operations against this threat would therefore be inconsistent with the strategic objective of preventing future terrorist attacks against the United States. I believe much of the momentum for asserting some arbitrary geographic limitation on the scope of operations conducted to disrupt or disable al Qaeda belligerent capabilities is the result of the commonly used term "hot battlefield." This notion of a "hot" battlefield is, in my opinion, an operational and legal fiction. Nothing in the law of armed conflict or military doctrine defines the meaning of "battlefield." Contrary to the erroneous assertions that the use of combat power is restricted to defined geographic locations such as Afghanistan (and previously Iraq), the geographic scope of armed conflict must be dictated by a totality assessment of a variety of factors, ultimately driven by the strategic end state the nation seeks to achieve. The nature and dynamics of the threat -including key vulnerabilities - is a vital factor in this analysis. These threat dynamics properly influence the assessment of enemy capabilities and vulnerabilities, which in turn drive the formulation of national strategy, which includes determining when, where, and how to leverage national power (including military power) to achieve desired operational effects. Thus, threat dynamics, and not some geographic "box", have historically driven and must continue to drive the scope of armed hostilities. The logic of this premise is validated by (in my opinion) the inability to identify an armed conflict in modern history where the scope of operations was legally restricted by a conception of a "hot" battlefield. Instead, threat dynamics coupled with policy, diplomatic considerations and, in certain armed conflicts the international law of neutrality, dictate such scope. Ultimately, battlefields become "hot" when persons, places, or things assessed as lawful military objectives pursuant to the law of armed conflict are subjected to attack. I do not, however, intend to suggest that it is proper to view the entire globe as a battlefield in the military component of our struggle against al Qaeda, or that threat dynamics are the only considerations in assessing the scope of military operations. Instead, complex considerations of policy and diplomacy have and must continue to influence this assessment. However, suggesting that the proper scope of combat operations is dictated by a legal conception of "hot" battlefield is operationally irrational and legally unsound. Accordingly, placing policy limits on the scope of combat operations conducted pursuant to the legal authority provided by the AUMF is both logical and appropriate, and in my view has been a cornerstone of U.S. use of force policy since the enactment of the AUMF. In contrast, interpreting the law of armed conflict to place legal limits on the scope of such operations to "hot" battlefields, or imposing such a legal limitation in the terms of the AUMF, creates a perverse incentive for the belligerent enemy by allowing him to dictate when and where he will be subject to lawful attack. I believe this balance between legal authority and policy and diplomatic considerations is reflected in what is commonly termed the "unable or unwilling" test for assessing when attacking an enemy belligerent capability in the territory of another country is permissible. First, it should be noted that the legality of an attack against an enemy belligerent is determined exclusively by the law of armed conflict when the country where he is located provides consent for such action (is the target lawful within the meaning of the law and will attack of the target comply with the targeting principles of distinction, proportionality and precautions in the attack). In the unusual circumstance where a lawful object of attack associated with al Qaeda and therefore falling within the scope of the AUMF is identified in the territory of another country not providing consent for U.S. military action, policy and diplomacy play a decisive role in the attack decision-making process. Only when the U.S. concludes that the country is unable or unwilling to address the threat will attack be authorized, which presupposes that the nature of the target is determined to be sufficiently significant to warrant a non-consensual military action in that territory. I believe the Executive is best positioned to make these judgments, and that to date they have been made judiciously. I also believe that imposing a statutory scope limitation would vest terrorist belligerent operatives with the benefits of the sovereignty of the state they exploit for sanctuary. It strikes me as far more logical to continue to allow the President to address these sovereignty concerns through diplomacy, focused on the strategic interests of the nation.

#### terrorism attacks escalate and cause 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

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#### Topicality

#### War powers authority is enumerated in prior statutes---doesn’t include CIC power because it’s not a congressionally authorized source of Presidential power

Curtis Bradley 10, Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School, Curtis, “CLEAR STATEMENT RULES AND EXECUTIVE WAR POWERS” http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty\_scholarship

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.1 For the most part, the Supreme Court has also followed this approach in deciding executive power issues relating to the war on terror. In Hamdi v. Rumsfeld, for example, Justice O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2 Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3 The Court’s decision in Boumediene v. Bush4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus re‐ view in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detainees.5 In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.

#### Vote Negative-the framers of the constitution explicitly distinguished between “war powers” and “commander in chief powers”— their interpretation is imprecise and explodes limits

Stephen Heidt 13, A Memorandum on the Topic Area, Georgia State University, http://www.cedadebate.org/forum/index.php?topic=4846.0

First, the topic committee and voters need to understand that Presidential War Power is not Commander in Chief Power. The topic paper, following a trend in legal “scholarship” and news media, blurs the distinction between the categories by alluding to presidential war power as commander in chief power (p9 at note 13). But war power is categorically distinct from commander in chief power. This categorical distinction derives directly from the powers ¶ 2 ¶ enumerated in the Constitution. Those powers can be summarized as Congress declares war, Presidents execute wars. ¶ Constitutional evidence: ¶ Article 1, Section 8: “The Congress shall have the power: To declare war…to raise armies and support armies…to provide and maintain a Navy, to make rules for the Government and Regulation of the land and naval Forces, to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; to provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States…” ¶ Article 1, Section 9: “The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.” ¶ Article 1, Section 10 which reads: “No State shall, without the Consent of Congress…engage in War, unless actually invaded, or in such imminent Danger as will not admit delay.” ¶ Article II, Section 2: “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several states…He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur…” ¶ To summarize: War powers are enumerated in Article 1 of the Constitution. Commander in Chief power is enumerated in Article 2. The framers of the Constitution kept the two entirely distinct, on purpose, as a means for resolving the tension between the danger that a strong president would risk dictatorship and the need for unfettered power of the executive to conduct and win war.

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#### LOAC DA

#### Plan wrecks LOAC and military operations-creates a massive chilling effect via legal uncertainty-they don’t solve because they only change operations not the paradigm which is what causes allied backlash and norm development.

**Kels, Department of Homeland Security attorney, 2012**

(Charles, “The Perilous Position of the Laws of War”, 12-6, <http://harvardnsj.org/2012/12/the-perilous-position-of-the-laws-of-war/>, ldg)

Thus, we find ourselves in the current predicament, with the “pro-LOAC” and “pro-HRL” forces locked in a counterproductive and seemingly irreconcilable contest for ideological supremacy, attempting to carve out maximal space for their preferred legal paradigm. As international law experts argue among themselves about the existence of a NIAC and the application of LOAC, what has been lost in the shuffle is the real meaning of jus in bello principles to those who live by them. Whereas policymakers and theorists view LOAC as a gateway to mete out violence “that would be utterly unthinkable in peacetime,” the military teaches and internalizes it as a code of honor in combat. In this sense, all the discussion of applicable “regimes” and “paradigms” reveals a larger misconception: LOAC does not enable hostilities, but acts as the prism through which they are lawfully conducted. The laws of war provide “rules of conduct by warriors for warriors,” informing a moral code that enables warfighters to differentiate “legal acts of killing and destruction from criminal acts of killing and destruction.” To the extent that politicians and their critics treat LOAC as something malleable that can be used to either expand or restrict the scale of counterterrorism operations, they undermine a system that—until the relatively recent advent of HRL—embodied the epitome of protection for civilians and restriction of bloodletting under international law. The armed forces value “clear, bright line rules” precisely because the business they are engaged in is so fraught with moral and physical peril. This is why judge advocates (JAGs) subscribe to a mentality of staying well within legal bounds and not even getting close to the proverbial line, as was reflected in the fierce detention debates with their civilian counterparts during the Bush administration. The military paradigm is an eighteen year-old private far from home and under unthinkable pressure, not a seasoned interrogator who can take liberties with the rules and still know where to stop. The Department of Defense (DOD) states clearly and unequivocally that it complies with LOAC in all “military operations,” regardless of classification. This was never intended to lower the standards of conduct for DOD personnel, but rather to moor U.S. policy to time-tested law and provide a baseline upon which the rules of engagement can be built and further refined. Indeed, the DOD used to employ a term, since discontinued, that captures the essence of the ongoing conundrum: “military operations other than war” (MOOTW). While there was a definite recognition that MOOTWs oftentimes did not rise to the level of armed conflict, the DOD nonetheless made a policy determination to comply with LOAC universally. Given the sensitive political nature of many MOOTWs, especially those conducted with international partners, the rules of engagement could be considerably more restrictive. But that was a function of strategy, not legal obligation. Of course, there is no doubt that LOAC is an “exceptional” body of law meant to govern a specific activity—the conduct of hostilities—as opposed to the “law of ordinary life.” But the strategic standoff between the “pro-LOAC” and “pro-HRL” forces over the freedom of action available in counterterrorism operations is fundamentally at odds with the more holistic view of LOAC adopted by the armed forces. Soldiers, including the uniformed lawyers who advise them, are less concerned with “thresholds” for application and which specific treaty provisions apply in different scenarios, than with a set of guiding principles (necessity, distinction, proportionality) that differentiate righteous warriors from common killers. That is, the U.S. armed forces subscribe to the conviction that a military properly “trained to comply with the law of war will do so, however a particular operation may be characterized.” This, I believe, is why the tenuous alignment between JAGs and human rights lawyers is now beginning to fray. Both made common cause in their objections to the Bush administration’s detention policies. For JAGs, though, the problem was not that the administration invoked LOAC, but that it did so selectively, in order to strengthen its hand without acknowledging the corresponding obligations. This is what Hamdan stands for: not necessarily that the fight against al Qaeda is a NIAC, but that with belligerent rights come belligerent responsibilities. The human rights community, as it turns out, was not primarily concerned with the perceived violations of LOAC, but with the application of LOAC altogether. The real nub of the current critique of U.S. policy, therefore, is that the Bush administration’s war on terror and the Obama administration’s war on al Qaeda and affiliates constitute a distinction without a difference. The latter may be less rhetorically inflammatory, but it is equally amorphous in application, enabling the United States to pursue non-state actors under an armed conflict paradigm. This criticism may have merit, but it is really about the use of force altogether, not the parameters that define how force is applied. It is, in other words, an ad bellum argument cloaked in the language of in bello. LOAC is apolitical. Adherence to it does not legitimize an unlawful resort to force, just as its violation—unless systematic—does not automatically render one’s cause unjust. The answer for those who object to U.S. targeted killing and indefinite detention is not to apply a peace paradigm that would invalidate LOAC and undercut the belligerent immunity of soldiers, but to direct their arguments to the political leadership regarding the decision to use force in the first place. Attacking LOAC for its perceived leniency and demanding the “pristine purity” of HRL in military operations is actually quite dangerous and counterproductive from a humanitarian perspective, because there remains the distinct possibility that the alternative to LOAC is not HRL but “lawlessness.” While there are certainly examples of armies that have acquitted themselves quite well in law enforcement roles—and while most nations do not subscribe to the strict U.S. delineation between military and police forces—the vast bulk of history indicates that in the context of armed hostilities, LOAC is by far the best case scenario, not the worst. Transnational terrorist networks pose unique security problems, among them the need to apply preexisting legal rubrics to an enemy who is dedicated to undermining and abusing them. Vital to meeting this challenge—of “building a durable framework for the struggle against al Qaeda that [draws] upon our deeply held values and traditions”—is to refrain from treating the deeply-ingrained tenets of honorable warfare as a mere mechanism for projecting force. The laws of war are much more than “lawyerly license” to kill and detain, subject to varying levels of application depending upon political outlook. They remain a bulwark against indiscriminate carnage, steeped in history and tried in battle.

#### Loss of mission effectiveness results in nuclear war in every hotspot

Kagan and O’Hanlon 7 Frederick, resident scholar at AEI and Michael, senior fellow in foreign policy at Brookings, “The Case for Larger Ground Forces”, April 2007, <http://www.aei.org/files/2007/04/24/20070424_Kagan20070424.pdf>

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

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#### Plan will force actions to be labeled as self-defense

**Daskal, Georgetown Center on National Security and the Law adjunct professor, 2013**

(Jennifer, “The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone”, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1252&context=facsch_lawrev>, ldg)

Absent the existence of an armed conflict, the United States—supported by a number of scholars—will turn increasingly to a self-defense theory to justify actions that would otherwise be conducted under a law-of-war framework. The United States has already suggested that certain targeted killings that have taken place outside of Afghanistan and northwest Pakistan are legitimate under both an armed-conflict and a self-defense justification. 209 Statements by CIA General Counsel Stephen Preston suggest that self-defense is in fact the primary basis for the CIA’s targeted-killing operations, with law-of-war authorities acting as a backstop.210 Meanwhile, scholars and European allies who reject the idea that the United States is engaged in a transnational armed conflict with al Qaeda nonetheless agree that the United States may act in self-defense against those al Qaeda operatives who pose an imminent threat, regardless of where they are located.211

#### US norm will get modeled-gurantees escalation and turns the case.

**Barnes, Boston JD and Tufts law and diplomacy MA, 2012**

(Beau, “Reauthorizing the 'War on Terror': The Legal and Policy Implications of the AUMF's Coming Obsolescence”, 211 Military Law Review 57 (2012), <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2150874>, ldg)

The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos.”148 Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration’s national security policy, sapping U.S. credibility. The Administration’s National Security Strategy emphasizes U.S. “moral leadership,” basing its approach to U.S. security in large part on “pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests.”149 Defense Department General Counsel Jeh Johnson has argued that “[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.”150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States “must not make [legal authority] up to suit the moment.”151 The Obama Administration’s global counterterrorism strategy is to “adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy” of “turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation.”152 Widely accepted legal arguments also facilitate cooperation from U.S. allies, especially from the United States’ European allies, who have been wary of expansive U.S. legal interpretations.153 Moreover, U.S. strategy vis-à-vis China focuses on binding that nation to international norms as it gains power in East Asia.154 The United States is an international “standard-bearer” that “sets norms that are mimicked by others,”155 and the Obama Administration acknowledges that its drone strikes act in a quasi-precedential fashion.156 Risking the obsolescence of the AUMF would force the United States into an “aggressive interpretation” of international legal authority,157 not just discrediting its own rationale, but facilitating that rationale’s destabilizing adoption by nations around the world.

#### Causes global hotspots to go nuclear

**Obayemi, East Bay law school professor, 2006**

(Olumide, “Article: Legal Standards Governing Pre-Emptive Strikes and Forcible Measures of Anticipatory Self-Defense Under the U.N. Charter and General International Law”, 12 Ann. Surv. Int'l & Comp. L. 19, lexis, ldg)

The United States must abide by the rigorous standards set out above that are meant to govern the use of preemptive strikes, because today's international system is characterized by a relative infrequency of interstate war. It has been noted that developing doctrines that lower the threshold for preemptive action could put that accomplishment at risk, and exacerbate regional crises already on the brink of open conflict. n100 This is important as O'Hanlon, Rice, and Steinberg have rightly noted: ...countries already on the brink of war, and leaning strongly towards war, might use the doctrine to justify an action they already wished to take, and the effect of the U.S. posture may make it harder for the international community in general, and the U.S. in particular, to counsel delay and diplomacy. Potential **examples abound**, ranging from Ethiopia and Eritrea, to China and Taiwan, to the Middle East. But perhaps the clearest case is the India-Pakistan crisis. n101 The world must be a safe place to live in. We cannot be ruled by bandits and rogue states. There must be law and order not only in the books but in enforcement as well. No nation is better suited to enforce international law than the United States. The Bush Doctrine will stand the test [\*42] of time and survive. Again, we submit that nothing more would protect the world and its citizens from nuclear weapons, terrorists and rogue states than an able and willing nation like the United States, acting as a policeman of the world within all legal boundaries. This is the essence of the preamble to the United Nations Charter.

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#### The executive branch should restrict Presidential war powers authority for targeted killing using uninhabited aerial vehicles as a first resort outside zones of active hostilities.

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#### TPA on top of the agenda – Obama push gets it to pass – key to global trade

McLarty-former chief of staff to Clinton during the NAFTA ratification fight-2/2/14 Huffington Post 2/2/14 http://www.huffingtonpost.com/thomas-f-mclarty/a-critical-test-of-leader\_b\_4705623.html A Critical Test of Leadership

In his State of the Union address last week, President Obama took a good first step in asking Congress to provide the tools he needs to close two of the most ambitious trade deals in U.S. history. But he faces an immediate challenge from within his party that could imperil negotiations, with huge stakes for the U.S. globally and for our economy at home. At issue is Trade Promotion Authority (TPA), which allows the president to send a trade agreement to Congress for an up-or-down vote, without amendments. Many Republicans reflexively oppose granting any request from the administration. But the biggest opposition is coming from Democrats skeptical of the value of free trade. The day after the president's address, Senate Majority Leader Harry Reid said he opposed "fast track" authority. His remarks revealed the depth of a gulf among Democrats over trade, and sparked new criticism from Republicans as a sign that the president's party couldn't be lined up behind a major administration initiative. For President Obama, this is a critical test of his leadership. Can he muster enough support for his trade agenda within his own party, and then assemble a bipartisan majority in both houses of Congress? Failure would be a great setback for U.S. prestige internationally, and a dismal signal for the president's remaining three years in office. We've seen this movie before -- and it didn't end well. The last Democratic president to seek fast track authority on trade was Bill Clinton in 1997. The effort collapsed when then House Speaker Newt Gingrich was unable to marshal his Republican majority. It was an opportunity lost, ending a period of bipartisan cooperation on trade and stalling momentum created a few years earlier by the North American Free Trade Agreement. Repeating this history would be a mistake, especially as our economy struggles to create good jobs at high wages. But the president faces an uphill battle. Now is the moment for Democrats to pause and take full measure of the stakes involved in opposing fast track. It's time for Republican supporters of trade to rally. And it is essential that the president and his cabinet exert persistent, focused leadership to persuade the skeptics. President Obama deserves much credit for advancing the most far-reaching trade agenda in a generation. The administration is nearing the finish line in negotiations of the Trans Pacific Partnership, an agreement with 11 Pacific Rim nations, including Japan and perhaps South Korea and others. Simultaneous talks are underway between the United States and the European Union over the Transatlantic Trade and Investment Partnership -- creating an economic NATO and the largest liberalized trade zone in the world. Together, the agreements would lower barriers in markets accounting for more than 60 percent of the global economy. Neither negotiation would survive a failure to renew Trade Promotion Authority, which expired in 2007. TPA reassures our negotiating partners that they will not agree to difficult concessions only to see Congress later force unilateral changes. Under TPA, Congress establishes negotiating goals and must be regularly consulted by the president. In exchange, Congress promises an up-or-down vote without amendment. No major trade legislation has passed Congress in decades without it. President Clinton knew that because trade was so hard, its support had to be bipartisan. To push for NAFTA, he assembled a high-profile war room in the White House, led by a prominent Democrat, Bill Daley, and former Republican Congressman Bill Frenzel. The president worked members tirelessly. The bill eventually passed with 102 Democratic and 132 Republican votes, and a similarly bipartisan total in the Senate. By contrast, the 1997 effort to renew fast-track authority lacked that high-profile White House push -- helping seal its doom. Over the last decades, global trade has proven essential to building employment and reducing inequality at home. One of every five jobs in the United States is tied to exports. More significantly for the long run, 95 percent of the world's customers live outside our borders. While many Americans have concerns about free trade, they say the benefits of U.S. involvement in the global economy outweigh the risks (by a 2-1 margin in a poll last month by the Pew Research Center). Even so, last fall 151 House Democrats signed a letter expressing their opposition to granting President Obama Trade Promotion Authority. Almost three dozen House Republicans followed suit. When the bill to renew TPA was introduced earlier this month, a number of Democratic Senators announced their opposition. They have now been joined by Sen. Reid. The warning signs are clear, but so is the path forward. Now is the time for a full-court press from the White House. President Obama should be clear about the imperative of TPA and make the strong case for trade as a catalyst for job growth. Then he must press his cabinet to the task. Ambassador Froman is a skilled negotiator and advocate. His cabinet colleagues include many effective proponents of free trade and international engagement, including Secretary of State John Kerry, Treasury Secretary Jack Lew, and Commerce Secretary Penny Pritzker. Without a concerted effort, TPA may well fail, embarrassing us abroad, casting a shadow on the president's second term and hurting our economy in the long run. Why not instead show America and the world that the president and Congress, including leaders of his own party, can work together?

#### The plan expends capital–immediate and forces a trade-off

O’Neil-prof law Fordham-7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of –Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### Free trade prevents multiple scenarios for world war and WMD Terrorism

Panzner-New York Institute of Finance-8

Michael, faculty at the New York Institute of Finance, 25-year veteran of the global stock, bond, and currency markets who has worked in New York and London for HSBC, Soros Funds, ABN Amro, Dresdner Bank, and JPMorgan Chase “Financial Armageddon: Protect Your Future from Economic Collapse,” pg. 136-138

Continuing calls for curbs on the flow of finance and trade will inspire the United States and other nations to spew forth protectionist legislation like the notorious Smoot-Hawley bill. Introduced at the start of the Great Depression, it triggered a series of tit-for-tat economic responses, which many commentators believe helped turn a serious economic downturn into a prolonged and devastating global disaster. But if history is any guide, those lessons will have been long forgotten during the next collapse. Eventually, fed by a mood of desperation and growing public anger, restrictions on trade, finance, investment, and immigration will almost certainly intensify. Authorities and ordinary citizens will likely scrutinize the cross-border movement of Americans and outsiders alike, and lawmakers may even call for a general crackdown on nonessential travel. Meanwhile, many nations will make transporting or sending funds to other countries exceedingly difficult. As desperate officials try to limit the fallout from decades of ill-conceived, corrupt, and reckless policies, they will introduce controls on foreign exchange. Foreign individuals and companies seeking to acquire certain American infrastructure assets, or trying to buy property and other assets on the cheap thanks to a rapidly depreciating dollar, will be stymied by limits on investment by noncitizens. Those efforts will cause spasms to ripple across economies and markets, disrupting global payment, settlement, and clearing mechanisms. All of this will, of course, continue to undermine business confidence and consumer spending. In a world of lockouts and lockdowns, any link that transmits systemic financial pressures across markets through arbitrage or portfolio-based risk management, or that allows diseases to be easily spread from one country to the next by tourists and wildlife, or that otherwise facilitates unwelcome exchanges of any kind will be viewed with suspicion and dealt with accordingly. The rise in isolationism and protectionism will bring about ever more heated arguments and dangerous confrontations over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to full-scale military encounters, often with minimal provocation. In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, terrorist groups will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level. Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more heated sense of urgency. China will likely assume an increasingly belligerent posture toward Taiwan, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientist at the University of Chicago, have even speculated that an “intense confrontation” between the United States and China is “inevitable” at some point. More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles soaked in blood. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. Terrorists employing biological or nuclear weapons will vie with conventional forces using jets, cruise missiles, and bunker-busting bombs to cause widespread destruction. Many will interpret stepped-up conflicts between Muslims and Western societies as the beginnings of a new world war.

## Case

### \*\*\*Norms

### Restraint Fails – 1NC

#### Lack of GPS means no one uses them for waging war

Noreika 10 (J., Matt, Assistant @ Science Department – American Geophysical Union, “TOWARD UNMANNED POWER How a Revolution in Military Affairs i s Transforming the Way We Understand Warfare in the Twenty-First Century” [http://aladinrc.wrlc.org/bitstream/handle/1961/9388/Noreika%2c%20J%20Matt%20-%20Spring%20%2710.pdf?sequence=1](http://aladinrc.wrlc.org/bitstream/handle/1961/9388/Noreika%2C%20J%20Matt%20-%20Spring%20%2710.pdf?sequence=1))

Meanwhile, the United States had recently perfected the technological capacity to control UAS from greater distances than ever before using its Global Positioning System (GPS). This network of orbiting satellites allows American mili tary units to relay positional information at near-instantaneous speeds from anywhere on the plan et with pinpoint accuracy. Thus, by the late 1990s UAS could be flown from locations safe within the United States while observing territory half a world away. The United States continues to m aintain a monopoly on its GPS although competing navigation systems including China’s Beidou , Europe’s Galilleo , and Russia’s GLONASS are scheduled to be online within the next few yea rs. Until then, the United States will continue to be the only nation in the world with a military infrastructure truly capable of wielding global unmanned power.

#### They’re too expensive

Mahadevan 10 (Prem, senior researcher with the Global Security Team at the Center for Security Studies (CSS), “THE MILITARY UTILITY OF DRONES” [http://e-collection.library.ethz.ch/eserv/eth:2252/eth-2252-01.pdf](http://e-collection.library.ethz.ch/eserv/eth%3A2252/eth-2252-01.pdf))

At present, only the United States and Israel have demonstrated the capacity to manufacture attack drones. However, with more than 50 countries purchasing drones or building them indigenously, this is cer - tain to change. More doubtful is whether drone technology will be able to remain inexpensive while becoming more sophisticated. The experience of manned military aviation, where acquisition costs have risen with technological improvements, does not suggest that future drones will be cheap. Furthermore, in contexts other than coun - terinsurgency and counterterrorism, the effectiveness of drones is largely dependent on the operating environment. If air defence technology improves at a faster pace than drone technology, depend - ence on unmanned aircraft could prove ruinously expensive for most countries. Despite this, the US military is currently investing heavily in operational drones. At the moment, most of its drones are tactical ones, which are cheap and easily replaceable. Drones are likely to be most useful when carrying out vital missions deemed too dangerous for manned aircraft, such as electronic warfare over hostile terri - tory. Even their use on border policing has proven controversial, with one study finding that the results produced do not justify the costs involved. From a long- term perspective, improvements in drone technology are occurring too slowly and incrementally to justify labeling it a transformative phenomenon. Rather than re - placing manned aircraft in the future, drones are likely to only complement them.

#### U.S. drone use doesn’t set a precedent, restraint doesn’t solve it, and norms don’t apply to drones at all in the first place

Amitai Etzioni 13, professor of international relations at George Washington University, March/April 2013, “The Great Drone Debate,” Military Review, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage.

Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of self constraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

I am not arguing that there are no natural norms that restrain behavior. There are certainly some that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). However drones are but one step—following bombers and missiles—in the development of distant battleﬁeld technologies. (Robotic soldiers—or future ﬁghting machines— are next in line). In such circumstances, the role of norms is much more limited.

### A2: Turkish Model

#### Turkish model is shot

#### Arab spring means everyone hates them

Zalewski 13 (Piotr Zalewski is an Istanbul-based freelance writer for Foreign Policy, Time and The National, “How Turkey Went From 'Zero Problems' to Zero Friends,” http://www.foreignpolicy.com/articles/2013/08/21/how\_turkey\_foreign\_policy\_went\_from\_zero\_problems\_to\_zero\_friends?page=full)

By blowing the regional status quo into oblivion, the Arab Spring forced Turkey out of this policy of non-interference. Ankara has struggled with the notion that it could not bend the region to its will: In Libya, before it ended up helping unseat Qaddafi, Turkey argued that the West had no business intervening against him. In Syria, it has broken completely with Assad, embroiling itself in a conflict that shows no sign of ending. And in Egypt, of course, it is setting itself on a collision course with the most populous state in the Arab world. The extent to which Turkey has since ditched its softly-softly approach to the region has been surprising. One of the commandments of "zero problems" was what Foreign Minister Ahmet Davutoglu referred to as "equidistance" -- that is, the refusal to take sides in regional disputes. This was always something of a myth, particularly when it came to the Israeli-Palestine dispute, where the government seldom missed a chance to bolster its regional and Islamic credentials by slighting the Israelis. But in the wake of the Arab Spring, equidistance appears to have gone into the gutter. It's not only in Egypt where Turkey is now seen as a partisan actor, rather than a neutral problem-solver. In Iraq, it has openly defied Prime Minister Nouri al-Maliki's government, accusing it of fomenting sectarian strife and going behind its back to negotiate oil deals with the Kurdish Regional Government, which administers the country's north. In Syria, it has lent unqualified support to the anti-regime rebels, letting them operate freely on its soil, turning a blind eye to their atrocities, and reportedly criticizing the United States for branding the al Qaeda-linked Jabhat al-Nusra a terrorist group. The former Turkish diplomat said that Ankara was right to support the demise of President Bashar al-Assad's regime, but deplored the ham-fisted way that it went about it. "Turkey was right to side with the people against the dictator, but it could have stopped there," he said. "By burning all bridges with the regime, Turkey lost its leverage with Assad." And when the international community, wary as the rebels' ranks swelled with jihadists, shied away from lending further support, "Turkey, to use a football term, found itself offside."

### \*\*\*European Allies

#### They need us more than we need them

**Perry, AP correspondent, 2013**

(Nick, “Experts Say US Spy Alliance Will Survive Snowden”, 7-16, <http://www.military.com/daily-news/2013/07/16/experts-say-us-spy-alliance-will-survive-snowden.html>, ldg)

WELLINGTON, New Zealand - Britain needed U.S. intelligence to help thwart a major terror attack. New Zealand relied on it to send troops to Afghanistan. And Australia used it to help convict a would-be bomber. All feats were the result of a spying alliance known as Five Eyes that groups together five English-speaking democracies, and they point to a vital lesson: American information is so valuable, experts say, that no amount of global outrage over secret U.S. surveillance powers would cause Britain, Canada, Australia and New Zealand to ditch the Five Eyes relationship. The broader message is that the revelations from NSA leaker Edward Snowden are unlikely to stop or even slow the global growth of secret-hunting - an increasingly critical factor in the security and prosperity of nations. "Information is like gold," Bruce Ferguson, the former head of New Zealand's foreign spy agency, the Government Communications Security Bureau, told The Associated Press. "If you don't have it, you don't survive." The Five Eyes arrangement underscores the value of this information - as well as the limitations of the information sharing. The collaboration began during World War II when the allies were trying to crack German and Japanese naval codes and has endured for more than 70 years. The alliance helps avoid duplication in some instances and allows for greater penetration in others. The five nations have agreed not to spy on each other, and in many outposts around the world, Five Eyes agencies work side by side, allowing for information to be shared quickly. But Richard Aldrich, who spent a decade researching a book on British surveillance, said some Five Eyes nations have spied on each other, violating their own rules. The five countries "generally know what's in each other's underwear drawers so you don't need to spy, but occasionally there will be issues when they don't agree" - and when that happens they snoop, Aldrich said. In Five Eyes, the U.S. boasts the most advanced technical abilities and the biggest budget. Britain is a leader in traditional spying, thanks in part to its reach into countries that were once part of the British Empire. Australia has excelled in gathering regional signals and intelligence, providing a window into the growing might of Asia. Canadians, Australians and New Zealanders can sometimes prove useful spies because they don't come under the same scrutiny as their British and American counterparts. "The United States doesn't share information," said Bob Ayers, a former CIA officer, "without an expectation of getting something in return." Britain is home to one of the world's largest eavesdropping centers, located about 300 kilometers (186 miles) northwest of London at Menwith Hill. It's run by the NSA but hundreds of British employees are employed there, including analysts from Britain's eavesdropping agency, the Government Communications Headquarters - or GCHQ. Australia is home to Pine Gap, a sprawling satellite tracking station located in the remote center of the country, where NSA officials work side-by-side with scores of locals. The U.S. also posts three or four analysts at a time in New Zealand, home to the small Waihopai and Tangimoana spy stations. The intelligence-sharing relationship enabled American and British security and law enforcement officials to thwart a major terror attack in 2006 - the trans-Atlantic liquid bomb plot to blow up some 10 airliners. The collaboration, sometimes called ECHELON, takes place within strict parameters. Two U.S. intelligence officials, who spoke on condition of anonymity because they weren't authorized to speak about the program to the news media, said only U.S. intelligence officers can directly access their own vast database. A Five Eyes ally can ask to cross-check, say, a suspicious phone number it has independently collected to see if there is any link to the U.S., the officials said. But the ally must first show the request is being made in response to a potential threat to Western interests. Ferguson said that in New Zealand, cooperation with the U.S. improved markedly after the Sept. 11, 2001, terrorist attacks. Still, he said, his agency was kept on a need-to-know basis. He said he never knew what information was being provided to other Five Eyes nations, and none of the countries would have shared all their intelligence anyway. Ferguson said a small country like New Zealand benefited by a ratio of about five-to-one in the information it received compared to what it provided. He said that as chief of the defense force, a role he held before taking over the spy agency in 2006, he could never have sent troops to Afghanistan without the on-the-ground intelligence provided by the U.S. and other allies. He said New Zealand continues to rely on Five Eyes information for most of its overseas deployments, from peacekeeping to humanitarian efforts. The intelligence is vital, he added, for thwarting potential cyber threats. In Australia, prosecutors in 2009 used evidence from a U.S. informant who had been at a terrorist training camp in Pakistan to help convict one of nine Muslim extremists found guilty of planning to bomb an unspecified Sydney target. The Australian Security Intelligence Organisation wrote in an email to The AP that "intelligence sharing between countries is critical to identifying and preventing terrorism and other transnational security threats." Canada's Department of National Defence had a similar response, saying it "takes an active role in building relationships with allies. Collaborating with the personnel of the Five Eyes community in support of mutual defense and security issues is part of this relationship building." Both agencies declined requests to provide more specific information. In the decades since World War II, the allies have formed various other intelligence allegiances, although few as comprehensive or deep as Five Eyes. While the Snowden revelations will test the relationship, it has survived tests in the past. New Zealand has long asserted an independent foreign policy by banning nuclear ships, and some are now calling for the country to go further and opt out of Five Eyes. Lawmaker Russel Norman, co-leader of New Zealand's Green Party, is one of many people calling for a public review of the relationship. "I want to live in a free society, not a total surveillance state," he said. "The old Anglo-American gang of five no longer runs the world." But John Blaxland, a senior fellow at the Australian National University's Strategic and Defence Studies Centre, said politicians Down Under have often criticized the security relationship until they've gotten into power and been briefed on its benefits. Then, he said, they tend to go silent. "The perception is that the advantages are so great, they'd be crazy to give it up," he said.

#### Multiple alt causes

**McGill, Norwich School of Graduate and Continuing Studies in Diplomacy, 2012**

(Anna-Katherine, “Challenges to International Counterterrorism Intelligence Sharing,” Global Security Studies, 3.3, ebsco, ldg)

Indeed, in the aftermath of 9/11 the US saw not only its NATO counterparts rise to action but also a new enthusiasm from its traditional bilateral relationships in improving counterterrorism coordination and more specifically intelligence sharing. Still, the rallying of support for the US following the attacks is not enough to overcome longstanding political and institutional hurdles to counterterrorism intelligence sharing. Although the US shares many political and cultural values with its traditional allies, their views diverge on issues like the invasion of Iraq, personal data protection, and the treatment or punishment of terrorists. The Invasion of Iraq The invasion of Iraq provides a perfect example of how the national interests of one nation can threaten the interests of its allies and more specifically, how policies in one arena can affect cooperation in another. According to US Senator Byrd, a major critic of the Bush administration, the invasion of Iraq “split traditional alliances, possibly crippling, for all time, international order-keeping entities like the United Nations and NATO” (qtd in Gardner 16). The central concerns arising from the 2003 Iraq invasion were the use of “preemptive” or “preventative” (depending on who you ask) strikes, unilateral action, and ultimately questionable motives. Consequently, bilateral cooperation from Germany, France, and NATO ally Turkey has taken a major hit. France argued against military intervention in favor of enforced inspections and diplomacy. Furthermore, it refuted that the US invasion of Iraq did not constitute collective security and therefore was not an obligation of NATO’s article V. Hall Gardner explains that while France has always been a reluctant ally, Germany and Turkey “represented the most loyal NATO allies during the Cold War” (3). As a result of the Iraq invasion, however, these two nations “bitterly questioned US policies and actions for very different reasons” (Gardner 3). For Germany, the use of preventative military strikes set a dangerous precedent for state behavior. They feared that should this become the norm, “it would undermine international law and concepts of national sovereignty dating back to Westphalia” (Gardner 3). Turkey, on the other hand, feared that the US invasion of Iraq would run directly counter to its national interests in regards to the Kurds of northern Iraq. While these countries have remained committed to the counterterrorism effort, the public row over the Iraq invasion shaped global public opinion of the US led war on terrorism and likely lessened domestic support for aiding the Americans in future CT endeavors. The fallout from US actions and its greater presence in the Middle East has arguably made it a larger target to terrorist organization which portray the US as a global crusader. By default, those who supported and contributed to the invasion of Iraq are also greater targets of transnational terrorist networks like al Qaeda. Additionally, the use of ultimately false intelligence on Iraqi position of WMD to justify the invasion heightened criticism of the US intelligence community and thus hurt their reputation in producing credible intelligence analysis. Personal data protection Personal data is critical to counterterrorism efforts because it “often provide[s] the only evidence of connections between members of terrorist groups and the types of activities that they are conducting” (Bensehal 48). However, Europe has shown resistance to freely sharing this type of information with its American counterparts since many of the US’s European allies have much more stringent views on the protection of personal data. In the EU, there are safeguards at the national and regional level that regulate the storage and sharing of personal data information. These laws are a product of Europe’s historical experience with fascism and thus its sensitivity to the abuse of such information as travel records or communications (Bensahel, 48). In “The Counterterror Coalitions: Europe, NATO, and the European Union” Nora Bensahel explains “by contrast, the United States protects personal information through legal precedents and procedures rather than [unified] legislation” which the Europeans find insufficient (48). The EU’s concerns over the US’s protection of personal data caused them to withhold information from the US and created a substantial challenge to their combined counterterrorism efforts. Following 9/11 the heightened political will to overcome such issues enabled the US and the EU to compromise on this issue but there are lingering limits to EU willingness to share personal data with the US. In the wake of the attacks, the US and Europol signed an agreement to permit the sharing of personal data. Although it increased operational effectiveness and intelligence sharing this agreement is limited to law enforcement operations which excludes personal data found in commercial activities. Furthermore, provisions in the agreement state that “personal information can be used only for the specific investigation for which it was requested” (Bensahel, 48). If the suspect is being investigated for murder and is discovered to have ties to a smuggling ring the US must submit a separate request to use the murder information in the case regarding the smuggling activities. The Rights of the Accused The US and the EU have also had substantial disagreements on the treatment and punishment of accused terrorists. This tension hinges on such issues as the use of the death penalty and “extraordinary rendition”. Fortunately, the death penalty issue was resolved with the passage of an multilateral treaty on extradition however the US has not fully recovered from the backlash of criticism and mistrust from its practice of “extraordinary rendition”. Prior to a May 2002 summit, the US and EU were at a disagreement over the death penalty. The EU’s aversion to capital punishment led it to not only hesitate from sharing information but deny requests for extradition unless the US would guarantee that the individual in question would not face the death penalty. The 2002 summit did however bring both the US and EU to at least agree in principle to a treaty on extradition and Mutual Legal Assistance Treaty (MLAT) and both parties ratified the treaties in 2003. The extradition treaty allowed for a blanket policy for European nations to “grant extradition on the condition that the death penalty will not be imposed” and the MLAT provided enhanced capability to gather and exchange information (Bensahel 49). The CIA’s use of “extraordinary rendition”, the practice of transporting a suspect to a third country for interrogation, has also stoked the ire of many traditional allies. Critics charge that this tactic quite simply allows the CIA to sidestep international laws and obligations by conducting interrogations in nations with poor human-rights records. In 2003, an Italian magistrate formally indicted 13 CIA agents for allegedly kidnapping an Italian resident and transporting him to a third country for interrogation. Ultimately 22 CIA agents and one US military officer were convicted in absentia of crimes connected to the abduction (Stewart, 1). The case not only heightened criticism of the US in Italy but challenged U.S. strategic communications aimed at reducing anti-Americanism worldwide (Reveron 462). According to Julianne Smith, director of the Europe program at the Center for Strategic and International Studies (CSIS), “[extraordinary rendition] makes it extremely difficult [for European governments] to stand shoulder-to-shoulder with the U.S.” (Heller 1).

#### Allies will inevitably come around on US drone doctrine questions---they know they’re the future of war and won’t want to be left out

**Franke, Oxford IR PhD candidate, 2013**

(Ulrike, “Just the new hot thing? The diffusion of UAV technology worldwide and its popularity among democratic states”, <http://files.isanet.org/ConferenceArchive/4269932e782d47248d5269ad381ca6c7.pdf>, ldg)

As shown in the first part of this paper, democracies seem to be particularly interested in drone technology. Niklas Schoerning argues that especially western democracies are fuelling a global UAV arms race.56 I argue that in addition to the aforementioned arguments, there are three main reasons why democracies and especially western democracies are particularly interested in the unmanned technology. Prestige (among partners): Not only autocracies have an interest in depicting their armed forces as modern and powerful. Democracies use UAVs to show off as well – however, their aim is rather to portray themselves as capable and reliable coalition partners for other western democracies and especially with an eye on the United States. French General Patrick Charaix points out: “If [France] wants to remain powerful within a coalition, we need to bring an unmanned capability to the table. Indeed, those countries that count have this military means which contributes on the one hand to the success of a mission and on the other hand increases the power and influence of the country.57 German defence minister Thomas de Maizière voiced a similar opinion in a recent speech on UAVs in the Bundestag: “We cannot say ‘we’ll keep the stagecoach’ while all others are developing the railway”.58 UAVs, according to this interpretation, are the irresistible future – those who are not part of it will lose out. An important aspect of this desire not to lose out is interoperability.59 Western states rarely go to war alone anymore. Today’s western wars are fought by coalitions, namely within NATO. This has important consequences for the equipment that is needed: the members of the coalition need to use the same kind of material in order to be effective and powerful.60 As NATO is dominated by the US and since the US is the most capable user of UAVs, this has important repercussions on the other NATO members. For Frans Osinga, NATO is “an obvious and important avenue of infusion of US military […] technology”.61

#### Can’t appease allies

**Anderson, American university law professor, 2009**

(Kenneth, “Targeted Killing in U.S. Counterterrorism Strategy and Law”, 5-11, <http://www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511_counterterrorism_anderson.pdf>, ldg)

Similarly, very few people in the United States, regardless of political persuasion, would regard the Predator strike in Yemen on November 3, 2002—which killed six people, including a senior member of al Qaeda, Qaed Salim Sinan al-Harethi, in a vehicle on the open road—as anything other than a good thing, regardless of how one characterizes it legally. Yet the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions described it as a “clear case of extrajudicial killing.”58 The legal analysis followed that held by Amnesty International and many others—to wit, that it does not matter whether the targeted killing takes place in armed conflict or not, nor how the United States justifies it legally, because international human rights law continues to apply no matter what and to require that the governments involved seek to arrest, rather than to kill. A subsequent U.N. special rapporteur on extrajudicial, summary or arbitrary executions summarized his office’s view in 2004: “Empowering Governments to identify and kill ‘known terrorists’ places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative had been exhausted.”59 Once again, it is hard to see how targeted killing as a policy could survive in any form with such a legal characterization. Various European allies have been extremely hostile toward the practice. Swedish Foreign Minister Anna Lindh was among the most outspoken critics of the U.S. targeting of al-Harethi in November 2002. She described the operation as “a summary execution that violated human rights…Even terrorists must be treated according to international law. Otherwise any country can start executing those whom they consider terrorists.”60 The criticism is even stronger when the actor is Israel—which undertakes targeted killing in keeping with the peculiarly long-term, “mixed” war-security and intelligence-law enforcement nature of its struggle—and, incidentally, with far more procedural protections than the United States uses, including judicial review. Then the gloves come off completely in expressions of international hostility to the practice.61 To be clear, under the standards these groups are articulating, these practices are regarded as crimes by a sizable and influential part of the international community. This is so whether or not these acts are currently reachable by any particular tribunal. As the coercive interrogation debate shows, with Spain and other countries considering prosecutions in their own courts, the trend is toward an expansion of jurisdiction of such tribunals. And America’s claim that these are killings of combatants in an armed conflict governed by either self-defense or IHL does not cut much ice against the views of those who either reject the armed conflict claim outright or else claim that even in armed conflict, human rights standards will apply. American officials seem to believe that by appealing to the detailed and specific requirements of IHL on the formal and technical definition of combatancy as an apparent condition of finding a lawful target, they have done an especially good and rigorous parsing of the legal requirements. As far as the international law community is concerned, however, the combatancy standard is not some especially rigorous approach that shows how concerned a party is for international law. To the contrary, it is by definition a relaxation of the ordinary standard of international human rights law, including prohibitions on murder and extrajudicial killing—and it can only be justified by the existence of an armed conflict that meets the definitions of IHL treaties. At times it appears that the United States government has little idea how much its concession of formal requirements of combatancy concedes. Yet when the United States argues that it’s okay to target someone because he is a combatant, it effectively concedes that the conflict must meet the definition of an IHL conflict for such an attack to be legitimate. By contrast, what the United States needs, and its historic position has asserted, is a claim that self-defense has an existence as a doctrine apart from IHL armed conflict that can justify the use of force against an individual. The United States has long assumed, then-Legal Adviser to the State Department Abraham Sofaer stated in 1989, that the “inherent right of self defense potentially applies against any illegal use of force, and that it extends to any group or State that can properly be regarded as responsible for such activities.”62 To put the matter simply, the international law community does not accept targeted killings even against al Qaeda, even in a struggle directly devolving from September 11, even when that struggle is backed by U.N. Security Council resolutions authorizing force, even in the presence of a near-declaration of war by Congress in the form of the AUMF, and even given the widespread agreement that the U.S. was both within its inherent rights and authorized to undertake military action against the perpetrators of the attacks. If targeted killing in which the international community agreed so completely to a military response against terrorism constitutes extrajudicial execution, how would it be seen in situations down the road, after and beyond al Qaeda, and without the obvious condition of an IHL armed conflict and all these legitimating authorities? In the view of much of the international law community, a targeted killing can only be something other than an extrajudicial execution—that is, a murder—if • It takes place in an armed conflict; • The armed conflict is an act of self-defense within the meaning of the UN Charter, and • It is also an armed conflict within the meaning of IHL; and finally, • Even if it is an armed conflict under IHL, the circumstances must not permit application of international human rights law, which would require an attempt to arrest rather than targeting to kill. As a practical matter, these conditions would forbid all real-world targeted killings. As we now turn to see, the United States has never accepted these criteria. The result is that a strategic centerpiece of U.S. counterterrorism policy rests upon legal grounds regarded as deeply illegal—extrajudicial killing is one of the most serious violations of international human rights, after all, as well it should be—by large and influential parts of the international community. The change of administration from Bush to Obama gives some protection to the policy, but not likely for all of the Obama term and still less likely beyond it. We turn now from how the international law community sees targeted killing to U.S. views of the subject under both international and domestic law.

# 2NC

## Counterplan

### 2NC – Solves

#### Solves the case---the U.S. and every other state already justify targeted killings with an “unable or unwilling” framework---no other legal model will ever achieve status as a norm---the plan forfeits the ability to shape that norm by clarifying its criteria

**Deeks, Columbia law school academic fellow, 2012**

(Ashley, “ARTICLE: "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense”, Virginia Journal of International Law, lexis, ldg)

On May 2, 2011, the United States put those words into operation. Without the consent of Pakistan's government, U.S. forces entered Pakistan to capture or kill Osama bin Laden. In the wake of the successful U.S. military operation, the Government of Pakistan objected to the "unauthorized unilateral action" of the United States. n3 U.S. officials, on the other hand, suggested that the United States declined to provide Pakistan with advance knowledge of the raid because it was concerned that doing so might have compromised the mission. n4 This failure to notify suggests that the United States determined that Pakistan was indeed "unwilling or unable" to suppress the threat posed by bin Laden. n5 Unfortunately, international law currently gives the United States (or any state in a similar position) little guidance about what factors are relevant when making such [\*486] a determination. Yet the stakes are high: the U.S.-Pakistan relationship has come under serious strain as a result of the operation. If, in the future, a state in Pakistan's position deems another state's use of force in its territory pursuant to an "unwilling or unable" determination to be unlawful, the territorial state could use force in response. The lack of guidance therefore has the potential to be costly. President Obama's speech invoked an important but little understood legal standard governing the use of force. More than a century of state practice suggests that it is lawful for State X, which has suffered an armed attack by an insurgent or terrorist group, to use force in State Y against that group if State Y is unwilling or unable to suppress the threat. n6 Yet there has been virtually no discussion, either by states or scholars, of what that standard means. What factors must the United States consider when evaluating Pakistan's willingness or ability to suppress the threats to U.S. (as well as NATO and Afghan) forces? Must the United States ask Pakistan to take measures itself before the United States lawfully may act? How much time must the United States give Pakistan to respond? What if Pakistan proposes to respond to the threat in a way that the United States believes may not be adequate? Many states agree that the "unwilling or unable" test is the correct standard by which to assess the legality of force in this context. For example, Russia used force in Georgia in 2002 against Chechen rebels who had conducted violent attacks in Russia, based on Russia's conclusion that Georgia was unwilling or unable to suppress the rebels' attacks. n7 Israel has invoked the "unwilling or unable" standard periodically in justifying its use of force in Lebanon against Hezbollah and the Palestine Liberation Organization, noting, "Members of the [Security] Council need scarcely be reminded that under international law, if a State is unwilling or unable to prevent the use of its territory to attack another State, that latter State is entitled to take all necessary measures in its own defense." n8 Similarly, [\*487] Turkey defends its use of force in Iraq against the Kurdish Workers' Party (PKK) by claiming that Iraq is unable to suppress the PKK. n9 Several U.S. administrations have stated that the United States will inquire whether another state is unwilling or unable to suppress the threat before using force without consent in that state's territory. n10 Given that academic discussion of the test has been limited thus far, we may describe what "unwilling or unable" means only at a high level of generality. n11 In its most basic form, a state (the "victim state") suffers an armed attack from a nonstate group operating outside its territory and concludes that it is necessary to use force in self-defense to respond to the continuing threat that the group poses. The question is whether the state in which the group is operating (the "territorial state") will agree to suppress the threat on the victim state's behalf. The "unwilling or unable" test requires a victim state to ascertain whether the territorial state is willing and able to address the threat posed by the nonstate group before using force in the territorial state's territory without consent. If the territorial state is willing and able, the victim state may not use force in the territorial state, and the territorial state is expected to take the appropriate steps against the nonstate group. If the territorial state is unwilling or unable to take those steps, however, it is lawful for the victim state to use [\*488] that level of force that is necessary (and proportional) to suppress the threat that the nonstate group poses. A test constructed at this level of generality offers insufficient guidance to states. Although many inquiries in the use of force area lack precision, including questions about what constitutes an "armed attack" and when force is proportional, states and commentators have discussed the possible meanings of these terms at length and in great detail. n12 The same is not true for the "unwilling or unable" test; strikingly little attention has been paid to the nature and consequences of -- or solutions to -- the imprecision surrounding the "unwilling or unable" test. The test's lack of content undermines the legitimacy of the test as it currently is framed and suggests that it is not, in its current form, imposing effective constraints on a state's use of force. n13 To address this flaw, this Article first identifies the test's historical parentage in the law of neutrality and then conducts an original analysis of two centuries of state practice in order to develop normative factors that define what it means for a territorial state to be "unwilling or unable" to suppress attacks by a nonstate actor. Identifying the test's pedigree demonstrates the legitimacy of the core test and helps to frame the relevant law that should inform the test's content. As Thomas Franck has noted, "Pedigree ... pulls toward rule compliance by emphasizing the deep rootedness of the rule." n14 Embedded in this argument is an assumption that states are reasonable actors, that they develop particular rules for good reasons, and that rules with a long pedigree may be seen as particularly instructive because they draw from the collective wisdom of states over time. While following precedent and tradition does not always result in the ideal normative outcome, n15 this Article will demonstrate why it is useful to consider the historical development and applications of the test in ascertaining what its meaning should be. It is worth noting that this test is not the only standard around which states could have coalesced. Although it is possible to imagine a range of [\*489] alternative regimes, it is beyond the scope of this Article to explore those other regimes in detail. n16 Instead, this Article takes as a given that states currently view the "unwilling or unable" test as the proper test. The fact that states currently are acclimated to using the "unwilling or unable" test suggests that any other test would have to overcome a high bar to become the preferred test, a hurdle no other option is poised to meet. In considering the appropriate content of the test, I argue that the "unwilling or unable" test, properly conceived, should advance three goals, derived from Abram Chayes's articulation of how international law can influence foreign policy decisions. n17 First, the "unwilling or unable" test should constrain victim state action by reducing the number of situations [\*490] in which a victim state resorts to force. Second, the test should be clear and detailed enough to serve to justify or legitimate a victim state's use of force when that force is consistent with the test. Third, the test should establish procedures that will improve the quality of decision-making by the victim and territorial states and by those international bodies that are seized with use of force issues. In considering these goals, I identify the relevance of the "rules versus standards" debate and discuss why, in this context, we should favor a more precise rule over a less determinate standard. A test that promotes the goals I have described within the framework of the UN Charter is likely to be seen as a credible international legal norm. It therefore will legitimize those uses of force that are consistent with the test's requirements and delegitimize (and possibly reduce the frequency of) those that stand in tension with the test.

### Solvency Turn – 2NC

#### The CP is the best possible middle-ground---the plan’s perceived as too restrictive on U.S. flexibility which means it’ll get ignored and violated---that turns the case---preserving the threat of force in states that harbor terrorists creates a key incentive for them to secure their territory and deny terrorists safe havens

**Deeks, Columbia law school academic fellow, 2012**

(Ashley, “ARTICLE: "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense”, Virginia Journal of International Law, lexis, ldg)

Any test that purports to guide state decision-making in the use of force area must be keenly attuned to the core underlying principles in the UN Charter and the basic problems that have arisen in evaluating particular uses of force by states. Michael Reisman has written, "A critical factor in the acceptance and incorporation of a new claim into the corpus of international law is whether it serves the common interests of the aggregate of actors." n80 A sustainable test that constrains the situations in which a victim state may use force in another state's territory against a nonstate actor will need to take into account the aggregate interests of the state actors directly affected, as well as other states in the international community that can imagine themselves in the shoes of the victim state, the territorial state, or both. The test therefore must strike an appropriate balance between victim state security and territorial state sovereignty. The Charter's primary use of force rules -- Articles 2(4) and 51 -- are in some tension with each other. n81 Jane Stromseth has described the UN Charter as seeking both to limit pretextual and open-ended claims of self-defense that threaten the idea of limits on the use of force and to affirm the "inherent right" of states to defend themselves effectively from attack, given that Security Council action would not always be timely. n82 This balance has proven notoriously difficult to achieve since the Charter's enactment, n83 but striking the wrong balance may have seriously destabilizing results. Consider an "unwilling or unable" test that systematically over-protects the victim state's equities. Such a test might require the victim state to undertake only a superficial inquiry about the territorial state's willingness or ability to suppress the threat itself, or might set high expectations for the territorial state's capacity to address the [\*509] threat, such that it would be easy for the victim state to conclude that the territorial state was unable to do so and to choose to use force itself. n84 On the other hand, consider a test that systematically over-protects the territorial state's equities -- for instance, by only allowing the victim state to deem the territorial state "unwilling" when the victim state proves to a high level of certainty that the territorial state assisted the nonstate actor that undertook the armed attack. Victim states simply will ignore a test that under-protects their equities when national security is at stake. Neither of those tests is likely to survive happily in the real world, and each is likely to increase, rather than decrease, the overall uses of force by victim states. A well-balanced test, in contrast, offers two ways substantively to reduce the use of force by victim states. The first way is to give the territorial state incentives to address the threat itself. In a world of unclear rules, territorial states are less likely to be on sufficient notice of the steps they must take to avoid having other states legitimately use force on their territory. Territorial states thus may take fewer prophylactic steps than they should to address violent nonstate activity in their territory. This increases the likelihood that a particular territorial state may actually be unwilling or unable to suppress the threat. A vague rule also might increase the chances of inadvertent conflict between the victim state and territorial state, if the territorial state is not aware of the legal basis on which the victim state is using force on its territory and interprets the victim state's use of force as an armed attack against it. In contrast, a territorial state that understands its responsibilities to foreclose the use of its territory by violent nonstate actors and that knows what inquiry a victim state will undertake when considering whether to violate the territorial state's sovereignty has better incentives ex ante to monitor its territory than would a state where the rule was hazy. n85 Assuming that most states have inherent incentives to avoid violations of [\*510] their sovereignty, this might mean that a territorial state has stronger incentives to improve its ability to suppress nonstate threats by having adequate criminal laws on its books and strong, noncorrupt law enforcement and military forces. n86 The "unwilling or unable" test should offer the territorial state the opportunity -- at least in principle -- to take control of the situation, foreclosing the need for the victim state to act. n87

#### The CP alone is the best way to boost U.S. legitimacy-bargaining theory proves that making concessions to critics of our drone policy encourages them to move the goalposts and never be satisfied-informing them of the rationale behind targeted killings with a “take it or leave it” stance encourages bandwagoning. Reject their ev by activists and academics---they always call for the most restrictive measures but their perspective’s irrelevant to actual inter-state relations

**Anderson, American University international law professor, 2011**

(Kenneth, “Public Legitimacy for Targeted Killing Using Drones”, 10-3, <http://www.volokh.com/2011/10/03/public-legitimacy-for-targeted-killing-using-drones/>, ldg)

Jack Goldsmith, writing at Lawfare, urges the Obama administration to release a redacted version of the Justice Department’s memo concluding that the targeting of Al-Awlaki was lawful – if not a redacted version, then some reasonably complete and authoritative statement of its legal reasoning. I agree. The nature of these operations abroad is that they will almost certainly remain beyond judicial review and, as a consequence, OLC opinions will serve as the practical mechanism of the rule of law. The best argument against disclosure is that it would reveal classified information or, relatedly, acknowledge a covert action. This concern is often a legitimate bar to publishing secret executive branch legal opinions. But the administration has (in unattributed statements) acknowledged and touted the U.S. role in the al-Aulaqi killing, and even President Obama said that the killing was in part “a tribute to our intelligence community.” I understand the reasons the government needs to preserve official deniability for a covert action, but I think that a legal analysis of the U.S. ability to target and kill enemy combatants (including U.S. citizens) outside Afghanistan can be disclosed without revealing means or methods of intelligence-gathering or jeopardizing technical covertness. The public legal explanation need not say anything about the means of fire (e.g. drones or something else), or particular countries, or which agencies of the U.S. government are involved, or the intelligence basis for the attacks. (Whether the administration should release more information about the intelligence supporting al-Aulaqi’s operational role is a separate issue that raises separate classified information concerns.) We know the government can provide a public legal analysis of this sort because presidential counterterrorism advisor John Brennan and State Department Legal Advisor Harold Koh have given such legal explanations in speeches, albeit in limited and conclusory terms. These speeches show that there is no bar in principle to a public disclosure of a more robust legal analysis of targeted killings like al-Aulaqi’s. So too do the administration’s many leaks of legal conclusions (and operational details) about the al-Aulaqi killing. The public accountability and legitimacy of these vital national security operations is strengthened to the extent that the public is informed and, through the political branches, part of the debate on the law of targeted killing. That cannot be operational discussion, for obvious reasons. But there is still a good deal that could be said about the underlying legal rationales, without compromising security. I myself favor revisions, either as internal executive branch policy or, in a better world, as formal legal revisions to Title 50 (CIA, covert action, etc.) and the oversight and reporting processes. One of those revisions would be to get beyond the not just silly, but in some deeper way, de-legitimizing insistence that these operations cannot be acknowledged even as a program; I would establish a distinct category of “deniable” rather than “covert,” and a category of programs that can be acknowledged as existing even without comment on particular operations. John Bellinger, the former State Department Legal Adviser in the last years of the Bush administration, raises concerns in the Washington Post today about the best way to defend the international legitimacy of these operations. He notes the deep hostility of the international advocacy groups, UN special raporteurs, numbers of foreign governments, and the studied silence of US allies (even as NATO, I’d add, has relied upon drones as an essential element of its Libyan air war). [T]he U.S. legal position may not satisfy the rest of the world. No other government has said publicly that it agrees with the U.S. policy or legal rationale for drones. European allies, who vigorously criticized the Bush administration for asserting the unilateral right to use force against terrorists in countries outside Afghanistan, have neither supported nor criticized reported U.S. drone strikes in Pakistan, Yemen and Somalia. Instead, they have largely looked the other way, as they did with the killing of Osama bin Laden. Human rights advocates, on the other hand, while quiet for several years (perhaps to avoid criticizing the new administration), have grown increasingly uncomfortable with drone attacks. Last year, the U.N. rapporteur for summary executions and extrajudicial killings said that drone strikes may violate international humanitarian and human rights law and could constitute war crimes. U.S. human rights groups, which stirred up international opposition to Bush administration counterterrorism policies, have been quick to condemn the Awlaki killing. Even if Obama administration officials are satisfied that drone strikes comply with domestic and international law, they would still be wise to try to build a broader international consensus. The administration should provide more information about the strict limits it applies to targeting and about who has been targeted. One of the mistakes the Bush administration made in its first term was adopting novel counterterrorism policies without attempting to explain and secure international support for them. The problem of international legitimacy is always tricky, as Bellinger knows better than anyone. I look at it this way. Tell the international community that we care about legitimacy – which is to say, that we care about their opinion in relation to our practices – and all of sudden we have handed other folks a rhetorical hold-up, to a greater or lesser degree. Unsurprisingly, the price of their good opinion and their desire to exercise control over our actions goes up. This is nothing special to this; it’s just standard bargaining theory. On the other hand, ignore them altogether, and they – particularly, note, our allies, those who say that they are acting roughly within our shared sphere of values discourse, not the Chinese or the Russians – develop a set of norms that they then apply in such a way as to mark us as the outlier and the deviant. Again, this is just drawn from any standard account of norm-negotiation; it’s not a statement of nefarious intent; it’s an acknowledgment that both we and our allies are invested in norms, and that we are not merely societies of narrow interests. At its worst, developing a quite separate norm regime and then characterizing us as genuinely deviant from it might lead to arrest warrants issued for current or former US officials, and much distrust between sides. It might also lead to places where even our allies might not want to go – putting themselves outside of the US security umbrella in particular matters that turn out to concern them a lot, such has having access to drones in Libya. If the norm envelope is pushed hard enough, however, then our allies wind up depriving themselves of access to the weapon, which clearly they don’t want to do. So they have reasons not to push too hard – both for fear of us simply ignoring them altogether (in effect withdrawing the acceptance that their opinion matters to the legitimacy of the activity) and because they want at least “parts” of it. The best place to be, then, for both sides, is roughly in the middle that Bellinger stakes out. (Note that nothing I’ve said here should be attributed to him; these are my views on the negotiation stakes.) Meaning that we have reasons to talk with our allies at length and in detail, in private and public, to try and persuade them to our views, and to persuade them that genuflecting to their advocacy and NGO groups will be worse for them than accepting our space to act, insofar as we can give a plausible interpretation of law. Plausibility is the central touchstone for international law in relations among states, finally; we and they don’t have to agree, only to agree that our several interpretations are within the ballpark of acceptability. It might involve alterations of our practice; it might not. This will never satisfy the non-governmental advocates or the academics, of course. They have no skin in the game and hence can always hold out for the most extreme position with only an indirect cost in credibility. In the case of drones, in which even some of the advocates are belatedly realizing that the weapon is indeed more precise and sparing of civilians, ignoring the NGO advocates as profoundly mistaken has spared a human tragedy in collateral damage over the long run. But the striking thing about the interstate negotiations among allies is that they don’t have to reach a conclusion – an agreement – and probably won’t. An acceptance of the plausibility of each side’s position and an agreement to continue discussion around alternatives that are considered plausible is sufficient.

### Solvency – Allies

#### European allies accept the CP

**Dworkin, European Council on Foreign Relations, 2013**

(Anthony, “Drones And Targeted Killing: Defining A European Position”, 7-3, <http://ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf>, ldg)

Outside an armed conflict, the default European assumption would be that the threat of terrorism should be confronted within a law enforcement framework. This framework would not absolutely prohibit the deliberate killing of individuals, but it would set an extremely high threshold for its use – for example, it might be permitted where strictly necessary to prevent an imminent threat to human life or a particularly serious crime involving a grave threat to life.37 Where the threat was sufficiently serious, the state’s response might legitimately include the use of military force, but every use of lethal force would have to be justified as a necessary and proportionate response to an imminent threat. In any action that involved the deliberate taking of human life, there would have to be a rigorous and impartial post-strike assessment, with the government disclosing the justification for its action. Finally, EU states might perhaps agree that in the face of an armed attack or an imminent armed attack, states can use force on the territory of another state without its consent, if that state is unable or unwilling to act effectively to restrain the attack. This consensus provides a basis on which the EU can step up engagement with the US on drones and targeted killing. At the heart of the EU position is the belief that the use of lethal force outside zones of active hostilities is an exceptional measure that can only be justified on the basis of a serious and imminent threat to human life. At a time when drone technology is proliferating rapidly, EU leaders should be more forthright in making this argument publicly – especially since Obama has adopted it, at least rhetorically, as an element of his policy. While Europeans may be reluctant to accuse Obama of having violated international law, they can assert their own vision and encourage Obama to follow through on his rhetoric by elevating the idea of a strict imminent threat-based approach to the use of deadly force outside the battlefield. European leaders and officials should welcome Obama’s latest moves to restrain drone strikes and his intimation that the armed conflict against al-Qaeda may be nearing its end. In this way they would reinforce the standards implicit in his speech and make clear that America’s closest allies will be watching to see how far he matches his words with action.

### A/T No Nuke Terror

#### 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)

## Case

### Norms

#### Can’t acquire – gps tech and expensive

#### They have exactly zero cards drawing the line to Turkey

#### Tech isn’t the key---no one has the human capital or intel to conduct wide scale drone operations

Boyle 12 (Ashley, is an Adjunct Junior Fellow at the American Security Project, “The US and its UAVs: Addressing Legality and Overblown Scenarios,” http://americansecurityproject.org/blog/2012/the-us-and-its-uavs-addressing-legality-and-overblown-scenarios/)

While there is no question that the US has used drones, it is hardly alone in wielding the technology. Approximately fifty nations possess and use drones. However, Wikipedia informs us that of these nations, only twelve have lethal drones of which only three nations – China, Iran, and Russia – may be of concern. Possessing the technology is only one part of the picture. Nations must also have the capabilities to maintain and operate these aircraft, as well as an intelligence network that informs their surveillance or strike activities. The supporting systems required to operate drones is greatly underestimated, and it is difficult to see China, Iran, or Russia having the resources or desire to launch expansive drone programs in the short- to mid-term. While the long-term picture always requires discussion, alarmist messages about impending drone wars are just that: alarming and unfounded.

#### Authoritarian states don’t follow norms — their “US justifies others” arg is naive

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

### EU

#### They won’t push back enough to collapse the program

Anderson 11 (Kenneth Anderson is a professor of international law at Washington College of Law, American University, Washington, DC, and a visiting fellow at the Hoover Institution. “Public Legitimacy for Targeted Killing Using Drones,” http://www.volokh.com/2011/10/03/public-legitimacy-for-targeted-killing-using-drones/comment-page-1/)

The problem of international legitimacy is always tricky, as Bellinger knows better than anyone. I look at it this way. Tell the international community that we care about legitimacy – which is to say, that we care about their opinion in relation to our practices – and all of sudden we have handed other folks a rhetorical hold-up, to a greater or lesser degree. Unsurprisingly, the price of their good opinion and their desire to exercise control over our actions goes up. This is nothing special to this; it’s just standard bargaining theory. On the other hand, ignore them altogether, and they – particularly, note, our allies, those who say that they are acting roughly within our shared sphere of values discourse, not the Chinese or the Russians – develop a set of norms that they then apply in such a way as to mark us as the outlier and the deviant. Again, this is just drawn from any standard account of norm-negotiation; it’s not a statement of nefarious intent; it’s an acknowledgment that both we and our allies are invested in norms, and that we are not merely societies of narrow interests. At its worst, developing a quite separate norm regime and then characterizing us as genuinely deviant from it might lead to arrest warrants issued for current or former US officials, and much distrust between sides. It might also lead to places where even our allies might not want to go – putting themselves outside of the US security umbrella in particular matters that turn out to concern them a lot, such has having access to drones in Libya. If the norm envelope is pushed hard enough, however, then our allies wind up depriving themselves of access to the weapon, which clearly they don’t want to do. So they have reasons not to push too hard – both for fear of us simply ignoring them altogether (in effect withdrawing the acceptance that their opinion matters to the legitimacy of the activity) and because they want at least “parts” of it. The best place to be, then, for both sides, is roughly in the middle that Bellinger stakes out. (Note that nothing I’ve said here should be attributed to him; these are my views on the negotiation stakes.) Meaning that we have reasons to talk with our allies at length and in detail, in private and public, to try and persuade them to our views, and to persuade them that genuflecting to their advocacy and NGO groups will be worse for them than accepting our space to act, insofar as we can give a plausible interpretation of law. Plausibility is the central touchstone for international law in relations among states, finally; we and they don’t have to agree, only to agree that our several interpretations are within the ballpark of acceptability. It might involve alterations of our practice; it might not. This will never satisfy the non-governmental advocates or the academics, of course. They have no skin in the game and hence can always hold out for the most extreme position with only an indirect cost in credibility. In the case of drones, in which even some of the advocates are belatedly realizing that the weapon is indeed more precise and sparing of civilians, ignoring the NGO advocates as profoundly mistaken has spared a human tragedy in collateral damage over the long run. But the striking thing about the interstate negotiations among allies is that they don’t have to reach a conclusion

 – an agreement – and probably won’t. An acceptance of the plausibility of each side’s position and an agreement to continue discussion around alternatives that are considered plausible is sufficient.

# 1NR

### Impact Stuff

#### Drone prolif doesn’t access this because it is insufficient to change great power dynamics

Lewis 11 (Michael W. Lewis teaches international law and the law of war at Ohio Northern University School of Law. He is a former Navy fighter pilot and is the coauthor of "The War on Terror and the Laws of War: A Military Perspective." “Unfounded drone fears,” http://articles.latimes.com/2011/oct/17/opinion/la-oe--lewis-drones-20111017)

Almost since the United States began using the unmanned aerial vehicles known as drones, their use has drawn criticism. The latest criticism, which has received considerable attention in the wake of the drone strike on Anwar Awlaki, is that America's use of drones has sparked a new international arms race. While it is true that some other nations have begun developing their own unmanned aerial vehicles, the extent of the alarm is unjustified. Much of it rests on myths that are easily dispelled. Myth 1: Drones will be a threat to the United States in the hands of other nations. Drones are surveillance and counter-terrorism tools; they are not effective weapons of conventional warfare. The unmanned aerial vehicles are slow and extremely vulnerable to even basic air defense systems, illustrated by the fact that a U.S. surveillance drone was shot down by a 1970s-era MIG-25 Soviet fighter over Iraq in 2002. Moreover, drones are dependent on constant telemetry signals from their ground controllers to remain in flight. Such signals can be easily jammed or disrupted, causing the drone to fall from the sky. It's even possible that a party sending stronger signals could take control of the drone. The drones, therefore, have limited usefulness. And certainly any drone flying over the U.S. while being controlled by a foreign nation could be easily detected and either destroyed or captured.

### AT: Blurring Now

#### Codifying current target policy as law signals a legal abandonment of the Law of Armed Conflict framework outside of explicitly declared conflict zones---that collapses CT

**Corn, South Texas presidential research professor, 9-30-13**

(Geoffrey, “Debate (Round 1): The Military Component of Counter-Terror Operations,” <http://justsecurity.org/2013/09/30/military-component-counter-terror-operations/>, ldg)

Twelve years after the September 11th terrorist attacks, however, highly informed experts both within and outside the government call into question the continuing validity of this characterization. Within the U.S. government, the debate has largely shifted from if the struggle against al Qaeda may properly be classified as an armed conflict, to whether that classification remains factually supportable. The President’s own statements that al Qaeda ‘core’ has been decimated and that U.S. actions have disabled its capacity to conduct large scale attacks on U.S. interests have fueled this debate. Additional uncertainty has resulted from administration statements regarding its policy towards executing future operations against al Qaeda. Some argue that recent administration statements regarding operations conducted beyond the geography of the ongoing hostilities in Afghanistan indicate a transition from conduct of hostilities to law enforcement norms: limiting attacks to high ranking al Qaeda officials based on a determination of imminent threat and employing deadly combat power only after exhausting less hostile means. However, these arguments misconstrue statements of policy restraint for declarations of a shift in legal interpretation. The imposition of policy-based constraints on LOAC authorities is certainly unremarkable. This is a routine process that occurs at every level of military operations – strategic, operational, and tactical – normally reflected in mission specific rules of engagement. However, the President and his administration have not always been clear on the basis for the self-imposed limitations on attack authority. This has only served to fuel arguments that continuing to classify counter-terror military operations against al Qaeda is simply invalid. But beyond the interesting debate over whether transnational armed conflict is or is not consistent with the 1949 law triggering articles of the Conventions, it is equally important to assess the pragmatic merit of treating the struggle with al Qaeda as an armed conflict. This assessment must begin with a candid acknowledgment of the binary legal authority framework applicable to any government response to a terrorist threat. Outside the context of armed conflict, government forces – to include military forces – must conduct operations pursuant to rules that comply with a pure human rights based response framework. This means that the methods and means used to disable the transnational terrorist threat must mirror those utilized in normal peacetime law enforcement operations: deadly force may only be employed in response to an imminent threat of death or grievous bodily harm, deadly force may employed only as a measure of last resort, and captured terrorist operatives must be promptly charged and brought to trial before a civilian criminal court, and released if prosecution is not feasible or trial results in acquittal. As noted above, LOAC based response authority is far more robust. This binary operational response framework arguably reveals why the United States has and continues to characterize the struggle against al Qaeda as an armed conflict: the nature of the threat—an organized, militarily armed and trained force under the direction and control of hostile leadership that had engaged in a series of escalating deadly attacks—cannot be efficiently and effectively addressed pursuant to a pure law enforcement legal framework. According to both Presidents Bush and Obama (and perhaps even Clinton, although not nearly as the result of overt evidence), al Qaeda was and remains a threat at a level of organization, capability, and magnitude justifying this conclusion. Both the legislative and judicial branches have endorsed this conclusion. Furthermore, the transnational nature of the threat and its process of ‘metastycizing’ by expanding to affiliates in areas beyond it’s original safe haven in Afghanistan necessitate an expansive geographic scope of operations in order to ‘take the fight’ to the enemy and deny the enemy functional geographic safe haven. Reverting back to a pure law enforcement response will therefore seriously undermine the efficacy of U.S. counter-terror operations, and is not, at this juncture, legally compelled. While it is almost certainly true that an enemy like al Qaeda will never be brought to total submission in the way a more conventional enemy can be, it is also clear that the meaning of ‘defeat’ in the context of counter-terror operations – the ultimate military objective when fighting any enemy – is not analogous to the meaning of that term when fighting a conventional enemy. Defeat of a terrorist threats, like that posed by al Qaeda, is normally achieved by disrupting and disabling the efficacy of their operations, not be destruction of all capability. Indeed, a disruptive effect is likely the only feasible operational and strategic objective a state can hope to achieve against such a threat (consider the Israeli experience as an example). Maximizing operational and tactical flexibility to strike high value terrorist targets – command, control, and communications; logistics; training centers; access to weapons – is essential to achieving this disruptive effect. Limiting response authority to law enforcement norms would undermine the ability of the United States to achieve this strategic objective, and would cede the initiative to the terrorist enemy by providing them functional immunity unless and until their efforts to attack the United States and our interests reach a point of law enforcement imminence. While the overall effectiveness of Article III prosecutions for terrorist related offenses indicates that abandoning the armed conflict characterization would be less significant with regard to post capture incapacitation than for pre-capture disruption, there always remains the possibility that a captured terrorist operative cannot be effectively prosecuted. In such cases, should the government possess compelling evidence that the individual represents an ongoing threat of terrorist activities – even if that evidence is incompetent for use at trial – release seems illogical. This, however, would be the result outside the context of armed conflict. None of this is intended to suggest that the armed conflict characterization makes executing counter-terror operations ‘easier.’ There are and will remain highly complex issues even within this framework, to include how to define terrorist belligerent operative, the permissible geographic scope of counter-terror military operations, when captured operatives should be subjected to trial by civilian courts, where such captives should be detained, and if, when, and why the expanded scope of LOAC attack authority should be restricted as a matter of policy. In our view, the limitations on LOAC authority implemented to date by President Obama do not indicate an inherent invalidity of the armed conflict response framework, but that this response authority must always be adjusted in response to policy, diplomatic, and political considerations. In contrast, a total abandonment of LOAC authority would produce a significant disruptive effect on our counter-terror operations, not on the enemy.

#### Legal codification of policy destroys flexibility-restrictions on authority are different then policy preferences.

**Corn, South Texas presidential research professor, 2013**

(Geoffrey, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring”, 11-22, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2179720>, ldg)

Ironically, when Professor Gabrielle Blum proposed such a limitation in her article The Dispensable Lives of Soldiers,76 I was quite skeptical. However, my skepticism focused primarily on two considerations. First, her proposal extended to “hot zones”. I remain opposed to such an extension, as I believe it would inject a dangerous dilution of tactical initiative into the ex-ecution of combat operations.77 Second, it was unclear whether Professor Blum was proposing a legal norm, or a policy constraint on permissible legal authority. Once it was clear that we shared opposition to modifying the existing legal authority to attack even an inoffensive enemy belligerent operative (such as an enemy soldier sleeping in a barracks or assembly area or attempting to retreat from an ongoing attack), and that she was in fact proposing consideration of policy limits on that authority, we were much more closely aligned in our views.78 This latter aspect of the “capture or kill” debate is critical, and in my opinion, if such a limitation on targeting authority is justified, it must be framed as a policy limit on otherwise lawful authority: a rule of engagement.79 This is because there may be situations, even where these conditions are satisfied, when an attack is justified because of the influence it will produce on enemy leadership and other belligerent operatives. It is this corporate, as opposed to individualized, approach to attack justification that distinguishes targeting belligerent operatives from targeting civilians taking a direct part in hostilities. It therefore requires strictly limiting any “capture or kill” obligation to a policy applique restricting underlying legal authority. In short, even when capture is a completely feasible option to incapacitate an enemy belligerent operative, there still are times when attack is preferred because of the shock effect it will produce on the corporate enemy capability.80

### Link – 2NC

#### 2. The option to use lethal force as a first resort is key to the entire conduct of hostilities-the plan requires individualized assessments of immediate personal danger to our troops before deadly force can be used-that collapses battlefield effectiveness

**Corn, South Texas presidential research professor, 2010**

(Geoffrey, “Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conﬂict”, 11-23, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1511954>, ldg)

The most profound distinction between regulating government power in armed conﬂict versus peacetime exists in relation to the application of deadly force by government actors in both contexts. From a military operations perspective, conceding state actors are prohibited in both contexts from arbitrary deprivations of life is not particularly troubling, so long as the most critical distinction between peacetime and wartime authority is recognized: the legitimate application of deadly force as a measure of ﬁrst resort against operational opponents during armed conﬂict, a distinction reﬂ ected in the regulatory norms of the LOAC. Th is is not to suggest that the LOAC permits belligerents to employ methods or means of warfare that make death an inevitable result. Prohibition against such action was one of the ﬁ rst developments in this body of law. 84 However, this prohibition does not, as is asserted by some, establish that attempting to kill an opponent as a measure of ﬁrst resort is also prohibited. Th ere is an important distinction between these two propositions. Use of deadly force as a measure of ﬁrst resort does indicate that death is the intended outcome of the engagement, but it does not make death inevitable. Instead, it is a method of warfare intended to maximize the probability of disabling an opponent. Achieving this eﬀect is central to military operations, and is reﬂ ected in the consistent practice of states as evidenced by combat operations, training, and the type of weapons provided to armed forces. Th is reality has been emphasized by W. Hays Parks, one of the most respected experts on the relationship between the LOAC and military weaponry. In his 2006 article Conventional Weapons and Weapons Review, Parks criticizes reliance by the International Committee of the Red Cross on the principle of unnecessary suﬀ ering as a basis to assert the LOAC imposes an obligation to use the least deadly means possible to subdue a belligerent opponent: [Th e ICRC document, Weapons that May Cause Unnecessary Suﬀ ering or Have Indiscriminate Eﬀ ects ,] suggests that the prohibition of unnecessary suﬀ ering or superﬂ uous injury meant “if combatant can be put out of action by taking him prisoner, he should not be injured; if he can be put out of action by injury, he should not be killed; and if he can be put out of action by light injury, grave injury should be avoided. Th is argument is not consistent with state practice or the practical nature of the battleﬁeld, much less the domestic law of most nations with regard to law enforcement use of deadly force against its own citizens. Subsequent negotiations in the CCW process did not support this argument as a deﬁnition of what constitutes unnecessary suﬀering or superﬂuous injury. 85 Use of deadly force as a measure of ﬁrst resort is, contrary to the improper assertion challenged by Parks, reﬂected in the combined eﬀect of the customary principle of military necessity 86 and the positive rule of military objective. 87 Military necessity justiﬁ es the use of all means not otherwise prohibited by international law which are necessary to bring about the prompt submission of an opponent. 88 Th e rule of military objective deﬁnes enemy forces as lawful military objectives, thereby rendering them legitimate objects of attack. 89 Accordingly, deliberate targeting of enemy personnel is permitted by the LOAC based not on a manifestation of actual threat, but instead on a presumption of necessity derived from the determination of status as ‘enemy’. 90 Once that status is determined, the law permits armed forces to use the most eﬃcient means to subdue the enemy personnel, which in operational terms is synonymous with the use of deadly force as a measure of ﬁrst resort. This legal standard for depriving someone of life is diametrically opposed to the authority of state actors to employ deadly force in a peacetime context. Use of deadly force against individuals who are not operational opponents in an armed conﬂ ict is strictly cause based: there must be a causal connection between the conduct of the object of force and the use of deadly force. 91 Accordingly, deadly force is presumptively invalid unless and until the state actor determines that a genuine individual necessity to employ force exists. 92 In addition, even when such necessity exists, the degree of force may be only that which is necessary to restore the status quo ante. Th us, the state actor is only permitted to employ deadly force when no lesser means will eﬀ ectively reduce a direct and speciﬁ c threat, producing a use of deadly force as a last resort requirement. 93 Th ere are, of course, situations when state actors must resort to such use without ﬁ rst exhausting lesser means. However, the legitimacy of such use of force in these situations is contingent on a determination that the threat can only be reduced by deadly force, thereby justifying the bypass of less harmful means. 94 Perhaps even more important is the reality that during peacetime, the law does not tolerate employment of any force, let alone deadly force, based on conclusive presumptions. Th us, unlike the armed conﬂ ict context, there is never a conclusive presumption of hostility and the accordant necessity to employ deadly force based on status determinations in peacetime. Use of force must instead always be responsive to the conduct manifested by the object of state power. 95 Only such a paradigm ensures that the objects of force are protected from overbroad applications of authority, or, arbitrary deprivations of life. 96 This is instructive on a critical substantive distinction between human rights norms and LOAC norms: the LOAC assumes and tolerates a degree of overbreadth that is inconsistent with human rights law. For example, because application of deadly force is justiﬁed based on status instead of conduct – which itself is based on a conclusive presumption that operational opponents pose a constant threat of deadly force – the LOAC allows the inﬂiction of death on enemy personnel irrespective of the actual risk they present (of course, once the enemy is subdued and rendered hors de combat the justiﬁ cation terminates). Human rights law tolerates no such overbreadth. It would simply be absurd to suggest that police could lawfully employ deadly force against suspected criminals based solely on a determination an individual was a member of a criminal group. Th is distinction may seem axiomatic to many LOAC practitioners and scholars. However, the increasing call for application of human rights norms during armed conﬂict is leading to the inevitable ‘mixing’ of these diametrically opposed standards for a legitimate use of deadly force. This was most visibly apparent in the Targeted Killing decision of the Israeli High Court of Justice. 97 After endorsing the government’s contention that operations against Hamas personnel qualiﬁ ed as an armed conﬂ ict, thereby triggering LOAC application, 98 the Court turned to the authority to kill as a ﬁ rst resort. Logical consistency should have dictated that the Court endorse such authority when directed towards individuals determined to qualify as enemy operatives; however, the Court adopted a diﬀ erent approach. Deprivation of life would only be justiﬁ ed when lesser means for reducing the threat were ineﬀ ective. 99 Th us, the Court apparently imposed a peacetime human rights standard for subduing an identiﬁ ed operational opponent in the context of an armed conﬂ ict. Th is might be explicable due to the unique nature of the territory in which the operations were conducted. Th e Court noted the special obligations of Israel when conducting operations in the administered (occupied) territories: Th e law of belligerent occupation recognizes the authority of the military commander to maintain security in the area and to thus protect the security of his country and its citizens. However, it imposes upon the use of this authority the condition of a proper balance between that security and the rights, needs, and interests of the local population. Arrest, investigation, and trial are not means which can always be used. At times the possibility does not exist whatsoever; at times it involves a risk so great to the lives of the soldiers, that it is not required. However, it is a possibility which should always be considered. It might actually be particularly practical under the conditions of belligerent occupation, in which the army controls the area in which the operation takes place, and in which arrest, investigation, and trial are at times realizable possibilities. 100 However, what was striking about the opinion was the overall absence of qualiﬁ cation to the ruling. Th us, the opinion might be seen as a broader endorsement of extending human rights norms to the context of armed conﬂ ict. Another potentially more expansive example of this mixing of legal standards is reﬂ ected in the position of the International Committee of the Red Cross on the limitations applicable to armed forces vis–à-vis disabling their enemies during armed conﬂ ict in the recently published Direct Participation in Hostilities Study. 101 Th e ICRC asserts that the LOAC imposes an obligation on combatants to refrain from employing deadly force when an enemy can be subdued with a less severe degree of force. According to the Study: In sum, while operating forces can hardly be required to take additional risks for themselves or the civilian population in order to capture an armed adversary alive, it would defy basic notions of humanity to kill an adversary or to refrain from giving him or her an opportunity to surrender where there manifestly is no necessity for the use of lethal force. In such situations, the principles of military necessity and of humanity play an important role in determining the kind and degree of permissible force against legitimate military targets. 102 It is noteworthy that although this assertion appears in the Direct Participation in Hostilities study, it is not conﬁ ned to civilians who lose their immunity from being made the objects of attack as the result of such direct participation (a qualiﬁ er which would have arguably limited the potential signiﬁ cance of the interpretation). To be clear, what is proposed is that when engaging an enemy combatant during armed conﬂ ict – an individual who by virtue of his or her status qualiﬁ es as a lawful military objective – the engaging force bears an obligation to refrain from the use of deadly force if some lesser degree of violence would produce submission. 103 Th at the ICRC would have an interest in advancing an interpretation of the law that operates to protect combatants from death when injury or capture is a possible alternative is unsurprising considering the historic mandate of that organization. 104 It is also undoubtedly in the eyes of some admirable. Nonetheless, the suggested interpretation of the law represents a dangerous confusion between law and policy. Even the ICRC acknowledges the lack of consensus on this interpretation: It is in this sense that Pictet’s famous statement should be understood that “[i]f we can put a soldier out of action by capturing him, we should not wound him; if we can obtain the same result by wounding him, we must not kill him. If there are two means to achieve the same military advantage, we must choose the one which causes the lesser evil”. During the expert meetings, it was generally recognized that the approach proposed by Pictet is unlikely to be operable in classic battleﬁ eld situations involving large scale confrontations and that armed forces operating in situations of armed conﬂ ict, even if equipped with sophisticated weaponry and means of observation, may not always have the means or opportunity to capture rather than kill. 105 Th is acknowledgment reveals that the LOAC establishes the outer limits of permissible conduct; it has never established a mandate that combatants employ the full scope of authority granted by the law to subdue an enemy. Put more simply, authority is not synonymous with obligation. As a result, how commanders choose to exercise the authority they are granted by the LOAC is and has always been a choice dictated by operational considerations. Th us, it is certainly true that there have been and will undoubtedly continue to be many instances where a commander who could employ deadly force against an enemy chooses not to do so, but to instead employ a lesser degree of force to bring the enemy into submission. However, by characterizing the exercise of such operational restraint as a LOAC requirement, the ICRC is transforming an exercise of command discretion into a legal obligation that is unsupported by treaty law, custom, or historic operational practice. There are countless logical operational explanations for exercising such restraint, from the desire to capture the enemy as a means of obtaining intelligence to the eﬀ ort to demonstrate to other enemy personnel the wisdom of submission. However, it is critical to understand is that contrary to the ICRC suggestion, such restraint is not legally mandated. On the contrary, the only pre-submission protection aﬀorded to enemy personnel by the LOAC is the prohibition against the inﬂ iction of unnecessary suﬀ ering. 106 Even here, there is controversy related to the extent of the constraint. 107 As a matter of sheer military logic, it is diﬃcult to contest the proposition that the deliberate inﬂiction of death on an enemy operative when some lesser degree of force might produce submission is generally not considered suﬃcient to run afoul of this very limited protective rule, because attacking the enemy with deadly combat power is customarily considered necessary to force an opponent into submission. 108 Instead, the prohibition against inﬂicting unnecessary suﬀ ering requires the use of a method or means of warfare that is so attenuated from the goal of achieving this submission that it cannot rationally be considered necessary (which in eﬀ ect produces and inference of genuine malice). 109 Ironically, based on this customary understanding of the prohibition, there may be situations when causing death might actually be considered more humane than causing an injury that is particularly painful or diﬃ cult to heal, particularly where the inﬂ iction of injury is motivated by a calculation to impose a greater logistical burden on the enemy force. Th e ICRC interpretation of this prohibition distorts what a commander may do with what he must. Nothing in the LOAC obligates foregoing resort to deadly force as a measure of ﬁrst resort vis à vis an enemy when injury and/or capture would subdue that enemy. 110 If such a rule were to gain momentum, it would fundamentally alter the presumptions of permissible conduct that have guided combatant behavior since the inception of organized warfare. What is most troubling about this distortion is that it reﬂects a fundamental shift from a LOAC based analysis of authority to a human rights based analysis. Underlying the proposal is a rejection of the consequence of identifying an enemy as a ‘military objective’: the conclusive presumption that until rendered hors de combat the threat inherent in that designation/determination justiﬁes immediate resort to deadly force. In contrast, the ICRC interpretation makes the authority to employ deadly force contingent on assessment of actual threat, and thereby denies such authority when that actual threat is insuﬃcient to justify the use of that level of force. Linking the authority to employ deadly force against an operational opponent during armed conﬂict to determinations of actual threat may appeal to some. After all, why should it be permissible to kill enemy personnel whose conduct seems relatively non-threatening, such as a cook or a clerk? Th e answer to question lies in the very nature of armed conﬂ ict itself. The LOAC is based on the presumption that all members of an enemy force represent a threat suﬃcient to justify the use of deadly force as a means to produce enemy submission. 111 This must be a presumption, because by placing enemy armed forces into the category of lawful military objectives, the law eliminates any obligation to assess whether each enemy soldier represents an actual threat to the attacking force. It is undeniable that this presumption can at times be factually overbroad; however, it is equally undeniable that this overbreadth is tolerated by the LOAC. Furthermore, this overbreadth is oﬀ set by the inverse presump - tion applicable to civilians. Unlike combatants, civilians are presumed nonthreatening, and therefore presumptively immune from being made the object of attack. 112 Both these presumptions are powerful, but neither is irrebuttable. For the civilian, the presumption is rebutted when and for such time as he takes a direct part in hostilities 113 ; for the operational opponent, the presumption is rebutted when, and only when he is rendered hors de combat by surrender, wounds, sickness. 114 Th ese presumptions and their rebuttal requirements can never be absolutely consistent with ground truth. For example, a civilian may perform a function that is essential to providing a combat capability to an enemy, such as working as an expert in a critical defense industry. A combatant, in contrast, may perform a function that posses virtually no actual threat to an opponent, such as a cook or a clerk. As a result the civilian may be far more ‘dangerous’ to opposing armed forces than the combatant. However, the presumptions related to who and who may not be made the deliberate object of attack evolved to satisfy the reality of armed conﬂ ict – the need to promptly and eﬃ ciently bring an opponent into submission by providing a degree of operational clarity that has historically been considered essential by both the profession of arms and the international legal community. No analogous overbreadth is tolerated by human rights law. Instead, conduct is the only justiﬁ able basis for employing such force. 115 Of course, when connected with other facts and circumstances, the possession of a deadly weapon may establish a justiﬁ able inference that the citizen is going to act in a manner that creates a necessity for the use of deadly force by the oﬃ cer. However, this is diﬀ erent from the calculus engaged in by a combatant during armed conﬂ ict, for the presence of the weapon remains an indicator of conduct, and in no way creates a status that justiﬁ es the use of deadly force. Attempting to extend human rights based use of force standards into the realm of armed conﬂict is therefore not only illogical, it is operationally debilitating. The operational clarity provided by these presumptions is an essential component for developing a warrior ethos. 116 Soldiers are not police oﬃcers, and while it is certainly possible to train soldiers to operate with the type of restraint incumbent in the police function, 117 asking them to operate under such a framework during armed conﬂ ict is inconsistent with their fundamental purpose: to be ready, willing, and able to kill on demand. Showing mercy or restraint is, as noted above, always an option available to a commander who chooses not to exercise the full scope of his or her authority against an enemy. However, once the law requires assessment of the actual threat posed by an enemy combatant, the eﬀectiveness of combat capability will inevitably be diluted. 118

#### 3. The plans restriction will spillover to all kinds of hostilities-you can’t say we are in an armed conflict with al qaeda and then take first resort force off the table in some areas without collapsing military certainty in future conflcits

**Blank, Emory International Humanitarian Law Clinic director, 2013**

(Laurie, “Learning To Live With (A Little) Uncertainty: The Operational Aspects And Consequences Of The Geography Of Conflict Debate”, <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>, ldg)

In the context of a specific legal framework for one particular type of conflict, the same concerns about blurring the lines between legal regimes remain. LOAC does not require an individualized threat assessment in the targeting of combatants, who are presumed hostile by dint of their status. Over time, however, the requirement for an individualized threat assessment in certain geographical zones in a new law of war framework for conflicts with transnational terrorist groups may well begin to bleed into the application of LOAC in more traditional conflicts. In essence, therefore, a carefully designed paradigm for one complex and difficult conflict scenario ultimately impacts LOAC writ large, even absent any perceived need or direct motivation for such change. Interpreting LOAC to require an individualized threat assessment for all targeting decisions—even those against the regular armed forces of the enemy state in an international armed conflict—introduces significant tactical and operational risk for soldiers not mandated or envisioned by the law.35 The same conflation problem holds true for other non-LOAC obligations that might be imported into LOAC depending on the analysis of where and how a new law of war framework were to apply. It is important to recognize, notwithstanding the focus on the operational effectiveness of LOAC in this Response, that conflation and “borrowing” offer the same challenges for the implementation of human rights law, to the extent that norms from LOAC begin to bleed into the application of human rights norms. Lastly, superimposing an artificially created framework detracts attention from—or even papers over—current challenges within LOAC, such as the identification of enemy operatives, the nature and amount of proof required for determinations of reasonableness or unreasonableness in targeting decisions, and other perennially tricky issues. The procedural and legal protections proposed in the sort of rules-based, geographically differentiated law of war framework that Daskal proposes could certainly maximize protections for certain groups of people in certain areas during certain specific conflicts. To that end, such enhanced protections would indeed be an important contribution. However, the operational imperatives of conflict—all conflicts, not only the complex current conflict with al Qaeda and associated terrorist groups—suggest that such a framework would likely have more significant detrimental consequences through dimi0nished clarity and predictability in the application of LOAC at all stages and unfortunate modifications in the future development of LOAC. Learning to accept some uncertainty in assessing the geography of conflict therefore helps to protect equally important LOAC goals and may well be a better option than it appears at first blush.