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### Plan

#### The United States Federal Government should establish an ex ante judicial review process for targeted killing by drones.

### Adv 1

#### Advantage 1 Norms

#### Drone policy sets a dangerous legal precedent – leads to global conflict escalation – especially in Asia

Taylor, 11/10/13 [Guy, “U.S. intelligence warily watches for threats to U.S. now that 87 nations possess drones”, http://www.washingtontimes.com/news/2013/nov/10/skys-the-limit-for-wide-wild-world-of-drones/?page=all]

The age of the drone is here, and U.S. intelligence agencies are warily monitoring their proliferation around the globe. China uses them to spy on Japan near disputed islands in Asia. Turkey uses them to eyeball Kurdish activity in northern Iraq. Bolivia uses them to spot coca fields in the Andes. Iran reportedly has given them to Syria to monitor opposition rebels. The U.S., Britain and Israel are the only nations to have fired missiles from remote-controlled drones, but the proliferation of unmanned aerial vehicles has become so prevalent that U.S. intelligence sources and private analysts say it is merely a matter of time before other countries use the technology. “People in Washington like to talk about this as if the supposed American monopoly on drones might end one day. Well, the monopoly ended years ago,” said Peter W. Singer, who heads the Center for 21st Century Security and Intelligence at the Brookings Institution. What’s worse, clandestine strikes carried out by Washington in far-flung corners of the world have set a precedent that could be ugly. Mr. Singer said as many as 87 nations possess some form of drones and conduct various kinds of surveillance either over their own territories or beyond. Among those 87, he said, 26 have either purchased or developed drones equivalent in size to the MQ-1 Predator — the model made by San Diego-based General Atomics. While American Predators and their updated sister, the MQ-9 Reaper, are capable of carrying anti-armor Hellfire missiles, the clandestine nature of foreign drone programs makes it difficult to determine how many other nations have armed drones. Defense industry and other sources who spoke with The Washington Times said 10 to 15 nations are thought to be working hard on doing just that, and China and Iran are among those with the most advanced programs. “Global developments in the UAV arena are being tracked closely,” said one U.S. intelligence official, who spoke with The Times on the condition of anonymity. “Efforts by some countries to acquire armed UAV systems are concerning, not least because of the associated proliferation risk.” Other sources said that while the international media have focused on the controversy and political backlash associated with civilian casualties from U.S. drone strikes in Pakistan, Yemen and Somalia, Washington’s unprecedented success with the technology — both in targeting and killing suspected terrorists — has inspired a new kind of arms race. “It’s natural that other nations and non-state actors, seeing the many ways the U.S. has leveraged the technology, are keen to acquire remotely piloted aircraft,” said Lt. Gen. Robert P. Otto, Air Force deputy chief of staff for intelligence, surveillance and reconnaissance. Race to the skies The number of nations possessing drones nearly doubled from 41 to 76 from 2005 to 2011, according to a report last year by the Government Accountability Office, which highlighted the fact that U.S. companies are no longer alone in manufacturing and marketing the technology. “Many countries acquired their UAVs from Israel,” said the report. It said Germany, France, Britain, India, Russia and Georgia have either leased or purchased Israeli drones, including the Heron, a model that many foreign militaries see as a good alternative to the American-made Predators and Reapers. A report this year by Teal Group, a Virginia-based aerospace and defense industry analysis corporation, said UAVs have come to represent the “most dynamic growth sector” of the global aerospace industry, with spending on drones projected to more than double from roughly $5.2 billion a year today to more than $11 billion in 2022. China is widely seen as a potential powerhouse in the market. Chinese companies have “marketed both armed drones and weapons specifically designed for UAV use,” said Steven J. Zaloga, a top analyst at Teal Group. “It’s a case where if they don’t have the capability today, they’ll have it soon.” Although there is concern in Washington that China will sell the technology to American adversaries, sources say, the U.S. also is pushing ahead with development of its own secretive “next generation” drones. Today’s models emerged in the post-9/11 era of nonconventional conflict — a time when American use of both weaponized and surveillance-only drones has been almost exclusively over chaotic patches of the planet void of traditional anti-aircraft defenses. With little or no need to hide, relatively bulky drones such as the MQ-1 Predator dominated the market. But the “big secret,” Mr. Zaloga said, “is that the U.S. is already working on both armed and unarmed UAVs that can operate in defended airspace.” Another factor likely to fuel the proliferation of armed drones, he said, centers on a global push to make “very small weapons” that can be tailored to fit smaller aircraft. This matters because of the roughly 20,000 drones now in existence, only about 350 are large enough to carry the slate of weapons on the current market. “What the new munitions will do is mean that if you’re operating the smaller UAVs, you’ll be able to put weapons on them,” said Mr. Zaloga. “And those smaller UAVs are being manufactured now by quite a few countries.” In the wrong hands? One serious concern in Washington is that smaller drones could be used by groups such as al Qaeda or Hezbollah, the Iran-backed militant and political organization based in Lebanon that is engaged in a protracted war with Israel. The U.S. intelligence official who spoke with The Times on the condition of anonymity said it is “getting easier for non-state actors to acquire this technology.” Hezbollah leader Hassan Nasrallah made headlines by claiming his group flew a drone into Israeli airspace last year, after Israel announced that it had shot a UAV out of the sky. Although Mr. Nasrallah said the drone was made in Iran and assembled in Lebanon, little is known about precisely what type it was — or whether it was armed. Armed or not, U.S. officials are wary. “No one is turning a blind eye to the growing use of surveillance-only UAV systems — including by non-state actors — even if these systems have a host of beneficial civil applications,” said the official who spoke with The Times. “One problem is that countries may perceive these systems as less provocative than armed platforms and might use them in cross-border operations in a way that actually stokes regional tension.” That appears to be happening in Asia, where Japan recently threatened to shoot down Chinese drones flying near the disputed Senkaku Islands in the East China Sea. Northeast Asian countries are likely to invest heavily in drone technology, said Patrick M. Cronin, senior director of the Asia-Pacific Security Program at the Center for a New American Security in Washington. “But even before these investments are manifested in wider deployments, Japan will be relying on UAVs for wider and better surveillance, particularly around its southwest island chain, while China will be using them to variably challenge Japanese administrative control and, indirectly, pressure the United States to restrain its ally,” said Mr. Cronin. “This vital new technology is improving situational awareness. But, paradoxically, if used more offensively the same technology may also accelerate a maritime crisis in the East or even South China Sea.” U.S. precedents Others say the U.S. and its closest allies have set a precedent with clandestine drone strikes in foreign lands. Although British forces have carried out hundreds of drone strikes in Afghanistan and Israel has used drone-fired missiles to kill suspected terrorists in Egypt’s Sinai Peninsula, as well as Islamic militants in Gaza, the most widespread use has been directed by the U.S. military and CIA. In addition to strikes in Libya and Somalia, the U.S. has carried out more than 375 strikes in Pakistan and as many as 65 in Yemen over the past nine years, according to the London-based Bureau of Investigative Journalism. The concern, said the Brookings Institution’s Mr. Singer, is that adversaries will point to U.S. behavior as an excuse for carrying out cross-border targeting of “high-value” individuals. “That’s where you have the problem,” he said. “Turkey carries out a strike in northern Iraq and then cites U.S. precedent in Pakistan to justify it. Or Iran carries out a drone strike inside Syria that the Syrian government says it’s fine with because it’s a lawless area where what they call ‘terrorists’ are hanging out, and then they throw the precedent back at the U.S. “That would make it sticky for us,” said Mr. Singer. “That’s not the broader norm we want out there.”

#### Those deterrence breakdowns escalate

Boyle, 13 [“The costs and consequences of drone warfare”, MICHAEL J. BOYLE, International Affairs 89: 1 (2013) 1–29, assistant professor of political science at LaSalle University]

The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, **such as Russia and China**, are beginning rapidly **to develop and deploy drones** for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own. A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them. Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144 Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 **Given this precedent**, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government. One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147 Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them. Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus **tilting the balance of power in authoritarian regimes** **even more decisively towards** those who wield the coercive instruments of power and against those who dare to challenge them. Conclusion Even though it has now been confronted with blowback from drones in the failed Times Square bombing, the United States has yet to engage in a serious analysis of the strategic costs and consequences of its use of drones, both for its own security and for the rest of the world. Much of the debate over drones to date has focused on measuring body counts and carries the unspoken assumption that if drone strikes are efficient—that is, low cost and low risk for US personnel relative to the terrorists killed—then they must also be effective. This article has argued that such analyses are operating with an attenuated notion of effectiveness that discounts some of the other key dynamics—such as the corrosion of the perceived competence and legitimacy of governments where drone strikes take place, growing anti-Americanism and fresh recruitment to militant networks—that reveal the costs of drone warfare. In other words, the analysis of the effectiveness of drones takes into account only the ‘loss’ side of the ledger for the ‘bad guys’, without asking what America’s enemies gain by being subjected to a policy of constant surveillance and attack. In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States. Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156 A final, and crucial, step towards mitigating the strategic consequences of drones would be to develop internationally recognized standards and norms for their use and sale. It is not realistic to suggest that the US stop using its drones altogether, or to assume that other countries will accept a moratorium on buying and using drones. **The genie is out of the bottle**: drones will be a fact of life for years to come. What remains to be done is to ensure that their use and sale are transparent, regulated and consistent with internationally recognized human rights standards. The Obama administration has already begun to show some awareness that drones are dangerous if placed in the wrong hands. A recent New York Times report revealed that the Obama administration began to develop a secret drones ‘rulebook’ to govern their use if Mitt Romney were to be elected president.157 The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.

#### Asian conflict escalates due to drone use

**Brimley et al, 13** \*vice president \*\*AND director of the Technology and National Security Program \*\*\*AND deputy director of the Asia Program at the Center for a New American Security (Shawn Brimley, Ben Fitzgerald, and Ely Ratner, 17 September 2013, “The Drone War Comes to Asia,” http://www.foreignpolicy.com/articles/2013/09/17/the\_drone\_war\_comes\_to\_asia?page=0,1)//CC

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

#### Goes nuclear

**Goldstein, 13** – Avery, David M. Knott Professor of Global Politics and International Relations, Director of the Center for the Study of Contemporary China, and Associate Director of the Christopher H. Browne Center for International Politics at the University of Pennsylvania (“First Things First: The Pressing Danger of Crisis Instability in U.S.-China Relations,” International Security, vol. 37, no. 4, Spring 2013, Muse //Red)

Two concerns have driven much of the debate about international security in the post-Cold War era. The first is the potentially deadly mix of nuclear proliferation, rogue states, and international terrorists, a worry that became dominant after the terrorist attacks against the United States on September 11, 2001.1 The second concern, one whose prominence has waxed and waned since the mid-1990s, is the potentially disruptive impact that China will have if it emerges as a peer competitor of the United States, challenging an international order established during the era of U.S. preponderance.2 Reflecting this second concern, some analysts have expressed reservations about the dominant post-September 11 security agenda, arguing that China could challenge U.S. global interests in ways that terrorists and rogue states cannot. In this article, I raise a more pressing issue, one to which not enough attention has been paid. For at least the next decade, while China remains relatively weak, the gravest danger in Sino-American relations is the possibility the two countries will find themselves in **a crisis** that **could escalate to open military conflict.** In contrast to the long-term prospect of a new great power rivalry between the United States and China, which ultimately rests on debatable claims about the intentions of the two countries and uncertain forecasts about big shifts in their national capabilities, the danger of instability in a crisis involving these two nuclear-armed states is a tangible, near-term concern.3 Even if the probability of such a war-threatening crisis and its escalation to the use of significant military force is low, the **potentially catastrophic consequences** of this scenario provide good reason for analysts to better understand its dynamics and for policymakers to fully consider its implications. Moreover, events since 2010—especially those relevant to disputes in the East and South China Seas—suggest that **the danger of a military confrontation** in the Western Pacific **that could lead to a U.S.-China standoff may be on the rise.** In what follows, I identify not just pressures to use force preemptively that pose the most serious risk should a Sino-American confrontation unfold, but also related, if slightly less dramatic, incentives to initiate the limited use of force to gain bargaining leverage—a second trigger for potentially devastating instability during a crisis.4 My discussion proceeds in three sections. The first section explains why, during the next decade or two, a serious U.S.-China crisis may be more likely than is currently recognized. The second section examines the features of plausible Sino-American crises that may make them so dangerous. The third section considers general features of crisis stability in asymmetric dyads such as the one in which a U.S. superpower would confront an increasingly capable but still thoroughly overmatched China—the asymmetry that will prevail for at least the next decade. This more stylized discussion clarifies the inadequacy of focusing one-sidedly on conventional forces, as has much of the current commentary about the modernization of China's military and the implications this has for potential conflicts with the United States in the Western Pacific,5 or of focusing one-sidedly on China's nuclear forces, as a smaller slice of the commentary has.6 An assessment considering the interaction of conventional and nuclear forces indicates why **escalation resulting from crisis instability remains a devastating possibility.** Before proceeding, however, I would like to clarify my use of the terms "crisis" and "instability." For the purposes of this article, I define a crisis as a confrontation between states involving a serious threat to vital national interests for both sides, in which there is the expectation of a short time for resolution, and in which there is understood to be a sharply increased risk of war.7 This definition distinguishes crises from many situations to which the label is sometimes applied, such as more protracted confrontations; sharp disagreements over important matters that are not vital interests and in which military force seems irrelevant; and political disputes involving vital interests, even those with military components, that present little immediate risk of war.8 I define instability as the temptation to resort to force in a crisis.9 Crisis stability is greatest when both sides strongly prefer to continue bargaining; instability is greatest when they are strongly tempted to resort to the use of military force. Stability, then, describes a spectrum—from one extreme in which neither side sees much advantage to using force, through a range of situations in which the balance of costs and benefits of using force varies for each side, to the other extreme in which the benefits of using force so greatly exceed the costs that striking first looks nearly irresistible to both sides. Although the incentives to initiate the use of force may not reach this extreme level in a U.S. China crisis, the capabilities that the two countries possess raise concerns that escalation pressures will exist and that they may be highest **early in a crisis**, compressing the time frame for diplomacy to avert military conflict.

#### The plan solves --- prior judicial review fosters sustainable norms

Wexler, 13 [The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests, Lesley Wexler, Professor of Law and Thomas A. Mengler Faculty Scholar, 3rd Speaker and semifinalist 1998 National Debate Tournament, p. SSRN]

The current practice of using drones to engage in overseas killings raises difficult legal ques-tions with incredibly high stakes. The fate of potential targets and collateral damage hangs in the balance along with grave concerns about national and foreign security. Over the past decade, expansive deference to the executive branch has allowed a substantial increase in the number and rate of drone strikes. The use of drones for targeted killing is becoming a regular tool of the U.S. government and perhaps will become so for other governments as well. What role, if any, do courts have to play in regulating this practice? Critics of the status quo would like greater transparency and accountability in regards to tar-geted killings. In addition to constitutional concerns, some worry the executive branch is violating International Humanitarian Law (IHL). They want the executive branch to reveal its legal under-standings of IHL. They also seek greater information regarding review processes for targeted kill-ings as to both prospective listings and retrospective assessments of compliance. These skeptics contend that the lack of judicial oversight and the opacity of the government’s legal position risks the deaths of innocent foreign civilians, violates democratic accountability norms, erodes our compliance reputation with allies, and helps recruit a new generation of anti-American insurgents. Even if the current approach is lawful, many worry about future administrations or other governments that may adopt drone strikes without sufficient IHL protections. As this chapter describes, some of these critics have proposed the use of courts to foster either transparency or accountability or both. In contrast, many, including the executive and judicial branches themselves, believe that the judicial role regarding drone strikes and targeted killings should be a minimal one. They suggest that an active court reviewing names of those to be targeted, providing damages to victims of un-lawful strikes, or demanding agencies declassify information on drone strikes would compromise an effective strategy in the war on terror. They fear judicial intervention would pose great danger to U.S. soldiers, foreign civilians, and in worst case scenarios, to U.S. citizens at home without en-hancing IHL compliance. In particular, executive branch officials have argued that greater transpar-ency may compromise intelligence efforts, provide targets with additional opportunities to act stra- 3 tegically, and sour relations with states currently willing to provide sub rosa permission for strikes. Meanwhile, these court opponents suggest that sufficient internal and congressional oversight can prevent unlawful activity. They also push back on the opacity charge by noting the information pro-vided through a series of high-level administration speeches and unacknowledged leaks. The U.S. judiciary itself is often reluctant to aggressively intervene in national security mat-ters and other legal issues arising out of armed conflicts. Federal courts frequently employ a variety of procedural postures and substantive doctrines to avoid deciding live IHL controversies. But the judicial branch sometimes surprises, as when the Supreme Court spoke to detention policy and its relationship to IHL in the trio of war on terror cases Hamdi,1 Hamdan,2 and Boumediene.3 U.S. courts might look to other countries, like Israel, whose courts have ruled on targeted killings and issued guidelines informed by IHL to govern future behavior.4 This chapter suggests the judiciary may play an important role in the debate over the execu-tive branch’s decisions regarding IHL even if it declines to speak to the substance of such cases. First, advocates may use courts as a visible platform in which to make their arguments and spur conversations about alternative, non-judicially mandated transparency and accountability measures. As they did with the trio of detention cases, advocates can leverage underlying constitutional con-cerns about the treatment of citizens to stimulate interest in the larger IHL issues. Second, litigants may use courts to publicize and pursue Freedom of Information (FOIA) requests and thus enhance transparency. Even if courts decline to grant FOIA requests, the lawsuits can generate media atten-tion about what remains undisclosed. Third, and **most** robustly, Congress may pass legislation that would facilitate either prospective review of kill lists through a so-called drone court or remove procedural barriers to retrospective damage suits for those unlawfully killed by a drone strike. Even the threat of such a judicial role may influence executive branch behavior.

#### Drone court key

Chow, 13 [Droning On: The Need to Establish a New Norm, Eugene K. Chow Former Executive Editor, Homeland Security NewsWire, http://www.huffingtonpost.com/eugene-k-chow/establish-new-constitutional-norm\_b\_2683131.html]

Contrary to what some have argued that the president requires full and unadjudicated control of the CIA's drone program for the swift execution of military operations to safeguard the nation, the proposed drone court or some form of Congressional oversight would not necessarily slow down the government's ability to wage war. Before that fateful button is pressed and Hellfire missiles go streaking toward an enemy combatant, thousands of man-hours are poured into gathering intelligence, assessing threats, and monitoring their movements. In all that time building up to that final moment, why can we not spare a few extra minutes for a Congressional committee, a judge, or a panel to determine if an American ought to be killed or not? Let us remember that the measure of a democratic society is not how it treats its best, but its worst. In the war against violent extremism, our government has already established a precedent for additional oversight. Following the Hamdi v. Rumsfeld decision, the Pentagon created Combatant Status Review Tribunals to determine if captured enemies on the battlefield had been properly designated as "enemy combatants." So it is not a question of whether the government can establish additional layers of oversight to ensure transparency, accountability, and the protection of Constitutional rights, but rather do we have the will. Now that a perpetual war, waged on an omnipresent battlefield, and drones capable of automatically monitoring every single moving object within 65 square miles and firing death-dealing missiles with a click of the button have become commonplace - it is high time we put into place laws and parameters that clearly define this new norm.

#### Legal constraints key --- institutionalizing clarity key to guide norms

HRI, 11 [Human Rights Institute, Targeting Operations with Drone Technology: Humanitarian Law Implications Background Note for the American Society of International Law Annual Meeting Human Rights Institute, Columbia Law School March 25, 2011, p. online]

While they disagree on important legal issues, critics and proponents alike share at least one significant concern: drones may be the future of warfare, and the U.S. may soon find itself “on the other end of the drone,” as other governments and armed non-state groups develop drone technology. Yet **discussions of** the legal constraints lag behind the rapid advances in technological capability and deployment. Even those who believe that the U.S. government’s use of drone technology is carefully calibrated to adhere to applicable law worry that other governments or non-state groups will cite the U.S. government’s silence on legal questions as justification to shirk from transparency about their practice or even openly flout the law. In this paper, we describe three questions arising from the U.S. government’s use of drone technology, focusing on ambiguities in the government’s position which scholars have debated: the scope of the armed conflict; who may be targeted; and the legal and policy implications of who conducts the targeting. These questions stem not so much from drone technology itself, but from the kind of warfare for which the U.S. is currently using drones. Scholars and experts have sharply disagreed about the answers to these questions, but it is telling that a core set of issues has emerged as the shared focus for individuals from across the ideological spectrum. Ambiguity on these core issues exists despite **the Administration’s efforts** to establish the legality of targeting practices—most notably, State Department Legal Adviser Harold Koh’s address at the 2010 annual meeting of the American Society of International Law. Some scholars laud Koh’s speech as divorcing the Administration from an approach that invokes the privileges of the law of war while dismissing the relevance of it duties and restraints. Observers have recognized that Koh’s address reflects the Administration’s desire to legitimize its policy through forthrightness about the constraints imposed by law. However, scholars disagree about the functional difference between the paradigm of the “global war against terrorism” and the Administration’s articulation, in a variety of fora, of an armed conflict against al Qaeda, the Taliban and associated forces. Some observers have argued that without further explanation, the Administration’s position confirms the relevancy of humanitarian law but leaves unanswered questions fundamental to assessing the legality of U.S. practice. We agree that where significant ambiguity exists, it leaves the U.S. government vulnerable to challenges about the sincerity of its commitment to the rule of law. In the near future, ambiguity may also weaken the government’s ability to argue for constraints on the practice of less law-abiding states. Clarity about U.S. legal standards and policy, as we describe in this paper, would not require disclosure of classified information about who is targeted, or intelligence sources and methods. We recognize that rules of engagement are classified and vary based on the theater of combat. Instead, we encourage clarification of the existence or character of legal justifications TARGETING WITH DRONE TECHNOLOGY: HUMANITARIAN LAW IMPLICATIONS HUMAN RIGHTS INSTITUTE, COLUMBIA LAW SCHOOL 3 and standards, and generic procedural safeguards, about which scholars and experts have debated. To be sure, not all the scholars and observers whose views we present believe that the government needs to disclose more information about its legal standards and procedures. Some have objected to court scrutiny of the government’s standards or justifications. Many observers are concerned that further government clarification would require divulging sensitive information, or at least information that the government has not historically made public. They point to the extent to which the questions we raise involve not just legal standards, but policy determinations. These observers’ concerns, and countervailing concerns about the expansive or unbounded scope of the armed conflict referenced by the Administration, require further discussion—one we attempt to set the foundation for, by identifying particular areas of ambiguity and debate. For some issues, scholars disagree with each others’ characterization of the government’s position. For other issues, they agree that the government’s position is unknown. On still other issues, the question of the government’s position is relegated to the background in favor of a highly contested debate among scholars and practitioners about the relevance of the law or the practicability of a legal standard. Yet in each case, disagreement among scholars underscores the need for clarity about the U.S. government’s position. U.S. legal standards and policies are a necessary starting point for discussions among scholars, yet they are such a “moving target”—or simply a target in the fog—that discussions can be expected to devolve to speculation. Disagreement among scholars, to some degree, reflects a necessarily myopic understanding of government policy. At least to that extent, the government non-disclosure may undermine the robustness of debate among scholars and practitioners about humanitarian law standards, and effectively halt sound legal analysis of U.S. practice. Limiting scholarly debate would be detrimental to the development of clear legal standards that aid, rather than undermine, U.S. armed forces charged with conducting targeting operations. Insofar as government non-disclosure prevents public or legal accountability, it also undermines the U.S. government’s message to the international community, so evident in Koh’s ASIL speech, of commitment to the rule of law.

#### It’s reverse causal: formal agreements are only effective if driven by US precedent

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

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

### Adv 2

#### Advantage 2 Accountability

#### Ex ante oversight key to neutral decision making, accountability and legitimacy

Adelsberg 12 (Samuel, J.D. – Yale Law School, “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens,” Harvard Law & Policy Review, Summer, 6 Harv. L. & Pol'y Rev. 437, Lexis)

The relevance of these precedents to the targeting of citizens is clear: the constitutional right to due process is alive and well--regardless of geographic location. We now turn to what type of process is due.

III. BRING IN THE COURTS: BRINGING JUDICIAL LEGITIMACY TO TARGETED KILLINGS

The function of this Article is not to argue that targeted killing should be removed from the toolbox of American military options. Targeted killing as a military tactic is here to stay. n34 Targeting strikes have robust bipartisan political support and have become an increasingly relied upon weapon as the United States decreases its presence in Iraq and Afghanistan. n35 The argument being asserted here, therefore, is that in light of the protections the Constitution affords U.S. citizens, there must be a degree of inter-branch process when the government targets such individuals.

The current intra-executive process afforded to U.S. citizens is not only unlawful, but also dangerous. n36 Justice O'Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that an interrogator is not a neutral decision-maker as the "even purportedly fair adjudicators are disqualified by their interest in the controversy." n37 In rejecting the government's argument that a "separation of powers" analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O'Connor contended that, in times of conflict, the Constitution "most assuredly envisions a role for all three branches when individual liberties are at stake." n38 Similarly, Justice Kennedy was unequivocal in Boumediene about the right of courts to enforce the Constitution even in times of war. Quoting Chief Justice Marshall in Marbury v. Madison, n39 Kennedy argued that holding "that the political branches may switch the constitution on or off at will would lead to a regime in which they, not this Court, say 'what the law is.'" n40 This sentiment is very relevant to our targeted killing analysis: in the realm of targeted killing, where the deprivation is of one's life, the absence of any "neutral decision-maker" outside the executive branch is a clear violation of due process guaranteed by the Constitution.

Justices O'Connor and Kennedy are pointing to a dangerous institutional tension inherent in any intra-executive process regime. Targeting decisions are no different; indeed, the goal of those charged with targeting citizens like al-Awlaki is not to strike a delicate balance between security [\*444] and liberty but rather, quite single-mindedly, to prevent attacks on the United States. n41 In describing the precarious nature of covert actions, James Baker, a distinguished military judge, noted, "the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and informed accountable decision-making." n42 While Judge Baker concluded that these risks "magnify the importance of a meaningful process of ongoing executive appraisal," he overlooked the institutional tension, seized upon by Justices O'Connor and Kennedy, which would preclude the type of process that he was advocating. n43

Although there may be a role for Congress in such instances, a legislative warrant for specific cases would likely be cumbersome, carry significant security risks, and may violate the spirit of the Bill of Attainder Clause, which prohibits the legislature from performing judicial or executive functions. The current inter-branch process for covert actions, in which the President must make a finding and notify the leaders of Congress and the intelligence committees, is entirely ex post and also has not been proven to provide a meaningful check on executive power. n44 Moreover, most politicians are unqualified to make the necessary legal judgments that these situations require.

Solutions calling for the expatriation of citizens deemed to be terrorists are fraught with judicial complications and set very dangerous precedents for citizenship revocation. n45 Any post-deprivation process, such as a Bivens-style action, for a targeted attack would also be problematic. n46 Government officials charged with carrying out these attacks might be hesitant to do so if there were a threat of prosecution. Moreover, post-deprivation process for a target would be effectively meaningless in the wake of a successful attack.

 [\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens.

Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on steadier constitutional ground. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

#### Intra-executive processes fail – plan is key to accountability

Chehab, 12 [Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review]

The practical, pragmatic justification for the COAACC derives largely from considering social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147 Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153 Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making. D. THE NEED FOR ACCOUNTABILITY CHECKS To check the vices of groupthink and shortcomings of human judgment, the psychology literature emphasizes a focus on accountability mechanisms in which a better reasoned decision-making process can flourish.156 By serving as a constraint on behavior, “accountability functions as a critical norm-enforcement mechanism—the social psychological link between individual decision makers on the one hand and social systems on the other.”157 Such institutional review can channel recognition for the need by government decision-makers to be more self-critical in policy targeted killing designations, more willing to consider alternative points of view, and more willing to anticipate possible objections.158 Findings have also shown that ex ante awareness can lead to more reasoned judgment while also preventing tendentious and ideological inclinations (and political motivations incentivized and exploited by popular hysteria and fear).159 Requiring accounting in a formalized way prior to engaging in a targeted killing—by providing, for example, in camera review, limited declassification of information, explaining threat assessments outside the immediate circle of policy advisors, and securing meaningful judicial review via a COAACC-like tribunal—can promote a more reliable and informed deliberation in the executive branch. With process-based judicial review, the COAACC could effectively reorient the decision to target individuals abroad by examining key procedural aspects—particularly assessing the reliability of the “terrorist” designation—and can further incentivize national security policy-makers to engage in more carefully reasoned choices and evaluate available alternatives than when subject to little to no review.

#### Ex ante review key – FISA critics miss the mark

Guiora, 12 [Targeted Killing: When Proportionality Gets All Out of Proportion, Amos N. Guiora. Professor of Law, S.J. Quinney College of Law, University of Utah, p. SSRN]

The unitary executive theory aggressively articulated, and implemented, by the Bush Administration has been adopted in toto by the Obama Administration. While the executive clearly prefers to operate in a vacuum, the question whether that most effectively ensures effective operational counterterrorism is an open question. The advantage of institutionalized, process-based input into executive action prior to decision implementation is worthy of discussion in operational counterterrorism. The solution to this search for an actionable guideline is the **strict scrutiny standard.** What is strict scrutiny, and how is it to be implemented in the context of operational counterterrorism? Why is there a need, if at all, for an additional standard articulating self-defense? The strict scrutiny standard would enable operational engagement of a non-state actor predicated on intelligence information that would meet admissibility standards akin to a court of law. The strict scrutiny test seeks to strike a balance **enabling the state to act sooner** but subject to significant restrictions. The ability to act sooner is limited, however, by the requirement that intelligence information must be reliable, viable, valid, and corroborated. The strict scrutiny standard proposes that for states to act as early as possible in order to prevent a possible terrorist attack the information must meet admissibility standards similar to the rules of evidence. The intelligence must be reliable, material, and probative. The proposal is predicated on the understanding that while states need to engage in operational counterterrorism, mistakes regarding the correct interpretation and analysis of intelligence information can lead to tragic mistakes. Adopting admissibility standards akin to the criminal law minimizes operational error. Rather than relying on the executive branch making decisions in a “closed world” devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information’s admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur. The logistics of this proposal are far less daunting than might seem—the court before which the executive would submit the evidence is the FISA Court. Presently, FISA Court judges weigh the reliability of intelligence information in determining whether to grant government ex parte requests for wire-tapping warrants. Under this proposal, judicial approval is necessary prior to undertaking a counterterrorism operation predicated solely on intelligence information. The standard the court would adopt in determining the information’s reliability is the same applied in the traditional criminal law paradigm. The intelligence must be reliable, material, and probative. While the model is different—a defense attorney cannot question state witnesses—the court will assume a dual role. In this dual role capacity the court will cross-examine the representative of the intelligence community and subsequently rule as to the information’s admissibility. While some may suggest that the FISA court is largely an exercise in “rubber-stamping,” the importance of the proposal is in requiring the government to present the available information to an independent judiciary as a precursor to engaging in operational counterterrorism. The call is complicated: the United States is a nation based on democratic values rooted in ethics and morals; yet, when push comes to shove the United States does not always act in accordance with these articulated principles. The vision of a “city upon a hill,” articulated by Puritan settler John Winthrop and subsequently referenced by President Ronald Reagan, 9 has been called into question by certain U.S. counterterrorism measures. This is not the first time that American responses in the face of crisis (whether real or perceived) have reflected “over-board” and “over-broad” approaches.10

#### **The impact is collapse of Yemen**

Farley, 12 [winter, 2012, South Texas Law Review, 54 S. Tex. L. Rev. 385, “Drones and Democracy: Missing Out on Accountability?” Benjamin R. Farley\* J.D. with honors, Emory University School of Law, 2011. Editor-in-Chief, Emory International Law Review, 2010-2011. M.A., The George Washington University Elliott School of International Affairs, 2007, p. lexis]

V. Conclusion: Unaccountable Uses of Force and High-Risk Policymaking Effective accountability mechanisms constrain policymakers' freedom to choose to use force by increasing the costs of use-of-force decisions and imposing barriers on reaching use-of-force decisions. The accountability mechanisms discussed here, when effective, reduce the likelihood of resorting to force (1) through the threat of electoral sanctioning, which carries with it a demand that political leaders explain their resort to force; (2) by limiting policymakers to choosing force only in the manners authorized by the legislature; and (3) by requiring policymakers to adhere to both domestic and international law when resorting to force and demanding that their justifications for uses of force satisfy both domestic and international law. When these accountability mechanisms are ineffective, the barriers to using force are lowered and the use of force becomes more likely. Use-of-force decisions that avoid accountability are problematic for both functional and normative reasons. Functionally, accountability avoidance yields increased risk-taking and increases the likelihood of policy failure. The constraints imposed by political, supervisory, fiscal, and legal accountability "make leaders reluctant to engage in foolhardy military expeditions... . If the caution about military adventure is translated into general risk-aversion when it comes to unnecessary military engagements, then there will likely be a distributional effect on the success rates of [democracies]." n205 Indeed, this result is predicted by the structural explanation of the democratic peace. It also explains why policies that rely on covert action - action that is necessarily less constrained by accountability mechanisms - carry an increased risk of failure. n206 Thus, although accountability avoidance seductively holds out the prospect of flexibility and freedom of action for policymakers, it may ultimately prove counterproductive. In fact, policy failure associated with the overreliance on force - due at least in part to lowered barriers from drone-enabled accountability avoidance - may be occurring already. Airstrikes are deeply unpopular in both Yemen n207 and Pakistan, n208 and although the strikes have proven critical [\*421] to degrading al-Qaeda and associated forces in Pakistan, increased uses of force may be contributing to instability, the spread of militancy, and the failure of U.S. policy objectives there. n209 Similarly, the success of drone [\*422] strikes in Pakistan must be balanced against the costs associated with the increasingly contentious U.S.-Pakistani relationship, which is attributable at least in part to the number and intensity of drone strikes. n210 These costs include undermining the civilian Pakistani government and contributing to the closure of Pakistan to NATO supplies transiting to Afghanistan, n211 thus forcing the U.S. and NATO to rely instead on several repressive central Asian states. n212 Arguably the damage to U.S.-Pakistan relations and the destabilizing influence of U.S. operations in Yemen would be mitigated by fewer such operations - and there would be fewer U.S. operations in both Pakistan and Yemen if U.S. policymakers were more constrained by use-of-force accountability mechanisms. From a normative perspective, the freedom of action that accountability avoidance facilitates represents the de facto concentration of authority to use force in the Executive Branch. While some argue that such concentration of authority is necessary or even pragmatic in the current international environment, n213 it is anathema to the U.S. constitutional system. Indeed, the founding generation's fear of foolhardy military adventurism is one reason for the Constitution's diffusion of use-of-force authority between Congress and the President. n214 That generation recognized that **a president vested with an** unconstrained **ability to go to war is** more likely to lead the nation into war.

#### Spills over to Horn of Africa

**Atarodi, 10** – Swedish Defence Research Agency (Alexander, “Yemen in Crisis – Consequences for the Horn of Africa,” <http://www.foi.se/upload/asia/FOI-R--2968--SE.pdf>)

Yemen will celebrate the 20th anniversary of national unification in 2010. But it will not be much of a celebration. Yemen, one of the world’s oldest civilizations, is experiencing severe difficulties and faces an uncertain future. Some of the problems are a violent Houthi rebel group in the north and increasing al-Qaeda activity. Furthermore, the country is the poorest in the Arab world as well as a haven for Islamic jihadists. These factors together have weakened Yemen and have resulted in a deteriorating security situation in the country. Currently Yemen is having myriad serious security problems such as arms- and human trafficking, piracy and terrorist activities. These are consequences of poor state control over Yemeni territory. Furthermore, deteriorating economic development has transformed the Yemeni economy into a war economy where different entrepreneurs are seeking to enrich themselves through illegal activities. This report, written during January and February 2010, will discuss some of the urgent issues facing the country. There are a couple of conclusions drawn from this report. One is that Yemen is not to be considered a failed state, at least not for now. However, the health of the Yemeni political, social and economic systems is getting continuously worse. If this trend is not reversed in the near future, the country is likely to follow the same path as Somalia, located just a short distance away across the Mandab Strait. If this happens, it will lead to further instability and strengthening of illegal and terrorist activities with enormous consequences for the Horn of Africa countries. Another conclusion is that Yemen needs international support (political and economical) to combat the political crisis in the country, to combat the widespread poverty and to promote economic development to improve the lives of the rapidly growing population.

#### The impact is global conflict

**Hedberg, 10** – Lt Col, US Navy, paper submitted in fulfillment of a MASTER OF ARTS IN SECURITY STUDIES (MIDDLE EAST, SOUTH ASIA, SUB-SAHARAN AFRICA) at the Naval Postgraduate School (Nicholas, “THE EXPLOITATION OF A WEAK STATE: AL-QAEDA IN THE ARABIAN PENINSULA IN YEMEN,” June, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA524655&Location=U2&doc=GetTRDoc.pdf>)

This chapter will address three major reasons why AQAP has come to the forefront of al-Qaeda in the Persian Gulf. At the heart of the problem is the fact that Yemen is a weak state and is unable to provide many basic social services to its populace, while at the same time, is either unwilling or unable to control the whole extent of its territory. The importance of Yemen in the fight against global terrorism cannot be underestimated as “Yemen has contributed fighters to all three generations of the global jihad,” and could soon become the next staging point for all major operations against the West.170 The United States cannot and should not try to solve this problem alone. The problem of terrorism in Yemen is an international threat that needs to be addressed by the leading powers in the world and, most importantly, by the Gulf Cooperation Council (GCC) countries. By studying the conditions that make Yemen a weak state, we can determine how to strengthen the state so that it can provide basic services to the majority of its people and eliminate the conditions that allow AQAP to recruit, train, and operate within Yemen.

A. PROBLEMS WITH WEAK STATES

Today, the United States is the world’s sole remaining superpower, and we no longer fear the threat from militaries of other world powers, but “rather transnational threats emanating from the world’s most poorly governed countries.”171 Tremendous attention has been given to weak and failing states in recent years because of their role in transnational terrorism. Weak and failing states, like Sudan and Afghanistan, have both harbored Osama bin Laden and his al-Qaeda leadership in the last two decades. From these locations, al-Qaeda has been able to conduct terrorist operations that have killed thousands of innocent people from the Middle East to Africa to the United States. Prior to 11 September 2001, policymakers viewed failing states strictly through a humanitarian lens, but this has changed and the leadership has been convinced that America is now more threatened by failing states than it is by conquering ones.172 Lately, weak and failing states have caused more worry and “anxiety about the spread of violent Islamic extremism and staging of terrorist attacks from ungoverned areas of such states has entered U.S. strategic thinking.”173 For the United States to combat the threat of weak and failing states such as Yemen, it must first understand the characteristics of weak states and why they are unable to provide the proper authority to thwart the threat of transnational terrorism.

Though attention to weak and failing states has increased, there is no universal definition or agreement on the number of these states in the world today. Failed states are commonly defined as those with the inability to achieve the characteristics described by Max Weber in his definition of a state. Failed states cannot “project or assert authority within their own borders, making them particularly susceptible to internal violence. They are often characterized by deteriorating living standards, corruption, a marked lack of civil society, and fewer services.”174 Terrorist groups are able to flourish in states that fall in this category because the state cannot or will not challenge the terrorist group. It can also be argued that weak states can pose just as much danger as failed states, as they have many of the same deficiencies. In most instances of weak and failing states, the state just does not have the capabilities to assert effective control over the entirety of its territory and this provides an ungoverned space where terrorist organizations can recruit, train, and conduct operations successfully.

There is no consensus on how many weak and failing states there are in the world today. The Commission on Weak States and U.S. National Security estimates that there are between 50 and 60; the United Kingdom’s Department for International Development classifies 46 nations as “fragile,” and the World Bank treats 30 countries in its LowIncome Under Stress program.175 The discrepancy in estimates shows the differences each have in defining weak and failing states, but what can be agreed upon is the fact that these states are major cause for concern because they can create a host of problems for the rest of the world. Weak and failing states create pockets that are susceptible to terrorism, WMD proliferation, crime, disease, energy insecurity, and regional instability.176 Each of these problems is not solely the problem of the individual state, but also threatens the security of the rest of the world. Weak and failing states provide bases for transnational criminal enterprises involved in the production, transit, or trafficking of drugs, weapons, and guns. They serve as important breeding grounds for new diseases and, because they lack the capacity to respond to the pandemic, endanger the rest of the world. Weak and failing states endanger energy security because reliance on these states increases the risk of interruption of supplies. These weak states also threaten the stability of the entire region as their conflicts can often spill into neighboring countries or induce external intervention.177 Although there is a range of problems that weak and failing states can cause for the rest of the world, none may be greater to the West than the threat of transnational terrorism.

There may not be a better example of a weak state today than Yemen. The Yemeni government faces a myriad of challenges that consume a tremendous amount of their resources, which prevent them from being able to effectively govern the whole of their territory. A nation-state exists to deliver political goods including, security, education, health services, economic opportunity, and environmental surveillance to its citizens.178 As discussed in Chapter IV, the Yemeni government is unable to provide many of the political goods that a state is supposed to provide for its people. The Yemeni economy is failing, unemployment rates are very high, the state is running out of water, there are not enough publicly run schools to support the population, malnutrition numbers are staggering, and the state is in the middle of fighting two separate conflicts against the Houthis in the north and secessionists in the south. This inability of the Yemeni government to govern effectively has produced a sense of illegitimacy that AQAP is using to help garner support in the country. Organizations such as AQAP

Are eager to step in and fill a void when the government is unable to provide its citizens with essential services. When such groups provide health, education, and protection services instead of or better than the government, they gain legitimacy, respect, and authority in the eyes of the public.179

Groups such Hizbullah in Lebanon, and Hamas in Gaza, have been successful in providing these essential services in the past and it has helped lead to their popularity in other areas. AQAP may not be as popular in Yemen as Hizbullah and Hamas are in their respective countries, but they are building strong relationships with the powerful Yemeni tribes who control large amounts of territory within Yemen.

Whereas it can be argued that violence is one of the outcomes of an organization in response “to an attempt to crush Islamic activism through broad repressive measures that leave few alternatives,” this study maintains that Yemen’s inability to provide proper goods and services allowed an already violent organization, AQAP, to recruit amongst a disgruntled population.180 The Yemeni state is going to continue to weaken as the economy worsens and what resources it has continue to go to combating the Houthis and southern secessionists. Its ability to govern the whole of the territory will continue to dwindle and AQAP is going to be there in the future, exploiting the weakness by operating freely in the ungoverned spaces, and recruiting the disenchanted population. The government cannot provide security throughout the country and cannot provide the proper social services that should be provided by an effective government. Yemen can be seen as the poster child for problems with weak and failing states. Although not a failed state, Yemen is a weak state, and the al-Qaeda organization has recognized the weakness, and will continue to utilize the safe haven provided to them as long as they are able to. Yemen’s weakness will continue to allow AQAP to operate, and if the al-Qaeda leadership on the Pakistan-Afghanistan borders is forced to flee, Yemen becomes the most logical stopping point for the next era of the transnational terrorist network.

#### Unaccountable drone use collapses forces that underpin US legitimacy

Kennedy, 13 [“Drones: Legitimacy and Anti-Americanism”, Greg Kennedy is a Professor of Strategic Foreign Policy at the Defence Studies Department, King's College London, based at the Joint Services Command and Staff College, Defence Academy of the United Kingdom, in Shrivenham, Parameters 42(4)/43(1) Winter-Spring 2013]

The exponential rise in the use of drone technology in a variety of military and non-military contexts represents a real challenge to the framework of established international law and it is both right as a matter of principle, and inevitable as a matter of political reality, that the international community should now be focusing attention on the standards applicable to this technological development, particularly its deployment in counterterrorism and counter-insurgency initiatives, and attempt to reach a consensus on the legality of its use, and the standards and safeguards which should apply to it.4 deliver deadly force is taking place in both public and official domains in the United States and many other countries.5 The four key features at the heart of the debate revolve around: who is controlling the weapon system; does the system of control and oversight violate international law governing the use of force; are the drone strikes proportionate acts that provide military effectiveness given the circumstances of the conflict they are being used in; and does their use violate the sovereignty of other nations and allow the United States to disregard formal national boundaries? Unless these four questions are dealt with in the near future the impact of the unresolved legitimacy issues will have a number of repercussions for American foreign and military policies: “Without a new doctrine for the use of drones that is understandable to friends and foes, the United States risks achieving near-term tactical benefits in killing terrorists while incurring potentially significant longer-term costs to its alliances, global public opinion, the war on terrorism and international stability.”6 This article will address only the first three critical questions. The question of who controls the drones during their missions is attracting a great deal of attention. The use of drones by the Central Intelligence Agency (CIA) to conduct “signature strikes” is the most problematic factor in this matter. Between 2004 and 2013, CIA drone attacks in Pakistan killed up to 3,461—up to 891 of them civilians.7 Not only is the use of drones by the CIA the issue, but subcontracting operational control of drones to other civilian agencies is also causing great concern.8 Questions remain as to whether subcontractors were controlling drones during actual strike missions, as opposed to surveillance and reconnaissance activities. Nevertheless, the intense questioning of John O. Brennan, President Obama’s nominee for director of the CIA in February 2013, over drone usage, the secrecy of their controllers and orders, and the legality of their missions confirmed the level of concern America’s elected officials have regarding the legitimacy of drone use. Furthermore, perceptions and suspicions of illegal clandestine intelligence agency operations, already a part of the public and official psyche due to experiences from Vietnam, Iran-Contra, and Iraq II and the weapons of mass destruction debacle, have been reinforced by CIA management of drone capability. Recent revelations about the use of secret Saudi Arabian facilities for staging American drone strikes into Yemen did nothing to dissipate such suspicions of the CIA’s lack of legitimacy in its use of drones.9 The fact that the secret facility was the launching site for drones used to kill American citizens Anwar al-Awlaki and his son in September 2011, both classified by the CIA as al-Qaeda-linked threats to US security, only deepened such suspicions. Despite the fact that Gulf State observers and officials knew about American drones operating from the Arabian peninsula for years, the existence of the CIA base was not openly admitted in case such knowledge should “ . . . damage counter-terrorism collaboration with Saudi Arabia.”10 The fallout from CIA involvement and management of drone strikes prompted Senator Dianne Feinstein, Chairwoman of the Senate Intelligence Committee, to suggest the need for a court to oversee targeted killings. Such a body, she said, would replicate the Foreign Intelligence Surveillance Court, which oversees eavesdropping on American soil.11 Most importantly, such oversight would go a long way towards allaying fears of the drone usage lacking true political accountability and legitimacy. In addition, as with any use of force, drone strikes in overseas contingency operations can lead to increased attacks on already weak governments partnered with the United States. They can lead to retaliatory attacks on local governments and may contribute to local instability. Those actions occur as a result of desires for revenge and frustrations caused by the strikes. Feelings of hostility are often visited on the most immediate structures of authority—local government officials, government buildings, police, and the military.12 It can thus be argued that, at the strategic level, drone strikes are fuelling anti-American resentment among enemies and allies alike. Those reactions are often based on questions regarding the legality, ethicality, and operational legitimacy of those acts to deter opponents. Therefore, specifically related to the reaction of allies, the military legitimacy question arises if the use of drones endangers vital strategic relationships.13 One of the strategic relationships being affected by the drone legitimacy issue is that of the United States and the United Kingdom. Targeted killing, by drone strike or otherwise, is not the sole preserve of the United States. Those actions, however, attract more negative attention to the United States due to its prominence on the world’s stage, its declarations of support for human rights and democratic freedoms, and rule-of-law issues, all which appear violated by such strikes. This complexity and visibility make such targeted killings important for Anglo-American strategic relations because of the closeness of that relationship and the perception that Great Britain, therefore, condones such American activities. Because the intelligence used in such operations is seen by other nations as a shared Anglo-American asset, the use of such intelligence to identify and conduct such killings, in the opinion those operations.14 Finally, the apparent gap between stated core policies and values and the ability to practice targeted killings appears to be a starkly hypocritical and deceitful position internationally, a condition that once again makes British policymakers uncomfortable with being tarred by such a brush.15 The divide between US policy and action is exacerbated by drone technology, which makes the once covert practice of targeted killing commonplace and undeniable. It may also cause deep-rooted distrust due to a spectrum of legitimacy issues. Such questions will, therefore, undermine the US desire to export liberal democratic principles. Indeed, it may be beneficial for Western democracies to achieve adequate rather than decisive victories, thereby setting an example of restraint for the international order.16 The United States must be willing to engage and deal with drone-legitimacy issues across the entire spectrum of tactical, operational, strategic, and political levels to ensure its strategic aims are not derailed by operational and tactical expediency.

#### Heg without legitimacy causes violent transitions and economic volatility—voluntary limits on power maintain relative international stability

Martin Griffiths January **2004**; Associate Professor and Head of School at School of Government and International Relations, Griffith University (coincidence, as it turns out) “BEYOND THE BUSH DOCTRINE: AMERICAN HEGEMONY AND WORLD ORDER” AUSTRALASIAN JOURNAL OF AMERICAN STUDIES www.anzasa.arts.usyd.edu.au/a.j.a.s/Articles/1\_04/Griffiths.pdf‎

In international relations, an established hegemony helps the cause of international peace in a number of ways. First, a hegemon deters renewed military competition and provides general security through its preponderant power. Second, a hegemon can, if it chooses, strengthen international norms of conduct. Third, a hegemon’s economic power serves as the basis of a global lending system and free trade regime, providing economic incentives for states to cooperate and forego wars for resources and markets. Such was the nature of British hegemony in the nineteenth century, hence the term Pax Britannica. After the Second World War, the United States has performed the roles that Britain once played, though with an even greater preponderance of power. Thus, much of the peace between democracies after World War Two can be explained by the fact that the political-military hegemony of the United States has helped to create a security structure in Europe and the Pacific conducive to peaceful interaction. Today, American hegemony is tolerated by many states in Europe and Asia, not because the United States is particularly liked, but because of the perception that its absence might result in aggression by aspiring regional hegemons. However, Chalmers Johnson has argued that this is a false perception promoted from Washington to silence demands for its military withdrawal from Japan and South Korea.8 It is true that hegemonic stability theory can be classified as belonging in the realist tradition because of its focus on the importance of power structures in international politics. The problem is that power alone cannot explain why some states choose to follow or acquiesce to one hegemon while vigorously opposing and forming counter-alliances against another hegemon. Thus when international relations theorists employ the concept of hegemonic stability, they supplement it with the concept of legitimacy.9 Legitimacy in international society refers simply to the perceived justice of the international system. As in domestic politics, legitimacy is a notoriously difficult factor to pin down and measure. Still, one cannot do away with the concept, since it is clear that all political orders rely to some extent on consent in addition to coercion. Hegemony without legitimacy is insufficient to deter violent challenges to the international order, and may provoke attempts to build counter-alliances against the hegemon. Hegemonic authority which accepts the principle of the independence of states and treats states with a relative degree of benevolence is more easily accepted. The legitimacy of American hegemony during the cold war was facilitated by two important characteristics of the era. First, the communist threat (whether real or imaginary) disguised the tension between the United States’ promotion of its own interests and its claim to make the world safe for capitalism.10 Second, American hegemony managed to combine economic liberalism between industrialised states with an institutional architecture (the Bretton Woods system) that moderated the volatility of transaction flows across borders. It enabled governments to provide social investments, safety nets and adjustment assistance at the domestic level.11 In the industrialised world, this grand bargain formed the basis of the longest and most equitable economic expansion in human history, from the 1950s to the 1980s. And it provided the institutional foundation for the newest wave of globalisation, which began not long thereafter and is far broader in scope and deeper in reach than its nineteenth century antecedent. The system that the United States led the way in creating after 1945 has fared well because the connecting and restraining aspects of democracy and institutions reduce the incentives for Western nations to engage in strategic rivalry or balance against American hegemony. The strength of this order is attested to by the longevity of its institutions, alliances and arrangements, based on their legitimacy in the eyes of the participants. Reacting against the closed autarchic regions that had contributed to the world depression and split the globe into competing blocs before the war, the United States led the way in constructing a post-war order that was based on economic openness, joint management of the Western political-economic order, and rules and institutions that were organised to support domestic economic stability and social security.12 This order in turn was built around a basic bargain: the hegemonic state obtains commitments from secondary states to participate in the international order, and the hegemon in return places limits on the exercise of its power. The advantage for the weak state is that it does not fear domination or abandonment, reducing the incentive to balance against the hegemon, and the leading state does not need to use its power to actively enforce order and compliance. It is these restraints on both sides and the willingness to participate in this mutual accord that explains the longevity of the system, even after the end of the cold war. But as the founder and defender of this international order, the United States, far from being a domineering hegemon, was a reluctant superpower.

#### That prevents great power war, economic collapse, and global governance failures

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Accordingly, while Pinker is sensitive to the importance of power in a domestic context—the Leviathan is good for safety and the decline of violence—he neglects the role of power in the international context, specifically he neglects US power as a force for stability. So, if a liberal Leviathan is good for domestic politics, a liberal Leviathan should be as well for international politics. The primacy of the United States provides the world with that liberal Leviathan and has four major positive consequences for international politics (Thayer 2006). In addition to ensuring the security of the United States and its allies, American primacy within the international system causes many positive outcomes for the world. The first has been a more peaceful world. During the Cold War, US leadership reduced friction among many states that were historical antagonists, most notably France and West Germany. Today, American primacy and the security blanket it provides reduce nuclear proliferation incentives and help keep a number of complicated relationships stable such as between Greece and Turkey, Israel and Egypt, South Korea and Japan, India and Pakistan, Indonesia and Australia. Wars still occur where Washington's interests are not seriously threatened, such as in Darfur, but a Pax Americana does reduce war's likelihood—particularly the worst form—great power wars**.** Second, American power gives the United States the ability to spread democracy and many of the other positive forces Pinker identifies. Doing so is a source of much good for the countries concerned as well as the United States because liberal democracies are more likely to align with the United States and be sympathetic to the American worldview. In addition, once states are governed democratically, the likelihood of any type of conflict is significantly reduced. This is not because democracies do not have clashing interests. Rather, it is because they are more transparent, more likely to want to resolve things amicably in concurrence with US leadership. Third, along with the growth of the number of democratic states around the world has been the growth of the global economy. With its allies, the United States has labored to create an economically liberal worldwide network characterized by free trade and commerce, respect for international property rights, mobility of capital, and labor markets. The economic stability and prosperity that stems from this economic order is a global public good. Fourth, and finally, the United States has been willing to use its power not only to advance its interests but to also promote the welfare of people all over the globe. The United States is the earth's leading source of positive externalities for the world. The US military has participated in over 50 operations since the end of the Cold War—and most of those missions have been humanitarian in nature. Indeed, the US military is the earth's “911 force”—it serves, de facto, as the world's police, the global paramedic, and the planet's fire department. There is no other state, group of states, or international organizations that can provide these global benefits. Without US power, the liberal order created by the United States will end just as assuredly. But, the waning of US power, at least in relative terms, introduces additional problems for Pinker concerning the decline of violence in the international realm. Given the importance of the distribution of power in international politics, and specifically US power for stability, there is reason to be concerned about the future as the distribution of relative power changes and not to the benefit of the United States.

#### Congressionally created drone court key to reverse negative perceptions

Epstein, 11 [Michael, Michigan State University College of Law “Targeted Killing Court: Why The United States Needs To Adopt International Legal Standards For Targeted Killings And How To Do So In A Domestic Court”, SSRN]

VI PROPOSED NEW U.S. LEGAL MECHANISM The Obama Administration has not indicated that it will halt or alter its current policy of targeted killings of al-Qaeda terrorists and other dangerous militants abroad using drones. In order to properly comport with international law and mitigate both domestic and world-wide criticism of the current targeted killing policy, the U.S. could adopt the targeted killing standard announced in PCATI. **Congress could enact,** and President Obamacould sign into law, a statute providing for rigorous judicial review of targeted killings as laid out in PCATI; a Targeted Killing Review Court (“TKR Court”). This would simultaneously comport with current IHL and IHR standards, provide limited but assured transparency to the international community that targeted killings are not “arbitrary extra-judicial executions,” and help to assure that U.S. forces acting abroad are being held accountable when they do carry out targeted killings. By incorporating the hybrid armed conflict and law enforcement standard of PCATI through this TKR Court, the Obama Administration could provide for meaningful judicial review under international law and ensure that military and intelligence agents are not acting with carte blanche approval to carry out targeted killings worldwide. While some scholars have proposed systems of public post-killing investigations of C.I.A. actions359

#### That’s key to salvage reputation

Epstein, 11 [Michael, Michigan State University College of Law “Targeted Killing Court: Why The United States Needs To Adopt International Legal Standards For Targeted Killings And How To Do So In A Domestic Court”, SSRN]

Overall, I believe that the TKR Court provides for a rigid system of Article III judicial review; comports with standards of applicable domestic and international law; and provides a mechanism for both domestic and international accountability. VII. CONCLUSION One of the nicknames for U.S. drone strikes that have been adopted by tribesmen in Pakistan is “bangana” – the Pashto word for “thunderclap.”384 The civilians living in Pakistani tribal areas have every reason for equating Predator Drone strikes to thunder; the strikes come out of nowhere, and many of the tribesmen have no idea why they occur. Drone strikes in Pakistan alone have been estimated to have killed over 1,800 people; while these strikes are likely necessary and proportionate to the grave threat they pose, these attacks cannot continue without some measure of accountability. While military strikes resulting in civilian casualties in the past have been justified due to a lack of knowledge, drone technology has advanced to a point where the U.S. government can gather the exact numbers and identities of possible civilian casualties. When Betullah Mehsud was killed, the C.I.A. agents had been observing him for two hours, and were able to gather information about whose home he was staying at (his father-in-law’s); who was at the home with him (his wife, in-laws, and eight Taliban fighters); and his current state of health (he was receiving an intravenous drip to treat a kidney disease.) Such prior knowledge could surely have been properly scrutinized by a judge to determine whether or not a strike is proportionate or not within the two hours that that the Predator drone hung over Mehsud and observed him. In the context of all of the known facts and circumstances about Mehsud’s prior acts and threat to national security he likely posed, some sort of judicial review could help salvage our reputation abroad and at home.

#### Formal judicial oversight key – maintains resolve while signaling restraint

NYT, 10 [“Lethal Force under Law”, New York Times, <http://www.nytimes.com/2010/10/10/opinion/10sun1.html>]

The drone program has been effective, killing more than 400 Al Qaeda militants this year alone, according to American officials, but fewer than 10 noncombatants. But assassinations are a grave act and subject to abuse — and imitation by other countries. The government needs to do a better job of showing the world that it is acting in strict compliance with international law. The United States has the right under international law to try to prevent attacks being planned by terrorists connected to Al Qaeda, up to and including killing the plotters. But it is not within the power of a commander in chief to simply declare anyone anywhere a combatant and kill them, without the slightest advance independent oversight. The authorization for military force approved by Congress a week after 9/11 empowers the president to go after only those groups or countries that committed or aided the 9/11 attacks. The Bush administration’s distortion of that mandate led to abuses that harmed the United States around the world. The issue of who can be targeted applies directly to the case of Anwar al-Awlaki, an American citizen hiding in Yemen, who officials have admitted is on an assassination list. Did he inspire through words the Army psychiatrist who shot up Fort Hood, Tex., last November, and the Nigerian man who tried to blow up an airliner on Christmas? Or did he actively participate in those plots, and others? The difference is crucial. If the United States starts killing every Islamic radical who has called for jihad, there will be no end to the violence. American officials insist that Mr. Awlaki is involved with actual terror plots. But human rights lawyers working on his behalf say that is not the case, and have filed suit to get him off the target list. The administration wants the case thrown out on state-secrets grounds. The Obama administration needs to go out of its way to demonstrate that it is keeping its promise to do things differently than the Bush administration did. It must explain how targets are chosen, demonstrate that attacks are limited and are a last resort, and allow independent authorities to oversee the process. PUBLIC GUIDELINES The administration keeps secret its standards for putting people on terrorist or assassination lists. In March, Harold Koh, legal adviser to the State Department, said the government adheres to international law, attacking only military targets and keeping civilian casualties to an absolute minimum. “Our procedures and practices for identifying lawful targets are extremely robust,” he said in a speech, without describing them. Privately, government officials say no C.I.A. drone strike takes place without the approval of the United States ambassador to the target country, the chief of the C.I.A. station, a deputy at the agency, and the agency’s director. So far, President Obama’s system of command seems to have prevented any serious abuses, but the approval process is entirely within the administration. After the abuses under President Bush, the world is not going to accept a simple “trust us” from the White House. There have been too many innocent people rounded up for detention and subjected to torture, too many cases of mistaken identity or trumped-up connections to terror. Unmanned drones eliminate the element of risk to American forces and make it seductively easy to attack. The government needs to make public its guidelines for determining who is a terrorist and who can be targeted for death. It should clearly describe how it follows international law in these cases and list the internal procedures and checks it uses before a killing is approved. That can be done without formally acknowledging the strikes are taking place in specific countries. LIMIT TARGETS The administration should state that it is following international law by acting strictly in self-defense, targeting only people who are actively planning or participating in terror, or who are leaders of Al Qaeda or the Taliban — not those who raise funds for terror groups, or who exhort others to acts of terror. Special measures are taken before an American citizen is added to the terrorist list, officials say, requiring the approval of lawyers from the National Security Council and the Justice Department. But again, those measures have not been made public. Doing so would help ensure that people like Mr. Awlaki are being targeted for terrorist actions, not their beliefs or associations. A LAST RESORT Assassination should in every case be a last resort. Before a decision is made to kill, particularly in areas away from recognized battlefields, the government needs to consider every other possibility for capturing the target short of lethal force. Terrorists operating on American soil should be captured using police methods, and not subject to assassination. If practical, the United States should get permission from a foreign government before carrying out an attack on its soil. The government is reluctant to discuss any of these issues publicly, in part to preserve the official fiction that the United States is not waging a formal war in Pakistan and elsewhere, but it would not harm that effort to show the world how seriously it takes international law by making clear its limits. INDEPENDENT OVERSIGHT Dealing out death requires additional oversight outside the administration. Particularly in the case of American citizens, like Mr. Awlaki, the government **needs to employ some** due process before depriving someone of life. It would be logistically impossible to conduct a full-blown trial in absentia of every assassination target, as the lawyers for Mr. Awlaki prefer. But judicial review could still be employed. The government could establish a court like the Foreign Intelligence Surveillance Court, which authorizes wiretaps on foreign agents inside the United States. Before it adds people to its target list and begins tracking them, the government could take its evidence to this court behind closed doors — along with proof of its compliance with international law — and get the equivalent of a judicial warrant in a timely and efficient way. Congressional leaders are secretly briefed on each C.I.A. attack, and say they are satisfied with the information they get and with the process. Nonetheless, that process is informal and could be changed at any time by this president or his successors. Formal oversight is a better way of demonstrating confidence in American methods. Self-defense under international law not only shows the nation’s resolve and power, but sends a powerful message to other countries that the United States couples drastic action with careful judgment.

#### External court oversight maintains legitimacy – key to global stability

Knowles, 09 [Robert, Assistant Professor, NYU Law, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, p. lexis]

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they **can rely on** those **interpretations** and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy. The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436 Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438 At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440 The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiesnce, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige. Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449 Conclusion When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Executive lead role spurs mistrust and global opposition

Goldsmith, 13 [May 1st, Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law. He is the author, most recently, of Power and Constraint, How Obama Undermined the War on Terror http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism]

And so Barack Obama greatly expanded the secret war that George W. Bush began. In the fall of 2009, Obama approved a "long list" of new CIA paramilitary operation proposals, as well as CIA requests for more armed drones, more spies, and larger targeting areas in Pakistan. "The CIA gets what it wants," said the president, approving the CIA requests, and conveying what Mazzetti thinks was his first-term attitude toward the Agency. The Department of Defense also got most of what it wanted. Obama approved an initiative by General David Petraeus to expand "military spying activities throughout the Muslim world," and gave special operations forces "even broader authorities to run spying missions across the globe" than they possessed under the Bush administration. Mazzetti describes Obama's souped-up secret war as "the way of the knife," a reference to Obama counterterrorism czar (and now CIA director) John Brennan's claim that the administration had replaced the "hammer" of large deployments with the "scalpel" of secret pinpoint missions. Its most famous use was the Abbottabad raid to kill bin Laden. But its most enduring legacy is Obama's significant expansion of the CIA and JSOC drone-strike campaign against Al Qaeda and affiliates, especially in Pakistan and Yemen. In 2009, the Obama administration conducted more drone strikes in those countries than the Bush administration had done in the seven years after 9/11; and to date, it has conducted almost nine times more drone strikes there than its predecessor. The administration's most controversial drone strike came against an American citizen, Anwar al-Awlaki, a leader of Al Qaeda in the Arabian Peninsula, the Yemeni organization responsible for the failed Detroit "underwear bomb" attack on Christmas in 2009 and other attempted attacks against the United States. Government lawyers gave the green light to kill al-Awlaki in 2010, but the administration had no idea where in Yemen he was. By 2011, the CIA and JSOC both had spies on the ground in Yemen and were "running two distinct drone wars," with different targeting lists, from bases in Saudi Arabia (for the CIA) and Ethiopia and Djibouti (for JSOC). In the fall of 2011, in part because of prior JSOC targeting mistakes and in part because of the CIA's extraordinary successes in Pakistan, Obama tasked the CIA alone with finding and killing al-Awlaki. On September 30, a CIA Reaper drone fired on a convoy near the Saudi Arabian desert and completed the mission. At the end of president Obama's first term, Mazzetti remarks, Americans seemed "little concerned about their government's escalation of clandestine warfare." By that point Obama's way of the knife had both decimated the senior leadership of Al Qaeda and reversed the Republicans' traditional advantage on national security. "Ask Osama bin Laden and the 22 out of 30 top Al Qaeda leaders who have been taken off the field whether I engage in appeasement," said the boastful president in December 2011, flicking away Republican charges that he was soft on terrorism. "Or whoever is left out there, ask them about that," he added. But in the last few months the Obama administration's secret war—and especially its drone program—have come under attack on multiple fronts. In 2011, The Washington Post reported the CIA's counterterrorism chief bragging of his Al Qaeda strikes that "we are killing these sons of bitches faster than they can grow them now." It is unclear whether this statement is true today. The core Al Qaeda organization appears debilitated. But its affiliate organizations are operating in Somalia, Yemen, and Iraq. And powerful new affiliates appear to be springing up elsewhere, including Al Qaeda in the Islamic Maghreb in post-Qaddafi North Africa, and the Al Nusra Front in revolutionary Syria. Secrecy is the essence of the type of war that Obama has chosen to fight. In this light, questions about the strategic success of Obama's drone campaign, and his secret war more generally, are growing. "We cannot kill our way to victory," former Congresswoman Jane Harman, who was a member of the House Intelligence Committee, testified in a counterterrorism hearing last month. General Stanley McChrystal, who presided over JSOC from 2003 to 2008, made a similar point in a recent interview in Foreign Affairs. The "danger of special operating forces," he noted, is that "you get this sense that it is satisfying, it's clean, it's low risk, it's the cure for most ills." But history provides no example of "a covert fix that solved a complex problem," he continued, adding that a too-heavy reliance on drone strikes is also "problematic" because "it's not a strategy in itself; it's a short-term tactic." One reason McChrystal questions the strategic efficacy of heavy reliance on drones is that "inhabitants of that area and the world have significant problems watching Western forces, particularly Americans, conduct drone strikes inside the terrain of another country." Last summer, Pew Research reported "considerable opposition" in "nearly all countries," and especially in predominantly Muslim countries, to Obama's drone program. It also found that Lebanon, Egypt, Jordan, and Pakistan now had a less favorable attitude toward the United States than at the end of the Bush administration. And a Gallup poll in February found that 92 percent of the people in Pakistan disapprove of the American leadership and 4 percent approve—historically bad numbers for the United States that are largely attributable to the way of the knife. These are discouraging numbers for a president who hoped to diminish the terrorism threat by establishing "a new beginning between the United States and Muslims ... based upon mutual interest and mutual respect," as Obama said in Cairo in 2009. The president added in that speech that the United States during the Bush era had acted "contrary to our ideals," and he pledged to "change course." But as the polls abroad show, Obama's change of course has not made the world think better of American ideals. Ben Emmerson, a United Nations special rapporteur on counter-terrorism and human rights, recently suggested that some American drone attacks might be war crimes. Since he launched an investigation in January, he has noted that most nations "heavily disput[e]" the legal theory underlying Obama's stealth wars, and concluded that American drone strikes violate Pakistan's sovereignty, contrary to international law. Most Americans are little interested in the popularity abroad of the way of the knife. To date, they very strongly support what they know about the president's drone campaign against foreign terrorist suspects. Support for targeting American citizens such as Anwar al-Awlaki, however, has dropped, and the focus on American citizens is affecting other elements of the way of the knife. In large part this has resulted from the administration's stilted explanations about the legal limits on killing Americans and the secret processes for placing American suspects on target lists. When a less-than-convincing Justice Department white paper on the topic leaked to the press in February, it stoked suspicions that the administration had big plans and something to hide. Questions grew when the administration continued to withhold legal memos from Congress, and when John Brennan danced around the issue during his confirmation hearings to be director of the CIA. Senator Rand Paul then cleverly asked Brennan whether the president could order a drone to kill a terrorist suspect inside the United States. When Brennan and Attorney General Eric Holder seemed to prevaricate, Paul conducted his now-famous filibuster. "I cannot sit at my desk quietly and let the president say that he will kill Americans on American soil who are not actively attacking the country," Paul proclaimed. The president never said, or suggested, any such thing. But with trust in Obama falling fast, Paul was remarkably successful in painting the secret wars abroad as a Constitution-defying threat to American citizens at home. Paul's filibuster attracted attention to the issue of drone attacks on Americans in the homeland. A more serious challenge to the president comes from growing concerns, including within his own party, about the legal integrity of his secret wars abroad. Anne-Marie Slaughter, a former senior official in Obama's State Department, recently gainsaid "the idea that this president would leave office having dramatically expanded the use of drones—including [against] American citizens—without any public standards and no checks and balances." Many in Congress want to increase the transparency of the processes and legal standards for placing a suspect (especially an American) on a targeting list, to tighten those legal standards (perhaps by recourse to a "drone court"), and to establish a more open accounting of the consequences (including civilian casualties) from the strikes. "This is now out in the public arena, and now it has to be addressed," Senator Dianne Feinstein, a Democrat, recently said. Others in Congress worry about the obsolescence of the legal foundation for the way of the knife: the congressional authorization, in 2001, of force against Al Qaeda. "I don't believe many, if any, of us believed when we voted for [the authorization] that we were voting for the longest war in the history of the United States and putting a stamp of approval on a war policy against terrorism that, 10 years plus later, we're still using," said Senator Richard Durbin, also a Democrat, in a Wall Street Journal interview. "What are the checks and balances of the system?" he asked. Senator John McCain, who led bipartisan efforts against what he saw as Bush-era legal excesses, is now focusing similar attention on Obama. "I believe that we need to revisit this whole issue of the use of drones, who uses them, whether the CIA should become their own air force, what the oversight is, [and] what the legal and political foundations [are] for this kind of conflict," he said last month. These are unhappy developments for the president who in his first inaugural address pledged with supercilious confidence that, unlike his predecessor, he would not expend the "rule of law" for "expedience's sake." Obama reportedly bristles at the legal and political questions about his secret war, and the lack of presidential trust that they imply. "This is not Dick Cheney we're talking about here," he recently pleaded to Democratic senators who complained about his administration's excessive secrecy on drones, according to Politico. And yet the president has ended up in this position because he committed the same sins that led Cheney and the administration in which he served to a similar place. The first sin is an extraordinary institutional secrecy that Obama has long promised to reduce but has failed to. In part this results from any White House's inevitable tendency to seek maximum protection for its institutional privileges and prerogatives. The administration's disappointing resistance to sharing secret legal opinions about the secret war with even a small subset of Congress falls into this category. Much of what the administrat-ion says about its secret war seems incomplete, self-serving, and ultimately non-credible. But the point goes deeper, for secrecy is the essence of the type of war that Obama has chosen to fight. The intelligence-gathering in foreign countries needed for successful drone strikes there cannot be conducted openly. Nor can lethal operations in foreign countries easily be acknowledged. Foreign leaders usually insist on non-acknowledgment as a condition of allowing American operations in their territories. And in any event, an official American confirmation of the operations might spark controversies in those countries that would render the operations infeasible. The impossible-to-deny bin Laden raid was a necessary exception to these principles, and the United States is still living with the fallout in Pakistan. For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests. A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants. The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust. Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. **Rather,** he must take advantage oftheseparation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because **adversarial branches of government** assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct. Administration officials resist this route because they worry about the outcome of the public debate, and because the president is, as The Washington Post recently reported, "seen as reluctant to have the legislative expansion of another [war] added to his legacy." But the administration can influence the outcome of the debate only by engaging it. And as Mazzetti makes plain, the president's legacy already includes the dramatic and unprecedented unilateral expansion of secret war. What the president should be worried about for legacy purposes is that this form of warfare, for which he alone is today responsible, is increasingly viewed as illegitimate.

### Solvency

#### Solvency!

#### Congress key to create a court with jurisdiction and to establish independent oversight – it’s effective

McKelvey, 11 [Benjamin, JD Candidate, Senior Editorial Board, Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>]

A. Option One: Congress Could Pass Legislation to Establish Screening and Oversight of Targeted Killing As the Aulaqi case demonstrates, any resolution to the problem of targeted killing would require a delicate balance between due process protections and executive power.204 In order to accomplish this delicate balance, Congress can pass legislation modeled on the Foreign Intelligence Surveillance Act (FISA) that establishes a federal court with jurisdiction over targeted killing orders, similar to the wiretapping court established by FISA.205 There are several advantages to a legislative solution. First, FISA provides a working model for the judicial oversight of real-time intelligence and national security decisions that have the potential to violate civil liberties.206 FISA also effectively balances the legitimate but competing claims at issue in Aulaqi: the sensitive nature of classified intelligence and national security decisions versus the civil liberties protections of the Constitution.207 A legislative solution can provide judicial enforcement of due process while also respecting the seriousness and sensitivity of executive counterterrorism duties.208 In this way, congress can alleviate fears over the abuse of targeted killing without interfering with executive duties and authority. Perhaps most importantly, a legislative solution would provide the branches of government and the American public with a clear articulation of the law of targeted killing.209 The court in Aulaqi began its opinion by explaining that the existence of a targeted killing program is no more than media speculation, as the government has neither confirmed nor denied the existence of the program.210 Congress can acknowledge targeted killing in the light of day while ensuring that it is only used against Americans out of absolute necessity.211 Independent oversight would promote the use of all peaceful measures before lethal force is pursued.212 i. FISA as an Applicable Model FISA is an existing legislative model that is applicable both in substance and structure.213 FISA was passed to resolve concerns over civil liberties in the context of executive counterintelligence.214 It is therefore a legislative response to a set of issues analogous to the constitutional problems of targeted killing.215 FISA also provides a structural model that could help solve the targeted killing dilemma.216 The FISA court is an example of a congressionally created federal court with special jurisdiction over a sensitive national security issue.217 Most importantly, **FISA works**. Over the years, the FISA court has proven itself capable of handling a large volume of warrant requests in a way that provides judicial screening without diminishing executive authority.218 Contrary to the DOJ’s claims in Aulaqi, the FISA court proves that independent judicial oversight is institutionally capable of managing real-time executive decisions that affect national security.219 The motivation for passing FISA makes this an obvious choice for a legislative model to address targeted killing. With FISA, Congress established independent safeguards and a form of oversight in response to President Nixon’s abusive wiretapping practices.220 The constitutional concern in FISA involved the violation of Fourth Amendment privacy protections by excessive, unregulated executivepower.221 Similarly, the current state of targeted killing law allows for executive infringement on Fifth Amendment due process rights. Although there is no evidence of abusive or negligent practices of targeted killing, the main purpose of congressional intervention is to ensure that targeted killing is conducted only in lawful circumstances after a demonstration of sufficient evidence. Finally, a FISA-style court is a potentially effective possibility because it would provide ex ante review of targeted killing orders, and the pre-killing stage is the only stage during which judicial review would be meaningful.222 In the context of targeted killing, due process is not effective after the decision to deprive an American of life has already been carried out. Pre-screening targeted killing orders is a critical component of judicial oversight. Currently, this screening is conducted by a team of attorneys at the CIA.223 Despite assurances that review of the evidence against potential targets is rigorous and careful, due process is best accomplished through independent judicial review.224 The FISA court provides a working model for judicial review of real-time requests related to national security.225 FISA also established the requisite level of probable cause for clandestine wiretapping and guidelines for the execution and lifetime of the warrant, whereas the legal standards used by the CIA’s attorneys are unknown.226 The only meaningful way to ensure that Americans are not wrongfully targeted with lethal force is to screen the evidence for the decision and to give ultimate authority to an impartial judge with no institutional connection to the CIA.

## 2ac

### AT: T

#### We meet – the plan’s court creation is a restriction – don’t be fooled by their evidentiary basis

Guiora, 12 [Amos, Professor of Law, SJ Quinney College of Law, University of Utah, author of numerous books dealing with military law and national security including Legitimate Target: A Criteria-Based Approach to Targeted Killing, “Drone Policy: A Proposal Moving Forward,” <http://jurist.org/forum/2013/03/amos-guiora-drone-policy.php>]

To re-phrase, this strict scrutiny test seeks to strike a balance by enabling the state to act sooner but subjecting that action to significant restrictions. This paradigm would be predicated on narrow definitions of imminence and legitimate targets. Rather than enabling the consequences of the DOJ memo, the strict scrutiny test would ensure implementation of person-specific operational counterterrorism. That is the essence of targeted killing conducted in accordance with the rule of law and morality in armed conflict.

#### We meet restriction

**Oxford Dictionaries, 13** (“restriction” <http://oxforddictionaries.com/definition/english/restriction?view=uk>)

Definition of restriction

noun

(often restrictions)

a limiting condition or measure, especially a legal one:

planning restrictions on commercial development

 [mass noun] the limitation or control of someone or something, or the state of being restricted:

the restriction of local government power

#### We meet judicial

**Barron and Lederman, 8 -** \* Professor of Law, Harvard Law School AND \* Visiting Professor of Law, Georgetown University Law Center (David and Martin, “THE COMMANDER IN CHIEF AT THE LOWEST EBB - FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING” 121 Harv. L. Rev. 689, January, lexis)

In contrast to the conventional scholarly approach, the Supreme Court has frequently grounded its war powers decisions - both in cases decided before the war on terrorism and in those resolved during it - in statutory interpretation. In some cases, the Court has held that Congress expressly or impliedly authorized the President's conduct, n30 [\*703] while in several landmark cases, including Youngstown itself, the Court has held that the Executive's actions were invalid because they violated express or implied statutory limitations. n31 Far from assuming that Congress has been a silent witness to executive action in wartime, then, the Court has regularly acted as though the legislature has been deeply involved in establishing the basis for, and the bounds of, warmaking. And, as evidenced by recent cases relating to the war on terrorism, the Court continues to assume that statutory enactments both authorize and limit the ways in which President Bush may conduct the campaign against al Qaeda. n32

## Case

### AT: Yemen

#### Accountable strikes are vital to stabilize Yemen

Jacqueline Manning 12, Senior Editor of International Affairs Review, December 9 2012, “Free to Kill: How a Lack of Accountability in America’s Drone Campaign Threatens U.S. Efforts in Yemen,” http://www.iar-gwu.org/node/450

Earlier this year White House counter-terrorism advisor, John Brennan, named al-Qaeda in the Arabian Peninsula (AQAP) in Yemen the greatest threat to the U.S. Since 2009, the Obama administration has carried out an estimated 28 drone strikes and 13 air strikes targeting AQAP in Yemen, while the Yemeni Government has carried out 17 strikes, and another five strikes cannot be definitively attributed to either state . There is an ongoing debate over the effectiveness of targeted killings by drone strikes in the fight against al-Qaeda. However, what is clear is that the secrecy and unaccountability with which these drone strike are being carried out are undermining U.S. efforts in Yemen. The drone campaign in Yemen is widely criticized by human rights activists, the local population and even the United Nations for its resulting civilian casualties. It is also credited with fostering animosity towards the U.S. and swaying public sentiment in Yemen in favor of AQAP. The long-term effects, as detailed by a 2012 report by the Center for Civilians in Conflict, seem to be particularly devastating. The resulting loss of life, disability, or loss of property of a bread-winner can have long-term impacts, not just on an individual, but on an entire family of dependents. The effectiveness of drone technology in killing al-Qaeda militants, however, cannot be denied. Targeted killings by drone strikes have eliminated several key AQAP members such as Anwar al-Awlaki, Samir Khan, Abdul Mun’im Salim al Fatahani, and Fahd al-Quso . Advocates of the counterterrorism strategy point out that it is much less costly in terms of human lives and money than other military operations. While there are strong arguments on both sides of the drone debate, both proponents and critics of targeted killings of AQAP operatives by drones agree that transparency and accountability are needed. Authorizing the CIA to carry out signature strikes is of particular concern. In signature strikes, instead of targeting individual Al Qaeda leaders, the CIA targets locations without knowing the precise identity of the individuals targeted as long as the locations are linked to a “signature” or pattern of behavior by Al Qaeda officials observed over time. This arbitrary method of targeting often results in avoidable human casualties. Secrecy surrounding the campaign often means that victims and families of victims receive no acknowledgement of their losses, much less compensation. There are also huge disparities in the reported number of deaths. In addition, according to The New York Times, Obama administration officials define “militants” as “all military-age males in a strike zone...unless there is explicit intelligence posthumously proving them innocent” This definition leads to a lack of accountability for those casualties and inflames anti-American sentiment. In a report submitted to the UN Human Rights Council, Ben Emmerson, special rapporteur on the promotion and protection of human rights while countering terrorism, asserted that, "Human rights abuses have all too often contributed to the grievances which cause people to make the wrong choices and to resort to terrorism….human rights compliant counter-terrorism measures help to prevent the recruitment of individuals to acts of terrorism." There is now statistical evidence that supports this claim. A 2010 opinion poll conducted by the New America Foundation in the Federally Administered Tribal Areas (FATA) of Pakistan, where U.S. drone strikes have been carried out on a much larger scale, shows an overwhelming opposition to U.S. drone strikes coupled with a majority support for suicide attacks on U.S. forces under some circumstances. It is clear that the drone debate is not simply a matter of morality and human rights; it is also a matter of ineffective tactics. At a minimum the U.S. must implement a policy of transparency and accountability in the use of drones. Signature strikes take unacceptable risks with innocent lives. Targets must be identified more responsibly, and risks of civilian casualties should be minimized. When civilian casualties do occur, the United States must not only acknowledge them, but also pay amends to families of the victims.

### AT: Brooks and Wohlforth

#### Brooks and Wohlforth are wrong about everything

Loomis, 08 [LEVERAGING LEGITIMACY IN SECURING U.S. LEADERSHIP NORMATIVE DIMENSIONS OF HEGEMONIC AUTHORITY A Dissertation submitted to the Faculty of the Graduate School of Arts and Sciences of Georgetown University in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Government, August 4, 2008]

Questioning Illegitimacy Costs: The Brooks-Wohlforth Challenge A nuanced perspective that avoids taking a paradigmatic position on the question of legitimacy costs is that recently advanced by Stephen Brooks and William Wohlforth.24 Brooks and Wohlforth focus their argument on the impact of U.S. unilateralism and insist that current international relations theory simply does not support an academic claim that U.S. unilateral behavior negatively impacts U.S. interests in the divergent ways that Neorealism, Neoliberal Institutionalism, and Constructivism predicts. United States unilateralism is a prime candidate for conduct perceived to be illegitimate and thus is a good test for my argument that perceived illegitimacy degrades U.S. influence. Given the extensiveness of U.S. power, the exaggerated levels of alarm that U.S. unilateralism presumably has generated, and the extent to which legal and social norms proscribe unilateral behavior, it is widely expected that U.S. unilateralism has a particularly strong deteriorating effect on U.S. authority. Brooks and Wohlforth conclude that the empirical evidence and the logical sequence of each of the three mainstream traditions of international relations theory provide insufficient evidence that the United States faces tangible costs as a result of unilateral behavior. Their analysis, however, suffers from a misspecification of the “costs” that they are looking for in response to U.S. unilateralism. Because the heart of their argument is that the costs of unilateral behavior are relatively low, a close inspection of the contours of these costs is required to evaluate their claim. First, challenging the Realist critique of U.S. unilateralism, the authors propose that balancing behavior against the United States is an expected cost of U.S. unilateralism. They conclude that because balancing is not observable, there are no tangible costs. Yet given the vastness of U.S. military preponderance, balancing is unlikely irrespective of U.S. behavior. Yet despite the fact that balancing is remote considering its short-term futility, the absence of balancing is not a fair test of the costs of illegitimate behavior. They do point to resistance strategies of key European states—notably Germany and France—as a form of “soft balancing”, but they suggest that this behavior was the result of German and French domestic politics and had little to do with unilateralism of the United States. Yet they do not make clear why ally domestic opposition to U.S. behavior, which restricts ally behavior vis-àvis U.S. requests, should not be considered a cost of U.S. unilateralism. This oversight is particularly problematic in cases in which domestic opposition generates real costs for the United States. Furthermore, irrespective of the fact that this behavior would be difficult to characterize as acts of balancing (soft or hard) in the definition they provide, their restriction of authority costs to balancing-type behavior renders an analysis of the impact of perceived illegitimacy incomplete.25 Second, Brooks and Wohlforth suggest that the paucity of evidence that unilateral behavior resulted in a major reduction in efficiency gains predicted in the neoliberal literature undermines the institutionalist critique of unilateralism. For one thing, they argue, there is no clear consensus in the literature on the impact of unilateral behavior on U.S. bargaining leverage. In addition, they argue, much of this literature is heavily empirical and devoid of theoretical content. Furthermore, the costs of multilateral action are significant and must be considered against the professed gains of multilateral coordination. Lastly, they suggest that the claim that the United States suffers from bad-faith behavior vis-à-vis institutional engagement is entangled with the emerging literature on reputation effects, which is, in their words, “woefully underdeveloped”.26 In sum, in their view, the theoretical and empirical evidence is insufficiently robust to identify the precise costs that the U.S. faces as a result of a unilateral foreign policy. It is not so much that the institutionalist literature is incorrect on the subject, but that the research agenda is incomplete. Yet by missing the costs in the form of degraded authority, they are prevented from assessing the full range of effects that U.S. unilateralism triggers. Third, Brooks and Wohlforth raise doubts about the constructivist argument that U.S. unilateralism degrades the legitimacy of the architecture of international order—an order from which the United States directly benefits—requiring increased U.S. costs for continued maintenance of the existing order. In establishing the contours of constructivism, they restrict this school of thought to its emphasis on the habituation of international rules, consistent with James March and Johan Olsen’s suggestion that a “logic of appropriateness” shapes decision-making processes.27 Brooks and Wohlforth then challenge constructivist 26 Brooks and Wohlforth, "International Relations Theory and the Case against Unilateralism," 516. 27 March and Olsen, Rediscovering Institutions : The Organizational Basis of Politics, 23. 24 claims that unilateral behavior toward Iraq in 2003 will generate unacceptable costs by suggesting there were other degrading effects of the onset of the Iraq war besides the fact that it was largely unilateral. Their criticism here, too, fails to explore the full range of authority costs, and thus fails to undermine the essential core of my argument. First, the argument I am advancing suggests that ideational factors—perceived fidelity to widely accepted international norms— influence decisions to resist U.S. authority. While legitimacy is widely considered to be the realm of constructivist scholarship, as discussed above, its effects are not dependent on the socialization effects and subsequent internalization of those norms. The argument here is that states can choose to comply with normative influences as a matter of strategic choice, which bypasses the centrality of identity transformation often identified with constructivists (and presumed by Brooks and Wohlforth as forming the outer boundary of constructivist thought). The main reason the Brooks and Wohlforth critique is unconvincing with respect to the constructivist expectation of legitimacy costs again turns on the subject of costs. They argue that because constructivist scholarship fails to satisfactorily answer three entangled complexities—that some forms of unilateralism are more costly than others, compensating strategies may mollify the possible costs, and unilateralism can shape the normative landscape to the hegemon’s advantage—constructivism cannot establish any generalities regarding the legitimacy effects of unilateralism with any degree of confidence. The problem is not that constructivist arguments about unilateralism are wrong, but rather that the scope 25 conditions have not been sufficiently specified. As a result, they argue, the constructivist perspective is deprived of analytical leverage. The 2003 Iraq war is a single data point, they suggest, exhibiting many features that may have degraded U.S. legitimacy. Here their entire argument hangs on the fact that constructivism has not provided sufficient purchase beyond the case of Iraq. How can one be certain that it was unilateralism that had the effect that constructivists now claim in retrospect? This question is valid. Yet in making this case they admit that “many other aspects of the (Iraq) case… are obviously corrosive of legitimacy.”28 Limiting constructivist arguments to unilateralism may be overly restrictive, but according to Brooks’ and Wohlforth’s own standards, the soil is fertile for new work on the broader question of the costs of perceived illegality and illegitimacy. It is on this broader question that this dissertation seeks to provide insight. Brooks and Wohlforth ultimately conclude that academic criticisms of President Bush’s unilateral policies were motivated largely by the substance of the policies (on which academia traditionally has little to offer), but focused on procedural issues (on which it does). They call for increased attention to clarifying the distinction between criticisms of substance and of procedure. In one respect, this dissertation is an answer to their skepticism that international relations scholarship has much to offer in terms of generalities around unilateralism. I am seeking to expand the specification of the independent variable beyond unilateral behavior to include the character of U.S. foreign policy, measured by its normative 28 Brooks and Wohlforth, "International Relations Theory and the Case against Unilateralism," 518. 26 consistency with international standards regulating the use of force. This should help satisfy the criticism that the outcome of unilateralism is under-determined.

### AT: Surveillance (2ac)

#### Status quo solves the surveillance alt cause

Deuce, 12/23/13 [Love, NSA Controversy Shifts In Favor Of Limiting Surveillance Anonymous by Love Deuce Dec 23rd 2013 In Well-Served <http://www.chetuji.com/2013/12/23/nsa-controversy-shifts-in-favor-of-limiting-surveillance/>]

In a surprise twist of events, the national debate over the activities of the National Security Agency seems to be turning in favor of limiting the agency’s power on spying activities domestically and internationally. The moves happened quickly and in just over a span of three days. First off, a federal judge made a ruling that the NSA’s bulk collection of data was simply unconstitutional followed by a presidential advisory panel that recommended sweeping changes to the organization. Both of these events are cranking up the pressure for President Barack Obama to stand down some of the most controversial activities of the agency.

## Offcase

### AT: Harvard Ex Post CP

#### IAB doesn’t solve and is still an intra-executive process

Ditz, 13 [Obama’s Intelligence Advisory Board Cleaned Out Ahead of NSA Scandalhttp://news.antiwar.com/2013/08/15/obamas-intelligence-advisory-board-cleaned-out-ahead-of-nsa-scandal/]

The President’s Intelligence Advisory Board (PIAB) has a history dating back to the Eisenhower Administration, and has for that time provided key advice to presidents time and again. With President Obama embroiled in a huge scandal with the NSA, one would think the board would be right in the thick of things. Except not so much. In the months leading up to the scandals, President Obama has slashed the panel’s membership to virtually nothing. Usually a panel of 14-16 people, and 14 even last year, the PIAB now stands at just four members. “They kicked me off,” noted former Congressman Lee Hamilton, who had served on the panel under Bush and Obama, and who says he has no idea why he was asked to resign. He’s one of 10 members who were recently “asked” to resign from the PIAB, since May, the same time Edward Snowden’s leaks started going public. Just when the administration seemingly needed them the most, the president had cleaned house on advisors and left the panel to rot on the vine.

#### Executive action isn’t credible

McKelvey, 11 [Benjamin, JD Candidate, Senior Editorial Board, Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>]

The Obama Administration’s Reassurances Are Circular and Unsatisfactory The Obama Administration has addressed the controversy over targeted killing in an effort to assuage concerns over the program’s constitutionality, including concerns over due process protections.162 However, the Administration’s explanations do little but reiterate the gaping hole in guaranteed due process protections if Americans are targeted with lethal force.163 In fact, the Administration’s attempts to justify the current response emphasize the desperate need for a clear articulation of the law and a mechanism for constitutional safeguards.164 Harold Koh, the Legal Adviser to the Department of State, addressed the criticisms of targeted killing in a speech at the Annual Meeting of the American Society of International Law in March 2010.165 Koh addressed the concern that “the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing.”166 First, he asserted that a state engaged in armed conflict is not required to provide legal process to military targets.167 Koh then attempted to reassure the critics of targeted killing that the program was conducted responsibly and with precision.168 He said that the procedures for identifying targets for the use of lethal force are “extremely robust,” without providing any explanation or details to substantiate this claim.169 He then argued that “[i]n my experience, the principles of proportionality and distinction . . . are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with international law.”170 Koh dismissed constitutional claims over targeted killing by simply suggesting that the program is legal and responsible.171 But this response only begs the question over targeted killing: what mechanisms are in place to prevent the unsafe and irresponsible use of this extraordinary power? Asserting that the program is legal and responsible without substantiating this assertion rests on notions of blind faith in executive prudence and responsibility, and provides no grounds for reassurance.172 The Obama Administration’s assurances regarding the targeted killing program are unsatisfactory because they fail to address the primary concern at issue: the possibility that an unchecked targeted killing power within the Executive Branch is an invitation for abuse.1 73 Without some form of independent oversight, there is no mechanism for ensuring the accurate and legitimate use of targeted killings in narrowly tailored circumstances.174

#### Doesn’t solve either advantage – no coherent framework or perception of executive restraint

Crandall, 12 [Copyright (c) 2012 Florida Journal of International Law Florida Journal of International Law April, 2012 Florida Journal of International Law 24 Fla. J. Int'l L. 55 LENGTH: 16589 words ARTICLE: READY . . . FIRE . . . AIM! A CASE FOR APPLYING AMERICAN DUE PROCESS PRINCIPLES BEFORE ENGAGING IN DRONE STRIKES NAME: Carla Crandall\* BIO: \* Law Clerk to the Honorable Laura Denvir Stith, Supreme Court of Missouri, p. lexis]

Despite the expanded use of drones, however, the legitimacy of these attacks remains unclear. Most commentators who have addressed the legitimacy of more general targeted killings have examined the issue within the framework of either international humanitarian law (IHL) or international human rights law (IHRL). n6 Those limited few who have [\*57] analyzed the subject through the lens of American due process have limited their scrutiny to the absence of post-deprivation rights. n7 They suggest, for instance, that the United States should implement some sort of Bivens-type action as a remedy for the survivors of erroneous drone strikes. n8 As this Article explains, however, none of these approaches yield wholly satisfactory answers as to which framework should govern the use of drones within the context of the war on terror. And though the idea that American due process principles ought to be applied ex post represents a significant contribution to the debate, it too ultimately falls flat. Indeed, such an approach unduly narrows the obligation of U.S. officials to the standard of readying, firing, and then aiming- requiring them to perform a detailed review of the strikes only after the fact. Instead, this Article argues that the United States ought to be held to a higher, ex ante standard-that of "aiming" before firing-and posits that such a standard is practically attainable. In doing so, the Article proceeds as follows. Part II describes the capabilities and current employment of drones and explains why resolving the legitimacy of their use is so critical. Specifically, it highlights that, despite the unsettled nature of the law in this area, targeted killings by drone strikes have increased exponentially in recent years-in some instances against arguably questionable targets. Part III examines current attempts to address the legitimacy of drone assaults and explains why they fail to adequately govern the use of these weapons. While this Part explores the applicability of IHRL and IHL, it does not undertake to resolve the debate as to which regime does or ought to apply to these operations. To the contrary, it argues that limitations within each framework have prevented consensus from forming around the applicability of either. Accordingly, U.S. officials [\*58] must arguably look to other sources to find guiding principles to legitimize targeted killings via drones. Though it is admittedly not entirely clear whether constitutional guarantees apply in the foreign locales where these strikes occur-or to the foreign nationals who are often their target-this Part proposes that American due process principles nevertheless ought to be invoked before such strikes occur, because failing to do so allows the executive to act with impunity in a legal void. Part IV argues that, in Hamdi v. Rumsfeld n9 and Boumediene v. Bush, n10 the Supreme Court signaled the process that may be due before drones are used to eliminate known terrorist targets. In extending the Hamdi and Boumediene analysis to targeted killings by drones, this Part also begins the inquiry into the procedural protections that due process may demand before U.S. officials engage in such actions. Part V concludes.

#### Lack of congressional codification blocks solvency

Mark David Maxwell, Colonel, Judge Advocate with the U.S. Army, Winter 2012, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

The weakness of this theory is that it is not codified in U.S. law; it is merely the extrapolation of international theorists and organizations. The only entity under the Constitution that can frame and settle Presidential power regarding the enforcement of international norms is Congress. As the check on executive power, Congress must amend the AUMF to give the executive a statutory roadmap that articulates when force is appropriate and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, statutory clarification will give other states a roadmap for the contours of what constitutes anticipatory self-defense and the proper conduct of the military under the law of war. Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74 The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order targeted killing without congressional limits means the President can manipulate force in the name of national security without tethering it to the law advanced by international norms. The potential consequence of such unilateral executive action is that it gives other states, such as North Korea and Iran, the customary precedent to do the same. Targeted killing might be required in certain circumstances, but if the guidelines are debated and understood, the decision can be executed with the full faith of the people’s representative, Congress. When the decision is made without Congress, the result might make the United States feel safer, but the process eschews what gives a state its greatest safety: the rule of law.

#### Zero chance of Congressional follow-on AND CP links to politics

Kevin Drum, Mother Jones, 4/22/13, Maureen Dowd and Presidential Leverage, www.motherjones.com/kevin-drum/2013/04/maureen-dowd-and-presidential-leverage

Finally, there's the most obvious change of all: **the decision by Republicans to stonewall every single Obama initiative from day one**. By now, I assume that even conservative apologists have given up pretending that this isn't true. **The evidence is overwhelming**, and **it's applied to** practically **every single thing Obama has done** in the domestic sphere. The only question, ever, is whether Obama will get two or three Republican votes vs. three or four. If the latter, he has a chance to win. But those two or three extra votes don't depend on leverage. In fact, Obama's leverage is negative. The last thing any Republican can afford these days is to be viewed as caving in to Obama. That's a kiss of death with the party's base.

#### Unrestricted drone use causes nuclear war in the Caucuses

Clayton 12 (Nick Clayton, Worked in several publications, including the Washington Times the Asia Times and Washington Diplomat. He is currently the senior editor of Kanal PIK TV's English Service (a Russian-language channel), lived in the Caucuses for several years,10/23/2012, "Drone violence along Armenian-Azerbaijani border could lead to war", www.globalpost.com/dispatch/news/regions/europe/121022/drone-violence-along-armenian-azerbaijani-border-could-lead-war)

Armenia and Azerbaijan could soon be at war if drone proliferation on both sides of the border continues. In a region where a fragile peace holds over three frozen conflicts, the nations of the South Caucasus are buzzing with drones they use to probe one another’s defenses and spy on disputed territories. The region is also host to strategic oil and gas pipelines and a tangled web of alliances and precious resources that observers say threaten to quickly escalate the border skirmishes and airspace violations to a wider regional conflict triggered by Armenia and Azerbaijan that could potentially pull in Israel, Russia and Iran. To some extent, these countries are already being pulled towards conflict. Last September, Armenia shot down an Israeli-made Azerbaijani drone over Nagorno-Karabakh and the government claims that drones have been spotted ahead of recent incursions by Azerbaijani troops into Armenian-held territory. Richard Giragosian, director of the Regional Studies Center in Yerevan, said in a briefing that attacks this summer showed that Azerbaijan is eager to “play with its new toys” and its forces showed “impressive tactical and operational improvement.” The International Crisis Group warned that as the tit-for-tat incidents become more deadly, “there is a growing risk that the increasing frontline tensions could lead to an accidental war.” “Everyone is now saying that the war is coming. We know that it could start at any moment.” ~Grush Agbaryan, mayor of Voskepar With this in mind, the UN and the Organization for Security and Co-operation in Europe (OSCE) have long imposed a non-binding arms embargo on both countries, and both are under a de facto arms ban from the United States. But, according to the Stockholm International Peace Research Institute (SIPRI), this has not stopped Israel and Russia from selling to them. After fighting a bloody war in the early 1990s over the disputed territory of Nagorno-Karabakh, Armenia and Azerbaijan have been locked in a stalemate with an oft-violated ceasefire holding a tenuous peace between them. And drones are the latest addition to the battlefield. In March, Azerbaijan signed a $1.6 billion arms deal with Israel, which consisted largely of advanced drones and an air defense system. Through this and other deals, Azerbaijan is currently amassing a squadron of over 100 drones from all three of Israel’s top defense manufacturers. Armenia, meanwhile, employs only a small number of domestically produced models. Intelligence gathering is just one use for drones, which are also used to spot targets for artillery, and, if armed, strike targets themselves. Armenian and Azerbaijani forces routinely snipe and engage one another along the front, each typically blaming the other for violating the ceasefire. At least 60 people have been killed in ceasefire violations in the last two years, and the Brussels-based International Crisis Group claimed in a report published in February 2011 that the sporadic violence has claimed hundreds of lives. “Each (Armenia and Azerbaijan) is apparently using the clashes and the threat of a new war to pressure its opponent at the negotiations table, while also preparing for the possibility of a full-scale conflict in the event of a complete breakdown in the peace talks,” the report said. Alexander Iskandaryan, director of the Caucasus Institute in the Armenian capital, Yerevan, said that the arms buildup on both sides makes the situation more dangerous but also said that the clashes are calculated actions, with higher death tolls becoming a negotiating tactic. “This isn’t Somalia or Afghanistan. These aren’t independent units. The Armenian, Azerbaijani and Karabakh armed forces have a rigid chain of command so it’s not a question of a sergeant or a lieutenant randomly giving the order to open fire. These are absolutely synchronized political attacks,” Iskandaryan said. The deadliest recent uptick in violence along the Armenian-Azerbaijani border and the line of contact around Karabakh came in early June as US Secretary of State Hillary Clinton was on a visit to the region. While death tolls varied, at least two dozen soldiers were killed or wounded in a series of shootouts along the front. The year before, at least four Armenian soldiers were killed in an alleged border incursion by Azerbaijani troops one day after a peace summit between the Armenian, Azerbaijani and Russian presidents in St. Petersburg, Russia. “No one slept for two or three days [during the June skirmishes],” said Grush Agbaryan, the mayor of the border village of Voskepar for a total of 27 years off and on over the past three decades. “Everyone is now saying that the war is coming. We know that it could start at any moment." Azerbaijan refused to issue accreditation to GlobalPost’s correspondent to enter the country to report on the shootings and Azerbaijan’s military modernization. Flush with cash from energy exports, Azerbaijan has increased its annual defense budget from an estimated $160 million in 2003 to $3.6 billion in 2012. SIPRI said in a report that largely as a result of its blockbuster drone deal with Israel, Azerbaijan’s defense budget jumped 88 percent this year — the biggest military spending increase in the world. Israel has long used arms deals to gain strategic leverage over its rivals in the region. Although difficult to confirm, many security analysts believe Israel’s deals with Russia have played heavily into Moscow’s suspension of a series of contracts with Iran and Syria that would have provided them with more advanced air defense systems and fighter jets. Stephen Blank, a research professor at the United States Army War College, said that preventing arms supplies to Syria and Iran — particularly Russian S-300 air defense systems — has been among Israel’s top goals with the deals. “There’s always a quid pro quo,” Blank said. “Nobody sells arms just for cash.” In Azerbaijan in particular, Israel has traded its highly demanded drone technology for intelligence arrangements and covert footholds against Iran. In a January 2009 US diplomatic cable released by WikiLeaks, a US diplomat reported that in a closed-door conversation, Azerbaijani President Ilham Aliyev compared his country’s relationship with Israel to an iceberg — nine-tenths of it is below the surface. Although the Jewish state and Azerbaijan, a conservative Muslim country, may seem like an odd couple, the cable asserts, “Each country finds it easy to identify with the other’s geopolitical difficulties, and both rank Iran as an existential security threat.” Quarrels between Azerbaijan and Iran run the gamut of territorial, religious and geo-political disputes and Tehran has repeatedly threatened to “destroy” the country over its support for secular governance and NATO integration. In the end, “Israel’s main goal is to preserve Azerbaijan as an ally against Iran, a platform for reconnaissance of that country and as a market for military hardware,” the diplomatic cable reads. But, while these ties had indeed remained below the surface for most of the past decade, a series of leaks this year exposed the extent of their cooperation as Israel ramped up its covert war with the Islamic Republic. In February, the Times of London quoted a source the publication said was an active Mossad agent in Azerbaijan as saying the country was “ground zero for intelligence work.” This came amid accusations from Tehran that Azerbaijan had aided Israeli agents in assassinating an Iranian nuclear scientist in January. Then, just as Baku had begun to cool tensions with the Islamic Republic, Foreign Policy magazine published an article citing Washington intelligence officials who claimed that Israel had signed agreements to use Azerbaijani airfields as a part of a potential bombing campaign against Iran’s nuclear sites. Baku strongly denied the claims, but in September, Azerbaijani officials and military sources told Reuters that the country would figure in Israel’s contingencies for a potential attack against Iran. "Israel has a problem in that if it is going to bomb Iran, its nuclear sites, it lacks refueling," Rasim Musabayov, a member of the Azerbiajani parliamentary foreign relations committee told Reuters. “I think their plan includes some use of Azerbaijan access. We have (bases) fully equipped with modern navigation, anti-aircraft defenses and personnel trained by Americans and if necessary they can be used without any preparations." He went on to say that the drones Israel sold to Azerbaijan allow it to “indirectly watch what's happening in Iran.” According to SIPRI, Azerbaijan had acquired about 30 drones from Israeli firms Aeronautics Ltd. and Elbit Systems by the end of 2011, including at least 25 medium-sized Hermes-450 and Aerostar drones. In October 2011, Azerbaijan signed a deal to license and domestically produce an additional 60 Aerostar and Orbiter 2M drones. Its most recent purchase from Israel Aeronautics Industries (IAI) in March reportedly included 10 high altitude Heron-TP drones — the most advanced Israeli drone in service — according to Oxford Analytica. Collectively, these purchases have netted Azerbaijan 50 or more drones that are similar in class, size and capabilities to American Predator and Reaper-type drones, which are the workhorses of the United States’ campaign of drone strikes in Pakistan and Yemen. Although Israel may have sold the drones to Azerbaijan with Iran in mind, Baku has said publicly that it intends to use its new hardware to retake territory it lost to Armenia. So far, Azerbaijan’s drone fleet is not armed, but industry experts say the models it employs could carry munitions and be programmed to strike targets. Drones are a tempting tool to use in frozen conflicts, because, while their presence raises tensions, international law remains vague at best on the legality of using them. In 2008, several Georgian drones were shot down over its rebel region of Abkhazia. A UN investigation found that at least one of the drones was downed by a fighter jet from Russia, which maintained a peacekeeping presence in the territory. While it was ruled that Russia violated the terms of the ceasefire by entering aircraft into the conflict zone, Georgia also violated the ceasefire for sending the drone on a “military operation” into the conflict zone. The incident spiked tensions between Russia and Georgia, both of which saw it as evidence the other was preparing to attack. Three months later, they fought a brief, but destructive war that killed hundreds. The legality of drones in Nagorno-Karabakh is even less clear because the conflict was stopped in 1994 by a simple ceasefire that halted hostilities but did not stipulate a withdrawal of military forces from the area. Furthermore, analysts believe that all-out war between Armenia and Azerbaijan would be longer and more difficult to contain than the five-day Russian-Georgian conflict. While Russia was able to quickly rout the Georgian army with a much superior force, analysts say that Armenia and Azerbaijan are much more evenly matched and therefore the conflict would be prolonged and costly in lives and resources. Blank said that renewed war would be “a very catastrophic event” with “a recipe for a very quick escalation to the international level.” Armenia is militarily allied with Russia and hosts a base of 5,000 Russian troops on its territory. After the summer’s border clashes, Russia announced it was stepping up its patrols of Armenian airspace by 20 percent. Iran also supports Armenia and has important business ties in the country, which analysts say Tehran uses as a “proxy” to circumvent international sanctions. Blank said Israel has made a risky move by supplying Azerbaijan with drones and other high tech equipment, given the tenuous balance of power between the heavily fortified Armenian positions and the more numerous and technologically superior Azerbaijani forces. If ignited, he said, “[an Armenian-Azerbaijani war] will not be small. That’s the one thing I’m sure of.”

### AT: Clarify – U/U CP

One, clarification links

**Gersen and Posner, 8 -** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

 [\*589] A standard insight of the signaling theory literature in economics is that as a general matter, a statement is credible when it is accompanied by a costly action - in particular, an action that is more costly for a dishonest speaker to engage in. n66 Passing resolutions is costly: it takes time that could be used for other things - passing legislation, engaging in constituent service, meeting supporters, enjoying leisure. These other activities benefit members of Congress either directly or by improving their chances for reelection. If Congress spends resources to enact a resolution disapproving the Iraq war, observers will rationally infer that Congress cares more about this issue than it cares about other issues for which it does not enact resolutions. In turn, people who are taking actions with an eye toward how Congress might, in the future, regulate the Iraq intervention or other military interventions would do well to take note of the resolution.

#### The CP isn’t credible

Jack Goldsmith, 10/11/2012, Ken and Eric Agree More than Ken Thinks, [www.lawfareblog.com/2012/10/ken-and-eric-agree-more-than-ken-thinks/](http://www.lawfareblog.com/2012/10/ken-and-eric-agree-more-than-ken-thinks/)

One focus of Ken’s response to Eric Posner’s Slate piece is Eric’s claim that “the United States has invoked a new idea of the ‘unable or unwilling’ country, one that outside powers can invade because that country cannot prevent terrorists located on its territory from launching attacks across its borders.” I don’t know if Eric meant that the “unwilling or unable” doctrine is new in the Bush-Obama era, or is a post-Charter development, or is being invoked in a new way in the last decade. If he meant the first, then Ken is quite right that the doctrine is not new in that sense. That possible disagreement aside, and despite Ken’s characterization of Eric as a “radical sceptic[]” about international law (whatever that means), I think Eric and Ken basically agree on Eric’s central claim that the security provisions of the U.N. Charter as written are not terribly efficacious and have been interpreted opportunistically by the United States in ways that comport with its global national security interests and responsibilities. Indeed, that appears to be a central claim of Ken’s terrific new book, and the central premise upon which he tries to craft a modestly useful role for the United States in the U.N. system. I could cite many passages in the book where Ken, like Eric, emphasizes the collective action problems that bedevil collective security, views the U.N. system through the lens of the muscular United States pursuing its national interests instrumentally, and pokes fun at the idealists who think the U.N. security system can through international law achieve global security governance. Here is one: UN collective security faces a daunting series of obstacles in the way of ever becoming the system for international security – so daunting that it will likely never overcome them. In addition to those of the preceding chapter, we must add the juridical one of the literal language of Article 51 of the UN Charter. If taken seriously it would seem to require recourse to the Security Council for any use of force other than immediate territorial self-defense against an actual armed attack. Of course this is not how states actually behave and never has been – states’ inherent right of self-defense means far more than that – so if collective security is supposed to be based on Article 51, it is a fiction long since overtaken by state practice and a different understanding of inherent self-defense. In reality, Article 51 serves as a rhetorical tool for those wanting to criticize how a state, in particular circumstances, acts when the state does not seek collective security through the Security Council or at least Security Council authority. And here is another: Yet when liberal internationalism dreams, it dreams of overcoming anarchic and violent power relations through universal global governance. That is so even when liberal internationalists themselves, in the Obama administration and everywhere else in the world, are tired and a little bored with their own idealism. The dream presupposes two key things. First, it requires a profound diminution, at a minimum, of the effective sovereignty of states, at least where sovereignty is understood in its traditional way, as a “political community without a political superior.” Second, “global governance” sufficient to take over where the anarchy of sovereigns leaves off requires a form of global constitutionalism in an ultimately federal world, at least weakly, a world of states subject to universal global law and enforced by global institutions of law. Some academic and policy literature devotes itself to denying the second proposition as fulminations of “right-wing bloggers and some politicians,” so as to turn it into a mere strawman claim. The international community, confronted with objections to its utopian appetite, suddenly puts on a modest countenance and downcast eyes as if to say, “But that’s not us, we have no grand desires to govern anything.” That is easy to say since the United Nations does not govern very much now. Moving to the particulars of Ken’s post, Ken says little about Eric’s central claim that the United States appears to be relying on a super-thin-to-the-point-of-non-existent conception of consent in Pakistan, at least if the recent Wall Street Journal story is to be believed. I doubt that Ken would deny that the conception of consent outlined in the Journal article is, as Eric said, **self-serving and** probably **not consistent with the Charter**. And as for a possible self-defense argument based on the “unwilling and unable” standard, Ken is right that this is not a new U.S. position. But it is also true that t**he doctrine** as currently practiced by the United States **is** legally unsettled**,** globally controversial**, and** viewed by many as an opportunistic interpretation **of international law** – which is Eric’s basic point, and again, one with which I doubt Ken disagrees.

#### The cp wouldn’t be perceived—it’s the squo

Kenneth Anderson, 10/9/12, Stop Presses: “Even Eric Posner Says Drone Strikes in Pakistan Are Illegal”, [www.lawfareblog.com/2012/10/stop-presses-even-eric-posner-says-drone-strikes-in-pakistan-are-illegal/](http://www.lawfareblog.com/2012/10/stop-presses-even-eric-posner-says-drone-strikes-in-pakistan-are-illegal/)

First, I don’t know how Eric comes to believe that **the “unwilling or unable” test** is “new.” He treats it as a seemingly somewhat desperate innovation arising in the Bush administration and carried further in the Obama administration. But it’s not, and **I’m at a loss to understand how this is a new legal view for the U**nited **S**tates **government**. On the contrary, lawyers for those administrations, so far as I’m aware, understood that they were merely asserting a view the US government has held for generations.

#### Links to politics

Goldsmith 13

(Jack, Lawfare, “More on Drone Shift from CIA to DOD,” March 21, 2013, <http://www.lawfareblog.com/2013/03/more-on-drone-shift-from-dod-to-cia/>)

Following up on Wells’ post, I increasingly think that the shift in drone authorities from CIA to DOD first reported by Dan Klaidman might not amount to much in substance, and that any proposed changes face many hurdles in any event. In addition to the suggestions to this effect in the NYT story that Wells discusses, the WSJ reports that any CIA wind down in Yemen and especially Pakistan will be slow at best. It also notes that the possible shift from CIA to DOD “remains controversial on Capitol Hill, within the CIA and in some military circles among people who think the program is more effective under the agency’s control.” And it describes disagreements about the shift between Senator McCain, who is on the Arms Services Committee and who (unsurprisingly) favors the shift, and Senator Feinstein, who is on the Intelligence Committee and who (unsurprisingly) opposes it. This congressional jurisdictional battle (more details here) could have large consequences for the success of any shift.

#### Changes nothing

Zakaria 13

(Rafia, Aljazeera, “President Obama: The drones don't work, they just make it worse,” March 26, 2013, <http://www.aljazeera.com/indepth/opinion/2013/03/201332685936147309.html>)

Moving the drone program from the CIA to the Department of Defense is thus being painted as a victory, even a capitulation, to those critics who have criticised the lack of transparency, accountability, and legal basis of the drone program. However, the details of the move do not suggest a reversal or even a rethinking of the strategic imperatives that the Obama Administration and the CIA have used to justify the drone program. First, the gradual process of the transition without any publicly disclosed details of how and when it will be completed are likely to create a situation in which, at least for a time, it would be difficult if not impossible to tell which agency, the Department of Defense or the CIA, would actually be responsible for a strike. Second, according to a government official who spoke to the Washington Post, the CIA program in Pakistan would be phased out even later “because of the complexities there” and because the program, unlike the ones in Yemen and Somalia, was actually begun by the CIA. Finally, even if the drone program is actually moved to the Department of Defense, it will be incorporated into its most secret portion, the Joint Special Operations Command, whose top-secret operations are also covert and never released to the public. When these factors are considered, the effort to provide more transparency and an institutional framework for the drone program seem chimerical at best and deceptive at worst. All of them point to a continuation of a national security mindset, within the Obama Administration and the State Department, both believing that drones, cheaply bought and unmanned, are a perfect way to bombard other countries with minimal cost the United States. With the risk of dead American soldiers reduced to nothing, military officials are also gobbling up the idea of waging remote-control wars all over the world, wherever a possible or even supposed threat can be identified.

### AT: Heg DA

#### Flexibility isn’t needed vis a vis targeted killing

Daskal, 13 [The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone Jennifer Daskal American University Washington College of Law, April]

Ex Ante Procedures Three key considerations should guide the development of ex ante procedures. First, any procedural requirements must reasonably respond to the need for secrecy in certain operations. Secrecy concerns cannot, for example, justify the lack of transparency as to the substantive targeting standards being employed. There is, however, a legitimate need for the state to protect its sources and methods and to maintain an element of surprise in an attack or capture operation. Second, contrary to oft-repeated rhetoric about the ticking time bomb, few, if any, capture or kill operations outside a zone of active conflict occur in situations of true exigency.166 Rather, there is often the time and need for advance planning. In fact, **advance planning is often necessary to minimize damage to one’s own troops and nearby civilians**.167 Third, the procedures and standards employed must be transparent and sufficiently credible to achieve the desired legitimacy gains.

#### The link is super small

Daskal, 13 [The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone Jennifer Daskal American University Washington College of Law, April]

It is also important to emphasize that a reviewing court or review board would not be “selecting” targets, but determining whether the targets chosen by executive branch officials met substantive requirements—much as courts do all the time when applying the law to the facts. Press accounts indicate that the United States maintains lists of persons subject to capture or kill operations—lists created in advance of specific targeting operations and reportedly subject to significant internal deliberation, including by the President himself.190 A court or review board could be incorporated into the existing ex ante decisionmaking process in a manner that would avoid interference with the conduct of specific operations—reviewing the target lists but leaving the operational details to the operators. As suggested above, emergency approval mechanisms could and should be available to deal with exceptional cases where ex ante approval is not possible.1

#### Drone courts use advances decisions – solves the link

Opderbeck 13 (David W., Professor of Law – Seton Hall University Law School, Director – Gibbons Institute of Law, “Drone Courts,” Seton Hall Public Law Research Paper No. 2305315, 8-2, Accessed: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2305315>)

In addition to general separation of powers concerns, a number of practical objections have been lodged against the possibility of a drone court. One such objection is that the window of opportunity for a strike may open and close unpredictably. Current U.S. policy, however, requires that “[a]n informed, highlevel official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States.”307 If such a showing can be made by the relevant military command to an “informed, high-level” civilian official before pulling the trigger (or joystick), it can also be made to a judge, particularly if there are judges at the ready to hear emergent applications of this type. Presumably such decisions are currently made well in advance of the actual strike. The same could be true for a court.

#### The plan solves cruise missile prolif

Joshi and Stein, 13 [October, Survival: Global Politics and Strategy Publication details, including instructions for authors and Emerging Drone Nations, Shashank Joshi & Aaron Stein, Shashank Joshi is a Research Fellow at the Royal United Services Institute and a PhD candidate at the Department of Government, Harvard University. Aaron Stein is an Associate Fellow at the Royal United Services Institute, a researcher at the Istanbul-based Centre for Economics and Foreign Policy Studies and a PhD candidate at King’s College London. P. Survival]

In some regions, such as South Asia and the Middle East, cruise missiles (which are also unmanned aerial vehicles) are being touted as essential not just for modern warfare but also as nuclear delivery systems; examples of the former are Turkey’s Stand-Off Missile, and Saudi Arabia and the UAE’s imported Storm Shadow, while the latter category includes India’s BrahMos, Pakistan’s Babur and Israel’s Popeye.83 Because of the technological overlap **between drones and cruise** missiles, **this has an impact beyond** that of manned **aircraft**. The proliferation of drones will accelerate the proliferation of cruise missiles in a way that, say, the F-16 does not. That will make it harder to craft regional arms-control policies on issues related to nuclear, chemical and biological weapons. States will be hesitant to give up a dual use platform for the sake of uncertain treaties and agreements if doing so will **weaken their** conventional military **capabilities** and deprive them of a technology seen as key to modern warfare.84

#### Nuke war

Dennis M. Gormley, Senior fellow James Martin Center for Nonproliferation Studies
Monterey Institute for International Studies, September 2008, “The Risks and Challenges of a Cruise Missile Tipping Point”, http://www.nti.org/e\_research/e3\_missile\_tipping\_point.html

Ballistic missiles have dominated the missile proliferation scene thus far. They emblematized ultimate military power during the Cold War. Iraq's use of modified Scud ballistic missiles during the 1991 Gulf War mesmerized the public with lasting images of duels between Iraqi ballistic Scuds and U.S. Patriot missile defenses. Ballistic missiles based on Scud technology have spread widely to potential American adversaries and, as a potential means of WMD delivery, they represent significant **impediments to U.S. force projection** and a potent means of future coercive diplomacy. An epidemic of cruise missile proliferation would aggravate matters gravely. If the use of large numbers of LACMs becomes a major feature of military operations in the next decade, a combination of cruise and ballistic missile attacks, even with conventional payloads, could make early entry into regional bases of operation increasingly problematic. Nuclear, and possibly biological, payloads would produce catastrophic consequences.

#### But the mechanism of the plan spurs superior decision making – turns the DA

Tiberiu Dragu 13, Assistant Prof in the Dept of Politics at NYU, PhD in Poli Sci from Stanford University, and Oliver Board, associate in the Corporate Department of Wachtell, Lipton, Rosen & Katz, former Assistant Prof of Economics at the University of Pittsburgh, D.Phil. in Economics from the University of Oxford, J.D. from NYU School of Law, “On Judicial Review in a Separation of Powers System,” June 3 2013, https://files.nyu.edu/tcd224/public/papers/judicial.pdf

7 Judicial Review, Drone Strikes and Counterterror- ism Policy In this section, we illustrate the applicability of our theory, and its policy implications, in the context of drone strikes and counterterrorism policy more generally. The public debate about the use of unmanned drones to kill suspected terrorists highlights the contending views on the appropriateness of (non-expert) judicial review as a means of checking the contours of (expert) counterterrorism policy.27 Perhaps more than any other counterterrorism pol- icy, targeted killings illustrate the presumed tension between dispensing policy-making to those institutions with superior expertise and the rule-of-law ideal of checking the legality of executive action, or at least one important aspect of it: judicially-enforced due process of law. Since 9/11, the CIA and the military have used unmanned drones to kill individuals sus- pected of terrorist activity in places far from any battle eld, without being charged, without a trial, and without any form of judicial approval. The president makes the determination of who should be targeted and can order the killings of non-citizens and citizens alike without any judicial oversight.28 Lower-level executive o cials, working for the intelligence agencies in charge of terrorism prevention, recommend to the president who should be the next to die on the basis of available intelligence. These nominations go to the White House, where the president approves the names on the kill list. The president also decides if (and when) to undertake a drone strike that can result in civilian casualties and makes the nal call on \signature strikes," which target suspicious behavior rather than speci c terrorist suspects.29 In short, under the current regime, the president is \the prosecutor, the judge, the jury and the executioner, all rolled into one."30 The policy of targeted killings, as implemented, raises important legal questions, even if one accepts that drone strikes are not inherently illegal.31 Because the task of identifying terrorist suspects is inherently riddled with errors, it is impossible to know with certainty whether potential targets are dangerous terrorists or just people with the wrong association. As a result, innocent people can mistakenly be targeted even if lower-level executive o cials make their recommendations for the kill list in good faith. And when those targeted to be killed have not been convicted in a court of law, the use of lethal force against non-citizens and citizens might infringe upon their due process rights.32 A drone strike aimed at an American citizen without adequate evidence to show that he or she is a terrorist posing an imminent danger can raise serious constitutional problems.33 Because of the risk of inadvertently killing innocent people by executive at and because abuses of power are likely when the executive carries unilaterally such a campaign of deaths, drone policy, some argue, should be subjected to some form of judicial review. A growing number of lawmakers, scholars, and public o cials have embraced this idea and proposed an independent court to oversee drone strikes on the account that it would improve the existing status-quo, at least from a legal accountability perspective.34 **One of the strongest criticisms** against such institutional development is the argument that judicial oversight of dronestrikes jeopardizes the e ectiveness of the policy because judges lack the necessary expertise to review targeted killing decisions. Former solicitor general, Neal Katyal, has forcefully articulated this expertise rationale against judicial review of drone strikes. Katyal argues that \[t]he drone court idea is a mistake" because \[e]xperts, not generalists" ought to decide on drone strikes.35 In this view, the harm to counterterrorism policy caused by potentially erroneous judicial decisions outweighs the rule-of-law bene ts of judicial oversight. Simply put, asymmetric institutional competence makes it desirable, on balance, for the executive to undertake drone strikes without independent judicial oversight. These contending per- spectives on the appropriateness of judicial review are not unique to drone policy but are emblematic of public and scholarly discussions about how to devise counterterrorism policy more generally (Cole 2003, Posner 2006). Our analysis has relevance for existing debates on the scope of judicial review in the con- text of terrorism prevention. The polemic whether drone strikes and other counterterrorism policies should be subjected to judicial oversight is framed as a tradeo between the legal accountability bene ts of judicial oversight and the public policy harms of reviewing expert counterterrorism policy by non-expert judges. But starting the debate on these terms already assumes that (non-expert) judicial review can only have a negative e ect on (expert) govern-mental polic**y.** As such, it glosses over the prior question of what is the effect of legal review on the information available for counterterrorism policy-making. To answer this question one needs to assess the counterfactual of how informed counterterrorism policy decisions are in the absence of judicial review as compared to the scenario in which a court can review the legality of those policies. Our game-theoretical analysis provides this counterfactual analysis, an otherwise di cult task to e ect, and thus contributes to the current debates regarding the appropriateness of judicial review in the context of terrorism prevention. It suggests that judicial checks can lead to more informed counterterrorism policy-making if one considers the internal structure of the executive and the electoral incentives of the president, conditions which we discuss in more detail below. First, the argument that judicial review of drone strikes, and counterterrorism policy more generally, has a detrimental e ect on expert policy-making overlooks the internal ecology of the executive branch. When asserting the superior expertise of the executive branch, scholars and commentators treat the executive as a unitary actor, or perhaps consider its internal structure to be incidental to the expertise rationale for limiting judicial review. However, as the description of the drone policy suggests, there is a separation between expertise and policy-making: the president (and his closest advisers) decides on counterterrorism policy, while lower-level bureaucrats provide the expertise and intelligence to make informed decisions. This separation of expertise from policy-making is not unique to counterterrorism. Rather this is a general fact of modern-day government, and scholars of bureaucratic politics, going back to Max Weber, have attempted to unravel its myriad implications for democratic governance (Rourke 1976; Wilson 1991). Second, the president, like all elected representatives, is a politician making choices un- der the pressure of re-election and public opinion, and such incentives are going to shape his counterterrorism choices. When it comes to the electoral incentives of public o cials, scholars have noted that the political costs of not reacting aggressively enough in matters of terrorism prevention and national security are going to be higher than the costs of overraction (Cole 2008; Fox and Stephenson 2011; Ignatie 2004; Richardson 2006; Swire 2004). This observation implies that the president and other elected o cials have an electoral bias to engage in counterterrorism policies that are more aggressive than what would be neces- sary on the basis of available information regarding the terrorist threat.36 Inside accounts of the decision-making process within executive branch (Goldsmith 2007), empirical analyses (Merolla and Zechmeister 2009), and newspaper reports,37 they all document such electoral incentives to appear tough on terrorism. The former Vice-President Dick Cheney forcefully depicts this electoral bias in his articulation of the so-called one percent doctrine, which states that if there was even a one percent chance of terrorists getting a weapon of mass destruction, then the executive must act as if it were a certainty (Suskind 2007). In Cheney's view, \it is not about analysis; it's about our response... making suspicion, not evidence, the new threshold for action."38 The run-up to the invasion in Iraq provides a stark illustration of the one percent doctrine in action, the con ict between intelligence o cials and policy-makers, and the issue of politicized expertise in the context of national security (Pillar 2011). Our results suggest that (non-expert) judicial review has the potential to induce more informed counterterrorism decisions when the president makes security policy under the veil of public expectations to respond forcefully to terrorist threats. Courts are not immune to public opinion, of course, but precisely because judges are not elected, they are more insulated from public opinion than elected o cials. This implies that, all else equal, the courts are less likely to prefer counterterrorism measures that respond to public expectations to be tough on terrorism. Under these conditions,39 our theory suggests a mechanism by which counterterrorism policy-making with judicial oversight can be superior to counterterrorism policy-making without it, even if courts are relatively ill-equipped to review executive deci- sions. Judicial review can serve as a commitment device to better align the preferences of policymakers with their experts, with the e ect of inducing more information for countert- errorism decisions. This observation is missing from current public and scholarly discussions about the role of judicial review in the context of drone strikes and other counterterrorism policies. As such, our analysis has policy implications for ongoing debates on how to de- sign the institutional structure of liberal governments when the social objective is terrorism prevention. This expertise rationale for judicial review does not depend on whether the court approves or not a particular counterterrorism action. Critics of judicial review of drone strikes, for example, point to the record of the FISA court -it approves almost all warrants requests- as evidence that a drone court designed on a similar template would be ineffective. That judicial review can have a positive expertise effect is not predicated upon how intensely the court turns down counterterrorism policies, or upon how the court would assess a specific counterterrorism policy on its legal merits. It is based on analyzing the counterfactual of how much information is available for counterterrorism decision-making by comparing the scenario in which a court reviews counterterrorism policy with a scenario in which that policy- making process is free of judicial oversight. It may very well be unnecessary for the court to reject the choices of executive officials because those choices are adjusted in anticipation that drone strikes need to pass the muster of judicial review. What our theory suggests is that, on average, counterterrorism policy-making can be more rigorous on expertise grounds with judicial oversight that in its absence.

### AT: Drones Good

#### Their cutting of McKelvey isn’t about a limited jurisdiction court, but a hypothetical about the normal process of judicial review

Benjamin McKelvey 11, J.D., Vanderbilt University Law School, November 2011, “NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, 44 Vand. J. Transnat'l L. 1353

The DOJ is correct in arguing that the President is constitutionally empowered to use military force to protect the nation from imminent attack.105 **As the DOJ noted** in its brief in response, the Supreme Court has held that the president has the authority to protect the nation from “imminent attack” and to decide the level of necessary force.106 The same is true in the international context. Even though Yemen is not a warzone and al-Qaeda is not a state actor, international law accepts the position that countries may respond to specific, imminent threats of harm with lethal force.107 **Under these doctrines** of domestic and international law, the use of lethal force against Aulaqi was valid if he presented a concrete, specific, and imminent threat of harm to the United States.108

**<Northwestern’s Card Starts>**

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the “imminence” standard.109 However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants of authority.110 In the context of targeted killing, a federal court could evaluate the targeted killing program to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. Targeted killing, by its very name, suggests an entirely premeditated and offensive form of military force.111 Moreover, the overview of the CIA’s targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval.112 While the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat to the nation, the judiciary has the authority to define “imminence” as a legal standard.113 These are general concepts of law, not political questions, and they are subject to judicial review.114 Under judicial review, a court would likely determine that targeted killing does not satisfy the imminence standard for the president’s authority to use force in defense of the nation. Targeted killing is a premeditated assassination and the culmination of months of intelligence gathering, planning, and coordination.115 “Imminence” would have no meaning as a standard if it were stretched to encompass such an elaborate and exhaustive process.116 Similarly, the concept of “defensive” force is eviscerated and useless if it includes entirely premeditated and offensive forms of military action against a perceived threat.117 Under judicial review, a court could easily and properly determine that targeted killing does not satisfy the imminence standard for the constitutional use of defensive force.118

**<And, ends>**

#### No terrorism

Zero risk of acquisition – miniaturization and enrichment are too difficult – even Al Qaeda sucks at it after years of trying

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Contrary to their popular portrayal in Hollywood, nuclear bombs are actually both difficult to manufacture and challenging to effectively deploy, making it virtually impossible for terrorist groups to acquire them. Nuclear devices initiate nuclear chain reactions, and these reactions generate roughly a million times more energy than comparable chemical reactions. The enrichment of Uranium is probably the most complex aspect of building a nuclear device; It presents numerous challenges for any nation in developing a nuclear programme. The concept requires separating a heavier isotope (atoms of the same element having a different number of neutrons) of uranium from a lighter isotope of uranium in order to enrich or purify the stock to higher than 80% of U235 - sufficient for use in weapons. Achieving this separation on a suitably refined level differentiated by only a few subatomic particles is an extremely complicated process. A series of centrifuges carry out the delicate task of separating isotopes, these are finely tuned machine components, able to spin at high speeds while fully containing and separating highly corrosive gas. It is the combination of appropriate calibration and rotational speed that allow for enrichment to take place, low-quality bearings just would not do the job. Thereafter fabricating fissile material and developing either a gun-type device or implosion device is a process only 9-10 nations in the world have accomplished. South Africa has since renounced it, whilst North Korea is still working on it.[2] Today nuclear warheads sit in missiles and this would be another challenge any nation would face, i.e. delivering a bomb to its intended target. The components of the bomb that actually initiate a nuclear explosion must be miniaturized in order to be placed in a missile. Modern missiles are smaller than a human being weighing only a few hundred pounds. Actually getting a warhead down to this size is no simple exercise. It requires, among other things, precision manufacturing, exceptional quality control and a good understanding of nuclear physics. All of this would be after decades of testing to ensure detonation upon delivery. Building a Nuclear weapon requires a comprehensive commitment from any nation for its national resources to be deployed in such a manner. It is not just about one facility, it needs an industrial base. A nuclear program requires long term facilities, which are very energy intensive, years of experimentation, fissionable material and high grade industrial machinery. All of this is beyond most countries let alone terrorist groups. In the case of al Qaeda, even after immense security, sanctuary and financial backing they have been unable to produce a crude nuclear device in any meaningful way.

#### No Pakistan collapse and it doesn't escalate

Dasgupta 13

Sunil Dasgupta is Director of the University of Maryland Baltimore County Political Science Program at the Universities at Shady Grove and non-resident Senior Fellow at the Brookings Institution, East Asia Forum, February 25, 2013, "How will India respond to civil war in Pakistan?", http://www.eastasiaforum.org/2013/02/25/how-will-india-respond-to-civil-war-in-pakistan/

India is not likely to initiate an intervention that causes the Pakistani state to fail. Bill Keller of the New York Times has described Pakistani president Asif Ail Zardari as overseeing ‘a ruinous kleptocracy that is spiraling deeper into economic crisis’. But in contrast to predictions of an unravelling nation, British journalist-scholar Anatol Lieven argues that the Pakistani state is likely to continue muddling through its many problems, unable to resolve them but equally predisposed against civil war and consequent state collapse. Lieven finds that the strong bonds of family, clan, tribe and the nature of South Asian Islam prevent modernist movements — propounded by the government or by the radicals — from taking control of the entire country. Lieven’s analysis is more persuasive than the widespread view that Pakistan is about to fail as a state. The formal institutions of the Pakistani state are surprisingly robust given the structural conditions in which they operate. Indian political leaders recognise Pakistan’s resilience. Given the bad choices in Pakistan, they would rather not have anything to do with it. If there is going to be a civil war, why not wait for the two sides to exhaust themselves before thinking about intervening? The 1971 war demonstrated India’s willingness to exploit conditions inside Pakistan, but to break from tradition requires strong, countervailing logic, and those elements do not yet exist. Given the current conditions and those in the foreseeable future, India is likely to sit out a Pakistani civil war while covertly coordinating policy with the United States.

#### The link is small

Funk, 13 [Deadly Drones, Due Process, and the Fourth Amendment by William Funk\*, Robert E. Jones Professor of Law, Lewis & Clark Law School, SSRN]

VI. Conclusion In short, it seems clear that the Due Process Clause and the Fourth Amendment do not pose any significant obstacles to the government’s ability to use lethal force against leaders of al-Qa’ida who are United States citizens. It may be that the government’s program as it currently stands passes constitutional muster, but there are clearly substantial public concerns and possibly significant weaknesses in the government’s justifications that undermine the program’s constitutionality. Nevertheless, those weaknesses could be virtually eliminated by the addition of the use of the Foreign Intelligence Surveillance Court as an additional procedure to further assure the reliability of the government’s determinations, a procedure already in place and functioning with respect to highly classified matters, a procedure that would do nothing to impede the program and would provide it substantial additional constitutional support.

#### No link uniqueness – drones decreasing now, but don’t take out the advantage

Bergen, 10/25/13 [Peter, CNN, Did Obama keep his drone promises? <http://www.cnn.com/2013/10/25/opinion/bergen-drone-promises/index.html>]

A study of drone strike activity **since May 23**, tabulated by the New America Foundation from news reports, provides some answers. The Obama administration has cut the number of CIA drone strikes considerably in Pakistan and has slightly slowed the number of strikes in Yemen. At the same time, the targets of the drone strikes have increasingly tended to be the leaders of al Qaeda or affiliated groups rather than mere foot soldiers. Nevertheless, the drone program continues to involve a number of civilian casualties and not enough has been done to make it as transparent and legally sustainable as the President has promised. There were just 10 drone strikes in Pakistan during the past five months; an average of one strike every 15 days. In the year before Obama's speech, drone strikes happened every eight days. The average death toll of the most recent strikes in Pakistan is about six, which is about the same as the average death toll over the year before Obama's May speech, indicating that changes to the program have not included restricting the sizes of those groups of suspected militants that are being targeted. According to media reports, four top militant leaders were killed in strikes in Pakistan and Yemen since the May speech, which is a much higher rate of "high-value" targeting than was seen previously. Just seven militant leaders were reported killed in the 44 strikes that took place during the year before Obama's keynote speech on terrorism. Why have drones killed civilians? The pace of drone strikes fell in Yemen after Obama's speech, too, but not as sharply as it did in Pakistan. Since May 23, there have been 12 strikes in Yemen; an average of about one strike every 13 days. Over the previous year, a strike occurred about once every 10 days. As in Pakistan, the size of the groups targeted in Yemen has remained about the same after Obama's speech. The average death toll resulting from those 12 strikes was 4.5, while the average death toll over the year prior was about six. Starting in 2009, the civilian casualty rate from drone strikes has been on a markedly downward trajectory in Pakistan. That trend has continued into 2013, during which no civilians have been confirmed killed in Pakistan, according to the New America Foundation study. Similarly, the Bureau of Investigative Journalism, a London-based organization that tracks drone strikes, also found no civilian casualties in Pakistan so far this year. But a 10-year-old boy was killed in a drone strike in the Yemeni province of Al Jawf on June 9, and two civilians were reported killed in Yemen on August 8. Reports on CIA drones released Tuesday by Amnesty International and Human Rights Watch highlight some of the civilian casualties that have been caused by drone strikes in Pakistan and Yemen over the past several years. The Amnesty International report recounts a strike in October 2012, in which a 68-year-old woman, Mamana Bibi, was killed by a drone as she picked vegetables with her grandchildren, a number of whom were injured in the attack. The report observed "Amnesty International is seriously concerned that these and other strikes have resulted in unlawful killings that may constitute extrajudicial executions or war crimes." But even these on-the-ground investigations cannot bring to light the full extent or impact of the U.S. drone campaign. Only greater transparency on the part of the government can do that. As U.S. Supreme Court Justice Louis Brandeis observed a century ago, "Sunlight is the best disinfectant."

#### The plan only results in a minimal change to the amount of strikes, but averts a wider public and allied backlash that kills the program

Johnson, 13 [Jeh, former Pentagon General Counsel, 3/18/13, “Keynote address at the Center on National Security at Fordham Law School: A “Drone Court”: Some Pros and Cons,” <http://www.lawfareblog.com/2013/03/jeh-johnson-speech-on-a-drone-court-some-pros-and-cons/>]

The problem is that the American public is suspicious of executive power shrouded in secrecy. In the absence of an official picture of what our government is doing, and by what authority, many in the public fill the void **by envisioning the worst**. They see dark images of civilian and military national security personnel in the basement of the White House – acting, as Senator Angus King put it, as “prosecutor, judge, jury and executioner” — going down a list of Americans, deciding for themselves who shall live and who shall die, pursuant to a process and by standards no one understands. Our government, in speeches given by the Attorney General,[2] John Brennan,[3] Harold Koh,[4] and myself,[5] makes official disclosures of large amounts of information about its efforts, and the legal basis for those efforts, but it is never enough, because the public doesn’t know what it doesn’t know, but knows there are things their government is still withholding from them. The revelation 11 days ago that the executive branch does not claim the authority to kill an American non-combatant – something that was not, is not, and should never be an issue – is big news, and trumpeted as a major victory for congressional oversight. A senator who filibusters the government’s secrecy is compared in iconic terms to Jimmy Stewart. At the same time, through continual unauthorized leaks of sensitive information, our government looks to the American public as undisciplined and hypocritical. One federal court has characterized the government’s position in FOIA litigation as “Alice in Wonderland,”[6] while another, this past Friday, referred to it as “neither logical nor plausible.”[7] An anonymous, unclassified white paper leaked to NBC News prompts more questions than it answers. Our government finds itself in a lose-lose proposition: it fails to officially confirm many of its counterterrorism successes, and fails to officially confirm, deny or clarify unsubstantiated reports of civilian casualties. Our government’s good efforts for the safety of the people risks an erosion of support by the people. It is in this atmosphere that the idea of a national security court as a solution to the problem — an idea that for a long time existed only on the margins of the debate about U.S. counterterrorism policy but is now entertained by more mainstream thinkers such as Senator Diane Feinstein and a man I respect greatly, my former client Robert Gates – has gained momentum. To be sure, a national security court composed of a bipartisan group of federal judges with life tenure, to approve targeted lethal force, would bring some added levels of credibility, independence and rigor to the process, and those are worthy goals. In the eyes of the American public, judges are for the most part respected for their independence. In the eyes of the international community, a practice that is becoming increasingly controversial would be placed on a more credible footing. A national security court would also help answer the question many are asking: what do we say to other nations who acquire this capability? A group of judges to approve targeted lethal force would set a standard and an example. Further, as so-called “targeted killings” become more controversial with time, I believe there are some decision-makers within the Executive Branch who actually wouldn’t mind the added comfort of judicial imprimatur on their decisions. But, we must be realistic about the degree of added credibility such a court can provide. Its proceedings would necessarily be ex parte and in secret, and, like a FISA court, I suspect almost all of the government’s applications would be granted, because, like a FISA application, the government would be sure to present a compelling case. So, at the same time the New York Times editorial page promotes a FISA-like court for targeted lethal force, it derides the FISA court as a “rubber stamp” because it almost never rejects an application.[[8]](file:///%5C%5Cfpfgsc01%5Cfiles%5Cusers%5Cbwittes%5CDownloads%5CJohnson%20speech%20at%20Fordham%20LS.docx#_ftn8) How long before a “drone court” operating in secret is criticized in the same way?

### AT: Farm Bill

#### No war scenario

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder.

The **aggregate data** suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40

None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, **the proper comparison** is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

#### Unemployment benefits fight thumps

**Klapper, 12/28/13** (Bradley, Associated Press, “1.3 million losing unemployment benefits today” <http://www.yakimaherald.com/news/yhr/saturday/1788393-8/13-million-losing-unemployment-benefits-today>)

More than 1 million Americans are bracing for a harrowing, post-Christmas jolt as extended federal unemployment benefits come to a sudden halt this weekend, with potentially significant implications for the recovering U.S. economy. A tense political battle likely looms when Congress reconvenes in the new, midterm election year. Nudging Congress along, a vacationing President Barack Obama called two senators proposing an extension to offer his support. From Hawaii, Obama pledged Friday to push Congress to move quickly next year to address the “urgent economic priority,” the White House said. For families dependent on cash assistance, the end of the federal government’s “emergency unemployment compensation” will mean some difficult belt-tightening as enrollees lose their average monthly stipend of $1,166.

#### Won’t pass

**Mayer, 12/30/13** (Amy, “One thing that didn’t happen in 2013: a Farm Bill” High Plains Public Radio, <http://hppr.org/post/one-thing-didn-t-happen-2013-farm-bill>)

The inability to settle on a farm bill illustrates the deep divisions that have become the norm on Capitol Hill. The massive food and agriculture package used to be relatively easy thanks to bipartisan and urban-rural alliances. But this year, progress was a slow slog.

A nine-month extension passed in January bought some time. This summer, the Senate passed its bill, but the House didn’t. Then the House sent two bills to the conference committee, one for agriculture and the other for food stamps.

The conference committee charged with drafting a final bill met off and on for months. The main negotiators were the leaders from each party of the Agriculture Committees of each house – Sen. Debbie Stabenow and Sen. Thad Cochran from the Senate, and Rep. Colin Peterson and Rep. Frank Lucas from the House. Despite reporting progress, the four lawmakers were unable to finish the job before the House adjourned for the year on Friday.

There are three fundamental reasons today’s lawmakers have such a hard time getting the job done. Iowa State University political scientist David Peterson says one is the striking chasm separating today’s Washington politicians.

“We’ve seen an increasing polarization within Congress, in particular we’ve seen the modern Republican Party move further to the right,” Peterson said. “The Democrats have moved some to the left, but really what is driving it is the Republicans have moved further to the right.”

That leaves fewer players drawn toward the middle, where compromises are forged. And it takes a majority of both bodies, plus the president, to enact laws.

“The problem we’ve got right now is that the amount of things that a majority of the House, and in particular a majority of the Republicans—a majority of the majority party in the House—the Democratic Senate, and the Democratic president can agree on is vanishingly small,” Peterson said.

On top of polarization and gridlock, add the lack of earmarks. Peterson says in times past, Congressional leaders could use those small, very specific addendums to sway neutral lawmakers to their side of a bill. But in the last decade, he says, Congress got rid of earmarks. Now deadlines are a main driver pushing Congress to act, though they haven’t been very effective. To be sure, it’s not just the farm bill suffering from this. Everything in Congress is, but the farm bill’s history of wending its way through relatively easily makes the delay more striking.

#### Vote won’t be for weeks and negotiations don’t involve Obama

**Clayton, 1/2/14** (Chris, “New Year means New Farm Bill” <http://www.kxlo-klcm.com/site/index.php?option=com_content&view=article&id=2269:new-year-means-new-farm-bill&catid=8:ag-news-pod&Itemid=115>)

 USDA will continue holding back on any effort to implement permanent law with expectations that Congress will move over the next few weeks to complete work on a farm bill.

Agriculture Secretary Tom Vilsack told DTN earlier this week he has high hopes Congress will follow through on conference negotiations between the House and Senate. Such efforts allow USDA to avoid buying milk products at twice the market price because of provisions in permanent law, the secretary said.

"I honestly think right now what we are seeing are positive signs from the leadership of the conference committee on the House and the Senate side and some indication from the House and Senate leadership that there is a desire and interest to get this done," Vilsack said.

The Senate returns to session Monday while the House returns Tuesday. Though no meeting time has been set, the House and Senate conferees on the farm bill could schedule a meeting later next week to vote on some contentious issues the principal negotiators have not been able to resolve in private talks.

"So at this point in time, our focus is on providing technical assistance, ideas and creative thought so whatever differences exist between the House and Senate can be resolved quickly and when they get back in a week or so they can finish up the conference report, have the conference committee vote on whatever issues divide them and present a conference report and hopefully get it passed," Vilsack said.

#### No PC

**Boyer, 12/31/13 -** White House correspondent for The Washington Times(Dave, Washington Times, “TRICKY DICK: Only Nixon less popular than President Obama in Year 5” <http://www.washingtontimes.com/news/2013/dec/30/with-sagging-polls-barack-obama-follows-george-wbu/?page=all>)

Mr. Obama’s job-approval ratings in most polls this month were 40 percent or lower, down from 54 percent at the start of the year and the lowest of his presidency. Mr. Bush’s popularity in December 2005 stood at 43 percent, down from a high of 57 percent near the beginning of his second term and less than half the 90 percent-plus approval ratings in the days after the Sept. 11 attacks. Only Watergate-plagued Richard Nixon had a worse rating than Mr. Obama at the same point of his presidency, in 1973. Although presidents tend to lose some public approval after winning second terms, Mr. Obama’s numbers slipped more quickly than most others. “The history of the presidency is like an hourglass with the sand running out,” said Stephen Hess, a presidential historian at the left-leaning Brookings Institution. “There is a little bump up at the start of the fifth year, and then the downward trend continues. The problem here is that Obama had such a terrible fifth year. He blew that one opportunity he had to put some things together.” Almost from the moment of his reelection, Mr. Obama was sidetracked by scandals including the Internal Revenue Service targeting of conservative groups and revelations of widespread spying by the National Security Agency. In October came the hapless launch of the Obamacare website and the public’s realization that Mr. Obama didn’t tell the truth when he assured consumers that they could keep their health insurance policies if that’s what they preferred. The president’s broken promise damaged his credibility and was chosen by an independent fact-checking group as the biggest political lie of 2013. Asked about his plummeting numbers at a Dec. 20 news conference, Mr. Obama took refuge in the answer of all elected officials whose ratings are down: He is not worried about polls. “I have now been in office five years, close to five years, was running for president for two years before that, and we have had ups and we have had downs,” Mr. Obama said. “I took this job to deliver for the American people, and I knew and will continue to know that there are going to be ups and downs on it.” Political fallout Mr. Obama doesn’t have to face the ballot again, but many Democrats are openly worried that his low popularity numbers could drag down the party in the November midterm elections and could hand control of both houses of Congress to Republicans. A CNN/ORC poll released Dec. 20 found that Mr. Obama’s approval rating had dropped to 41 percent, matching an all-time low in the survey. CNN polling director Keating Holland said the president had lost significant support among women and young people, two voting blocs largely responsible for his 2012 re-election victory over Republican Mitt Romney. The CNN poll found that the rise in disapproval of the president came equally from the right and the left of the political spectrum. Mr. Bush said upon his re-election in 2004 that he intended to spend the political capital he had earned. But with the troubled war in Iraq and a failed push to partially privatize Social Security, he lost popularity rapidly and never regained it. Mr. Obama hopes to change his fortunes with a shake-up of senior White House staff, including the hiring of former Bill Clinton aide John Podesta, but Mr. Hess said the moves are unlikely to reverse the downward trend. “There’s always some ‘savior of the week’ that comes in from the outside,” Mr. Hess said. “It doesn’t usually work that way and there’s no reason to think it will in this case. You face the midterm election, which presidents always lose some seats.”

#### Obama’s PC fails – won’t spend it

**Benac, 12/30/13 –** Associated Press (Nancy, “Obama's Presidency Beset by Fits, Starts in Year 5” <http://abcnews.go.com/Politics/wireStory/obamas-presidency-beset-fits-starts-year-21365716?singlePage=true>)

The 2014 midterm elections give Obama his best opportunity to rebound. But Democrats, who just weeks ago saw an opportunity to retake the House after Republicans got blamed for the government shutdown, now fret about the health care law's ongoing problems and may be content to just keep control of the Senate. There's a certain irony in Obama's success depending on Congress, a body with whom he has had a lukewarm partnership. Lawmakers from both parties say Obama doesn't talk to them much,

 nor do his aides. Letters go unanswered. Policies come out of the blue. Social interactions are few. Both sides wistfully recall the voluble Clinton, who figured out how to craft deals with Republicans on welfare reform and other agenda items after the GOP took control of the House and made big gains in the Senate two years into his presidency. Sen. Tom Coburn, an Oklahoma Republican who worked with Obama when he was a senator and still considers the president a friend, says flatly: "He's flunked in terms of relations with Congress." "If you know him personally, he's a very likable person," says Coburn. "But it's different than with most other presidents in terms of having relationships with Congress. ... There's a lack of a personal touch." Of course, the president's tepid relationship with Congress is hardly his fault alone. The tea party forces that pulled House Republicans to the right in recent years made it difficult for the GOP to reach agreement with Democrats on much of anything, and produced the showdown over the president's health care law that spawned the government shutdown. Obama did attempt to improve relations with Republicans earlier this year, holding a few dinners with GOP lawmakers. His chief of staff, Denis McDonough, has been widely praised by Republicans for being a frequent visitor to Capitol Hill. But some lawmakers say that's as far as the outreach goes. Sen. John McCain, the Arizona Republican who ran against Obama in 2008 but has since tried to work with him on immigration and the budget, said no one from the White House legislative affairs staff has ever called him or come to his office just to chat. ——— What does it matter if Obama doesn't buddy up to his former colleagues? He needs those relationships to advance his agenda in Congress. And the strained ties with legislators are emblematic of a broader problem for Obama rooted in his tendency to keep a tight inner circle. "Instead of going out and talking to his enemies, making friends and schmoozing, or banging heads together with them or whatever, you can see that the man is diffident — deeply, deeply diffident about the kinds of politicking that are necessary to build consensus," says Nigel Nicholson, a professor at the London Business School who has written a book about leadership in which Obama is a frequent topic. The president has been getting plenty of that kind of advice in recent weeks. Critics called for a sweeping shakeup of his White House inner circle. Even his allies called for someone — anyone — to be fired for the health care failures. Obama has responded in his typically restrained fashion. No one has lost a job over the massive health care screw-up, though the White House hasn't ruled that out. And while the president is doing some minor shuffling in the West Wing, he's largely bringing in people he already knows. To critics, the limited staff changes smack of a White House that doesn't fully understand the depths of its problems. But presidential friend Ron Kirk said they are indicative of Obama's "fairly dispassionate temperament," which allows him to hold steady in the face of adversity. "He understands that overreacting to any one development in the moment is not the best way to achieve a long-term and stable objective," said Kirk, who served as U.S. trade representative in Obama's first term.

## 1ar

### AT: “The” = All Parts

#### ‘The’ denotes uniqueness – distinguishes the federal government from other governments

**Merriam-Websters 8** Online Collegiate Dictionary, http://www.m-w.com/cgi-bin/dictionary

used as a function word to indicate that a following noun or noun equivalent is a unique or a particular member of its class <the President> <the Lord>

### AT: Counterplan

#### Counterplan links:

#### Oliphant:

“But even that small degree of oversight, warns”

### AT Drones Good

### AT: Link – 1ar

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#### The rest of their link args are wrong

Adelsberg 12 (Samuel, J.D. – Yale Law School, “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens,” Harvard Law & Policy Review, Summer, 6 Harv. L. & Pol'y Rev. 437, Lexis)

National Security Concerns A major concern for the military and intelligence community would likely be **the effect** of the CTRC **on operational freedom** of movement. Assessing the effect on targeting operations is difficult, as little is known publicly about the current procedures used for targeting individuals.79 For the military and the CIA, every indication, both from press and government accounts, suggests that there are very rigorous controls on the targeting process, though intra-executive in nature.80 For example, according to one press account, an individual can only become a military target when his enemy status is confirmed by “two verifiable human sources” and “substantial additional evidence.”81 Moreover, according to publicly released documents, before every operation, the military undergoes a “Joint Targeting Cycle” which requires (1) identification of the military objective of an operation, (2) target development and prioritization, (3) capabilities analysis, (4) commander’s decision and force assignment, (5) mission planning and force exe-cution, and (6) assessment.82 Before an attack, the military must “engage the intelligence community (IC) and other organizations’ subject-matter experts (SMEs) to establish a reasonable level of confidence in a candidate target’s functional characterization based on a review of the supporting intelligence” 83 and perform a collateral damage assessment.84 Although not as public, the CIA apparently also has robust internal targeting procedures. Former CIA Director Leon Panetta apparently approved each strike, “sometimes reversing his decision or reauthorizing a target if the situation on the ground change[d].”85 According to one journalistic account, “[a] look at the bureaucracy behind the operations reveals that it is multilayered and methodical, run by a corps of civil servants who carry out their duties in a professional manner.”86 Lawyers draft cables based on available intelligence to justify targeting an individual. These cables are known to be “legalistic and carefully argued, often running up to five pages.”87 The purpose of surveying the known targeting procedures is to demonstrate that there is already a rigorous intra-executive process in place, and therefore much of the information required for CTRC approval is already being accumulated. Many, if not most, targeting operations involve long term efforts to locate specific individuals. For example, al-Awlaki was initially approved for targeted killing in April 2010, but was not killed until nearly a year and half later. There is already a list of prioritized targets, known as the Joint Integrated Prioritized Target List (JIPTL), who “can be captured or killed at any time.”88 Any citizen on that list could be put through the GTP with hearings before the CTRC. The CTRC would be a novel structure—one thatThe CTRC would be a novel structure—one that the military and the CIA would likely and understandably perceive as a judicial impediment to their mission of protecting national security. This Article does not make the claim that the CTRC would have no operational effect. Rather, it will and it should. That effect will force the military and the CIA to think carefully before targeting U.S. citizens. However, the operational effect can and will be mitigated to protect national security. For those operations where the time horizon is more condensed—in such a way as to make formal GTP hearings before the CTRC impossible—there is the emergency mechanism. Importantly, independent judicial review over targeting, while novel in the American context, has already been implemented in Israel, a country that faces serious security exigencies as well.89 While the CTRC may present certain operational challenges, the value of American citizenship is worth the cost in operational efficiency. Due process guarantees more than classified memos exchanged between executive branch lawyers. It guarantees a substantive check on the executive branch before it targets one of its own citizens.