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### Adv 1

#### Advantage 1: Terrorism!

#### WMD terrorism is feasible and dangerous

Bunn, et al, 10/2/13 [Bunn, Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>]

I. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam; by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

#### Nuclear war

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

#### Public and allied backlash will destroy effective drone use—the plan is key middle ground

Zenko, 13 [Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No. 65, January 2013, “U.S. Drone Strike Policies”, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎]

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

#### Credible threat of legal backlash stifles even defensible drone use

Goldsmith, 12 [Jack Goldsmith, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, P. 199-201]

For the GTMO Bar and its cousin NGOs and activists, however, the al-Aulaqi lawsuit, like other lawsuits on different issues, was merely an early battle in a long war over the legitimacy of U.S. targeting practices—a war that will take place not just in the United States, but in other countries as well. When the CCR failed to achieve what it viewed as adequate accountability for Bush administration officials in the United States in connection with interrogation and detention practices, it started pursuing, and continues to pursue, lawsuits and prosecutions against U.S. officials in Spain, Germany, and other European countries. "You look for every niche you can when you can take on the issues that you think are important," said Michael Ratner, explaining the CCR's strategy for pursuing lawsuits in Europe. Clive Stafford Smith, a former CCR attorney who was instrumental in its early GTMO victories and who now leads the British advocacy organization Reprieve, is using this strategy in the targeted killing context. "There are endless ways in which the courts in Britain, the courts in America, the international Pakistani courts can get involved" in scrutinizing U.S. targeting killing practices, he argues. "It's going to be the next 'Guantanamo Bay' issue."' Working in a global network of NGO activists, Stafford Smith has begun a process in Pakistan to seek the arrest of former CIA lawyer John Rizzo in connection with drone strikes in Pakistan, and he is planning more lawsuits in the United States and elsewhere against drone operators." "The crucial court here is the court of public opinion," he said, explaining why the lawsuits are important even if he loses. His efforts are backed by a growing web of proclamations in the United Nations, foreign capitals, the press, and the academy that U.S. drone practices are unlawful. What American University law professor Ken Anderson has described as the "international legal-media-academic-NGO-international organization-global opinion complex" is hard at work to stigmatize drones and those who support and operate them." This strategy is having an impact. The slew of lawsuits in the United States and threatened prosecutions in Europe against Bush administration officials imposes reputational, emotional, and financial costs on them that help to promote the human rights groups' ideological goals, **even if courts never actually rule** against the officials. By design, these suits also give pause to current officials who are considering controversial actions for fear that the same thing might later happen to them. This effect is starting to be felt with drones. Several Obama administration officials have told me that they worry targeted killings will be seen in the future (as Stafford Smith predicts) as their administration's GTMO. The attempted judicial action against Rizzo, the earlier lawsuits against top CIA officials in Pakistan and elsewhere, and the louder and louder proclamations of illegality around the world all of which have gained momentum after al-Aulaqi's killing—are also having an impact. These actions are rallying cries for protest and political pushback in the countries where the drone strikes take place. And they lead CIA operators to worry about legal exposure before becoming involved in the Agency's drone program." We don't know yet whether these forces have affected actual targeting practices and related tactics. But they induce the officials involved to take more caution. And it is only a matter of time, if it has not happened already, before they lead the U.S. government to forgo lawful targeted killing actions otherwise deemed to be in the interest of U.S. national security.

#### Also, allied cooperation’s key to effective drone use

Zenko, 13 [Micah Zenko is the Douglas Dillon fellow with the Center for Preventive Action at the Council on Foreign Relations, Newsday, January 30, 2013, "Zenko: Why we can't just drone Algeria", http://www.newsday.com/opinion/oped/zenko-why-we-can-t-just-drone-algeria-1.4536641]

CNN should not have been surprised. Neither the Bush nor Obama administrations received blanket permission to transit Algerian airspace with surveillance planes or drones; instead, they received authorization only on a case-by-case basis and with advance notice. According to Washington Post journalist Craig Whitlock, the U.S. military relies on a fleet of civilian-looking unarmed aircraft to spy on suspected Islamist groups in North Africa, because they are less conspicuous - and therefore less politically sensitive for host nations - than drones. Moreover, even if the United States received flyover rights for armed drones, it has been unable to secure a base in southern Europe or northern Africa from which it would be permitted to conduct drone strikes; and presently, U.S. armed drones cannot be launched and recovered from naval platforms. According to Hollywood movies or television dramas, with its immense intelligence collection and military strike capabilities, the United States can locate, track, and kill anyone in the world. This misperception is continually reinvigorated by the White House's, the CIA's, and the Pentagon's close cooperation with movie and television studios. For example, several years before the CIA even started conducting non-battlefield drone strikes, it was recommending the tactic as a plotline in the short-lived (2001-2003) drama "The Agency." As the show's writer and producer later revealed: "The Hellfire missile thing, they suggested that. I didn't come up with this stuff. I think they were doing a public opinion poll by virtue of giving me some good ideas." Similarly, as of November there were at least 10 movies about the Navy SEALs in production or in theaters, which included so much support from the Pentagon that one film even starred active-duty SEALs. The Obama administration's lack of a military response in Algeria reflects how sovereign states routinely constrain U.S. intelligence and military activities. As the U.S. Air Force Judge Advocate General's Air Force Operations and the Law guidebook states: "The unauthorized or improper entry of foreign aircraft into a state's national airspace is a violation of that state's sovereignty. . . . Except for overflight of international straits and archipelagic sea lanes, all nations have complete discretion in regulating or prohibiting flights within their national airspace." Though not sexy and little reported, deploying CIA drones or special operations forces requires constant behind-the-scenes diplomacy: with very rare exceptions - like the Bin Laden raid - the U.S. military follows the rules of the world's other 194 sovereign, independent states. These rules come in many forms. For example, basing rights agreements can limit the number of civilian, military and contractor personnel at an airbase or post; what access they have to the electromagnetic spectrum; what types of aircraft they can fly; how many sorties they can conduct per day; when those sorties can occur and how long they can last; whether the aircraft can drop bombs on another country and what sort of bombs; and whether they can use lethal force in self-defense. When the United States led the enforcement of the northern no-fly zone over Iraq from the Incirlik Air Base in southern Turkey from 1991 to 2003, a Turkish military official at the rank of lieutenant colonel or higher was always on board U.S. Air Force AWACS planes, monitoring the airspace to assure that the United States did not violate its highly restrictive basing agreement. As Algeria is doing presently, the denial or approval of overflight rights is a powerful tool that states can impose on the United States. These include where U.S. air assets can enter and exit another state, what flight path they may take, how high they must fly, what type of planes can be included in the force package, and what sort of missions they can execute. In addition, these constraints include what is called shutter control, or the limits to when and how a transiting aircraft can collect information. For example, U.S. drones that currently fly out of the civilian airfield in Arba Minch, Ethiopia, to Somalia, are restricted in their collection activities over Ethiopia's Ogaden region, where the government has conducted an intermittent counterinsurgency against the Ogaden National Liberation Front.

#### Stakeholders care about the aff’s standard—key to effective coop

Kris, 11 [David, Assistant Attorney General for National Security at the U.S. Department of Justice from March 2009 to March 2011, 6/15/2011, Law Enforcement as a Counterterrorism Tool, http://jnslp.com/wp-content/uploads/2011/06/01\_David-Kris.pdf]

On the other side of the balance, certainly most of our friends in Europe, and indeed in many countries around the world (as well as many people in this country), accept only a law enforcement response and reject a military response to terrorism, at least outside of theaters of active armed conflict.76 As a result, some of those countries will restrict their cooperation with us unless we are using law enforcement methods. Gaining cooperation from other countries can help us win the war – these countries can share intelligence, provide witnesses and evidence, and transfer terrorists to us. Where a foreign country will not give us a terrorist (or information needed to neutralize a terrorist) for anything but a criminal prosecution, we obviously should pursue the prosecution rather than letting the terrorist go free. This does not subordinate U.S. national interest to some global test of legitimacy; it simply reflects a pragmatic approach to winning the war. If we want the help of our allies, we need to work with them.77 More generally, we need to recognize the practical impact of our treatment of the enemy and the perception of that treatment. This war is not a classic battle over land or resources, but is fundamentally a conflict of values and ways of life.78 Demonstrating that we live up to our values, thus drawing stark contrasts with the adversary, is essential to ensuring victory. When our enemy is seen in its true colors – lawless, ruthless, merciless – it loses support worldwide. For example, in Iraq, al Qaeda’s random and widespread violence against civilians eventually helped mobilize the population against the insurgents.79 On the other hand, when our actions or policies provoke questions about whether we are committed to the rule of law and our other values, we risk losing some of our moral authority. This makes it harder to gain cooperation from our allies and easier for the terrorists to find new recruits. This is not simply abstract philosophy. It is an important reality in our military’s effort to defeat the enemy in places like Iraq and Afghanistan. As the U.S. military’s counterinsurgency field manual states, “to establish legitimacy, commanders transition security activities from combat operations to law enforcement as quickly as feasible. When insurgents are seen as criminals, they lose public support.”80 Adherence to the rule of law is central to this approach: “The presence of the rule of law is a major factor in assuring voluntary acceptance of a government’s authority and therefore its legitimacy. A government’s respect for preexisting and impersonal legal rules can provide the key to gaining widespread enduring societal support. Such respect for rules – ideally ones recorded in a constitution and in laws adopted through a credible, democratic process – is the essence of the rule of law. As such, it is a powerful potential tool for counterinsurgents.”81 Indeed, the U.S. military has been implementing such a transition to civilian law enforcement in Iraq, where detentions and prosecutions of insurgents are now principally processed through the domestic criminal justice system,82 and we are moving in that direction in Afghanistan, where transfer of detention and prosecution responsibilities to Afghan civilian authorities is our goal.83 I think these are principles that are well worth keeping in mind as we think about the impact of employing different tools in the context of our conflict with al Qaeda. It would not only be ironic, but also operationally counterproductive, if our partners in Iraq and Afghanistan rely increasingly on law enforcement tools to detain terrorists, even in areas of active hostilities, while we abandon those tools here in the United States.84

#### Drone use prevents planning and executing terrorist attacks

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

Should the U.S. continue to strike at al-Qaida's leadership with drone attacks? A recent poll shows that while most Americans approve of drone strikes, in 17 out of 20 countries, more than half of those surveyed disapprove of them. My study of leadership decapitation in 90 counter-insurgencies since the 1970s shows that when militant leaders are captured or killed militant attacks decrease, terrorist campaigns end sooner, and their outcomes tend to favor the government or third-party country, not the militants. Those opposed to drone strikes often cite the June 2009 one that targeted Pakistani Taliban leader Baitullah Mehsud at a funeral in the Tribal Areas. That strike reportedly killed 60 civilians attending the funeral, but not Mehsud. He was killed later by another drone strike in August 2009. His successor, Hakimullah Mehsud, developed a relationship with the foiled Times Square bomber Faisal Shahzad, who cited drone strikes as a key motivation for his May 2010 attempted attack. Compared to manned aircraft, drones have some advantages as counter-insurgency tools, such as lower costs, longer endurance and the lack of a pilot to place in harm's way and risk of capture. These characteristics can enable a more deliberative targeting process that serves to minimize unintentional casualties. But the weapons employed by drones are usually identical to those used via manned aircraft and can still kill civilians—creating enmity that breeds more terrorists. Yet many insurgents and terrorists have been taken off the battlefield by U.S. drones and special-operations forces. Besides Mehsud, the list includes Anwar al-Awlaki of al-Qaida in the Arabian Peninsula; al-Qaida deputy leader Abu Yahya al-Li-bi; and, of course, al-Qaida leader Osama bin Laden. Given that list, it is possible that the drone program has prevented numerous attacks by their potential followers, like Shazad. What does the removal of al-Qaida leadership mean for U.S. national security? Though many in al-Qaida's senior leadership cadre remain, the historical record suggests that "decapitation" will likely weaken the organization and could cripple its ability to conduct major attacks on the U.S. homeland. Killing terrorist leaders is not necessarily a knockout blow, but can make it harder for terrorists to attack the U.S. Members of al-Qaida's central leadership, once safely amassed in northwestern Pakistan while America shifted its focus to Iraq, have been killed, captured, forced underground or scattered to various locations with little ability to communicate or move securely. **Recently declassified correspondence** seized in the bin Laden raid shows that the **relentless pressure** from the drone campaign on al-Qaida in Pakistan led bin Laden to advise al-Qaida operatives to leave Pakistan's Tribal Areas as no longer safe. Bin Laden's letters show that U.S. counterterrorism actions, which had forced him into self-imposed exile, had made running the organization not only more risky, but also more difficult. As al-Qaida members trickle out of Pakistan and seek sanctuary elsewhere, the U.S. military is ramping up its counterterrorism operations in Somalia and Yemen, while continuing its drone campaign in Pakistan. Despite its controversial nature, the U.S. counter-terrorism strategy has demonstrated a degree of effectiveness. The Obama administration is committed to reducing the size of the U.S. military's footprint overseas by relying on drones, special operations forces, and other intelligence capabilities. These methods have made it more difficult for al-Qaida remnants to reconstitute a new safe haven, as Osama bin Laden did in Afghanistan in 1996, after his ouster from Sudan.

### Adv 2

#### Advantage 2: Norms!

#### Executive legal discretion for drone use outside hot battlefields makes global conflict inevitable

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

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

#### Results in great power war—traditional checks don’t apply

Eric Posner 13, a professor at the University of Chicago Law School, May 15th, 2013, "The Killer Robot War is Coming," Slate, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/drone\_warfare\_and\_spying\_we\_need\_new\_laws.html

Drones have existed for decades, but in recent years they have become ubiquitous. Some people celebrate drones as an effective and humane weapon because they can be used with precision to slay enemies and spare civilians, and argue that they pose no special risks that cannot be handled by existing law. Indeed, drones, far more than any other weapon, enable governments to comply with international humanitarian law by avoiding civilian casualties when attacking enemies. Drone defenders also mocked Rand Paul for demanding that the Obama administration declare whether it believed that it could kill people with drones on American territory. Existing law permits the police to shoot criminals who pose an imminent threat to others; if police can gun down hostage takers and rampaging shooters, why can’t they drone them down too?¶ While there is much to be said in favor of these arguments, drone technology poses a paradox that its defenders have not confronted. Because drones are cheap, effective, riskless for their operators, and adept at minimizing civilian casualties, governments may be **tempted to use them too frequently**.¶ Indeed, a panic has already arisen that the government will use drones to place the public under surveillance. Many municipalities have passed laws prohibiting such spying even though it has not yet taken place. Why can’t we just assume that existing privacy laws and constitutional rights are sufficient to prevent abuses?¶ To see why, consider U.S. v. Jones, a 2012 case in which the Supreme Court held that the police must get a search warrant before attaching a GPS tracking device to a car, because the physical attachment of the device trespassed on property rights. Justice Samuel Alito argued that this protection was insufficient, because the government could still spy on people from the air. While piloted aircraft are too expensive to use routinely, drones are not, or will not be. One might argue that if the police can observe and follow you in public without obtaining a search warrant, they should be able to do the same thing with drones. But when the cost of surveillance declines, more surveillance takes place. If police face manpower limits, then they will spy only when strong suspicions justify the intrusion on targets’ privacy. If police can launch limitless drones, then we may fear that police will be tempted to shadow ordinary people without good reason.¶ Similarly, we may be comfortable with giving the president authority to use military force on his own when he must put soldiers into harm’s way, knowing that he will not risk lives lightly. Presidents have learned through hard experience that the public will not tolerate even a handful of casualties if it does not believe that the mission is justified. But when drones eliminate the risk of casualties, the president is more likely to launch wars too often.¶ The same problem arises internationally. The international laws that predate drones assume that military intervention across borders risks significant casualties. Since that check normally kept the peace, international law could give a lot of leeway for using military force to chase down terrorists. But if the risk of casualties disappears, then nations might too eagerly attack, resulting in blowback and retaliation. Ironically, the reduced threat to civilians in tactical operations could wind up destabilizing relationships between countries, including even major powers like the United States and China, making the long-term threat to human life much greater.¶ These three scenarios illustrate the same lesson: that law and technology work in tandem. When technological barriers limit the risk of government abuse, legal restrictions on governmental action can be looser. When those technological barriers fall, legal restrictions may need to be tightened.

#### These conflicts go nuclear

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89\_1/89\_1Boyle.pdf

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.

#### 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.

#### Weak drone norms escalate every Asian flashpoint

**Brimley et al, 9/17/13** \*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.

#### Nuclear war

Max Fisher 11, foreign affairs writer and editor for the Atlantic, MA in security studies from Johns Hopkins, Oct 31 2011, “5 Most Likely Ways the U.S. and China Could Spark Accidental Nuclear War,” http://www.theatlantic.com/international/archive/2011/10/5-most-likely-ways-the-us-and-china-could-spark-accidental-nuclear-war/247616

Neither the U.S. nor China has any interest in any kind of war with one other, nuclear or non-nuclear. The greater risk is an accident. Here's how it would happen. First, an unforeseen event that sparks a small conflict or threat of conflict. Second, a rapid escalation that moves too fast for either side to defuse. And, third, a mutual misunderstanding of one another's intentions.¶ This three-part process can move so quickly that the best way to avert a nuclear war is for both sides to have absolute confidence that they understand when the other will and will not use a nuclear weapon. Without this, U.S. and Chinese policy-makers would have to guess -- perhaps with only a few minutes -- if and when the other side would go nuclear. This is especially scary because both sides have good reason to err on the side of assuming nuclear war. If you think there's a 50-50 chance that someone is about to lob a nuclear bomb at you, your incentive is to launch a preventative strike, just to be safe. This is especially true because you know the other side is thinking the exact same thing. In fact, even if you think the other side probably won't launch an ICBM your way, they actually might if they fear that you're misreading their intentions or if they fear that you might over-react; this means they have a greater incentive to launch a preemptive strike, which means that you have a greater incentive to launch a preemptive strike, in turn raising their incentives, and on and on until one tiny kernel of doubt can lead to a full-fledged war that nobody wants.¶ The U.S. and the Soviet Union faced similar problems, with one important difference: speed. During the first decades of the Cold War, nuclear bombs had to be delivered by sluggish bombers that could take hours to reach their targets and be recalled at any time. Escalation was much slower and the risks of it spiraling out of control were much lower. By the time that both countries developed the ICBMs that made global annihilation something that could happen within a matter of minutes, they'd also had a generation to sort out an extremely clear understanding of one another's nuclear policies. But the U.S. and China have no such luxury -- we inherited a world where total mutual destruction can happen as quickly as the time it takes to turn a key and push a button.¶ The U.S. has the world's second-largest nuclear arsenal with around 5,000 warheads (first-ranked Russia has more warheads but less capability for flinging them around the globe); China has only about 200, so the danger of accidental war would seem to disproportionately threaten China. But the greatest risk is probably to the states on China's periphery. The borders of East Asia are still not entirely settled; there are a number of small, disputed territories, many of them bordering China. But the biggest potential conflict points are on water: disputed naval borders, disputed islands, disputed shipping lanes, and disputed underwater energy reserves. These regional disputes have already led to a handful of small-scale naval skirmishes and diplomatic stand-offs. It's not difficult to foresee one of them spiraling out of control. But what if the country squaring off with China happens to have a defense treaty with the U.S.?¶ There's a near-infinite number of small-scale conflicts that could come up between the U.S. and China, and though none of them should escalate any higher than a few tough words between diplomats, it's the unpredictable events that are the most dangerous. In 1983 alone, the U.S. and Soviet Union almost went to war twice over bizarre and unforeseeable events. In September, the Soviet Union shot down a Korean airliner it mistook for a spy plane; first Soviet officials feared the U.S. had manufactured the incident as an excuse to start a war, then they refused to admit their error, nearly pushing the U.S. to actually start war. Two months later, Soviet spies misread an elaborate U.S. wargame (which the U.S. had unwisely kept secret) as preparations for an unannounced nuclear hit on Moscow, nearly leading them to launch a preemptive strike. In both cases, one of the things that ultimately diverted disaster was the fact that both sides clearly understood the others' red lines -- as long as they didn't cross them, they could remain confident there would be no nuclear war.¶ But the U.S. and China have not yet clarified their red lines for nuclear strikes. The kinds of bizarre, freak accidents that the U.S. and Soviet Union barely survived in 1983 might well bring today's two Pacific powers into conflict -- unless, of course, they can clarify their rules. Of the many ways that the U.S. and China could stumble into the nightmare scenario that neither wants, here are five of the most likely. Any one of these appears to be extremely unlikely in today's world. But that -- like the Soviet mishaps of the 1980s -- is exactly what makes them so dangerous.

#### Turkey models the accountability mechanism – averts PKK strike

Stein 13 (Aaron, Ph.D candidate at King’s College, London and the Nonproliferation Program Director at the Center for Economics and Foreign Policy Studies an independent think tank in Istanbul, “Turkey’s Negotiations with the Kurdistan Workers’ Party and Armed Drones” February 26, 2013, Turkey Wonk Blog)

Prime Minister Recep Tayyip Erdogan has recently re-intiated peace talks with Abdullah Ocalan and the Kurdistan Worker’s Party (PKK). Erdogan’s AKP, like Turgut Ozal’s Motherland Party, has sought to address Turkey’s Kurdish Issue – or the Kurds’ Turkey Problem – by focusing on the two groups’ shared muslim identity, rather than the previous policy of forced ethnic assimilation. Erdogan has previously engaged the PKK in peace talks, however, these efforts were unsuccessful. During the previous round of negotiations, Erdogan opted to hold the talks in secret, rather than subject himself to the inevitable backlash from Turkish nationalists (An important AKP voting bloc by the way). The talks, despite having made some progress, broke down after President Abdullah Gul went public with the negotiations and the subsequent celebration at the Habur border gate in 2009 when Kurdish fighters returned from the PKK camps in Iraqi Kurdistan to Turkish territory. The AKP appeared to have been caught off guard and ill-prepared to deal with the imagery of thousands of Kurds welcoming home the PKK fighters as national heroes. The Turkish nationalist backlash, combined with the AKP’s political ambitions, led to the end of the talks and the re-militarization of the Kurdish issue. This time around, Erdogan has opted to publicize the talks, which has, in my opinion, placed the responsibility for success squarely on the shoulders of Abdullah Ocalan. Erdogan’s public statements, as well as the policies that his party is now pursuing are politically dangerous, though the powerful Prime Minister has a number of reasons to solve the Kurdish issue. Most importantly, the AKP has shown an off and on commitment to ending the Turkish – Kurdish conflict, which has claimed an estimated 40,000 lives since the current conflict began in 1984. Moreover, Erdogan, who has made no secret of his desire to move to an executive Presidency, has an incentive to engage and secure the support of the Kurdish BDP for his proposed constitution. In addition, Erdogan’s 2009 – 2012 alliance with Turkey’s ultra-nationalist MHP has alienated Turkish liberals, which, despite being less religious than the AKP, are keen on implementing European Union reforms and deepening the country’s democratic system (Both AKP campaign themes). Erdogan, I am assuming, is betting that if he solves the PKK problem, the majority of Turks, who continue to be wary of negotiating with what they consider to be a terrorist group akin to Al Qaeda, will eventually support his decision. This of course hinges on his kicking out the fighters from Turkish territory, so as to ensure a drop in violence, which would in turn give him the credibility to go before the wary Turkish electorate and claim that he has brought peace. This political path is fraught with potential pitfalls, as illustrated by the recent attack of BDP MPs in the nationalist strongholds of Sinop and Samsun (For an excellent overview of the recent attack, see this blog post by the excellent Frederike Geerdink). The AKP, however, receives a tremendous amount of political support from nationalists. The AKP, which faces little resistance from the main opposition Republican People’s Party (CHP), is far more concerned about the potential for its base to splinter, which would in turn lead to it loosing some votes to the MHP, the BDP, and the Islamist Saadet Party. The AKP, therefore, is seeking to balance the current PKK negotiations with its need to continue to engage and appeal to Turkish nationalists. It is an incredibly difficult policy to pursue and is likely the reason why Erdogan’s messaging has vacillated wildly between themes like re-instituting the death penalty and the need to open chapters for Turkey’s stalled European Union bid. However, because the AKP has shown an incredible ability to set Turkey’s political agenda – using coordinated leaks, trial balloons, and speeches, which are framed by overarching themes like justice and development (The translation of the AKP’s name) – I believe that the AKP is capable of keeping its coalition together and ending the conflict with the PKK. (The PKK also has a lot to with this, but that is the subject for another blog post.) However, as I explain in my current piece on Foreign Policy, Ankara has opted to follow Washington’s example of using drones for counter-terrorism missions. Turkey, as I explain in the piece, has developed a surveillance drone and is seeking to use the current platform to develop an armed version. While Ankara has been characteristically opaque about the drones’ development, it does not take a genius to figure out that the Turkish military hopes to use armed drones to shorten to “kill-chain” for targeted strikes against PKK operatives. However, Turkey has not publicized who makes the decisions about when to use deadly force, nor has it publicly explained the legal rationale for using armed drones to assassinate Turkish citizens without due process. (As an EU candidate country, one would assume Turkey would try and figure this out). Moreover, if the drone is used in the southeast to attack PKK militants, it is likely that some of those killed will be Turkish citizens. Given the trajectory of the cease fire talks, I see a disconnect between Erdogan’s intentions, the likely use of armed drones in the future, and the military establishment’s opaque drone policy. To be clear, I am not advocating that Ankara disarm or cease in its efforts to further develop its anti-terror capabilities. However, I do think it would be prudent for the Turkish government to publicize its drone policies, in order to build trust with the Kurdish minority. Moreover, Turkey should also seek to clarify the current legal structure that has been put in place for the killing of Turkish citizens. (If one does not exist, Ankara should start writing.) It would also be prudent for the Turkish government to explain whether or not it conducts signature strikes (I think it does, one need not look any further than the Uludere tragedy for confirmation). If Ankara presses ahead with its armed drone program (and it will), the government should seek to be more forthcoming with information about the program’s goals and its intended use. **Otherwise, it risks undermining trust with the Kurdish minority** and, should the two sides agree to a cease fire,could risk re-igniting the conflict. Moreover, the program, which is still in the design phase, provides Ankara with a political opportunity. On the one hand, **Erodgan can tout the program as a symbol of** Turkey’s strength **– which would win him support from the nationalists**. However, **he could pair the rhetoric with a clear articulation of Turkey’s drone policy, which should include a** clear legal framework **for the strikes, in order to assuage Turkish liberals and Turkey’s Kurds.** This would allow for him to continue to balance the two sides’ political demands and, from the perspective of AKP political operatives, help them grow their voter base.

#### That causes wider regional Kurdish conflict

Stein, 13 [The First Rule of Drone Club The bad lessons Turkey learned from Obama's war from above. BY AARON STEIN | FEBRUARY 25, 2013,http://www.foreignpolicy.com/articles/2013/02/25/the\_first\_rule\_of\_drone\_club?page=0,1]

As the United States continues to grapple with the legal ramifications of using armed unmanned aerial vehicles to strike individuals, a slew of countries are eager to develop their own drones and mimic American tactics. Turkey is an avid supporter of drones and argues that it needs an indigenously-built UAV to combat the Kurdistan Workers Party (PKK), the Kurdish insurgents it has been fighting since the 1980s. The problem is that the Turkish republic seems to have adopted the principles currently guiding the U.S. use of drones: Say nothing about how you employ them and ignore the potential consequences. The PKK has come to dominate the country's security planning, but for years the Turkish Army's large conscript force and emphasis on heavy equipment left it ill-equipped to effectively fight an insurgency, particularly during the winter months. So, in addition to professionalizing its forces, it focused on improving its intelligence, surveillance, and reconnaissance capabilities. Ankara, therefore, purchased off-the-shelf drone systems from the United States, partnered with Israel for sale of Heron UAVs, and launched an effort to build one of its own -- an effort that has apparently come to fruition. Turkey now claims that the country's first domestically produced UAV -- a reconnaissance drone dubbed the "Anka" -- is set for serial production. While the Anka was beset with problems during testing, the drone is reported to be able to operate for 24 hours at an altitude up to 30,000 feet in adverse weather conditions during the day or at night. The Anka will primarily be used to surveil Turkey's Kurdish majority southeast and the PKK camps in the Kandil Mountains in Northern Iraq. Ankara hopes to develop an armed version of the Anka so that it can decrease the time needed to launch airstrikes against Kurdish targets. To help augment Turkey's drone capabilities in the interim, Ankara has requested unarmed and armed Predator and Reaper drones from the United States. Despite Turkey's repeated requests, U.S. export control law and congressional opposition will likely prevent the sale, but the Obama administration has sought to appease its Turkish counterparts and has agreed to station four unarmed Predator drones at Incirlik Air Force Base. The drones are flown by an American contractor from a joint operations center near Ankara. Turkish Air Force officers are in the room with their American counterparts and reportedly have the authority to direct the drones' movements. In 2011, Turkish officers in the Ankara operations center directed an American drone to surveil a known smuggling route near the Kurdish majority town of Uludere.\* After a group of men were spotted crossing the border illegally, the Turks reportedly ordered the Predator to fly away. A Turkish Heron then picked up the surveillance, and the Turkish Air Force bombed the smugglers. It was later revealed that the group of men were not members of the PKK, but 34 Kurdish citizens attempting to eke out a living by smuggling subsidized Iraqi gasoline to Turkey for resale. The subsequent uproar has led to a parliamentary investigation, though the report has been repeatedly delayed, and no minister has resigned. Most believe that the government is conspiring to prevent the authorities from carrying out their investigation in order to protect the person responsible for issuing the kill order. Turkey's pursuit of armed drones reflects, in part, the new consensus, driven by the United States, that they are useful, even critical, for counterterrorism. But there is little acknowledgment of the difficulties and dangers that drones pose. For example, few Turkish officials have made clear to the electorate that drones rely heavily on human operators and pre-existing intelligence. Nor have they acknowledged that the total cost of operating armed drones is reported to be higher than 240 F-16s in the Turkish Air Force. Most significantly, few in Turkey have grappled with the moral and legal implications of a country -- one hoping to join the European Union -- using drones to assassinate its own citizens. Turkey hasn't addressed the regional implications of increased drone use either. Unlike the United States, it has not received overflight rights from the countries where it would likely use its drones. Given Turkey's tense relationship with Iraqi Prime Minister Nouri al-Maliki, it is unlikely to secure drone overflight rights similar to those used by the United States in Yemen, Somalia, and Afghanistan. It is also unlikely that Turkish ally Masoud Barzani, the president of the Kurdistan Regional Government (KRG), would turn a blind eye to the Turkish military operating and using armed drones to kill Iraqi Kurds. True, it is widely believed that Turkey is using its fleet of Herons to violate Iraqi airspace to monitor PKK bases in Kandil. However, if Iraqi territory were repeatedly targeted with drone-fired missiles, relations with Baghdad would sour and Turkey's close alliance with the KRG would flag. Turkey's desire to export the Anka could also undermine its recent efforts to stem proliferation in the region. Turkish President Abdullah Gul told the opening session of Turkey's parliament in October 2012 that the threats posed by WMD in the region reinforced the need to make progress towards a Middle East WMD-free zone. But Egypt, which is not a signatory to the Chemical Weapons Convention (CWC), has agreed to purchase ten Anka drones from Turkey's Turkish Aersopace Industries. If the sale is finalized, Ankara will have agreed to export a dual-use item to a non-signatory of the CWC that has a history of chemical weapons use (in North Yemen in the 1960s). While it is unlikely that Egypt would arm the Anka with chemical weapons, the sale would nevertheless send conflicting messages about Turkey's commitment to regional disarmament and nonproliferation. So, just like the United States, Turkey faces a series of unresolved political, legal, and strategic issues as it moves forward with its drone program. It may well conclude that armed drones -- and even the assassination of Turkish citizens -- are vital for Turkish security. But whatever debate the government is having is a mystery. Turkey, therefore, appears to have adopted almost all of the American established norms associated with drones. The problem is those norms are to keep all of the details secret and to prevent the public from weighing in.

#### Escalates globally

Gokcek 2 – Faculty at the Department of Political Science at UC Santa Barbara (Gulriz, “Ethnic Conflict and Interstate War: An Analysis of the Kurdish Problem” Prepared for presentation at the International Studies Association Annual Meeting, <http://isanet.ccit.arizona.edu/noarchive/gokcek.html>)

The tensions over the Kurdish conflict, which eventually escalated to the brink of war, did not result in a military confrontation between Turkey and Syria. This might be because while all of the underlying conditions are satisfied in the Kurdish conflict, the two triggers for interstate war do not seem to have a strong showing in this case. This is not to suggest that the alliance factor played no role in the mounting tensions between Turkey and its neighbors. One could argue that the alliance trigger was present but then disappeared when Syria cut off its support of the Kurdish insurgents. Instead of treating the alliance factor as a dichotomous trigger it may be better to look at it as a continuous variable. It may not be the absence or presence of an external actor, but the strength of its role in the ethnic conflict that may help us to understand why some lead to interstate war. Fortunately, the 1998 crisis ended peacefully with Turkey and Syria signing an agreement to cooperate. However, prior Turkish threats of retaliation against any regional state supporting the PKK, raises the potential for interstate war as the PKK continues to seek the support of Iran, Iraq, and Syria against Turkey. If Syria decides to continue or increase its support for the training of the PKK or the militants inside Turkey, then the situation could escalate to an all-out war. If a war between Turkey and Syria breaks out, the possibility of Iran, Iraq, and other Arab countries getting involved is highly likely. Of course, being that Turkey is a member of NATO, this might get the United States and the European allies involved. Turkey has been an important ally to the United States, as it sits strategically between the Balkans, the former Soviet republics, and the Middle East. The United States uses the Incirlik military base in the southern part of Turkey to carry out intelligence operations and monitoring flights over northern Iraq to patrol violators of the “no fly” zone by Saddam Hussein’s air force.[103] If the U.S. or the Europeans were to come to the aid of a Turkey engaged in war with one of its neighbors, this would draw in other great powers, possibly even the Russians and the Chinese, thus raising the ethnic conflict to a whole new level. The U.S. and Western powers fear that the already fragile region cannot afford another major conflict. All four of the countries, which share the Kurdish population, have had hostile relations with one another in a region that already has a reputation for being volatile. The Kurdish conflict is not limited to Turkey, as evidenced by the demonstrations and riots at the Turkish government offices in Europe. The Kurdish problem “is characterized by a dimension that crosses borders and endangers peace.”[104] The Middle East has already been devastated both politically and economically as a result of the Palestinian and Israeli conflict. With the looming question on Palestinian statehood and peace, the region cannot afford to have any more conflict and instability. Since Kurds are the fourth largest national group in the Middle East after the Arabs, Persians, and Turks, a viable solution is needed.

#### Spills over to Nagorno-Karabakh – triggers war between Turkey, Armenia and Azerbaijan

**Blank, 8** – professor at the US Army War College (Stephen, “The Kurdish Issue and Nagorno-Karabakh,” <http://www.eurasianet.org/departments/insight/articles/eav052708a.shtml>)

The Kurdish issue, specifically the matter of establishing a homeland for Kurds, has complicated efforts to stabilize Iraq. Now, there is growing concern among international experts that the Kurdish question could become a source of tension, and possibly conflict in the South Caucasus.

Media outlets in Turkey and Azerbaijan have reported that militant Kurds, in particular fighters affiliated with the Kurdistan Workers Party, have been settling in Nagorno-Karabakh and in portions of Armenian-occupied Azerbaijan, with the tacit support of the Armenian government in Yerevan. Many of the Kurds are reputed to have resettled in the strategically important Lachin Corridor, a strip of territory now occupied by Armenia that was formerly part of Azerbaijan proper. Control of Lachin is one of the main obstacles in the search for a Karabakh settlement. [[For background see the Eurasia Insight archive](http://www.eurasianet.org/departments/insight/articles/eav091506.shtml)].

Before the outbreak of the Karabakh conflict, Lachin had a high number of Kurdish residents, and during the 1920s, it was part of a Kurdish Autonomous Area within the Soviet Union. Much of the Kurdish population fled the region during the Karabakh war. But the fact remains that there is a historical precedent for a Kurdish presence in Lachin. Even so, their resettlement today -- especially if reports about PKK militants being among the migrants are accurate -- is fraught with peril for regional security.

Some recent Turkish and Azerbaijani reports have seemed downright hyperbolic in sounding the alarm about the Kurdish threat, as well as about Armenia's supposed role in promoting resettlement. The reports alleged that Kurdish militants have established training camps in and around Karabakh, and that Armenian authorities have given Kurds access to state broadcasting facilities. They likewise claimed that political organizations in Armenia, such as the Armenian Revolutionary Federation (Dashnakstoutiun), are actively assisting the Kurds, seeing them as a means to strengthen Armenians' hold on Karabakh. In addition, Turkish and Azerbaijani media have stressed that both Ankara and Baku consider the PKK a terrorist organization.

On May 14, a commentary in the Istanbul newspaper Yeni Safak, a staunch supporter of Turkey's governing Justice and Development Party, claimed that the PKK's leadership, perhaps feeling insecure in northern Iraq, was mulling a move to Nagorno-Karabakh. The report could not be independently confirmed.

Armenia officials have vigorously denied a PKK presence in either Armenia proper or in Karabakh. "The unsubstantiated rumors about the intentions on the side of the Kurdistan Workers' Party (PKK) to move to Nagorno-Karabakh and controlled territories cannot be called anything less than another provocation," stated Foreign Ministry press spokesman Vladimir Karapetian.

It might be tempting to downplay the news reports as Turkish and Azerbaijani propaganda aimed at their longtime enemy -- Armenia. But dismissing Turkish and Azerbaijani assertions and concerns could prove dangerous. They require further investigation.

There is a danger that Turkey and Azerbaijan could take matters into their own hands, using the reported Kurdish threat as a pretext for military operations in Karabakh. In a February commentary published by the Ekho newspaper in Baku, political analyst Mubariz Ahmadoglu stated that that the country's political leadership might feel compelled to use force in an attempt to address the Kurdish issue. "If Armenia continues moving in this direction, resistance on the part Azerbaijan will be increasing. And not only at a diplomatic level," the newspaper quoted Ahmadoglu as saying. "I cannot rule out that Azerbaijan can start real actions of a military character. I know officials who made remarks lately and I formed such an impression." For example, Azerbaijan's Deputy Foreign Minister Araz Azimov has stated publicly that Baku would consider military operations to root out Kurdish militants.

#### Most likely nuclear war

**Avetyan, 11 -** Special Agent, US Department of State, Master’s Thesis for the JOINT ADVANCED WARFIGHTING SCHOOL at National Defense University (Avetik, “War in the Caucasus is Inevitable”, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA545741&Location=U2&doc=GetTRDoc.pdf>)

A protracted war between Armenia and Azerbaijan is sure to affect the geopolitical and economic factors of the region including disruption of Caspian Sea oil and gas production which certainly will upset the interests of the larger players. 42 To suppose that humanity will take lessons from history and change course is grossly naive. Although Russia, Iran, United States, and Turkey have been able to avoid a direct conflict over Nagorno-Karabagh, relying on each nation’s self restraint is a tremendous risk which can have disastrous consequences. Maintaining the status-quo of the conflict has helped Russia, Turkey, Iran, and the United States to advance their own strategic interests in the region at the expense of allowing escalating tensions between the Armenian and Azerbaijani nations. Since 1988, United States has countered Iran’s involvement in the region by encouraging Turkey’s role, especially in securing Azeri oil resources, and in the process also containing Russian domination of the region. 43 Russia has countered the U.S. role by fostering Turkish-Russian relationship through economic interdependence, while manipulating Iran to counter Turkey’s Pan-Turkish ambitions in Azerbaijan. 44 Iran has used the Russian influence in the region to counter U.S. and NATO basing in Azerbaijan while simultaneously developing Turkish-Iranian economic relationship. 45 Officially Turkey, Russia, Iran and the United States have announced their commitment to help resolve the Nagorno-Karabagh conflict peacefully within the framework of the OSCE however, a small change in an already tense environment may seriously undermine the strategic interests of all of these regional players. 46

Brinkmanship in Caucasus

The current frozen status of Nagorno-Karabagh conflict is not as stable as it appears. 47 Armenians and Azerbaijanis have used rhetoric, accusing the opposing side on charges of discrimination, racism, bigotry, hatred, mistrust, qualms, injustice, intimidation, and coercion in an effort to classify, categorize, and dehumanize the opponent, a tactic which dates back to the overall tone in the First and Second World Wars. “The two governments have so far undertaken virtually nothing to prepare their populations for the necessity of concessions.” 48 Both presidents have manipulated memory and identity to maintain the status-quo of the frozen conflict and through corruption and brutal oppression they have managed to remain in their political positions. 49 However, there is mounting, external and internal political pressure to end corruption and promote democratic way of life in both countries. This may force the politicians to rally political support and exacerbate ethnic national actions to resume the conflict in Nagorno-Karabagh and divert the focus of their populations from seeking change to fighting for a national cause: a miscalculation and provocation which could easily lead to war. 50

The following recent events capture the danger. On February 25, 2010, Safar Abiyev, the Defense Minister of Azerbaijan, told the OSCE Minsk Group co-chairs that “Azerbaijan is seriously preparing to liberate its territories.” 51 This statement started a slew of similar inflammatory rhetoric and increased the number of sniper attacks and counterattacks on the Nagorno-Karabagh border, with the heaviest Azeri attack on June 18, 2010 that resulted in four Armenian and two Azeri soldiers killed. 52 On July 7, 2010, President Aliyev warned at a public event, “this is the last chance for Armenia to leave the occupied lands voluntarily for the sake of its own future and its own security.” 53 On December 1, 2010, the Armenian president addressed the OSCE co-chairs in Astana indicating Armenia’s position on the Nagorno-Karabagh conflict by stating that, “Azerbaijan has no legal, historical, or moral right to lay any claim on NagornoKarabagh. Armenia is strongly against a military settlement of the conflict. However, in the case of Azerbaijani military aggression Armenia will have no alternative but recognize Nagorno-Karabagh as an independent state, as it has no future as part of Azerbaijan.” 54

Azerbaijani diplomats have begun a heavy effort to increase Armenia’s economic isolation by trying to convince the government of Georgia to deny Armenian businesses easy access to the Georgian coastal city of Kabuleti. On February 27, 2011, the Azerbaijani Ambassador to Georgia, Namig Aliyev, alluded to the possibility that Armenians are on a “Pan-Armenian” quest to expand their territory and gain access to the Black Sea. 55 The Armenia-Georgia route was the only direct line of operation for supplies and equipment during the Armenian-Azeri war. If it is eliminated, it will restrict Armenia to only one land based supply source, Iran. The Azeri actions in Georgia are viewed by the Armenians as an effort by the Azeri government to further extend its economic blockade on Armenia and weaken Armenia’s ability to resist an Azeri attack on Nagorno-Karabagh.

On March 5, 2011, Russian President Dmitri Medvedev invited the Armenian and Azerbaijani presidents to a meeting in Sochi to renew talks. Although both presidents promised to increase the number of diplomatic dialogues and meetings, the atmosphere of trust between two nations no longer exists. 56

From these events it became clear that in the words of one observer, “**No comparable conflict** in the world today arguably has the potential to involve as many regional and global powers as does the Armenian-Azerbaijani conflict.” 57 Indeed, Russia, the U.S., Turkey and Iran are the big regional and global powers with important interests tied to the Nagorno-Karabagh conflict that may blunder unintentionally into war.

### Solvency

#### The United States Federal Government should restrict targeted killing outside zones of active hostilities to clear and convincing instances determined using a quantum of information framework.

#### Status quo executive clarification fails to set an adequate precedent

Dworkin, 13 [Anthony, Senior policy fellow at the European Council on Foreign Relations, “Drones and Targeted Killing: Defining a European Position”, July, p. pdf]

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

#### Establishing a “clear and convincing” threshold resolves the legal controversy

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

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

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

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

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

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

#### That resolves TK legitimacy and geographic drone norms

Geoffrey Corn, South Texas College of Law, Professor of Law and Presidential Research Professor, J.D., 2013, Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2179720

\*note: TAC = transnational armed conflict

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

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

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

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

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

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

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

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

B. Target Identification and Engagement

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

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

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

Two factors appear to provide an explanation for the increased concern over the threat identification uncertainty in the context of TAC. One of these is beyond the scope of “mitigation solutions,” while the other is not. The first is the increased public awareness and interest in both the legal authority to use military force and the legality of the conduct of hostilities, a factor that inevitably increases the scrutiny on military power under the rubric of TAC. **This pervasive and intense interest in and legal critique of military operations** associated with what is euphemistically called the war on terror **is truly unprecedented**. In this “lawfare” environment, it is unsurprising that government action that deprives individuals of life as a measure of first resort or subjects them to preventive detention that may last a lifetime—often impacting individuals located far beyond a “hot zone” of armed hostilities—generates intense legal scrutiny.60 **This factor**, whether a net positive or negative, is a reality that **is unlikely to abate** in the foreseeable future.

In an article published in the Brooklyn Law Review, I proposed a sliding quantum of information related to the assessment of targeting legality based on relative proximity to a “hot zone.”62 In essence, I proposed that when conducting operations against unconventional non-State operatives, the reasonableness of a target legality judgment requires increased informational certainty the more attenuated the nominated target becomes to a zone of traditional combat operations. The concept was proposed as a measure to mitigate the increased risk of targeting error when engaging an unconventional belligerent operative in an area that itself does not indicate belligerent activity. Jennifer Daskal offers a similar proposal in her article, The Geography of the Battlefield.63 Daskal presents a more comprehensive approach to adjusting the traditional targeting framework when applied to the TAC context. Both of these articles seek to **mitigate the consequence** of applying broad LOAC authority against a dispersed and unconventional enemy; both methods that should continue to be explored.

#### Congressional restriction key to credibility and signal

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What Should Congress Do?

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

#### Action outside traditional conflict zones is key

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

and strategies – and will need to know that they have sound, publicly and firmly asserted legal defenses of their use, including both their use and their limits in law.

#### (Back to terrorism) Every alternative fails—drones are way to prevent terrorism

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

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

#### (Back to Turkey) Goes nuclear at a lower launch threshold

**Blank 2K -** professor of research at the Strategic Studies Institute of the US Army War College, (Stephen, “US Military Engagement with Transcaucasia and Central Asia”, June, <http://www.bits.de/NRANEU/docs/Blank2000.pdf>)

Washington’s burgeoning military-political-economic involvement seeks, *inter alia*, to demonstrate the U.S. ability to project military power even into this region or for that matter, into Ukraine where NATO recently held exercises that clearly originated as an anti-Russian scenario. Secretary of Defense William Cohen has discussed strengthening U.S.-Azerbaijani military cooperation and even training the Azerbaijani army, certainly alarming Armenia and Russia.69 And Washington is also training Georgia’s new Coast Guard. 70 However, Washington’s well-known ambivalence about committing force to Third World ethnopolitical conflicts suggests that U.S. military power will not be easily committed to saving its economic investment. But this ambivalence about committing forces and the dangerous situation, where Turkey is allied to Azerbaijan and Armenia is bound to Russia, create the potential for wider and more protracted regional conflicts among local forces. In that connection, Azerbaijan and Georgia’s growing efforts to secure NATO’s lasting involvement in the region, coupled with Russia’s determination to exclude other rivals, foster a polarization along very traditional lines.71 In 1993 Moscow even threatened World War III to deter Turkish intervention on behalf of Azerbaijan. Yet the new Russo-Armenian Treaty and Azeri-Turkish treaty suggest that Russia and Turkey could be dragged into a confrontation to rescue their allies from defeat. 72 Thus many of the conditions for conventional war or protracted ethnic conflict in which third parties intervene are present in the Transcaucasus. For example, many Third World conflicts generated by local structural factors have a great potential for unintended escalation. Big powers often feel obliged to rescue their lesser proteges and proxies. One or another big power may fail to grasp the other side’s stakes since interests here are not as clear as in Europe. Hence commitments involving the use of nuclear weapons to prevent a client’s defeat are not as well established or apparent. Clarity about the nature of the threat could prevent the kind of **rapid and almost uncontrolled escalation** we saw in 1993 when Turkish noises about intervening on behalf of Azerbaijan led Russian leaders to threaten a nuclear war in that case. 73 Precisely because Turkey is a NATO ally, Russian nuclear threats could trigger a potential nuclear blow (not a small possibility given the erratic nature of Russia’s declared nuclear strategies). The real threat of a Russian nuclear strike against Turkey to defend Moscow’s interests and forces in the Transcaucasus makes the **danger of major war there higher than almost everywhere else**. As Richard Betts has observed, The greatest danger lies in areas where (1) the potential for serious instability is high; (2) both superpowers perceive vital interests; (3) neither recognizes that the other’s perceived interest or commitment is as great as its own; (4) both have the capability to inject conventional forces; and, (5) neither has willing proxies capable of settling the situation.74

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#### Rehighlighing of 2ac Goldmisth to prove it’s about war

Bradley and Goldsmith, 5 (Curtis and Jack, professor of law at the University of Virginia and professor of law at Harvard, 118 Harvard Law Review 2047, May, lexis)

Second, under Justice Jackson's widely accepted categorization of presidential power, n5 "the strongest of presumptions and the widest latitude of judicial interpretation" attach "when the President acts pursuant to an express or implied authorization of Congress." n6 This  [\*2051]  proposition applies fully to presidential acts in wartime that are authorized by Congress. n7 By contrast, presidential wartime acts not authorized by Congress lack the same presumption of validity, and the Supreme Court has invalidated a number of these acts precisely because they lacked congressional authorization. n8 The constitutional importance of congressional approval is one reason why so many commentators call for increased congressional involvement in filling in the legal details of the war on terrorism. Before assessing what additional actions Congress should take, however, it is important to assess what Congress has already done. Third, basic principles of constitutional avoidance counsel in favor of focusing on congressional authorization when considering war powers issues. n9 While the President's constitutional authority as Commander-in-Chief is enormously important, determining the scope of that authority beyond what Congress has authorized implicates some of the most difficult, unresolved, and contested issues in constitutional law. n10 Courts have been understandably reluctant to address the scope of that constitutional authority, especially during wartime, when the consequences of a constitutional error are potentially enormous. n11 Instead,  [\*2052]  courts have attempted, whenever possible, to decide difficult questions of wartime authority on the basis of what Congress has in fact authorized. n12 This strategy makes particular sense with respect to the novel issues posed by the war on terrorism.

#### Commander in chief just means collective authority to conduct foreign relations—hence the not being at war distinction

**Baker, 7 -** Chief Judge to the United States Court of Appeals for the Armed Forces, former Special Assistant to the President and Legal Advisor to the National Security Council (James, IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERILOUS TIMES, p. 178)

The president’s enumerated war powers include those as commander in chief, chief executive, and those authorities that collectively permit the president to conduct foreign relations. These are the authorities cited by successive presidents in more than 100 “War Powers” [Resolution] reports as the legal basis for military action. In a time of homeland security and terrorism it is also worth noting that the president is charged in Article II “to take care that the laws be faithfully executed.” Indeed, many of the president’s extraordinary statutory authorities to deploy armed forces within the United States are predicated on the breakdown of the rule of law, in particular the Insurrection Act, discussed in Chapter 9.

#### Precision is impossible because THEIR standard is vague

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Justice Rehnquist called the Commander in Chief power “the most difficult area of all of the Constitution.”20 There are varying interpretations of the balance of war powers between the President and Congress,21 with some scholars championing sweeping presidential prerogative and others defending the original understanding of the Constitution, which indicates preeminent congressional authority.22 The Constitution does not specify the exact allocation of authority between the President and Congress, and there is no precise definition of the relationship.23 This Article examines competing perspectives and dissension by using Justice Jackson’s “zone of twilight” formulation in Youngstown Sheet & Tube Co. v. Sawyer24 to juxtapose originalist and structuralist interpretations of the Constitution in conjunction with contemporary developments. Justice Jackson’s design is one of several possible formulations constructed to explicate presidential power.25

#### Claims that CIC means chain of military command is ahistorical and unpredictable

**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)

[\*730] 1. The Commander in Chief Clause Does Not Confer Substantive Powers. - The strongest form of the argument asserts that the Commander in Chief Clause's sole function is to place the President at the top of the chain of military command. n119 Such a contention makes the Category Three question easy in all cases unrelated to the possible infringement of the President's prerogative of superintendence, for surely the President may not acquire substantive authority by virtue of Congress imposing a statutory restriction.

The problem with this argument is that it cannot be reconciled with **a long line of Supreme Court precedent** recognizing a range of distinct substantive powers that the Commander in Chief may exercise **in the absence of legislative authorization**. These powers include, in particular, the power "to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy." n120 There continue to be contested questions on the limits of the President's independent authorities (most notably with respect to the power to initiate hostilities). n121 In virtually all of the [\*731] cases that have thus far arisen in the context of the current armed conflicts, however, the President at least arguably has such independent powers. n122

#### Means you prefer our relational definition about what congress has explicitly authorized

**Zeisburg, 13** - assistant professor of political science at the University of Michigan (Mariah, War Powers: The Politics of Constitutional Authority, <http://press.princeton.edu/chapters/s10034.pdf>)

At each step, the more the branches govern and interpret constitutional meaning in accord with the substantive and processual standards of the relational conception, the more constitutionally authoritative is the warmaking system they construct. The relational conception puts the processes of knowledge production and interbranch deliberation at the center of its conception of constitutional authority. The practices of discernment, elaboration, and review at the heart of interbranch deliberation generate constitutional authority for acts of war and security orders.

Constitutional authority to use the war power has a stipulated definition here: it is what emerges from the branches’ successful navigation of a web of justificatory processes. When the branches mobilize their institutional capacities, develop good understandings of the security needs of the moment, and place themselves in responsive relationship, they generate constitutional authority over war; authority is hence both presumed and created by their interactive processes.

This way of conceiving constitutional authority is unusual. Legal and philosophic scholarship prominently associated with Joseph Raz commonly describes “authority” as content-independent reasons to obey.110 In other words, for an institution to be authoritative means that others obey it even if they object to what they are told to do. And yet the relational conception asks the branches to respond to, and perhaps even challenge, one another’s determinations. While this is an unfamiliar notion of constitutional authority, it is not unusual in the world more broadly. Consider a junior faculty member being advised by his chair. If asked why he treats the chair’s advice as authoritative, the faculty member may well answer in a Razian fashion that the chair is empowered to instruct junior faculty. But it would also be perfectly sensible to say that the faculty treats the chair’s advice as authoritative because he recognizes that the advice is coherent and informed by the chair’s unique perspective on a situation, because the chair has been responsive to counter-considerations and frames a dilemma in a way that makes good sense, and because the chair offers recommendations of recognizably high quality. We may consider a friend’s advice authoritative for similar reasons. In fact, people often consider one another’s perspectives authoritative on the basis of assessments that are not entirely content-neutral, but which are also not reducible to following a good idea no matter where it comes from. This way of relating to authority views it as a resource that actors develop for one another.

Authority also means having reason to obey. A second reason for viewing authority in a bimodal way rests upon a view of compliance that is itself bimodal. A soldier either will, or will not, comply with an order to deploy. It doesn’t make sense for a soldier to partially deploy in response to a form of authority that is shaky but still intact. To have the option to comply or not comply with a command suggests that authority itself must be bimodal.

But this way of viewing compliance is also limited. When Congress declares war, the president does not face a choice of “obeying” or “not obeying.” The president may use that declaration of war as the grounds for an all-out assault on another nation’s sovereignty, or he may use it as one more tool of coercive diplomacy. These are only two among many possibilities. When the president deploys troops in a provocative manner, the legislature too faces a large array of possible policy and constitutional responses. Because the branches are policymaking institutions, the authoritative behavior of each triggers a range of possible responses from the others. Each branch has governance tools that may resist, narrow, closely execute, extend, or intensify the instructions the other branch has communicated.111 The relational conception asks officials to link their responses to their judgments about each branch’s relative authority. Authority here does not function as a fully exclusionary reason. In the US constitutional system, it is rare for commands to be given without reasons, and we expect pushback from agents if or when these reasons are inadequate.112 Using the word “authority” to signify the presence of content-independent reasons for action is only one way of conceiving how authority functions in our lives.

What do we gain and lose with this way of describing constitutional authority? First, it is, on its face, more consistent with the Constitution’s actual strategy of elaborating institutional structure but not defining the boundary lines between war powers. The vagueness present in how the relational conception conceives authority corresponds to a vagueness rooted in the Constitution’s own text. Second, this way of describing authority provides a vocabulary for political intuitions that cannot otherwise be accommodated. Consider debate in Congress about whether its own declaration of the War of 1812 was constitutional, given insufficient British hostility.113 Or consider that, when I discuss this book, some mention the US entry into the Iraq War as a moment of constitutional deficiency.114 Yet the Iraq War was legally authorized by Congress acting through its regular procedures. No other war powers theory on offer can account for the common intuition that legislative processes may sometimes be so deficient as to actually impair the constitutional authority of legislative assent. Highlighting the role of the processual standards in generating constitutional authority makes these common intuitions more sensible. Through the case studies, I bring attention to common intuitions about American constitutional politics that the relational conception of war authority—but not settlement accounts—can track

### econ

#### Their economic pessimism is unfounded

Boston Globe 13

http://www.bostonglobe.com/news/nation/2013/06/15/analysts-predict-solid-growth-for-economic-rebound/QVdFATRCoX4pngCFqrwRII/story.html

NEW YORK — For more than a decade, the economy has failed to grow the way it once did. Unemployment has not stayed this high, this long, since the 1930s. But could the New Normal, as this long economic slog has been called, be growing old? That is the surprising new view of a number of economists in academia and on Wall Street, who are now predicting something the United States has not experienced in years: healthier, more lasting growth. The improving outlook is one reason the stock market has risen so sharply this year, even if street-level evidence for a turnaround, like strong job growth and income gains, has been scant so far. A prominent convert to this emerging belief is Tyler Cowen, an economics professor at George Mason University near Washington and author of “The Great Stagnation,” a 2011 bestseller, who has gone from doomsayer to a decidedly more optimistic perspective. He is not predicting an imminent resurgence. Like most academic economists, Cowen focuses on the next quarter-century rather than the next quarter. But new technologies like artificial intelligence and online education, increased domestic energy production, and slowing growth in the cost of health care have prompted Cowen to reappraise the country’s prospects. “It’s better than it looked,” Cowen said. “Technological progress comes in batches and it’s just a little more rapid than it looked two years ago.” His next book, “Average Is Over: Powering America Beyond the Age of the Great Stagnation,” is due out in September. Certainly, there are significant national headwinds that will not abate anytime soon, including an aging population, government austerity, the worst income inequality in nearly a century, and more than 4 million long-term unemployed workers. These and other forces prompted some leading economists, led by Robert J. Gordon of Northwestern, to conclude not long ago that the arc of American economic growth for centuries was over, to be replaced by decades of stagnation. Productivity might grow steadily, Gordon argued, but the benefits will not flow to most Americans. Other analysts are challenging that perspective, which they said was colored, in part, by the severe downturn that hit the global economy more than five years ago. And some of them now see a brighter outlook right around the corner, not just far into the future. Two widely followed economic forecasters, Morgan Stanley and IHS Global Insight, have both increased their estimates for growth in recent days. “It’s been a long time coming,” said Nariman Behravesh, chief economist at IHS. “There is more optimism about the US and in particular about the second half of this year and 2014. Three months ago, we wouldn’t have come to that same conclusion.”

### 1ar immigration

#### The leadership won’t cave despite the ‘GOP image’ argument and Obama pressure fails

**Debevec, 10/27/13** (Nicole, UPI, “Politics 2014: October 2013 helps shape message for November 2014”

Read more: <http://www.upi.com/Top_News/US/2013/10/27/Politics-2014-October-2013-helps-shape-message-for-November-2014/UPI-80101382859000/#ixzz2j0zRTWOg>)

Insiders told Roll Call they're skeptical the splintered Republican caucus can get something done on immigration reform any time soon.

Sources familiar with the thinking of Republican leaders and the unruly conservatives who clash with them are pessimistic about the party's ability to unite, even though immigration reform enjoys popular support within the party and voters overall.

"I would ask these immigration proponents, 'Does our party look like it's doing a good job of actively managing our favorables?'" one GOP aide said. "Does the [Republican National Committee] want us to do something? Sure it does, to give them talking points headed into 2016, making the party look like it's more reasonable and in tune with demographics a Republican presidential candidate might need. Is that something that's actually viable in the House? No. It's not."

Another Republican aide told Roll Call, "There is no chance the House brings anything to a vote. I'm pretty confident you don't have anyone in Republican leadership in the House telling you it would be good to vote on it. Just not going to happen, no matter how much [Obama] wants to change the debate to that issue."

#### Their uniqueness evidence is only public posturing by Democratic strategists for election reasons – privately they admit immigration has no chance

**Miller, 10/24/13** (Zeke, Time, “Obama’s New Immigration Pivot Isn’t About Immigration”

<http://swampland.time.com/2013/10/24/obamas-new-immigration-pivot-isnt-about-immigration/>

President Obama called Thursday on the Republican-controlled House of Representatives to take up the comprehensive immigration bill passed by the Senate. “This is not an idea whose time has come,” Obama said, “This is an idea whose time has been around for years now. . . and this is the moment when we should be able to the job done.”

The move is the latest in a pattern of efforts by Democrats to increase political pressure on Republicans, who have already ruled out the Senate bill, in the hopes of using the issue in the 2014 and 2016 elections. President Barack Obama took the podium in the White House State Dining Room last week to mark the end of the shutdown and laid out his priorities for the coming months. At the top of the list was a renewed push for comprehensive immigration reform. Congressional Democrats likewise are onboard with the new push. “I look forward to the next venture, which is making sure we do immigration reform,” Senate Majority Leader Harry Reid said last week.

But privately, administration officials and congressional Democrats admit that they are unlikely to get immigration reform through Congress any time soon. Minutes after Obama spoke, Brendan Buck, a spokesman for Speaker John Boehner released a statement rejecting Obama’s calls for a comprehensive plan. “The House will not consider any massive, Obamacare-style legislation that no one understands,” Buck wrote. “Instead, the House is committed to a common sense, step-by-step approach that gives Americans confidence that reform is done the right way.”

## 2ac

#### Extinction

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

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

### Afghanistan (2ac)

#### Targeted killings are key to Afghan stability post-withdrawal

Byman 13 (Daniel, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4)

In places where terrorists are actively plotting against the United States, however, drones give Washington the ability to limit its military commitments abroad while keeping Americans safe. Afghanistan, for example, could again become a Taliban-run haven for terrorists after U.S. forces depart next year. Drones can greatly reduce the risk of this happening. Hovering in the skies above, they can keep Taliban leaders on the run and hinder al Qaeda's ability to plot another 9/11.

#### Extinction

Carafano 10 (James Jay is a senior research fellow for national security at The Heritage Foundation and directs its Allison Center for Foreign Policy Studies, “Con: Obama must win fast in Afghanistan or risk new wars across the globe,” Jan 2 http://gazettextra.com/news/2010/jan/02/con-obama-must-win-fast-afghanistan-or-risk-new-wa/)

We can expect similar results if Obama’s Afghan strategy fails and he opts to cut and run. Most forget that throwing South Vietnam to the wolves made the world a far more dangerous place. The Soviets saw it as an unmistakable sign that America was in decline. They abetted military incursions in Africa, the Middle East, southern Asia and Latin America. They went on a conventional- and nuclear-arms spending spree. They stockpiled enough smallpox and anthrax to kill the world several times over. State-sponsorship of terrorism came into fashion. Osama bin Laden called America a “paper tiger.” If we live down to that moniker in Afghanistan, odds are the world will get a lot less safe. Al-Qaida would be back in the game. Regional terrorists would go after both Pakistan and India—potentially triggering a nuclear war between the two countries. Sensing a Washington in retreat, Iran and North Korea could shift their nuclear programs into overdrive, hoping to save their failing economies by selling their nuclear weapons and technologies to all comers. Their nervous neighbors would want nuclear arms of their own. The resulting nuclear arms race could be far more dangerous than the Cold War’s two-bloc standoff. With multiple, independent, nuclear powers cautiously eyeing one another, the world would look a lot more like Europe in 1914, when precarious shifting alliances snowballed into a very big, tragic war. The list goes on. There is no question that countries such as Russia, China and Venezuela would rethink their strategic calculus as well. That could produce all kinds of serious regional challenges for the United States. Our allies might rethink things as well. Australia has already hiked its defense spending because it can’t be sure the United States will remain a responsible security partner. NATO might well fall apart. Europe could be left with only a puny EU military force incapable of defending the interests of its nations.

## Off

### AT: T

#### Counter interpretation – congressional authorization

Bradley and Goldsmith, 5 (Curtis and Jack, professor of law at the University of Virginia and professor of law at Harvard, 118 Harvard Law Review 2047, May, lexis)

Second, under Justice Jackson's widely accepted categorization of presidential power, n5 "the strongest of presumptions and the widest latitude of judicial interpretation" attach "when the President acts pursuant to an express or implied authorization of Congress." n6 This  [\*2051]  proposition applies fully to presidential acts in wartime that are authorized by Congress. n7 By contrast, presidential wartime acts not authorized by Congress lack the same presumption of validity, and the Supreme Court has invalidated a number of these acts precisely because they lacked congressional authorization. n8 The constitutional importance of congressional approval is one reason why so many commentators call for increased congressional involvement in filling in the legal details of the war on terrorism. Before assessing what additional actions Congress should take, however, it is important to assess what Congress has already done. Third, basic principles of constitutional avoidance counsel in favor of focusing on congressional authorization when considering war powers issues. n9 While the President's constitutional authority as Commander-in-Chief is enormously important, determining the scope of that authority beyond what Congress has authorized implicates some of the most difficult, unresolved, and contested issues in constitutional law. n10 Courts have been understandably reluctant to address the scope of that constitutional authority, especially during wartime, when the consequences of a constitutional error are potentially enormous. n11 Instead,  [\*2052]  courts have attempted, whenever possible, to decide difficult questions of wartime authority on the basis of what Congress has in fact authorized. n12 This strategy makes particular sense with respect to the novel issues posed by the war on terrorism.

#### WE include all the justifications for targeted killing

Marcy Wheeler 13, founder of EmptyWheel – a national security blog, PhD in comparative lit, The AUMF Fallacy, <http://www.emptywheel.net/2013/02/18/the-aumf-fallacy/>

And ultimately, we should look to what Stephen Preston — the General Counsel of the agency that actually carried out the Awlaki killing — has to say about where the CIA gets its authorization to engage in lethal covert operations.

Let’s start with the first box: **Authority to Act under U.S. Law**.

First, we would confirm that **the contemplated activity is authorized by the President in the exercise of his powers under Article II of the U.S. Constitution, for example, the President’s responsibility as Chief Executive and Commander-in-Chief to protect the country from an imminent threat of violent attack**. This would not be just a one-time check for legal authority at the outset. Our hypothetical program would be engineered so as to ensure that, through careful review and senior-level decision-making, each individual action is linked to the imminent threat justification.

#### AFF ground - limits out most drones AFFs in their entirety

Alston 11 – Professor of Law @ NYU

(Philip, “ARTICLE: The CIA and Targeted Killings Beyond Borders,” 2 Harv. Nat'l Sec. J. 283)

[\*286] The CIA's drone-based killing programs have so far killed well in excess of 2,000 persons in Pakistan, and it has been involved in such drone programs in at least four other countries. This number is likely to expand significantly in the years ahead as a result of a combination of factors, including the perceived effectiveness of drone killings, the relatively low costs involved, shrinking overall defense budgets, a diminishing appetite for traditional warfare, the very low risk to United States personnel, the rapidly growing sophistication of tracking, targeting, and delivery technologies, and major investments aimed at further accelerating technological breakthroughs.

### AT: War Powers DA

#### Plan bolsters the cred of threats

Waxman 8/25/13 (Matthew Waxman is a law professor at Columbia Law School, where he co-chairs the Roger Hertog Program on Law and National Security. He is also Adjunct Senior Fellow for Law and Foreign Policy at the Council on Foreign Relations and a member of the Hoover Institution Task Force on National Security and Law. He previously served in senior policy positions at the State Department, Defense Department, and National Security Council. After graduating from Yale Law School, he clerked for Judge Joel M. Flaum of the U.S. Court of Appeals and Supreme Court Justice David H. Souter, “The Constitutional Power to Threaten War” Forthcoming in YALE LAW JOURNAL, vol. 123, 2014, August 25th DRAFT)

Part II draws on several strands of political science literature to illuminate the relationship between war powers law and threats of force. As a descriptive matter, the swelling scope of the president’s practice in wielding threatened force largely tracks the standard historical narrative of war powers shifting from Congress to the President. Indeed, adding threats of force to that story might suggest that this shift in powers of war and peace has been even more dramatic than usually supposed, at least in terms of how formal congressional checks are exercised.

Part II also shows, however, that congressional checks and influence – even if not formal legislative powers – operate more robustly and in different ways to shape strategic decision-making than usually supposed in legal debates about war powers, and that **these checks and influence can enhance the potency of threatened force**. This Article thus fits into a broader scholarly debate now raging about the extent to which the modern President is meaningfully constrained by law, and in what ways. 20 Recent political science scholarship suggests that Congress already exerts constraining influences on presidential decisions to threaten force, even without resorting to binding legislative actions. 21 Moreover, when U.S. security strategy relies heavily on threats of force, credibility of signals is paramount. Whereas it often used to be assumed that institutional checks on executive discretion undermined democracies’ ability to threaten war credibly, some **recent political science scholarship** also offers reasons to expect that congressional political constraints can actually bolster the credibility of U.S. threats. 22

#### Plan doesn’t spillover – they have no evidence about codification

Rosa Brooks, Georgetown University law center professor, 5/13/2013, ARMED CONFLICT AND MILITARY FORCE, Lexis

Expressly limiting the AUMF's geographic scope to Afghanistan and/or other areas in which U.S. troops on the ground are actively engaged in combat, for instance, would clarify that the ongoing armed conflict (and the applicability of the law of armed conflict) is limited to these more traditional battlefield situations. As noted above, **such a geographical limitation would by no means undermine the president's ability to use force to protect the U**nited **S**tates **from threats emanating from outside of the specified region**. Such a geographical limitation would merely make it clear that any presidential desire to use force elsewhere would require him either to request an additional narrowly drawn congressional authorization to use force, or would require that any non-congressionally authorized use of force be justified -- constitutionally and internationally - on self defense grounds, by virtue of the gravity and imminence of a specific threat.

#### 1nc Syria argument is backwards

Nather and Palmer, 9-1-13

[David and Anna, Politico, Bushies fear Obama weakening presidency, <http://www.politico.com/story/2013/09/bushies-fear-obama-weakening-presidency-96143.html>]

President Barack **Obama** just **turned decades of debate over presidential war powers on its head**. Until Saturday, when Obama went to Congress to ask for permission to strike Syria, the power to launch military action had been strongly in the hands of the commander in chief. Even the 1973 War Powers Resolution allows bombs to start falling before the president has to ask Congress for long-term approval. For three decades after Watergate, conservatives like Dick Cheney and those of his ilk sought to increase executive branch power that they felt had been eroded by liberal congressional reformers. George W. Bush’s legal team crafted controversial opinions that emboldened the White House on a wide range of national security areas, from interrogation to surveillance. That makes the move by Obama to hand a piece of the messy situation in Syria to Congress a clear step in the other direction — an abdication of power to Congress at a moment when he has no good solutions. And even if Obama ultimately balks at Congress if they vote down his ask, **prominent conservatives who fueled the expansion of presidential power** — especially Bush administration alums — **are beside themselves, arguing that** Obama has weakened the presidency.

#### Restrictions inevitable---the aff prevents haphazard ones which are worse

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several years.

### Add on

#### 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.

### AT: Soft Law CP

condo

#### CR links to politics

**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.

#### Perm do the CP – second plan not competitive

Louis Fisher, Scholar in Residence at the Cato Constitution Project, 2009, The Law: The Baker-Christopher War Powers Commission, Presidential Studies Quarterly Volume 39, Issue 1

The commission devotes a section to the War Powers Resolution (WPR), summarizing the objections that have been directed to it. Elsewhere, I have criticized the WPR as an abdication of congressional power. It is constitutionally indefensible to permit the president to go to war for whatever reason, whenever and wherever, for up to 60 to 90 days (Fisher and Adler 1998). The commission report does not offer that objection. Instead, it states that constitutional scholars “generally agree that Section 5(c) of the Resolution is unconstitutional in light of the Supreme Court's subsequent decision in INS v. Chadha, 462 U.S. 919 (1983). Section 5(c) provides that Congress may compel the President to remove troops—otherwise lawfully committed to the battlefield—merely by passing a concurrent resolution” (National War Powers Commission 2008, 23). A concurrent resolution must pass each chamber but is not presented to the president for signature or veto. Therefore, it has no force of law. Oddly, the commission's draft bill relies on congressional action through a concurrent resolution.

#### Doesn’t solve the aff

#### First – allied coop – only codification solves allied concerns – that’s Dworkin

#### Second – norms – Congressional codification is the only way to establish sufficient legal clarity to unregulated killing – that’s Corn

#### The CP is hollow rhetoric – it sends mixed international signals and the executive won’t listen

**Kriner, 10 –** associate professor of political science and the Director of Undergraduate Studies at Boston University(Douglas, After the Rubicon: Congress, Presidents, and the Conduct of Waging War, p. 155-156)

The models also investigate the effect of legislative actions to curtail presidential discretion in the conduct of military affairs on a venture’s expected duration. However, not all legislative actions to curtail an ongoing operation have equal legal or political weight. To capture some of this variance in the types of actions members introduce, the analysis divides all congressional challenges into two categories based on whether or not the demands they place on the president are legally binding. Concurrent resolutions or provisions expressing the sense of Congress are primarily vehicles for position taking and public posturing, not substantive assertions of congressional influence over the conduct of military affairs. Through these nonbinding actions, the president’s opponents in **Congress can criticize** the executive’s deployment of troops, call for their return home, or saddle the president with reporting and other requirements while avoiding the costs associated with legally binding actions, such as exposing members to countercharges of failing to support the troops in the field or triggering the interbranch constitutional struggle inevitably touched off by an effort to invoke the War Powers Resolution. These open expressions of congressional criticism may have some effect on raising the political costs to the president. However, because such actions fail to carry any concrete consequences for the president and hence are often seen as hollow rhetoric, their impact should be limited. Nonbinding resolutions do not put new alternatives to the administration’s policy onto the national agenda, and therefore they do not represent serious institutional challenges to the president’s preeminence in military affairs. Similarly, the signals nonbinding actions send to foreign actors are also ambiguous. On the one hand, such actions are publicly visible signs of congressional unease over the administration’s conduct of a use of force; on the other, they demonstrate Congress’s unwillingness to use the formal legislative means at its disposal to rein in presidential conduct of which it does not approve. Consequently, the effects of nonbinding actions to curtail a conflict should be limited, if they have any influence at all.

#### Permutation do both:

#### Statutory action is key to clarity

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 U**nited **S**tates **feel safer, but the process eschews what gives a state its greatest safety: the rule of law**.

#### The CP is uniquely vulnerable to future rollback

**Harvard Law Review, 11** (“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

Another important aspect of statutory interpretation not fully addressed here is the impact of changing institutional preferences over time. As new facts emerge and the contexts in which a statute must be applied change, and as the House, Senate, and presidency change hands, **each political institution may change its mind about how an ambiguous statute ought to be interpreted**. One crucial element of the proposal, therefore, is the power of each political branch to change its position just as easily as it adopted the position in the first place. n89 This capacity for revision is not a perfect solution - indeed, if the Senate adopts an interpretation that a majority of its members eventually regret, its very high legislative enactment costs may make it difficult for that majority to alter its interpretation. Even so, this Note's proposal is no more "ossifying" than legislation itself, and the other chamber of Congress or the President could veto deference and thus return the question to the judiciary for a de novo interpretation.

#### Soft law won’t check the executive – perceived as too weak

**Swaine, 10 -** Associate Professor, George Washington University Law School (Edward, “THE POLITICAL ECONOMY OF YOUNGSTOWN” <http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1017&context=faculty_publications>)

A second, more ambitious approach would be to supplement the Youngstown framework by adding to the congressional toolkit. For example, one might enhance Justice Jackson's solicitude for informal congressional will by embracing legislative soft law. Within the framework itself, reckoning congressional preferences might be improved by distinguishing more carefully among possible indicia: for example, as others have argued, a concurrent resolution may be a better signal of congressional views than even a statute (since in the absence of presentment, there is no need to incorporate the president's preferences), and it is certainly more refined than legislative history. n312 Outside the framework's bounds, courts might also invoke the more reliable species of soft law in interpreting statutes. n313 Such tactics are hardly risk free, of course, even putting aside constitutional and legal process objections. Soft law might just as easily enable presidential unilateralism: if the House or Senate choose to adopt a one-chamber resolution supporting presidential action, that might well count toward Category One, at least if the framework were made more amenable to soft law. Congress might also employ soft law measures as a less taxing alternative to adopting statutes, which might let it off the hook too easily - and, ultimately, diminish congressional constraints on the executive branch. n314

#### Ackerman’s remedy ignores that future Congresses won’t enforce framework statutes

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian,Terror in the Balance: Security, Liberty, and the Courts p. 167-168)

Third, Ackerman’s statute is a poorly designed cure for the ailment that he diagnoses. If his framework statute is needed to prevent panicking legislators from deferring to bad executive actions, then it seems unlikely that it can have that effect. A panicky Congress can simply ignore the supermajoritarian escalator and approve new statutory powers or a new statutory framework by majority rule; the PATRIOT Act, which Ackerman abhors, could have simply included one panicky section sweeping away any extant framework statutes limiting presidential power. Ackerman needs a stronger commitment mechanism than a statute; but he fails to supply one.

### AT: Immigration DA

#### Immigration not key to economy

Mike Flynn 13, Breitbart reporter, July 13, "White House Oversells Economic Benefits of Immigration Reform," www.breitbart.com/Big-Government/2013/07/13/white-house-oversells-economic-benefits-of-immigration-reform

On Saturday, President Obama used his weekly radio address to tout the economic benefits of passing the Senate immigration reform bill. On Wednesday, the White House issued a report saying the immigration reform bill would both trim the deficit and boost the economy over the next two decades. Even accepting the Administration's numbers at face-value, the report shows how little would be gained economically from reform in the long-term. In the short-term, however, there are some very real costs ignored by the White House.¶ The White House report draws heavily from a CBO analysis on the economic impact of the Senate bill, released in mid-June. The CBO estimates that, under the Senate bill, in 20 years, the nation's GDP would be $1.4 trillion higher than it otherwise would be if the bill didn't pass. The Administration claims the bill will grow the economy by 5.4% in that time-frame. ¶ Which sounds impressive, until one realizes that we are talking about a 20 year window here. An incremental growth of 5% over two decades isn't exactly an economic bonanza. In that time-span the US economy will generate $300-500 trillion in total economic impact. An extra few trillion is at the margins or the margins.¶ Worse, the economic benefits the CBO estimates will accrue only begin at least a decade after enactment. Through 2031, Gross National Product, which measures the output of US residents and firms, would be lower than it otherwise would be. In ten years, the per capita GNP would be almost 1% lower than without the Senate bill. ¶ The CBO analysis also shows that average wages of American workers would be lower than they otherwise would be through at least the first 10 years of the law's enactment. The unemployment rate would also rise for the first decade, due to a large increase in the labor force.¶ Supporters and opponents of immigration reform both overstate its economic impact. In a nation of more than 300 million people and a $16 trillion economy, any economic impact is going to be felt at the margins. The CBO, however, finds that, for at least a decade, the economic effects of the Senate bill are negative at the margins. After 2 decades, the CBO says the effects become positive at the margin. ¶ A decade of relatively worse economic performance to secure marginally better performance 20 years from now is not an obviously good bargain. One can make many argument in favor of immigration reform. Economic growth, however, seems a very weak one.

#### Decline doesn’t cause war

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

#### It’s dead, there won’t be a vote and the House will cut days from the calendar instead

**Sherman, 10/27/13** (Jake, Politico, “House leaders plot new fall GOP strategy” <http://www.politico.com/story/2013/10/house-republican-strategy-98907.html?ml=po_r>)

For the first time in months, House Republicans are facing no immediate cataclysmic deadlines, and GOP leaders are struggling to come up with an agenda to fill the 19 legislative days that are left in 2013.

Need evidence? The House votes Monday evening and will finish its work week Wednesday. After that, the House is out of session until Nov. 12. Internally, Speaker John Boehner (R-Ohio) and senior Republicans aren’t discussing coming back early from the scheduled recess, but instead, they are wondering if they’ll cancel some of the remaining days in session.

After an exhausting October full of late-night and weekend votes, the slower pace is a sharp change for the House.

Having just gotten through a grueling debt ceiling and government funding fight, the next big deadline is Dec. 13, when a bipartisan group of House and Senate budget negotiators are scheduled to report whether they have reached an agreement. There appears to be a stark split within Republican leadership about whether the budget process Rep. Paul Ryan (R-Wis.) is starting has any chance of succeeding. Some House Republicans believe these bicameral talks are a political trap, where Democrats are going to insist on raising taxes. Other top House GOP aides think it’s the best way to wrap up a deal to fund the government through the 2014 election cycle and remove the issue from the front pages until after voters have gone to the polls.

Throughout leadership and the House Republican Conference there’s a sense of bewilderment and confusion about what leadership will move to next. The fiscal fights with President Barack Obama and Senate Democrats have pushed the GOP’s numbers to barrel-scraping lows. And there’s a real sense that Republicans could lose control of the House next year.

Yet there’s not much going on in the Capitol.

The future of Obamacare — and how far to go in trying to undo the 2010 Affordable Care Act — remains at center stage for House Republicans.

On Monday, House GOP chiefs of staff are meeting with leadership and the House Administration Committee on how members and staff will handle enrollment in the health care exchanges mandated under ACA. Boehner and House Republicans unsuccessfully pushed legislation that would end the government’s employer contribution to health care for lawmakers and aides. Now that they have to sign up, House Republicans face numerous questions on how to do so and who is covered.

In the meantime, it appears that the House will — once again — vote to delay portions of Obamacare, setting up another fight with Senate Democrats and the White House.

In an appearance on C-SPAN’s “Newsmakers,” Rep. Fred Upton (R-Mich.), chairman of the House Energy and Commerce Committee, said there are discussions to further delay the date by which all Americans must have health insurance. Health and Human Services Secretary Kathleen Sebelius is expected to testify in front of Upton’s panel Wednesday.

“We learned a lot this last week; we’re going to learn more, I presume, this next week. And you know, this is people’s health care; it’s a lot of money out of their own pocket,” Upton said in the C-SPAN interview. “Lot of changes are there, too. And where this leads us, time will tell, but I think we’re going to try to take this evidence that we saw [last] week and see what adjustments we might be able to make.”

No date has been set yet for this vote, senior House GOP aides said.

Republicans will also spend the remaining days of 2013 pushing for Sebelius to step down over the botched rollout of the Obamacare website.

“The president has been poorly served in the implementation of his own signature legislation,” House Oversight and Government Reform Committee Chairman Darrel Issa (R-Calif.) said during an appearance on “Fox News Sunday.” “If Kathleen Sebelius can’t reorganize to meet his agenda, then she shouldn’t be there.”

Democrats on Capitol Hill also have been highly critical of the Obama administration’s handling of the program, although no one in the party has called for her resignation, and there is no sign that Sebelius’s departure is imminent.

The Ways and Means Committee also has an Obamacare oversight meeting scheduled for Tuesday. Marilyn Tavenner, administrator of the Centers for Medicare & Medicaid Services, is set to appear at that session. Tavenner has held hundreds of meetings with White House officials over the past several years, including some with Obama himself, which Republicans will use to argue that the president and senior administration aides should have been — or already were — aware of the looming enrollment problems at HealthCare.gov for months.

One major plus in this round of Obamacare-related fights is the number of Senate Democrats — especially those up for reelection in red states in 2014 — who have said they would back a delay in the individual mandate or the penalty for failing to sign up for health insurance. Sen. Joe Manchin (D-W.Va.) is working with Georgia Republican Sen. Johnny Isakson on a bill calling for a one-year delay of the individual mandate. Sen. Jeanne Shaheen (D-N.H.) and nine other Senate Democrats want to extend the enrollment deadline past March 31, citing problems that consumers are having in signing up for the program, although they remain supportive of Obamacare overall.

The White House has already stated that anyone who does not have health insurance by the March 31 deadline will not be penalized.

“The rollout has been a disaster,” Shaheen said Sunday on CBS’s “Face the Nation.” “My goal is to fix the Affordable Care Act, to make sure people can get that access to health care. Unlike a lot of the proposals that we’ve seen from people who want to repeal it, make sure it doesn’t work, I want it to work.”

The House will take up several veteran-related measures this week as well as a resolution of disapproval on Obama’s suspension of the debt ceiling limit. That symbolic measure will pass the House, most likely with some Democratic votes, but will be derailed in the Senate. In addition, the House will vote on several measures on financial services industry regulation during the abbreviated week.

If there is no budget agreement with Obama and Democrats prior to the Jan. 15 expiration of the current government funding bill, House Republicans could push for a vote on a continuing resolution funding bill at $967 billion through the end of FY 2014, GOP sources said. That is the post-sequester funding level, and is likely the highest amount that House Republicans could approve barring a larger fiscal deal. There has been some discussion of whether the House should adopt such a measure and then adjourn, leaving Senate Majority Leader Harry Reid (D-Nev.) and the White House to approve it or face a government shutdown.

Yet considering how badly Boehner and House Republicans fared politically during this month’s 16-day shutdown, such a move is considered unwise by many GOP lawmakers, Republican aides said. Reid could amend such a bill and send it back to the House, potentially at higher spending levels, throwing the issue back on Boehner.

House Republicans will push forward on energy-related issues as well, according to GOP sources. The House could vote again on legislation calling for construction of the Keystone XL pipeline as well as measures allowing the expansion of fracking for oil and gas exploration.

Here’s what won’t get done: immigration reform. The process is completely stalled, and many are pronouncing it dead. House Republican leadership has no plans to bring any bill to the floor — even one to bulk up border security — because of concerns among the rank and file that it could be forced into a bad deal with Obama and the Democratic-controlled Senate.

#### Won’t pass – no vote and every other agenda item thumps it

**Berman, 10/25/13** (Russell, “GOP comfortable ignoring Obama pleas for vote on immigration bill” The Hill, <http://thehill.com/homenews/house/330527-gop-comfortable-ignoring-obama-pleas-to-move-to-immigration-reform>)

For President Obama and advocates hoping for a House vote on immigration reform this year, the reality is simple: Fat chance.

Obama repeatedly since the shutdown has sought to turn the nation’s focus to immigration reform and pressure Republicans to take up the Senate’s bill, or something similar.

But there are no signs that Republicans are feeling any pressure.

Speaker John Boehner (R-Ohio) has repeatedly ruled out taking up the comprehensive Senate bill, and senior Republicans say it is unlikely that the party, bruised from its internal battle over the government shutdown, will pivot quickly to an issue that has long rankled conservatives.

Rep. Tom Cole (R-Okla.), a leadership ally, told reporters Wednesday there is virtually no chance the party would take up immigration reform before the next round of budget and debt ceiling fights are settled. While that could happen by December if a budget conference committee strikes an agreement, that fight is more likely to drag well in 2014: the next deadline for lifting the debt ceiling, for example, is not until Feb. 7.

“I don’t even think we’ll get to that point until we get these other problems solved,” Cole said.

He said it was unrealistic to expect the House to be able to tackle what he called the “divisive and difficult issue” of immigration when it can barely handle the most basic task of keeping the government’s lights on.

“We’re not sure we can chew gum, let alone walk and chew gum, so let’s just chew gum for a while,” Cole said.

In a colloquy on the House floor, Minority Whip Steny Hoyer (D-Md.) asked Majority Leader Eric Cantor (R-Va.) to outline the GOP's agenda between now and the end of 2013.

Cantor rattled off a handful of issues – finishing a farm bill, energy legislation, more efforts to go after ObamaCare – but immigration reform was notably absent.

#### This conserves capital

**Specter 9** (Arlen, United States Senator – Pennsylvania, “The Need to Roll Back Presidential Power Grabs”, The New York Review of Books, 56(8), 5-14, http://www.nybooks.com/articles/22656)

These signing statements are outrageous, intruding on the Constitution's delegation of "all legislative powers" to Congress. The legislation I introduced in 2006 would have given Congress standing to challenge the constitutionality of signing statements, but it has until now failed to muster the veto-proof majority it would surely require. The executive branch operates free of such internal dissent. Although John McCain promised to drop signing statements altogether, Barack Obama, while deploring Bush's practice, said during the campaign that "no one doubts that it is appropriate to use signing statements to protect a president's constitutional prerogatives."[[13]](http://www.nybooks.com/articles/22656" \l "fn13) Here again, the president does not need to convince any colleagues to issue a signing statement, he needs only put pen to paper. Indeed, two days after criticizing President Bush's signing statements, President Obama issued one of his own regarding the Omnibus Appropriations Act of 2009. Citing among others his "commander in chief" and "foreign affairs" powers, he refused to be bound by at least eleven specific provisions of the bill including one long-standing rider to appropriations bills designed to aid congressional oversight.[[14]](http://www.nybooks.com/articles/22656" \l "fn14) As I told *TheWall Street Journal*, "We're having a repeat of what Democrats bitterly complained about under President Bush," and if President Obama "wants to pick a fight, Congress has plenty of authority to retaliate."[[15]](http://www.nybooks.com/articles/22656" \l "fn15)

#### Even if – it avoids blame but putting Obama on record against the plan

**Kinkopf 6** (Neil, Professor of Law – Georgia State University, “Signing Statements and the President’s Authority to Refuse to Enforce the Law”, The Journal of the ACS Issue Groups, June, http://www.acslaw.org/files/Kinkopf-Signing%20Statements-Jun%202006-Advance%20Vol%201.pdf)

Historically, signing statements have served a largely innocuous and ceremonial function. They are issued by the President to explain his reasons for signing a bill into law. A signing statement thus serves to promote public awareness and discourse in much the same way as a veto message. Controversy arises when a signing statement is used not to extol the virtues of the bill being signed into law, but to simultaneously condemn a provision of the new law as unconstitutional and announce the President’s refusal to enforce the unconstitutional provision. This refusal to enforce laws represents a controversial exercise of presidential power, but it is crucial to keep this controversy distinct from the vehicle by which that power is announced—the signing statement. There is nothing inherently wrong with or controversial about signing statements. Most do not contain an assertion of presidential power. For those that do, the signing statement itself ironically serves the laudable function of promoting accountability. Even if one rejects the idea that the President may refuse to enforce a law, at least the President is openly declaring what he plans to do. Put differently, if the President is to sign a bill into law with his fingers crossed, better that they be crossed where we can see them than that they be crossed behind his back. The controversy, then, is not over the use of signing statements but over the assertion of a non-enforcement power that is sometimes declared in signing statements.

#### Obama won’t fight the plan

Kwame Holman 13, congressional correspondent for PBS NewsHour; citing Rosa Brooks, Prof of Law at Georgetown University Law Center, former Counselor to the Under Secretary of Defense for Policy, former senior advisor at the US Dept of State, “Congress Begins to Weigh In On Drone Strikes Policy,” http://www.pbs.org/newshour/rundown/2013/04/congress-begins-to-weigh-in-on-drone-strikes-policy.html

In an October 2012 interview, Mr. Obama said of the drone program, "we've got to ... put a legal architecture in place, and we need Congressional help in order to do that, to make sure that not only am I reined in but any president's reined in, in terms of some of the decisions that we're making."¶ The president has not taken up the drone issue in public again but White House press secretary Jay Carney, asked Wednesday about the drone hearing, said, "We have been in regular contact with the committee. We will continue to engage Congress...to ensure our counterterrorism efforts are not only consistent with our laws and system of checks and balances, but even more transparent to the American people and the world."¶ And after the hearing, Brooks, too, sounded optimistic.¶ "My own sense is that the executive branch is open to discussion of some kind of judicial process," she said.¶ While some experts have argued for court oversight of drone strikes before they're carried out, Brooks sides with those who say that would be unwieldy and unworkable.¶ Brooks says however an administration that knows its strikes could face court review after the fact -- with possible damages assessed -- would be more responsible and careful about who it strikes and why

#### Momentum is dead – Obama poisoned the well

**Palmer, 10/25/13** (Anna, Politico, “House GOP plans no immigration vote in 2013”

<http://www.politico.com/story/2013/10/house-gop-plans-no-immigration-vote-in-2013-98824.html>

Other prominent immigration supporters like Sen. Marco Rubio (R-Fla.) have also backed off any deal, saying the Obama administration has “undermined” negotiations by not defunding his signature health care law. Rep. Raul Labrador (R-Idaho) went further, saying Obama is trying to “destroy the Republican Party” and that GOP leaders would be “crazy” to enter into talks with Obama.

That rhetoric combined with signals in private conversations with lawmakers and staff has led some immigration advocates to say they see the writing on the wall and they aren’t going to invest heavily until there’s more momentum.

“After Obama poisoned the well in the fiscal showdown and [House Minority Leader Nancy] Pelosi now is actively trying to use immigration as a political weapon, the chances for substantive reforms, unfortunately, seem all but gone,” said one GOP operative involved in the conservative pro-immigration movement.

#### Boehner won’t waive the Hastert rule

**Pareene, 10/24/13 –** politics writer for Salon (Alex, Salon, “Immigration reform still incredibly unlikely to happen this year” <http://www.salon.com/2013/10/24/immigration_reform_still_incredibly_unlikely_to_happen_this_year/singleton/>

The Senate bill would possibly pass the House with Democratic votes, but John Boehner already explicitly promised not to let that happen. And it’s very hard to imagine John Boehner specifically deciding to exacerbate a deep division in his caucus right before the budget fights are scheduled to happen (again). So that’s probably it for anything important happening in 2013. Next year, maybe? It’s possible, I guess, but I think the House of Representatives is more likely to initiate impeachment proceedings in 2014 than it is to pass comprehensive immigration reform including a path to citizenship.

#### Piecemeal means Democrats block

**Didymus, 10/25/13 -** JOHNTHOMAS DIDYMUS is based in Lagos, Lagos, Nigeria, and is an Anchor for Allvoices(Johnthomas, “House GOP plans to punish Obama after shutdown by not voting immigration reform” <http://www.allvoices.com/contributed-news/15820604-house-gop-plans-to-punish-obama-after-shutdown-by-not-voting-immigration-reform>

Despite the push by the Obama administration to get comprehensive immigration reform passed by the end of the year, there are signs House Republicans will refuse to vote on immigration reform this year.

The enthusiasm of the Obama administration for immigration reform is shown in the fact that before the budget crisis was fully resolved, President Barack Obama’s attention shifted to the challenge of comprehensive overhaul of the nation's immigration system, which he considered the next big issue to tackle after the budget crisis.

But House Republicans are saying that they will punish Obama for refusing to negotiate with them over Obamacare and the debt ceiling by refusing to vote immigration reform in 2013.

Allvoices noted that although House Speaker John Boehner (R-Ohio) said Wednesday that “immigration reform is an important subject that needs to be addressed," his non-committal attitude contrasts with the urgency of the Obama administration.

According to USA Today, there is practically no interest among GOP lawmakers to vote on a comprehensive reform bill. The best chance of anything being done on immigration reform this year is if Republicans can win support of Democrats for their preferred piecemeal bills, all of which exclude a path to citizenship for undocumented immigrants.

Democratic opposition to the piecemeal approach has made Republicans even more pessimistic about the prospects of any move in Congress this year on immigration reform.

The Huffingnton Post reports that Democrats have said unequivocally that they will not support any of the piecemeal bills because they fear that Republicans will skirt the core issues and address only those issues that Republicans are concerned with.

Republicans are concerned about immigration reform issues such as improved border security and legal immigration. The core issue for Democrats is a path to citizenship for undocumented immigrants.

Rep. Joe Garcia (D-Fla.) voiced the concern among Democratic lawmakers when he said, "There is a problem with comprehensive immigration reform, and we know what it is. The idea that that same party who cannot pass anything... is now piecemeal going to do this is a fallacy."

After their defeat in the fiscal crisis, House Republicans loathe the idea of having to negotiate with Senate Democrats and the White House on immigration reform.

#### The plan boosts Obama’s capital without triggering a fight over authority

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 59-60

Presidents and politicos alike have long recognized Congress's ability to reduce the political costs that the White House risks incurring by pursuing a major military initiative. While declarations of war are all but extinct in the contemporary period, Congress has repeatedly moved to authorize presidential military deployments and consequently to tie its own institutional prestige to the conduct and ultimate success of a military campaign. **Such authorizing legislation**, even if it fails to pass both chambers, **creates a sense of** shared legislative-executive responsibility for a military action's success **and provides the president with** considerable political support **for** **his chosen policy** course.34 Indeed, the desire for this political cover—and not for the constitutional sanction a congressional authorization affords—has historically motivated presidents to seek Congress's blessing for military endeavors. For example, both the elder and younger Bush requested legislative approval for their wars against Iraq, while assiduously maintaining that they possessed sufficient independent authority as commander in chief to order the invasions unilaterally.35 This fundamental tension is readily apparent in the elder Bush's signing statement to HJ Res 77, which authorized military action against Saddam Hussein in January of 1991. While the president expressed his gratitude for the statement of congressional support, he insisted that the resolution was not needed to authorize military action in Iraq. "As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution."36

#### PC is irrelevant to immigration

**Nowicki, 10/24/13** (Dan, “Are pleas by Obama hindering the push?” Arizona Republic,

<http://www.azcentral.com/news/politics/articles/20131024pleas-by-obama-hindering-push.html>

Other observers, including Arizona’s two members of the Senate Gang of Eight, suggested that Obama’s powers of persuasion probably are limited with regard to many House Republicans.

“I don’t know if it helps or hurts, to be honest with you,” McCain said Tuesday when asked about a more active Obama role. “I think that the Republican Party understands the majority of Americans want this issue resolved. There are many members of Congress that represent districts where the majority do not support immigration reform, and we understand and respect that.”

John J. “Jack” Pitney Jr., a political scientist at Claremont McKenna College in Southern California, also said rank-and-file House Republicans are more likely to take their cues on immigration reform from their conservative base than from Obama or even the national GOP leaders who want to improve the party’s image with Latino voters.

“For the average House Republican, the Number 1 concern is his or her own district, and most Republicans are not getting much clamor for the liberalization of immigration laws in their own districts,” Pitney said. “You can argue that it’s in the party’s long-term interest to address the issue, but ‘long-term interest’ doesn’t get a vote in primaries and general elections.”

#### Budget negotiations thump

**Wilson, 10/16/13** (Scott, Washington Post, “Obama plans to renew immigration, climate change efforts” <http://www.washingtonpost.com/politics/obama-plans-to-renew-immigration-climate-change-efforts/2013/10/16/d0a96cbe-367b-11e3-be86-6aeaa439845b_story.html>

Now administration officials say they hope to persuade a chastened Republican Party, battered in the polls, to support elements of Obama’s languishing agenda.

“There are things that we know will help strengthen our economy that we could get done before this year is out,” Obama said in a statement Wednesday night. “We still need to pass a law to fix our broken immigration system. We still need to pass a farm bill. And with the shutdown behind us and budget committees forming, we now have an opportunity to focus on a sensible budget that is responsible, that is fair, and that helps hardworking people all across this country.”

But the new fiscal deadlines, looming just months away, mean that much of Obama’s energy in the near term is likely to be consumed by budget talks. Democrats worry that the agreement may set in motion a process that runs out the clock on Obama’s ability to secure other policy gains before the 2014 midterm elections.

#### Health care thumps capital

**Todd, 10/21/13** – NBC News (Chuck, NBC News First Read, “First Thoughts: Admitting there's a problem” <http://firstread.nbcnews.com/_news/2013/10/21/21063152-first-thoughts-admitting-theres-a-problem>

\*\*\* But still not knowing exactly what the problem is: The only question is how long it takes to fix the problem. Two weeks? Not a major long-term problem. Two months, that’s a political five-alarm fire. And this HHS blog post, which says it’s making improvements to the website, might suggest this isn’t a two-week fix. “Our team is bringing in some of the best and brightest from both inside and outside government to scrub in with the team and help improve HealthCare.gov.” To us, that means while they’ve admitted they have a problem, they STILL don’t know what that problem is. We can picture how in the world of government bureaucracy and in this climate of fear of ever taking the blame personally, that these deficiencies could have been kept from the White House and even senior leaders at HHS. But that shouldn’t be the excuse. Somebody either failed to tell the truth to someone up the chain of command, or the White House and HHS knowingly misled reporters about the viability of this web site. The president earned some political capital after the shutdown but instead of using it for immigration or getting a better budget agreement, he may have to use it on health care.

#### Obama has no PC

**Barnes, 11/4/13** – editor of the Weekly Standard (Fred, “The Point of No Return”, The Weekly Standard, <http://www.weeklystandard.com/articles/point-no-return_764703.html>)

\*Language Modified\*

President Obama is facing the abyss. It’s that moment when a president’s plans are overwhelmed by his problems, and he’s relegated to playing defense for the rest of his White House term. Obama’s agenda already lingers near death. His poll numbers have slipped to new lows. His speeches are full of alibis and accusations.

Obama hasn’t reached the point of no return, but he’s close. His biggest problem is the collapse of Obamacare on its launching pad as the entire country watched. And there’s worse trouble ahead. More likely than not, Obamacare will be the dominant issue in the final three-plus years of his presidency. From that, there’s no recovery.

Years on defense—impotent years—have beset even the strongest of presidents. After the Iran-contra scandal broke in November 1986, the Reagan presidency was essentially over. He served two more years and made a triumphant trip to the Soviet Union, but his power was gone. The low point was the overturning of his veto of a highway bill.

Jimmy Carter’s presidency was hardly a powerhouse. Still, it had one shining moment, when the Camp David peace accord between Israel and Egypt was signed in September 1978. What clout Carter had vanished after the “malaise” speech in July 1979. It made him a target of ridicule.

Impeachment in 1998 forced President Clinton into retreat. His popularity remained high, but he abandoned an agenda that included entitlement reform. Even an unexpected Democratic victory in the midterm elections in his second term couldn’t revive his presidency.

In George W. Bush’s case, problems in his second term quickly engulfed his administration. The Iraq war became a bloodbath, his plan for overhauling Social Security had few takers, and he was blamed, unfairly, for the incompetent response to Hurricane Katrina. A troop buildup and adoption of a counterinsurgency strategy saved Iraq from disaster, but otherwise Bush’s second term was marked by futility.

Now, with his presidency in peril, Obama seems unprepared to avert problems (paralysis). The failed startup of Obamacare, its website a “joke” in the view of 60 percent of America in a Fox News poll, caught the president by surprise. He refused to acknowledge the magnitude of the problem, conceding only that healthcare.gov wasn’t working as “smoothly as it was supposed to.” Neither is his presidency.