# 1NC

### 1

#### This topic requires the affirmative to specify a mechanism – this is more than an ASPEC argument, it’s about what the mechanism of the resolution is.

#### Resolutional use of and/or implies a choice of restrictions – aff must specify statutory or judicial

Tennessee Department of Education, Programs of Study¶ 2013-2014 Academic Year¶ http://www.scsk12.org/uf/ctae/documents/ProgramsofStudy/TradeIndustrial\_ProgramArea.pdf

The word "or" signifies that credit can be earned toward the fulfillment of the Program of Study ¶ in either course, but not both. The term “and/or” means a student may choose either course or both courses for credit toward the POS.

#### Vio – the plan does not choose judicial or statutory restrictions

#### Vote negative –

#### Ground – this is a separation of powers topic – best neg arguments are about interbranch relations and circumvention, aff avoids the core controversy by ignoring the topical mechanism

#### CP competition – any aff interpretation makes getting competition impossible – justifies perm do the counterplan against the executive counterplan which makes the aff functionally object fiat

### 2

#### Interpretation – Drones policy varies based on procedure and strategy - signature strikes are a DISTINCT SUBSET from targeted killing

David Hastings Dunn (Reader in International Politics and Head of Department in the Department of Political Science and International Studies at the University of Birmingham, UK) and Stefan Wolff (Professor of International Security at the University of Birmingham in the UK) March 2013, “Drone Use in Counter-Insurgency and Counter-Terrorism: Policy or Policy Component?,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf

Yet an important distinction needs to be drawn here between acting on operational intelligence that corroborates existing intelligence and confirms the presence of a specific pre-determined target and its elimination – so-called ‘targeted strikes’ (or less euphemistically, ‘targeted killings’) – and acting on an algorithmic analysis of operational intelligence alone, determining on the spot whether a development on the ground suggests terrorist activity or association and thus fulfils certain (albeit, to date, publicly not disclosed) criteria for triggering an armed response by the remote pilot of a drone – so-called ‘signature strikes’.6¶ Targeted strikes rely on corroborating pre-existing intelligence: they serve the particular purpose of eliminating specific individuals that are deemed crucial to enemy capabilities and are meant to diminish opponents’ operational, tactical and strategic capabilities, primarily by killing mid- and top-level leadership cadres. To the extent that evidence is available, it suggests that targeted strikes are highly effective in achieving these objectives, while simultaneously generating relatively little blowback, precisely because they target individual (terrorist) leaders and cause few, if any, civilian casualties. This explains, to a significant degree, why the blowback effect in Yemen – where the overwhelming majority of drone strikes have been targeted strikes – has been less pronounced than in Pakistan and Afghanistan.7¶ Signature strikes, in contrast, can still be effective in diminishing operational, tactical and strategic enemy capabilities, but they do so to a certain degree by chance and also have a much higher probability of causing civilian casualties. Using drones for signature strikes decreases the dependence on pre-existing intelligence about particular leaders and their movements and more fully utilises their potential to carry out effective surveillance and respond to the conclusions drawn from it immediately. Signature strikes have been the predominant approach to drone usage in Pakistan and Afghanistan.8 Such strikes have had the effect of decimating the rank and file of the Taliban and their associates – but they have also caused large numbers of civilian casualties and, at a minimum, weakened the respective host governments’ legitimacy and forced them to condemn publicly, and in no uncertain terms, the infringement of their states’ sovereignty by the US. In turn, this has strained already difficult relations between countries which have more common than divergent interests when it comes to regional stability and the fight against international terrorist networks. That signature strikes have a high probability of going wrong and that such failures prove extremely counterproductive is also illustrated by a widely reported case from Yemen, in which twelve civilians were killed in the proximity of a car identified as belonging to an Al-Qa’ida member.9¶ The kind of persistent and intimidating presence of a drone policy geared towards signature strikes, and the obvious risks and consequences involved in repeatedly making wrong decisions, are both counterproductive in themselves and corrosive of efforts that seek to undercut the local support enjoyed by insurgent and terrorist networks, as well as the mutual assistance that they can offer each other. Put differently, signature strikes, in contrast to targeted killings, do anything but help to disentangle the links between insurgents and terrorists.

#### Violation – Aff restricts signature strikes

#### Vote negative - Our interp is a must for precision -- preserves aff limits, neg links and counterplan ground, and specific education

Kenneth Anderson (Professor at Washington College of Law, American University, Hoover Institution visiting fellow, Non-Resident Visiting Fellow at Brookings) Sept 23 2011 “Efficiency in Bello and ad Bellum: Targeted Killing Through Drone Warfare,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1812124>

Although targeted killing and drone warfare are often closely connected, they are not the same and are not always associated with each other. We need to disaggregate the practices of targeted killing from the technologies of drone warfare.¶ Targeted killing consists of using deadly force, characterized by the identification of and then strike against an individual marked to be killed. It is distinguished, among other things, by making an individualized determination of a person to be killed, rather than simply identifying, for example, a mass of enemy combatants to attack as a whole. Since it is a practice that involves the determination of an identified person, rather than a mass of armed and obvious combatants, it is a use of force that is by its function integrated with intelligence work, whether the intelligence actors involved are uniformed military or a civilian agency such as the CIA.¶ Targeted killing might (and does) take place in the course of conventional warfare, through special operations or other mechanisms that narrowly focus operations through intelligence. But it might also take place outside of a conventional conflict, or perhaps far from the conventional battlefields of that conflict, sufficiently so operationally to best be understood as its own operational category of the use of force – “intelligence-driven,” often covert, and sometimes non-military intelligence agency use of force, typically aimed at “high value” targets in global counterterrorism operations. It might be covert or it might not – but it will be driven by intelligence, because of necessity it must identify and justify the choice of target (on operational, because resources are limited; or legal grounds; or, in practice, both).¶ Targeted killing might use a variety of tactical methods by which to carry out the attack. The method might be by drones firing missiles – the focus of discussion here. But targeted killing – assassination, generically – is a very old method for using force and drones are new. Targeted killing in current military and CIA doctrine might, and often does, take place with covert civilian intelligence agents or military special operations forces – a human team carrying out the attack, rather than a drone aircraft operated from a distance. The Bin Laden raid exemplifies the human team-conducted targeted killing, of course, and in today’s tactical environment, the US often uses combined operations that have available both human teams and drones, to be deployed according to circumstances.¶ Targeted killing is thus a tactic that might be carried out either by drones or human teams. If there are two ways to do targeted killing, there are also two functions for the use of drones – targeted killing as part of an “intelligence-driven” discrete use of force, on the one hand, and a role (really, roles) in conventional warfare. Drones have a role in an ever-increasing range of military operations that have no connection to “targeted killing.” For many reasons ranging from cost-effectiveness to mission-effectiveness, drones are becoming more ramified in their uses in military operations, and will certainly become more so. This is true starting with their fundamental use in surveillance, but is also true when used as weapons platforms.¶ From the standpoint of conventional military operations and ordinary battlefields, drones are seen by the military as simply an alternative air weapons platform. One might use an over-the-horizon manned aircraft – or, depending on circumstances, one might instead use a drone as the weapons platform. It might be a missile launched from a drone by an operator, whether sitting in a vehicle near the fighting or farther away; it might be a weapon fired from a helicopter twenty miles away, but invisible to the fighters; it might be a missile fired from a US Navy vessel hundreds of miles away by personnel sitting at a console deep inside the ship. Future air-to-air fighter aircraft systems are very likely to be remotely piloted, in order to take advantage of superior maneuverability and greater stresses endurable without a human pilot. Remotely-piloted aircraft are the future of much military and, for that matter, civil aviation; this is a technological revolution that is taking place for reasons having less to do with military aviation than general changes in aviation technology.¶ Missiles fired from a remotely-piloted standoff platform present the same legal issues as any other weapons system – the law of war categories of necessity and proportionality in targeting. To military professionals, therefore, the emphasis placed on “remoteness” from violence of drone weapons operators, and presumed psychological differences in operators versus pilots, is misplaced and indeed mystifying. Navy personnel firing missiles from ships are typically just as remote from the fighting, and yet one does not hear complaints about their indifference to violence and their “Playstation,” push-button approach to war. Air Force pilots more often than not fire from remote aircraft; pilots involved in the bombing campaign over Serbia in the Kosovo war sometimes flew in bombers taking off from the United States; bomber crews dropped their loads from high altitudes, guided by computer, with little connection to the “battlefield” and little conception of what they – what their targeting computers - were aiming at. Some of the crews in interviews described spending the flights of many hours at a time, flying from the Midwest and back, as a good chance to study for graduate school classes they were taking – not Playstation, but study hall. In many respects, the development of new sensor technologies make the pilots, targeters, and the now-extensive staff involved in a decision to fire a weapon from a drone far more aware of what is taking place at the target than other forms of remote targeting, from Navy ships or high altitude bombing.¶ Very few of the actors on a technologically advanced battlefield are personally present in a way that makes the destruction and killing truly personal – and that is part of the point. Fighting up close and personal, on the critics’ psychological theories, seems to mean that it has greater significance to the actors and therefore leads to greater restraint. That is extremely unlikely and contrary to the experience of US warfighters. Lawful kinetic violence is more likely to increase when force protection is an issue, and overuse of force is more likely to increase when forces are under personal pressure and risk. The US military has known since Vietnam at least that increased safety for fighting personnel allows them greater latitude in using force, encourages and permits greater willingness to consider the least damaging alternatives, and that putting violence at a remove reduces the passions and fears of war and allows a coolly professional consideration of what kinds, and how much, violence is required to accomplish a lawful military mission. Remote weapon systems, whether robotic or simply missiles launched from a safe distance, in US doctrine are more than just a means for reducing risk to forces – they are an integral part of the means of allowing more time to consider less-harmful alternatives.¶ This is an important point, given that drones today are being used for tasks that involve much greater uses of force than individualized targeted killing. Drones are used today, and with increasing frequency, to kill whole masses of enemy columns of Taliban fighters on the Pakistan border – in a way that would otherwise be carried out by manned attack aircraft. This is not targeted killing; this is conventional war operations. It is most easily framed in terms of the abstract strategic division of counterinsurgency from counterterrorism (though in practice the two are not so distinct as all that). In particular, drones are being deployed in the AfPak conflict as a counterinsurgency means of going after Taliban in their safe haven camps on the Pakistan side of the border. A fundamental tenet of counterinsurgency is that the safe havens have to be ended, and this has meant targeting much larger contingents of Taliban fighters than previously understood in the “targeted killing” deployment. This could be – and in some circumstances today is – being done by the military; it is also done by the CIA under orders of the President partly because of purely political concerns; much of it today seems to be a combined operation of military and CIA.¶ Whoever conducts it and whatever legal issues it might raise, the point is that this activity is fundamentally counterinsurgency. The fighters are targeted in much larger numbers in the camps than would be the case in “targeted killing,” and this is a good instance of how targeted killing and drone warfare need to be differentiated. The targets are not individuated, either in the act of targeting or in the decision of who and where to target: this is simply an alternative air platform for doing what might otherwise be done with helicopters, fixed wing aircraft, or ground attack, in the course of conventional counterinsurgency operations. But it also means that the numbers killed in such operations are much larger, and consist often of ordinary fighters who would otherwise pile into trucks and cross back into Afghanistan, rather than individualized “high value” targets, whether Taliban or Al Qaeda.

### 3

#### Text: The Office of Legal Counsel should determine that the Executive Branch lacks the legal authority to conduct signature strikes.

#### The President should require the Office of Legal Counsel to publish any legal opinions regarding policies adopted by the Executive Branch.

#### The CP is competitive and solves the case—OLC rulings do not actually remove authority but nevertheless hold binding precedential value on the executive.

Trevor W. Morrison (Professor of Law, Columbia Law School) October 2010. “STARE DECISIS IN THE OFFICE OF LEGAL COUNSEL,” Columbia Law Review, 110 Colum. L. Rev. 1448, Lexis.

On the other hand, an OLC that says "yes" too often is not in the client's long-run interest. n49 Virtually all of OLC's clients have their own legal staffs, including the White House Counsel's Office in the White House and the general counsel's offices in other departments and agencies. Those offices are capable of answering many of the day-to-day issues that arise in those components. They typically turn to OLC when the issue is sufficiently controversial or complex (especially on constitutional questions) that some external validation holds special value. n50 For example, when a department confronts a difficult or delicate constitutional question in the course of preparing to embark upon a new program or course of action that raises difficult or politically sensitive legal questions, it has an interest in being able to point to a credible source affirming the [\*1462] legality of its actions. n51 The in-house legal advice of the agency's general counsel is unlikely to carry the same weight. n52 Thus, even though those offices might possess the expertise necessary to answer at least many of the questions they currently send to OLC, in some contexts they will not take that course because a "yes" from the in-house legal staff is not as valuable as a "yes" from OLC. But that value depends on OLC maintaining its reputation for serious, evenhanded analysis, not mere advocacy. n53¶ The risk, however, is that OLC's clients will not internalize the long-run costs of taxing OLC's integrity. This is in part because the full measure of those costs will be spread across all of OLC's clients, not just the client agency now before it. The program whose legality the client wants OLC to review, in contrast, is likely to be something in which the client has an immediate and palpable stake. Moreover, the very fact that the agency has come to OLC for legal advice will often mean it thinks there is [\*1463] at least a plausible argument that the program is lawful. In that circumstance, the agency is unlikely to see any problem in a "yes" from OLC.¶ Still, it would be an overstatement to say that OLC risks losing its client base every time it contemplates saying "no." One reason is custom. In some areas, there is a longstanding tradition - rising to the level of an expectation - that certain executive actions or decisions will not be taken without seeking OLC's advice. One example is OLC's bill comment practice, in which it reviews legislation pending in Congress for potential constitutional concerns. If it finds any serious problems, it writes them up and forwards them to the Office of Management and Budget, which combines OLC's comments with other offices' policy reactions to the legislation and generates a coordinated administration position on the legislation. n54 That position is then typically communicated to Congress, either formally or informally. While no statute or regulation mandates OLC's part in this process, it is a deeply entrenched, broadly accepted practice. Thus, although some within the Executive Branch might find it frustrating when OLC raises constitutional concerns in bills the administration wants to support as a policy matter, and although the precise terms in which OLC's constitutional concerns are passed along to Congress are not entirely in OLC's control, there is no realistic prospect that OLC would ever be cut out of the bill comment process entirely. Entrenched practice, then, provides OLC with some measure of protection from the pressure to please its clients.¶ But there are limits to that protection. Most formal OLC opinions do not arise out of its bill comment practice, which means most are the product of a more truly voluntary choice by the client to seek OLC's advice. And as suggested above, although the Executive Branch at large has an interest in OLC's credibility and integrity, the preservation of those virtues generally falls to OLC itself. OLC's nonlitigating function makes this all the more true. Whereas, for example, the Solicitor General's aim of prevailing before the Supreme Court limits the extent to which she can profitably pursue an extreme agenda inconsistent with current doctrine, OLC faces no such immediate constraint. Whether OLC honors its oft-asserted commitment to legal advice based on its best view of the law depends largely on its own self-restraint.¶ 2. Formal Requests, Binding Answers, and Lawful Alternatives. - Over time, OLC has developed practices and policies that help maintain its independence and credibility. First, before it provides a written opinion, n55 OLC typically requires that the request be in writing from the head or general counsel of the requesting agency, that the request be as specific and concrete as possible, and that the agency provide its own written [\*1464] views on the issue as part of its request. n56 These requirements help constrain the requesting agency. Asking a high-ranking member of the agency to commit the agency's views to writing, and to present legal arguments in favor of those views, makes it more difficult for the agency to press extreme positions.¶ Second, as noted in the Introduction, n57 OLC's legal advice is treated as binding within the Executive Branch until withdrawn or overruled. n58 As a formal matter, the bindingness of the Attorney General's (or, in the modern era, OLC's) legal advice has long been uncertain. n59 The issue has never required formal resolution, however, because by longstanding tradition the advice is treated as binding. n60 OLC protects that tradition today by generally refusing to provide advice if there is any doubt about whether the requesting entity will follow it. n61 This guards against "advice-shopping by entities willing to abide only by advice they like." n62 More broadly, it helps ensure that OLC's answers matter. An agency displeased with OLC's advice cannot simply ignore the advice. The agency might [\*1465] construe any ambiguity in OLC's advice to its liking, and in some cases might even ask OLC to reconsider its advice. n63 But the settled practice of treating OLC's advice as binding ensures it is not simply ignored.¶ In theory, the very bindingness of OLC's opinions creates a risk that agencies will avoid going to OLC in the first place, relying either on their general counsels or even other executive branch offices to the extent they are perceived as more likely to provide welcome answers. This is only a modest risk in practice, however. As noted above, legal advice obtained from an office other than OLC - especially an agency's own general counsel - is unlikely to command the same respect as OLC advice. n64 Indeed, because OLC is widely viewed as "the executive branch's chief legal advisor," n65 an agency's decision not to seek OLC's advice is likely to be viewed by outside observers with skepticism, especially if the in-house advice approves a program or initiative of doubtful legality.¶ OLC has also developed certain practices to soften the blow of legal advice not to a client's liking. Most significantly, after concluding that a client's proposed course of action is unlawful, OLC frequently works with the client to find a lawful way to pursue its desired ends. n66 As the OLC Guidelines put it, "when OLC concludes that an administration proposal is impermissible, it is appropriate for OLC to go on to suggest modifications that would cure the defect, and OLC should stand ready to work with the administration to craft lawful alternatives." n67 This is a critical component of OLC's work, and distinguishes it sharply from the courts. In addition to "providing a means by which the executive branch lawyer can contribute to the ability of the popularly-elected President and his administration to achieve important policy goals," n68 in more instrumental terms the practice can also reduce the risk of gaming by OLC's clients. And that, in turn, helps preserve the bindingness of OLC's opinions. n69¶ [\*1466] To be sure, OLC's opinions are treated as binding only to the extent they are not displaced by a higher authority. A subsequent judicial decision directly on point will generally be taken to supersede OLC's work, and always if it is from the Supreme Court. OLC's opinions are also subject to "reversal" by the President or the Attorney General. n70 Such reversals are rare, however. As a formal matter, Dawn Johnsen has argued that "the President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds." n71 Solely is a key word here, especially for the President. Although his oath of office obliges him to uphold the Constitution, n72 it is not obvious he would violate that oath by pursuing policies that he thinks are plausibly constitutional even if he has not concluded they fit his best view of the law. It is not clear, in other words, that the President's oath commits him to seeking and adhering to a single best view of the law, as opposed to any reasonable or plausible view held in good faith. Yet even assuming the President has some space here, it is hard to see how his oath permits him to reject OLC's advice solely on policy grounds if he concludes that doing so is indefensible as a legal matter. n73 So the President needs at least a plausible legal basis for [\*1467] disagreeing with OLC's advice, which itself would likely require some other source of legal advice for him to rely upon.¶ The White House Counsel's Office might seem like an obvious candidate. But despite recent speculation that the size of that office during the Obama Administration might reflect an intention to use it in this fashion, n74 it continues to be virtually unheard of for the White House to reverse OLC's legal analysis. For one thing, even a deeply staffed White House Counsel's Office typically does not have the time to perform the kind of research and analysis necessary to produce a credible basis for reversing an OLC opinion. n75 For another, as with attempts to rely in the first place on in-house advice in lieu of OLC, any reversal of OLC by the White House Counsel is likely to be viewed with great skepticism by outside observers. If, for example, a congressional committee demands to know why the Executive Branch thinks a particular program is lawful, a response that relies on the conclusions of the White House Counsel is unlikely to suffice if the committee knows that OLC had earlier concluded otherwise. Rightly or wrongly, the White House Counsel's analysis is likely to be treated as an exercise of political will, not dispassionate legal analysis. Put another way, the same reasons that lead the White House to seek OLC's legal advice in the first place - its reputation for [\*1468] providing candid, independent legal advice based on its best view of the law - make an outright reversal highly unlikely. n76¶ Of course, the White House Counsel's Office may well be in frequent contact with OLC on an issue OLC has been asked to analyze, and in many cases is likely to make it abundantly clear what outcome the White House prefers. n77 But that is a matter of presenting arguments to OLC in support of a particular position, not discarding OLC's conclusion when it comes out the other way. n78The White House is not just any other client, and so the nature of - and risks posed by - communications between it and OLC on issues OLC is analyzing deserve special attention. I take that up in Part III. n79 My point at this stage is simply that the prospect of literal reversal by the White House is remote and does not meaningfully threaten the effective bindingness of OLC's decisions.

#### Mandatory publishing requirements prevent OLC deferral to presidential pressure—can be self-imposed—avoids SOP concerns with congressional interference.

Ross L. Weiner, February 2009. JD May 2009 @ George Washington University Law School. “THE OFFICE OF LEGAL COUNSEL AND TORTURE: THE LAW AS BOTH A SWORD AND SHIELD,” THE GEORGE WASHINGTON LAW REVIEW, 77 Geo. Wash. L. Rev. 524, Lexis.

The Torture Memo exposed serious deficiencies in how the OLC operates. For two years, interrogators were given erroneous legal advice regarding torture, with two adverse results. First, American interrogators behaved in ways contrary to traditional American values, possibly leading in part to the Abu Ghraib scandal n147 and to a decline in American reputation around the globe. n148 Second, agents on the [\*549] frontlines were given advice that, if followed, might be the basis for prosecution one day. n149 More importantly, when the Torture Memo was leaked to the public, it exposed the OLC to charges of acting as an enabler to the executive branch. John Yoo, the author of the Torture Memo, was known as "Dr. Yes" for his ability to author memos asserting exactly what the Bush Administration wanted to hear. n150 To ensure that this situation does not repeat itself in the future, it is critical for changes to be implemented at the OLC by mandating publication and increasing oversight.¶ A. Mandated Publishing One explanation for the Torture Memo and its erroneous legal arguments was the OLC authors' belief that the Memo would remain secret forever. When he worked in the OLC, Harold Koh was often told that we should act as if every opinion might be [sic] some day be on the front page of the New York Times. Almost as soon as the [Torture Memo] made it to the front page of the New York Times, the Administration repudiated it, demonstrating how obviously wrong the opinion was. n151 Furthermore, James B. Comey, a Deputy Attorney General in the OLC, told colleagues upon his departure from the OLC that they would all be "ashamed" when the world eventually found out about other opinions that are still classified today on enhanced interrogation techniques. n152 This suggests that OLC lawyers, operating in relative obscurity, felt somewhat protected by the general veil of secrecy surrounding their opinions.¶ [\*550] For many opinions, some of which are already published on the OLC's Web site, n153 this will not be a controversial proposition. Publication has three advantages: (1) accessibility; (2) letting people see the factual predicate on which an opinion is based; and (3) eliminating people's ability to strip an OLC opinion of nuance in favor of saying "OLC says we can do it." n154 Koh provides a telling illustration of the problems associated with the absence of mandated publishing as he found an OLC opinion placed in the Territorial Sea Journal that was critical to a case he was trying on behalf of a group of Haitians seeking to enter the United States. n155 He was incredulous that on a matter "of such consequence," n156 he literally had to be lucky to find the opinion. n157¶ Secrecy in government facilitates abuse, and nowhere is the need for transparency more important than the OLC, whose opinions are binding on the entire executive branch. In a telling example, on April 2, 2008, the Bush Administration declassified a second Torture Memo. n158 In eighty-one pages, John Yoo presented legal arguments that effectively allowed military interrogators carte blanche to abuse prisoners without any fear of prosecution. n159 While the Memo was classified at the "secret" level, it is clear that there was no strategic rationale for classifying it beyond avoiding public scrutiny. n160 According [\*551] to J. William Leonard, the nation's top classification oversight official from 2002-2007, "There is no information contained in this document which gives an advantage to the enemy. The only possible rationale for making it secret was to keep it from the American people." n161¶ To address this problem, the OLC should be required to publish all of its opinions, with a few limited exceptions. John F. Kennedy once said, "The very word 'secrecy' is repugnant in a free and open society." n162 Justice Potter Stewart, in New York Times Co. v. United States, n163 laid out the inherent dangers of secrecy in the realm of foreign affairs: I should suppose that moral, political, and practical considerations would dictate that a very first principle of that wisdom would be an insistence upon avoiding secrecy for its own sake. For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion. I should suppose, in short, that the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained. n164¶ The proposal to require the OLC to publish its opinions has been advocated by many, including former heads of the OLC. n165 [\*552] ¶ 1. Process for Classification In certain situations, an opinion may have to remain confidential for national security purposes, but mechanisms can be designed to deal with this scenario. First, in order to deem a memorandum classified as a matter of national security, another agency in the executive branch with expertise on the subject should be required to sign off on such a classification. The Torture Memo exposed an instance of the OLC acting secretively not only for national security purposes, but also because it knew the Torture Memo could not withstand scrutiny. n166 Thus, only opinions dealing with operational matters that give aide to the enemy should be classified. Opinions that consist solely of legal reasoning on questions of law clearly would not pass that test.¶ If there is a disagreement between those in the OLC who choose to classify something and those in the other executive agency who believe it should be published, then the decision should be sent back to the OLC to review the potential for publishing a redacted version of the opinion. For example, consider a memo from the OLC on the different interrogation techniques allowable under the law. While it would be harmful for the OLC to publish specific activities, and thus alert the country's enemies as to interrogation tactics, publishing the legal analysis that gives the President this authority would not be harmful. Publishing would restore legitimacy to the work the OLC is doing and help remove the taint the Torture Memo has left on the office.¶ 2. Exceptions There are a few necessary exceptions to a rule requiring publication, and the former OLC attorneys who wrote a series of guidelines for the OLC are clear on them: Ordinarily, OLC should honor a requestor's desire to keep confidential any OLC advice that the proposed executive action would be unlawful, where the requestor then does not take the action. For OLC routinely to release the details of all contemplated action of dubious legality might deter executive branch actors from seeking OLC advice at sufficiently early stages in policy formation. n167 [\*553] This reasoning stems directly from the attorney-client privilege and the need for candor in government. It is imperative that the executive branch seek information on potential action that may or may not be legal (or constitutional), and this type of inquiry should not be discouraged. This exception is only to be applied when the President does not go ahead with the policy in question. If the OLC were to opine that something is illegal or unconstitutional, and the President were to disregard that advice and proceed with the action anyway, this type of opinion should be made public. n168¶ If the OLC tells a President he can ignore a statute, and the President follows that advice, that opinion should be available to the public. One of the foundations of American governance is that nobody is above the law; advice that a statute should not be enforced contradicts this maxim. The Torture Memo asserted that violations of U.S. law would probably be excused by certain defenses, including necessity and self-defense. n169 Additionally, the Torture Memo argued that "Congress can no more interfere with the President's conduct of the interrogation of enemy combatants than it can dictate strategic or tactical decisions on the battlefield." n170 The OLC thus told the President that he does not have to enforce any congressional statutes that infringe on his Commander in Chief power. For both the purposes of good government and accountability, this type of claim should be made in public, rather than in secret, so Americans know how the President is interpreting the laws.¶ 3. Oversight of Secret Opinions Increased oversight at the OLC is most important for opinions that are classified as secret pursuant to the above procedures, and are unlikely to ever be heard in a court of law. According to former OLC attorneys: The absence of a litigation threat signals special need for vigilance: In circumstances in which judicial oversight of executive branch action is unlikely, the President - and by extension [\*554] OLC - has a special obligation to ensure compliance with the law, including respect for the rights of affected individuals and the constitutional allocation of powers. n171 How can oversight be ensured?¶ First, memos that are both secret and unlikely to be heard in court must be reviewed by others with an expertise in the field. In 2002, there were two major issues with the OLC: first, almost nobody outside a group of five attorneys was allowed to read the secret opinions, n172 and second, there was a lack of expertise in the office on matters of national security. n173 As Goldsmith later confessed, "I eventually came to believe that [the immense secrecy surrounding these memoranda] was done [not for confidentiality, but] to control outcomes in the opinions and minimize resistance to them."n174¶ For opinions that are classified as secret, at least one other legal department in the federal government, with a similar level of expertise, should be asked to review a secret opinion in order to take a [\*555] substantive look at the legal work in question. According to Jack Goldsmith, this process was traditionally how things worked; n175 when the Bush Administration started "pushing the envelope," n176 however, nearly all outside opinion was shut out under the guise of preventing leaks. n177 It is now apparent that the concern stemmed more from a fear of objections than from the national security concern of a leak. n178 Based on the declassification of the Torture Memo, along with the subsequent declassification of another memo on torture, n179 there was no national security purpose for keeping the memos secret.¶ The reason an outside review of memos labeled as classified is important is that in times of crisis, proper oversight mechanisms need to be in place. It is in times of emergency when the country is most vulnerable to decisions that it might later regret. n180 Based on the legal reasoning exposed in both the Torture Memo and the released Yoo opinion from March 2003, it is reasonable to surmise that other opinions written in the aftermath of September 11 are similarly flawed. n181 Currently, there are a number of classified memoranda that have been referenced in declassified OLC opinions, but have never been declassified themselves. n182 What these memoranda assert, and whether President Bush decided to follow them, are currently unknown. In a recently declassified opinion, however, there is a footnote indicating that the Fourth Amendment's protection against unreasonable searches and seizures is not applicable to domestic military operations related to the war on terror.n183 Because this would be a novel assertion [\*556] of authority, the American public should be able to evaluate the merits of such a legal argument.¶ Different agencies of government have personnel with different expertise, so it will be incumbent upon those in the OLC to determine which department, and which individual in the department, has the required security clearance and knowledge to review an opinion. Thus, when an opinion has been deemed classified, before it can be forwarded outside of the OLC, it would have to go to another agency for approval.¶ The question that the reviewer should have to answer is whether the work he or she is analyzing is an "accurate and honest appraisal of applicable law." n184 If it is, then there is no problem with the opinion, and the second agency will sign off on it. If it is not, then the reviewer should prepare a minority report. What is most critical is that both the Attorney General and the President - who might not be an attorney - understand exactly what their lawyers are saying. For a controversial decision, it should not be sufficient for someone in the OLC like John Yoo to write an inaccurate legal memo that asserts one thing, while the law and precedent say another, with the eventual decisionmaker - the President - only viewing the flawed opinion. The minority report will serve two purposes: first, it will encourage lawyers to avoid dressing up a shoddy opinion in "legalese" to make it look legitimate when in reality it is not; and second, it will ensure that the opinion truly is a full and fair accounting of the law.¶ The most important by-product from mandated review of secret opinions will be that lawyers in the OLC will no longer be able to hide behind a wall of total confidentiality. n185 Rather than acting as if the OLC is above the law and answerable to no one, the knowledge that every classified opinion will be reviewed by someone with an expertise in the field should give pause to any OLC attorney who lacks independence and serves as a yes-man for the President.¶ [\*557] ¶ B. Mechanisms for Implementing Changes¶ 1. Self-Imposed by Executive The easiest way to implement such a change in OLC requirements would be for the President to impose them on the OLC. The OLC's authority stems from the Attorney General, who has delegated some of his power to the OLC. n186 The Attorney General is in the executive branch, which means that the President has the authority to order these changes.¶ It is unlikely that the executive branch would self-impose constraints on the OLC, because Executives from both parties have historically exhibited a strong desire to protect the levers of power. n187One of the reasons lawyers at the OLC were able to write documents like the Torture Memo without anyone objecting was because the results were in line with what the Bush Administration wanted to hear. n188 Thus, it was unlikely that the Bush Administration would make any changes during its final year in office, and as it turned out, the Bush Administration ended on January 20, 2009, without making any changes.¶ Nevertheless, in light of the OPR's publicly announced investigation of the OLC's conduct, n189 and the release of another John Yoo memorandum on torture, n190 the lack of oversight at the OLC could come to the forefront of the public's attention. n191 Thus, it is possible that through public pressure, President Bush could be persuaded to mandate these changes himself. n192¶ 2. Congressional Mandate Alternatively, Congress could step into the void and legislate. Any potential congressional interference, however, would be fraught with separation of powers concerns, which would have to be dealt with directly. First, the President is entitled to advice from his advisors. n193 Second, a great deal of deference is owed to the President when he is operating in the field of foreign affairs. n194 Any attempt by Congress to limit either of these two powers will most likely be met with resistance. n195

### 4

#### Iran sanctions are at the top of the docket – Obama is spending capital to persuade Democrats to sustain a veto

Lobe, 12-27

Reporter for Inter Press Service(Jim, “Iran sanctions bill: Big test of Israel lobby power”

<http://www.arabamericannews.com/news/index.php?mod=article&cat=World&article=8046>)

WASHINGTON - This week’s introduction by a bipartisan group of 26 senators of a new sanctions bill against Iran could result in the biggest test of the political clout of the Israel lobby here in decades.¶ The White House, which says the bill could well derail ongoing negotiations between Iran and the U.S. and five other powers over Tehran’s nuclear program and destroy the international coalition behind the existing sanctions regime, has already warned that it will veto the bill if it passes Congress in its present form.¶ The new bill, co-sponsored by two of Congress’s biggest beneficiaries of campaign contributions by political action committees closely linked to the powerful American Israel Public Affairs Committee (AIPAC), would impose sweeping new sanctions against Tehran if it fails either to comply with the interim deal it struck last month in Geneva with the P5+1 (U.S., Britain, France, Russia, China plus Germany) or reach a comprehensive accord with the great powers within one year.¶ To be acceptable, however, such an accord, according to the bill, would require Iran to effectively dismantle virtually its entire nuclear program, including any enrichment of uranium on its own soil, as demanded by Israeli Prime Minister Benjamin Netanyahu.¶ The government of President Hassan Rouhani has warned repeatedly that such a demand is a deal-breaker, and even Secretary of State John Kerry has said that a zero-enrichment position is a non-starter.¶ The bill, the Nuclear Weapon Free Iran Act, also calls for Washington to provide military and other support to Israel if its government “is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program.”¶ The introduction of the bill last week by Republican Sen. Mark Kirk and Democratic Sen. Robert Menendez followed unsuccessful efforts by both men to get some sanctions legislation passed since the Geneva accord was signed Nov. 24.¶ Kirk at first tried to move legislation that would have imposed new sanctions immediately in direct contradiction to a pledge by the P5+1 in the Geneva accord to forgo any new sanctions for the six-month life of the agreement in exchange for, among other things, enhanced international inspections of Iran’s nuclear facilities and a freeze on most of its nuclear program.¶ Unable to make headway, Kirk then worked with Menendez to draw up the new bill which, because of its prospective application, would not, according to them, violate the agreement. They had initially planned to attach it to a defense bill before the holiday recess. But the Democratic leadership, which controls the calendar, refused to go along.¶ Their hope now is to pass it – either as a free-standing measure or as an amendment to another must-pass bill after Congress reconvenes Jan. 6.¶ To highlight its bipartisan support, the two sponsors gathered a dozen other senators from each party to co-sponsor it.¶ Republicans, many of whom reflexively oppose President Barack Obama’s positions on any issue and whose core constituencies include Christian Zionists, are almost certain to support the bill by an overwhelming margin. If the bill gets to the floor, the main battle will thus take place within the Democratic majority.¶ The latter find themselves torn between, on the one hand, their loyalty to Obama and their fear that new sanctions will indeed derail negotiations and thus make war more likely, and, on the other, their general antipathy for Iran and the influence exerted by AIPAC and associated groups as a result of the questionable perception that Israel’s security is uppermost in the minds of Jewish voters and campaign contributors (who, by some estimates, provide as much as 40 percent of political donations to Democrats in national campaigns).¶ The administration clearly hopes the Democratic leadership will prevent the bill from coming to a vote, but, if it does, persuading most of the Democrats who have already endorsed the bill to change their minds will be an uphill fight. If the bill passes, the administration will have to muster 34 senators of the 100 senators to sustain a veto – a difficult but not impossible task, according to Congressional sources.¶ That battle has already been joined. Against the 13 Democratic senators who signed onto the Kirk-Menendez bill, 10 Democratic Senate committee chairs urged Majority Leader Harry Reid, who controls the upper chamber’s calendar, to forestall any new sanctions legislation.

#### Obama’s strategy is working but failure scuttles the nuclear deal

Merry 1-1

Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy (Robert, “Obama may buck the Israel lobby on Iran” Washington Times, factiva)

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.”¶ For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House.¶ With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.¶ It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.¶ However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.¶ Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.”¶ While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”¶ That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.¶ That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.¶ 2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.¶ AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.¶ Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.¶ If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### Plan ensures huge battles between President and Congress

Peter Weber, “Will Congress Curb Obama’s Drone Strikes,” THE WEEK, 2—6—13,

<http://theweek.com/article/index/239716/will-congress-curb-obamas-drone-strikes>

"It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons (D-Del.) tells the AP. "We are sort of running on the steam that we acquired right after our country was attacked in the most horrific act of terror in U.S. history," agrees Rep. Keith Ellison (D-Minn.). "We have learned much since 9/11, and now it's time to take a more sober look at where we should be with use of force."¶ One problem for lawmakers, says The New York Times in an editorial, is that when it comes to drone strikes, the Obama team "utterly rejects the idea that Congress or the courts have any right to review such a decision in advance, or even after the fact." Along with citing the law authorizing broad use of force against al Qaeda, the white paper also "argues that judges and Congress don't have the right to rule on or interfere with decisions made in the heat of combat." And most troublingly, Obama won't give Congress the classified document detailing the legal justification used to kill American al Qaeda operative Anwar al-Awlaki.¶ Going forward, he should submit decisions like this one to review by Congress and the courts. If necessary, Congress could create a special court to handle this sort of sensitive discussion, like the one it created to review wiretapping. This dispute goes to the fundamental nature of our democracy, to the relationship among the branches of government and to their responsibility to the public. [New York Times]¶ It's interesting to watch conservatives show (or at least feign) outrage over a policy that "would have been met with right-wing hosannas under Bush/Cheney," says Steve M. at No More Mister Nice Blog. But even with the grumbling from the Left and Right, "I don't think any of this is going to stop the drone strikes." ¶ I can't really see righties and lefties banding together to do something upliftingly democratic and bipartisan like forcing a reconsideration of the policy via combined public pressure (when was the last time something like that happened in America?) — there are too many people in office, from both parties, who like what's being done by the administration. [No More Mister Nice Blog]

#### That emboldens the opposition and collapses the deal

**Muhammad, 12/31**/13 – cites David Bositis, Vice President and Senior Research Analyst at the Joint Center for Political and Economic Studies (Askia, The Final Call, “Obama's burden” <http://www.finalcall.com/artman/publish/National_News_2/article_101094.shtml> In foreign affairs, the President’s burden is made even more awkward by dug-in opposition by leaders of both parties here in this country. Despite unprecedented breakthroughs on his watch with Syria concerning its stockpile of chemical weapons, and with Iran concerning its nuclear enrichment plans, the Israel-lobby would prefer more saber-rattling and possible military action than any peaceful resolution. Other challenges are complicated by some of Mr. Obama’s own decisions. “On the international level,” Dr. Horne explained, “it’s clear that the Obama administration wants to pivot toward Asia, which mean’s China. “But, you may recall, when he first came into office that was to be accompanied by a reset with Russia, because it’s apparent that the United States confronting Russia and China together is more than a notion. And yet, the Obama administration finds itself doing both. “Look at its misguided policy towards Ukraine, for example, where it’s confronting Russia head-on, and its confrontation with China off the coast of eastern China. So, I guess in the longer term, it’s probably evident that the most severe challenge for the Obama administration comes from (the) international situation because as we begin to mark the 100th anniversary of the onset of World War I in 2014, it’s evident that unfortunately the international situation today, in an eerie way, resembles some ways the international situation at the end of 1913. “In the end of 1913 there was a rising Germany, just like there is a rising China. There was a declining Britain, just like there is a declining United States of America, and we all know the rather morbid consequences of World War I, so it is for that reason that I say that I would say that Mr. Obama’s most severe challenge is in the international arena,” said Dr. Horne. “In terms of foreign policy, his wanting to negotiate with Iran about their stopping their nuclear program, almost immediately there were people in the Congress speaking out in public who were totally against everything he wanted to do,” said Dr. Bositis. “There are people who don’t want to put any pressure on Israel about coming to terms with the Palestinians. There are people who are unhappy with what he’s done in terms of Syria,” he said. These stumbling blocks also stand in the way of the President’s ability to deliver on his pre-election promise to close the Guantanamo prison camp where hundreds are being detained, although most have been cleared for release by all U.S. intelligence agencies because they pose no threat to this country. Yet the prisoners languish, some even resorting to hunger strikes because of the hopelessness of their plight, with the U.S. turning to painful force-feeding the inmates to keep them from starving themselves to death. “Change is always hard,” Ms. Jarrett said Mr. Obama told a group of youth leaders recently. “The Civil Rights Movement was hard. People sacrificed their freedom. They went to prison. They got beat up. Look through our history and then look around the world. It’s always hard. You can’t lose faith because it’s hard. It just means you have to try harder. That’s really what drives him every day,” said Ms. Jarrett. And at the end of the day, Mr. Obama remains in control and holding all the “trump cards.” “Remember something,” Dr. Bositis said. “These people can say or make all these claims about Obama, but the fact of the matter is that Obama is president, and he’s going to be president for three more years, and he’s going to have a lot more influence than all of these clowns,” who disparage his leadership. “He’s not going to blink. He learned that lesson. With these guys, they’re like rapists. If you give them an inch, they will own you,” Dr. Bositis concluded.

#### Impact is global nuclear war

Press TV 11/13 “Global nuclear conflict between US, Russia, China likely if Iran talks fail”, <http://www.presstv.ir/detail/2013/11/13/334544/global-nuclear-war-likely-if-iran-talks-fail/>

A global conflict between the US, Russia, and China is likely in the coming months should the world powers fail to reach a nuclear deal with Iran, an American analyst says.¶ “If the talks fail, if the agreements being pursued are not successfully carried forward and implemented, then there would be enormous international pressure to drive towards a conflict with Iran before [US President Barack] Obama leaves office and that’s a very great danger that no one can underestimate the importance of,” senior editor at the Executive Intelligence Review Jeff Steinberg told Press TV on Wednesday. ¶ “The United States could find itself on one side and Russia and China on the other and those are the kinds of conditions that can lead to miscalculation and general roar,” Steinberg said. ¶ “So the danger in this situation is that if these talks don’t go forward, we could be facing a global conflict in the coming months and years and that’s got to be avoided at all costs when you’ve got countries like the United States, Russia, and China with” their arsenals of “nuclear weapons,” he warned. ¶ The warning came one day after the White House told Congress not to impose new sanctions against Tehran because failure in talks with Iran could lead to war. ¶ White House press secretary Jay Carney called on Congress to allow more time for diplomacy as US lawmakers are considering tougher sanctions. ¶ "This is a decision to support diplomacy and a possible peaceful resolution to this issue," Carney said. "The American people do not want a march to war." ¶ Meanwhile, US Secretary of State John Kerry is set to meet with the Senate Banking Committee on Wednesday to hold off on more sanctions on the Iranian economy. ¶ State Department spokeswoman Jen Psaki said Kerry "will be clear that putting new sanctions in place would be a mistake." ¶ "While we are still determining if there is a diplomatic path forward, what we are asking for right now is a pause, a temporary pause in sanctions. We are not taking away sanctions. We are not rolling them back," Psaki added.

### Norms

**US action irrelevant to international norms on drones – other tech proves**

**Etzioni 13** – professor of IR @ George Washington (Amitai, “The Great Drone Debate”, March/April, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>, CMR)

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage. Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of self constraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology. I am not arguing that there are no natural norms that restrain behavior. There are certainly some that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). However drones are but one step—following bombers and missiles—in the development of distant battleﬁeld technologies. (Robotic soldiers—or future ﬁghting machines— are next in line). In such circumstances, the role of norms is much more limited.

**No drones arms race – multiple checks**

- narrow application – diplomatic and political costs – state defenses

**Singh 12** – researcher at the Center for a New American Security (Joseph, “Betting Against a Drone Arms Race”, 8/13, <http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2TxEkUI37>, CMR)

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones.¶ As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, **the narrow applications of** current **drone tech**nology **coupled with** what we know about **state behavior** in the international system **lend no credence to** these **ominous warnings**.¶ Indeed, critics seem overly-focused on the domestic implications of drone use.¶ In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.”¶ Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, **there remain** equally **serious** **diplomatic and political** **costs** that emanate from **beyond a fickle electorate, which** will **prevent** the likes of the **increased drone aggression** predicted by both Ignatieff and Sharkey.¶ Most recently, **the** serious **diplomatic scuffle instigated by Syria**’s **downing a Turkish reconnaissance plane** in June **illustrated** **the** very serious **risks** of operating any aircraft in foreign territory.¶ **States** **launching drones must still weigh** the **diplomatic and political costs** of their actions, **which make the calculation surrounding their use no fundamentally different** to any other aerial engagement.¶ **This** recent bout also **illustrated a salient point** regarding drone technology: **most states maintain** at least minimal air **defenses that can quickly detect and take down drones**, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active.¶ What the U.S. also learned, however, was that **drones constitute an effective military tool in an extremely narrow strategic context.** They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations against a technologically unsophisticated enemy.¶ In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region.

#### No Senkaku or Asian conflict- empirically denied, economic interdependence checks, and China avoids nationalism.

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At times in the past few months, China and Japan have appeared almost ready to do battle over the **Senkaku** (Diaoyu) Islands --which are administered by Tokyo but claimed by both countries -- and to ignite a war that could be bigger than any since World War II. Although Tokyo and Beijing have been shadowboxing over the territory for years, the standoff reached a new low in the fall, when the Japanese government nationalized some of the islands by purchasing them from a private owner. The decision set off a wave of violent anti-Japanese demonstrations across China. In the wake of these events, the conflict quickly reached what political scientists call a state of equivalent retaliation -- a situation in which both countries believe that it is imperative to respond in kind to any and all perceived slights. As a result, it may have seemed that armed engagement was imminent. **Yet,** months later,nothing has happened. And **despite** their **aggressive posturing** in the disputed territory, **both** sides **now show** glimmers of willingness to dial down hostilities and to reestablish stability**.** Some analysts have cited North Korea's recent nuclear test as a factor in the countries' reluctance to engage in military conflict. They argue that the detonation, and Kim Jong Un's belligerence, brought China and Japan together, unsettling them and placing their differences in a scarier context. Rory Medcalf, a senior fellow at the Brookings Institution, explained that "the nuclear test gives the leadership in both Beijing and Tokyo a chance to focus on a foreign and security policy challenge where their interests are not diametrically at odds." The nuclear test, though, is a red herring in terms of the conflict over the disputed islands. In truth, the roots of the conflict -- and the reasons it has not yet exploded -- are much deeper. Put simply, **China** cannot afford military conflict **with** any of its **Asian neighbors.** It is not that China believes it would lose such a spat; the country increasingly enjoys strategic superiority over the entire region, and it is difficult to imagine that its forces would be beaten in a direct engagement over the islands, in the South China Sea or in the disputed regions along the Sino-Indian border. However**, Chinese officials see** thateven the most pronounced victory would be outweighed by the collateral damagethat such a use of force would cause **to Beijing's** two most fundamental national interests **--** economic **growth and preventing the escalation of** radical **nationalist sentiment at home.** These constraints, rather than any external deterrent**, will keep** Xi Jinping, **China's new leader, from** authorizing the use of deadly **force** in the Diaoyu Islands theater. For over three decades, **Beijing has promoted** peace and stability **in Asia** to facilitate conditions amenable to **China's** **economic** **development**. The origins of the policy can be traced back to the late 1970s, when Deng Xiaoping repeatedly contended that to move beyond the economically debilitating Maoist period, China would have to seek a common ground with its neighbors. Promoting cooperation in the region would allow China to spend less on military preparedness, focus on making the country a more welcoming destination for foreign investment, and foster better trade relations. All of this would strengthen the Chinese economy. Deng was right. Today, China's economy is second only to that of the United States. The fundamentals of Deng's grand economic strategy are still revered in Beijing. But any war in the region would erode the hard-won, and precariously held, political capital that China has gained in the last several decades. It would also disrupt trade relations, complicate efforts to promote the yuan as an international currency, and send shock waves through the country's economic system at a time when it can ill afford them. There is thus little reason to think that China is readying for war with Japan. At the same time, the specter of rising Chinese nationalism, **although** often seen as **a promoter of conflict**, further limits the prospects for armed engagement. This is because Beijing will try to discourage nationalism if it fears it may lose control or be forced by popular sentiment to take an action it deems unwise. **Ever since** the **Tiananmen Square** massacre put questions about the Chinese Communist Party's right to govern before the population, **successive generations of Chinese leaders have carefully negotiated a balance** between promoting nationalist sentiment and preventing it from boiling over. In the process, they cemented the legitimacy of their rule. A war with Japan could easily upset that balance by inflaming nationalism that could blow back against China's leaders. Consider a hypothetical scenario in which a uniformed Chinese military member is killed during a firefight with Japanese soldiers. Regardless of the specific circumstances, the casualty would create a new martyr in China and, almost as quickly, catalyze popular protests against Japan. Demonstrators would call for blood, and if the government (fearing economic instability) did not extract enough, citizens would agitate against Beijing itself. Those in Zhongnanhai, the Chinese leadership compound in Beijing, would find themselves between a rock and a hard place. It is possible that Xi lost track of these basic facts during the fanfare of his rise to power and in the face of renewed Japanese assertiveness. It is also possible that the Chinese state is more rotten at the core than is understood. That is, party elites believe that a diversionary war is the only way to hold on to power -- damn the economic and social consequences. But Xi does not seem blind to the principles that have served Beijing so well over the last few decades. Indeed, although he recently warned unnamed others about infringing upon China's "national core interests" during a foreign policy speech to members of the Politburo, he also underscored China's commitment to "never pursue development at the cost of sacrificing other country's interests" and to never "benefit ourselves at others' expense or do harm to any neighbor." Of course, wars do happen -- and still could in the East China Sea. Should either side draw first blood through accident or an unexpected move, Sino-Japanese relations would be pushed into terrain that has not been charted since the middle of the last century. However, understanding that war would be a no-win situation, China has avoided rushing over the brink. This relative restraint seems to have surprised everyone. But it shouldn't. Beijing will continue to disagree with Tokyo over the sovereign status of the islands, and will not budge in its negotiating position over disputed territory. However, it cannot take the risk of going to war over a few rocks in the sea. On the contrary, in the **coming months it will quietly** seek a way to **shelve the dispute in return for** securing **regional stability**, facilitating economic development, and keeping a lid on the Pandora's box of rising nationalist sentiment. The ensuing peace, while unlikely to be deep, or especially conducive to improving Sino-Japanese relations, will be enduring.

### Pakistan

#### Signature strikes critical to contain low-level operatives and prevent major attacks

Mudd 5/24/13 (Philip, senior official at the CIA and the FBI, now director of global risk at SouthernSun Asset Management, “Fear Factor”, <http://www.foreignpolicy.com/articles/2013/05/24/fear_factor_signature_strikes?page=full>, CMR)

The impact of armed drones during the decade-plus of this intense global counterterrorism campaign is hard to overestimate: Without operational commanders and visionary leaders, terror groups decay into locally focused threats, or disappear altogether. Targeted strikes against al Qaeda leaders and commanders in the years immediately after 9/11 deprived the group of the time and stability required to plot a major strike. But the London subway attacks in July 2005 illustrated the remaining potency of al Qaeda's core in the tribal areas of Pakistan. The threat was fading steadily. But not fast enough.¶ So-called signature strikes -- in which target selection is based not on identification of an individual but instead on patterns of behavior or unique characteristics that identify a group -- accelerated this decline for simple reasons. Targeting leadership degrades a small percentage of a diffuse terror group, but developing the tactical intelligence required to locate an individual precisely enough to stage a pinpoint strike, in a no-man's land half a world away, is time-consuming and difficult. And it's not a perfect science; the leaders of groups learn over time how to operate more securely. Furthermore, these leaders represent only a fraction of the threat: Osama bin Laden might have been the public face of al Qaeda, but he was supported by a web of document-forgers, bombmakers, couriers, trainers, ideologues, and others. They made up the bulk of al Qaeda and propelled the apparatus that planned the murder of innocents. Bin Laden was the revolutionary leader, but it was the troops who executed his vision.¶ Signature strikes have pulled out these lower-level threads of al Qaeda's apparatus -- and that of its global affiliates -- rapidly enough that the deaths of top leaders are now more than matched by the destruction of the complex support structure below them. Western conceptions of how organizations work, with hierarchal structures driven by top-level managers, do not apply to al Qaeda and its affiliates. These groups are instead conglomerations of militants, operating independently, with rough lines of communication and fuzzy networks that cross continents and groups. They are hard to map cleanly, in other words. Signature strikes take out whole swaths of these network sub-tiers rapidly -- so rapidly that the groups cannot replicate lost players and their hard-won experience. The tempo of the strikes, in other words, adds sand to the gears of terror organizations, destroying their operational capability faster than the groups can recover.

#### No Pakistan kickout

Daniel Byman 13, 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

It is also telling that drones have earned the backing, albeit secret, of foreign governments. In order to maintain popular support, politicians in Pakistan and Yemen routinely rail against the U.S. drone campaign. In reality, however, the governments of both countries have supported it. During the Bush and Obama administrations, Pakistan has even periodically hosted U.S. drone facilities and has been told about strikes in advance. Pervez Musharraf, president of Pakistan until 2008, was not worried about the drone program's negative publicity: "In Pakistan, things fall out of the sky all the time," he reportedly remarked. Yemen's former president, Ali Abdullah Saleh, also at times allowed drone strikes in his country and even covered for them by telling the public that they were conducted by the Yemeni air force. When the United States' involvement was leaked in 2002, however, relations between the two countries soured. Still, Saleh later let the drone program resume in Yemen, and his replacement, Abdu Rabbu Mansour Hadi, has publicly praised drones, saying that "they pinpoint the target and have zero margin of error, if you know what target you're aiming at."

As officials in both Pakistan and Yemen realize, U.S. drone strikes help their governments by targeting common enemies. A memo released by the antisecrecy website WikiLeaks revealed that Pakistan's army chief, Ashfaq Parvez Kayani, privately asked U.S. military leaders in 2008 for "continuous Predator coverage" over antigovernment militants, and the journalist Mark Mazzetti has reported that the United States has conducted "goodwill kills" against Pakistani militants who threatened Pakistan far more than the United States. Thus, in private, Pakistan supports the drone program. As then Prime Minister Yousaf Raza Gilani told Anne Patterson, then the U.S. ambassador to Pakistan, in 2008, "We'll protest [against the drone program] in the National Assembly and then ignore it."

Still, Pakistan is reluctant to make its approval public. First of all, the country's inability to fight terrorists on its own soil is a humiliation for Pakistan's politically powerful armed forces and intelligence service. In addition, although drones kill some of the government's enemies, they have also targeted pro-government groups that are hostile to the United States, such as the Haqqani network and the Taliban, which Pakistan has supported since its birth in the early 1990s. Even more important, the Pakistani public is vehemently opposed to U.S. drone strikes.

#### No retaliation to LeT

Yale Global 9-6-11 (“The World After 9/11 – Part I”, <http://yaleglobal.yale.edu/content/world-after-911-part-i>, CMR)

Ten years ago, a small group of men launched unprecedented terrorist attacks on icons of American power. The dramatic attack by Al Qaeda ushered in an era of seemingly unending war between organized states and shadowy groups. This YaleGlobal series examines the continuing reverberations from the 9/11 attacks, which lured the US into long wars in Afghanistan and Iraq. The US has successfully foiled attacks since, but Al Qaeda remains intent on igniting global war to establish an Islamic caliphate, warns Bruce Riedel, former US intelligence officer and senior fellow at the Brookings Institution’s Saban Center for Middle East Policy, in the first of two articles. A key caliphate link would be South Asia. **Despite** many attempts, **Al Qaeda** and the Pakistani group Lashkar-e-Taiba **have failed to bait India into war with Pakistan**. **The extremists keep plotting, hoping to ignite reckless conflicts** between the US and Iran, Egypt and Israel. **Fortunately,** the **extremism** **appalls most Muslims, and most state leaders** detect the traps. – YaleGlobal

#### No loose nukes

Cohen & Zenko 12 (Michael and Micah, Fellow at the Century Foundation AND Fellow in the Center for Preventive Action at the Council on Foreign Relations, “Clear and Present Safety,” Foreign Affairs, Vol. 91, Iss. 2, EBSCO)

Pakistan represents another potential source of loose nukes. The United States' military strategy in Afghanistan, with its reliance on drone strikes and cross-border raids, has actually contributed to instability in Pakistan, worsened U.S. relations with Islamabad, and potentially increased the possibility of a weapon falling into the wrong hands. Indeed, Pakistani fears of a U.S. raid on its nuclear arsenal have reportedly led Islamabad to disperse its weapons to multiple sites, transporting them in unsecured civilian vehicles. But even in Pakistan, the chances of a terrorist organization procuring a nuclear weapon are infinitesimally small. The U.S. Department of Energy has provided assistance to improve the security of Pakistan's nuclear arsenal, and successive senior U.S. government officials have repeated what former Secretary of Defense Robert Gates said in January 2010: that the United States is "very comfortable with the security of Pakistan's nuclear weapons."

#### Their authors are alarmists

Power 7/29/13 veteran foreign analyst, Jonathon, “America over the top”, <http://www.khaleejtimes.com/kt-article-display-1.asp?xfile=data/opinion/2013/July/opinion_July61.xml&section=opinion>, CMR

**Loose nukes** was **a threat** when the Cold War ended, especially in Russia and other ex-Soviet republics, but no longer. The worry was that a poorly protected nuclear bomb would end up in the hands of some terrorist group. Indeed, security and bomb accounting were woefully inadequate. But cooperative Russian-US efforts in improving security have been effective. In fact, both before and after this programme there have been no thefts or we would know about them by now.¶ **Pakistan**’s fast growing nuclear weapons’ programme has also **posed a risk**. **But** these days **US aid with security,** including locks, **has** sharply diminished **the dangers**. Secretary of Defence Robert Gates said in 2010 that the US is “very comfortable with the security of Pakistan’s nuclear weapons”.¶ Threat exaggeration **is a tool of the military-industrial-academic complex** in order **to enhance internal vested interests.** **Without its influence the US defence budget would be cut sharply**, as would the income of the arms suppliers. Hundreds of congressmen would loose the finance that these companies give them in return for their pro-military lobbying efforts. The thousands of **academics** that are **beholden to Defence Department research contracts would lose** a major source of **funds**.

#### No retaliation

Neely 13 Megan Neely, is a research intern for the Project on Nuclear Issues, “Doubting Deterrence of Nuclear Terrorism”, March 21, 2013, <http://csis.org/blog/doubting-deterrence-nuclear-terrorism>, CMR

Yet, let’s think about the series of events that would play out if a terrorist organization detonated a weapon in the United States. Let’s assume forensics confirmed the weapon’s origin, and let’s assume, for argument’s sake, that country was Pakistan. Would the United States then retaliate with a nuclear strike? If a nuclear attack occurs within the next four years (a reasonable length of time for such predictions concerning current international and domestic politics), it seems unlikely. Why? First, there’s the problem of time. Though nuclear forensics is useful, it takes time to analyze the data and determine the country of origin. Any justified response upon a state sponsor would not be swift. Second, even if the United States proved the country of origin, it would then be difficult to determine that Pakistan willingly and intentionally sponsored nuclear terrorism. If Pakistan did, then nuclear retaliation might be justified. However, if Pakistan did not, nuclear retaliation over unsecured nuclear materials would be a disproportionate response and potentially further detrimental. Should the United States launch a nuclear strike at Pakistan, Islamabad could see this as an initial hostility by the United States, and respond adversely. An obvious choice, given current tensions in South Asia, is for Pakistan to retaliate against a U.S. nuclear launch on its territory by initiating conflict with India, which could turn nuclear and increase the exchanges of nuclear weapons. Hence, it seems more likely that, after the international outrage at a terrorist group’s nuclear detonation, the United States would attempt to stop the bleeding without a nuclear strike. Instead, some choices might include deploying forces to track down those that supported the suicide terrorists that detonated the weapon, pressuring Pakistan to exert its sovereignty over fringe regions such as the Federally Administered Tribal Areas, and increasing the number of drone strikes in Waziristan.

#### Very low probability

**Ayson 10** (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, 2010 Available Online to Subscribing Institutions via InformaWorld, nkj)

There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is **just a chance**, **albeit a slim one**, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability?

#### Deterrence checks – default to empirics

Frohwein 5/7/2013 (2012 graduate of Georgetown University’s Security Studies Program Ashley, “Why Waltz May Have it Right”, https://blogs.commons.georgetown.edu/globalsecuritystudiesreview/2013/05/07/why-waltz-may-get-it-right/

First, her comparison with the Indo-Pakistani conflict does as much to hurt her case as to help it. Since partition in 1947, **India and Pakistan have fought four wars, three major and one minor**. The wars in 1947, 1965, and 1971 resulted in 3,500, 8,000, and nearly 12,000 battle-related deaths, respectively. India then conducted its “peaceful” nuclear test in 1974, followed by tests by both India and Pakistan in 1998. These were followed by the **Kargil** War in 1999, **lasting only a few months** with just over 1,000 battle deaths.[1] **Since this** conflict, **there have been** no large-scale military exchanges between the two sides, despite **ongoing rivalry and crises** such as the 2011 border skirmishes and terrorist attacks in the Indian Parliament in 2001 and in Mumbai in 2008. In times of crisis, **both sides seem able to step** back from the brink.[2] Thus, rather than necessarily escalating conflict through misperception or any other route, it seems that **mutual nuclear possession is concentrating the minds**[3] **of these two states**, as it likewise could vis-à-vis Iran.¶ Second, the empirical record regarding the validity of the stability-instability paradox is inconclusive. While intuitively logical, this argument’s greatest weakness is that many of its applications have been in the context of “enduring rivalries,” where conflict and crisis is more the norm than a deviation from it.[4] In the case of India and Pakistan, it is possible that nuclear weapons have allowed Pakistan to aggress with greater impunity, but it is equally plausible that **this is** simply business as usual**.** Similarly, on the Korean Peninsula, North Korean belligerence and provocation is a constant, not a result of their recent nuclear weapons acquisition, so it is difficult to sort out what exactly is making the difference. Iran would likely be no different, since its inflammatory rhetoric and support of terrorist organizations is a constant phenomenon.

#### No chance it goes nuclear – most qualled ev

Enders 2 (Jan 30, David, Michigan Daily, “Experts say nuclear war still unlikely,” http://www.michigandaily.com/content/experts-say-nuclear-war-still-unlikely, CMR)

\* Ashutosh Varshney – Professor of Political Science and South Asia expert at the University of Michigan

\* Paul Huth – Professor of International Conflict and Security Affairs at the University of Maryland

\* Kenneth Lieberthal – Professor of Political Science at the University of Michigan. Former special assistant to President Clinton at the National Security Council

University political science Prof. Ashutosh **Varshney** becomes animated **when asked about the likelihood of nuclear war between India and Pakistan.¶ "Odds are** close to zero**," Varshney said forcefully**, standing up to pace a little bit in his office. "**The assumption that India and Pakistan cannot manage their nuclear arsenals as well as the U.S.S.R. and U.S. or Russia and China concedes less to the intellect of leaders in both India and Pakistan than would be warranted."¶** The worlds two youngest nuclear powers first tested weapons in 1998, sparking fear of subcontinental nuclear war a fear Varshney finds ridiculous.¶ "**The decision makers are aware of what nuclear weapons are, even if the masses are not," he said.**¶ "Watching **the evening news**, CNN, I think they **have** vastly overstated the threat of nuclear war," political science Prof. Paul **Huth said.¶ Varshney added that there are numerous factors working against the possibility of nuclear war.¶ "India is committed to** a **n**o-**f**irst-**s**trikepolicy**," Varshney said. "It is virtually impossible for Pakistan to** go for a **first strike, because the retaliation would be gravely dangerous."¶** Political science Prof. Kenneth **Lieberthal,** a former special assistant to President Clinton at the National Security Council, **agreed**. "Usually a country that is in the position that **Pakistan** is in **would not shift to a level that would ensure their total destruction,**" Lieberthal said, making note of India"s considerably larger nuclear arsenal.¶ "**American intervention is another reason not to expect nuclear war," Varshney said. "If anything has happened since September 11, it is that** the command control system has strengthened. **The trigger is in very safe hands."**

# 2NC

## CP

### A2 Congress key to Perception/Credibility

#### Institutional flaws make Congress less consistent and credible than the executive --- also makes them an ineffective check on executive over-reach.

Eric A. Posner and Adrian Vermeule, Summer 2007. Kirkland & Ellis Professor of Law, The University of Chicago Law School; and Professor of Law, Harvard Law School. “The Credible Executive,” University of Chicago Law Review, http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74\_3\_Posner\_Vermeule.pdf.

Like the executive, Congress has a credibility problem. Members of Congress may be well motivated or ill motivated; the public does not know. Thus, when Congress passes a resolution criticizing presidential action or refuses to delegate power that he seeks, observers do not know whether Congress or the president is right. Ill-motivated members of Congress will constrain public-spirited presidents; thus the Madisonian cure for the problem of executive credibility could be worse than the disease. Even if members of Congress are generally well motivated, Congress has a problem of institutional credibility that the president lacks. Although a voter might trust the member of Congress for whom she voted because she knows about his efforts on his district’s behalf, she will usually know nothing about other members of Congress, so when her representative is outvoted, she might well believe that the other members are ill motivated. And, with respect to her own representative, he will often lack credibility compared to the president because he has much less information. Further, the reputation of congressional leaders is only very loosely tied to the reputation of the institution, while there is a closer tie between the president’s reputation and the presidency. As a result, Congress is likely to act less consistently than the president, further reducing its relative credibility. Congressional lack of credibility undermines its ability to constrain the president: Congress can monitor the president and tell the public that the president has acted properly or improperly, but if the public does not believe Congress, then Congress’s power to check the president is limited.

### 2nc solvency – Norms

#### The CP changes executive practice – that’s the key link to legal norms

Bradley, professor of law at Duke, and Morrison, professor of law at Columbia, May 2013

(Curtis A. and Trevor W., PRESIDENTIAL POWER, HISTORICAL PRACTICE, AND LEGAL CONSTRAINT, 113 Colum. L. Rev. 1097, Lexis)

Perhaps **the** most obvious **way that law can have a constraining effect is if the relevant actors** have internalized the legal norms, **whether those norms are** embodied **in** authoritative text, **judicial decisions**, or institutional practice. As a general matter, the internalization of legal norms is a phenomenon that can potentially take place wherever the law is thought to operate, in both the private and public sectors. But precisely how that internalization operates, including how it affects actual conduct, depends heavily on institutional context. When speaking of legal norm internalization as it relates to the presidency, it is important first to note that Presidents act through a wide array of agencies and departments, and that presidential decisions are informed - and often made, for all practical purposes - by officials other than the President. In most instances involving presidential power, therefore, **the relevant question is whether there has been an** internalization of legal norms by the executive branch.¶ The executive branch contains thousands of lawyers. n124 The President and other executive officials are regularly advised by these lawyers, and sometimes they themselves are lawyers. Although lawyers serve in a wide variety of roles throughout the executive branch, their [\*1133] experience of attending law school means that they have all had a common socialization - a socialization that typically entails taking law seriously on its own terms. n125 Moreover, the law schools attended by virtually all U.S. government lawyers are American law schools, which means that the lawyers are socialized in an ethos associated with the American polity and the American style of law and government. n126 These lawyers are also part of a professional community (including the state bars to which they are admitted) with at least a loosely shared set of norms of argumentative plausibility.¶ Certain legal offices within the executive branch have developed their own distinctive law-internalizing practices. This is particularly true in places like OLC, which, as noted above, provides legal advice based on its best view of the law. OLC has developed a range of practices and traditions - including a strong norm of adhering to its own precedents even across administrations - that help give it some distance and relative independence from the immediate political and policy preferences of its clients across the executive branch, and that make it easier for OLC to act on its own internalization of legal norms. n127 Another example is the State Department Legal Adviser's Office, which often takes the lead within the executive branch on matters of international law and which has developed its own set of traditions and practices that help protect it from undue pressure from its clients. n128

### 2nc solvency – perception

#### Solves perception and precedent

Johnsen, professor of law at Indiana University, August 2007

(Dawn, “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

Perhaps most essential to avoiding a culture in which OLC becomes merely an advocate of the administration's policy preferences is transparency [\*1597] in the specific legal advice that informs executive action, as well as in the general governing processes and standards. The Guidelines state that "**OLC should publicly disclose its written legal opinions** in a timely manner, absent strong reasons for delay or nondisclosure." n151 The Guidelines describe several values served by a presumption of public disclosure, beyond the general public accountability that accompanies openness in government. **The likelihood of public disclosure will encourage both** the reality andthe appearance **of governmental adherence to the rule of law by** deterring "excessive claims of executive authority" and promoting public confidence **that executive branch action actually is taken with regard to legal constraints**. n152 The Guidelines note as well that public discourse and "the development of constitutional meaning" may benefit from the executive's important voice, valuable perspective, and expertise. n153

### 2nc solvency – binding

#### OLC opinions are presumptively binding and solve the case

Trevor Morrison 11, Professor of Law at Columbia Law School, “LIBYA, ‘HOSTILITIES,’ THE OFFICE OF LEGAL COUNSEL, AND THE PROCESS OF EXECUTIVE BRANCH LEGAL INTERPRETATION,” Harvard Law Review Forum Vol.124:42, http://www.harvardlawreview.org/media/pdf/vol124\_forum\_morrison.pdf

Deeply rooted traditions treat the Justice Department’s Office of Legal Counsel (OLC) as the most important source of legal advice wit h- in the executive branch. A number of important norms guide the provision and handling of that advice. OLC bases its answers on its best view of the law, not merely its sense of what is plausible or arguable. 6 To ensure that it takes adequate account of competing perspectives within the executive branch, it typically requests and fully considers the views of other affected agencies before answering the questions put to it. Critically, once OLC arrives at an answer, it is treated as binding within the executive branch unless overruled by the Attorney General or the President. That power to overrule, moreover, is wielded extremely rarely — virtually never. As a result of these and related norms, and in spite of episodes like the notorious “torture memos,” OLC has earned a well-deserved reputation for providing credible, authoritative, thorough and objective legal analysis. The White House is one of the main beneficiaries of that reputation. When OLC concludes that a government action is lawful, its conclusion carries a legitimacy that other executive offices cannot so readily provide. That legitimacy is a function of OLC’s deep traditions and unique place within the executive branch. Other executive offices — be they agency general counsels or the White House Counsel’s Office — do not have decades-long traditions of providing legal advice based on their best view of the law after fully considering the competing positions; they have not generated bodies of authoritative precedents to inform and constrain their work; and they do not issue legal opinions that, whether or not they favor the President , are treated as presumptively binding within the executive branch. (Nor should those other offices mimic OLC; that is not their job.) Because the value of a favorable legal opinion from OLC is tied inextricably to these aspects of its work, each successive presidential administration has a strong incentive to respect and preserve them.

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### A2 CP Links to Politics

#### Mandatory disclosure doesn’t link either --- changes in agency design are not as controversial as specific policies because of a lack of interest groups and constituency effect.

Neal Kumar Katyal, 2006. Professor of Law @ Georgetown University. “Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within,” Yale Law Journal 115.9, The Most Dangerous Branch? Mayors, Governors, Presidents, and the Rule of Law: A Symposium on Executive Power (2006), pp. 2314-2349.

Before getting into the substance of the proposals, it is worth taking up a criticism that might be present off the bat. Aren't all proposals for bureaucratic reform bedeviled by the very forces that promote legislative inertia? If Congress can't be motivated to regulate any particular aspect of the legal war on terror, then how can it be expected to regulate anything more far-reaching? The answer lies in the fact that sometimes broad design choices are easier to impose by fiat than are specific policies.23 ¶ Any given policy proposal can get mired in a competition of special interests; indeed, that danger leads many to prefer executive action. Institutional design changes differ from these specific policy proposals because they cut across a plethora of interest groups and because the effects on constituencies are harder to assess due to the multiplicity of changes. The benefits of faction that Madison discussed in The Federalist No. 51 therefore arise; multitudes of interest groups find things to embrace in the system change. It is therefore not surprising that at the same time that Congress dropped the ball overseeing the legal war on terror it enacted the most sweeping set of changes to the executive branch in a half-century in the form of the Homeland Security Act of 2002.4 Indeed, as we shall see, that Act provides an object lesson: Design matters. And by altering bureaucratic arrangements, stronger internal checks can emerge

#### Executive orders don’t require political capital --- bypasses legislative process.

Benjamin Sovacool and Kelly Sovacool, 2009. PhD, Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization; and Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of Singapore. “Preventing National Electricity-Water Crisis Areas in the United States,” Columbia Journal of Environmental Law , 34 Colum. J. Envtl. L. 333.

Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horsetrading and compromise such legislative activity entails. 292 Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September 11, 2001 attacks on the Pentagon and World Trade Center, for instance, the Bush Administration almost immediately passed Executive Orders forcing airlines to reinforce cockpit doors and freezing the U.S. based assets of individuals and organizations involved with terrorist groups. 293 These actions took Congress nearly four months to debate and subsequently endorse with legislation. Executive Orders therefore enable presidents to rapidly change law without having to wait for congressional action or agency regulatory rulemaking

### EU

#### Lack of public backing foils EU efforts – plan can’t reverse, larger international role trades off with creating sustainable support

Shada Islam, 12-28-2013. http://www.dawn.com/news/1076841/decline-in-support-for-the-european-union

Call it one of life’s ironies: anti-government protesters in Ukraine may be clamouring to join the European Union (EU), but support for the EU is declining steadily among many of its 500 million citizens. Lack of public backing for the “European project” has long worried policymakers. With elections to the European Parliament — the EU’s only democratically-elected institution — set to take place in May 2014, the fretting has reached crisis proportions. The EU bigwigs are right to be concerned. Voter turn-out in the parliamentary polls is expected to be low — and those who do decide to cast their ballots are likely to do so in favour of anti-European and populist parties. Nobody is sure if the trend can be reversed. Recent opinion polls show that the number of Europeans who distrust the EU has doubled over the past six years to a record high, with debt-racked Greeks and Cypriots having the least faith in the bloc. Sixty per cent of Europeans “tended not to trust the EU”, according to the Euro barometer survey, compared to the 32 per cent level of distrust reported in early 2007 before the onset of the 2008/2009 global financial meltdown and the ensuing euro zone debt crisis. Reasons for Europeans’ disenchantment with an organisation that was awarded the 2013 Nobel Peace Prize for its contribution to democracy are not hard to come by. An economic crisis, record unemployment and five Eurozone bailouts have taken their toll on the EU’s standing. The policies of austerity adopted by Eurozone governments have resulted in record levels of unemployment, especially among young people. This, not surprisingly, is aggravating Europe’s mood of pessimism. Eurosceptic fervour may be highest in Britain (Prime Minister David Cameron has proposed Britain hold a vote by 2017 on whether to leave) but support for the EU is also falling in traditionally pro-European states such as Spain and Portugal. In fact, almost half of all Europeans are believed to pessimistic about the future of the 28-nation bloc. Many fear that this grim mood will encourage voters to slam mainstream political parties and elect the more extreme EU-phobic and anti-immigrant groups whose popularity has been on the rise for several years, prompting European Commission President José Manuel Barroso to warn of “political extremes and populism tearing apart the political support and the social fabric”. But it will take more than nice speeches to get Europeans to the ballot boxes in May. Turnout for the EU election has been declining since the Parliament was first elected in 1979, and hit its lowest point in 2009, when only 43 per cent of Europeans went to cast their ballot. There is hope that new rules under which European political parties have the power to nominate a candidate for European Commission president — a post that was in the past filled by a person hand-picked by EU leaders — will generate some voter excitement. The general sentiment is, however, that the elections will see an increase in the number of radical nationalist and anti-EU protest parties elected to the parliament.Some analysts say there could be a protest vote of up to 30 per cent, meaning up to 250 of the 751 seats in parliament being taken by candidates from non-mainstream parties on the far-left or far-right. Such a large protest vote could lead to serious disruptions in parliament, making it much harder to forge a majority on critical legislation, even if the protest candidates were of widely divergent views and not united. Others argue that the anti-European vote, while substantial, will be more contained, and fears of a vast surge in support for the far-right across the 28 countries may be overstated. The conservatives (European Peoples Party) are expected to remain the leading party, although they could lose around 40-50 seats. The Socialists may gain a fair number of seats and solidify their position as the second-largest presence across Europe. The key question is where that leaves the ‘non-mainstream’ groups — the far-right and far-left parties that are not part of the traditional five or so largest parliamentary blocs. Recent polls suggest that there may be a raw ‘protest’ element across the political spectrum of up to 150 seats — potentially the third-largest presence in parliament but not a coordinated one or one that agrees on many policies. As a result, the three biggest blocs — the conservatives, socialists and liberals, will have to overcome their traditional differences and coordinate more closely on legislation. While the upcoming elections are on everybody’s mind at the moment, the EU will, in fact, undergo a more far-reaching “leadership change” with the current heads of the European Commission, European Council and the “high representative” for foreign and security policy set to be replaced. For most of 2014, therefore, the EU will seek to juggle a hectic domestic agenda with demands for an expanded international role.

## Norms

**AT: Modeling/Arms Race – 2NC US Not Key**

#### US drone usage legal – no modeling – and restraint wouldn’t solve

Anderson 10/9/13 – law prof @ Washington College of Law, visiting fellow @ Hoover Institution, Senior Fellow @ Brookings (Kenneth, “Drones Are the Future for Dull or Dangerous Missions”, http://www.lawfareblog.com/2013/10/drones-are-the-future-for-dull-or-dangerous-missions/ , CMR)

Meanwhile, however, campaigning organizations – in the US and elsewhere, but strongest by far in their impact in Europe – darkly warn that as weaponized drones spread, the US will reap what it has sown through its targeted killing policies, and come to regret its arrogant exercise of special power privileges. This is not a persuasive claim, I would say, or an accurate characterization of the US position. The US does not believe that it is merely availing itself of a technology to which, for a time, it has held special access, and law must conform to its special privileges. On the contrary, the US sees its use of drone warfare and targeted killing as both lawful and good policy, and this in large part because the US sees the situation as an armed conflict and legally constrained existing law of targeting. One might disagree – as many do, including some European allies, campaigning groups, and the ICRC – with parts of the US interpretation of those rules, particularly who can be targeted and when, but it is a legally defensible, articulated position that adheres to (and develops in the context of new technology) long-held US positions on targeting law. With respect to others such as China, Russia, or others, however, the US is not claiming special privileges of power here – “just because we can.” The US government appears perfectly happy to say that if other governments actually follow these targeting standards, it does not have a problem as a matter of the laws of war – including China or other potential state adversaries. The possibility that China and other states would somehow not have marched ahead to develop so important a civilian (and not just military), technology as drone aircraft just because the United States somehow did not do so is far-fetched at best. (I leave for another post the question of whether possible drone military encounters over islands contested between China and Japan are better or worse than the alternative encounters.) It is finally hard to say, save by speculation, how much campaigning efforts to stigmatize a weapon and governments that acquire it actually impact government policies – especially when the technology is going to be transformative in so many ways that military uses will be only one part. Still, I would guess that the impact in Europe has been to slow down – not stop, but slow, and possibly fatally so, from a “business model” standpoint – the European defense establishment’s development of military drone technology. In that sense it is speculative, yes, but an important missing link in the account of the business of European military drones that the WSJ article describes. But the result today is exactly what the article describes: from the standpoint of having a home-grown military drone technological base, as well as actually possessing drones and especially the latest technologies, Europe is left in the position of playing catchup.

**AT: Russia (Chechnya)**

**This seriously won’t happen**

**Lewis 11** – teaches international law and the law of war at Ohio Northern University School of Law (Michael W, “Unfounded drone fears”, Oct 17, <http://articles.latimes.com/2011/oct/17/opinion/la-oe--lewis-drones-20111017>, CMR)

Numerous commentators have suggested that U.S. drone use legitimizes Russian drone use in Chechnya or Chinese drone use against the Uighurs. If China or Russia were facing genuine threats from Chechen or Uighur separatists, they might be allowed under international law to use drones in neighboring states if those states gave them permission to do so. However, **given the fact that Chechen separatists declared an end to armed resistance in** 20**09**, **and that the greatest concern Russians currently have with Chechnya is with the lavish subsidies that Russia is currently providing it, the likelihood of armed Russian drones over Chechnya seems remote at best.**

**AT: China**

#### No impact to Chinese drones---their ev is irrational media hype

Trefor Moss 13, journalist for The Diplomat covering Asian politics, defense and security, formerly Asia-Pacific Editor at Jane’s Defence Weekly, 3/2/13, “Here Come…China’s Drones,” The Diplomat, http://thediplomat.com/2013/03/02/here-comes-chinas-drones/?print=yes

Unmanned systems have become the legal and ethical problem child of the global defense industry and the governments they supply, rewriting the rules of military engagement in ways that many find disturbing. And this sense of unease about where we’re headed is hardly unfamiliar. Much like the emergence of drone technology, the rise of China and its reshaping of the geopolitical landscape has stirred up a sometimes understandable, sometimes irrational, fear of the unknown.

It’s safe to say, then, that Chinese drones conjure up a particularly intense sense of alarm that the media has begun to embrace as a license to panic. China is indeed developing a range of unmanned aerial vehicles/systems (UAVs/UASs) at a time when relations with Japan are tense, and when those with the U.S. are delicate. But that hardly justifies claims that “drones have taken center stage in an escalating arms race between China and Japan,” or that the “China drone threat highlights [a] new global arms race,” as some observers would have it. This hyperbole was perhaps fed by a 2012 U.S. Department of Defense report which described China’s development of UAVs as "alarming."

That’s quite unreasonable. All of the world’s advanced militaries are adopting drones, not just the PLA. That isn’t an arms race, or a reason to fear China, it’s just the direction in which defense technology is naturally progressing. Secondly, while China may be demonstrating impressive advances, Israel and the U.S. retain a substantial lead in the UAV field, with China—alongside Europe, India and Russia— still in the second tier. And thirdly, China is modernizing in all areas of military technology – unmanned systems being no exception.

#### And, US will always deter China---even if they acted it would only cause a diplomatic fuss

Vu Duc ‘13 "Khanh Vu Duc is a Vietnamese-Canadian lawyer who researches on Vietnamese politics, international relations and international law. He is a frequent contributor to Asia Sentinel and BBC Vietnamese Service, "Who's Bluffing Whom in the South China Sea?" www.asiasentinel.com/index.php?option=com\_content&task=view&id=5237&Itemid=171

Conversely, China would find an increased American presence unacceptable and a nuisance. Of course, **neither country is likely to find itself staring down the barrel of the other's gu**n. China's plans for the region would undoubtedly be under greater American scrutiny if Washington decides to allocate more assets to Asia-Pacific.

For the US, returning in force to Asia-Pacific would prove to be a costly endeavour, resources the country may or may not be able to muster. Yet, even if this is true, Washington's calculations may determine that the security risk posed by China in the region outweighs whatever investment required by the US.

China's dispute with Japan over the Senkaku/Diaoyu Island, however heated, will prove to be a peripheral issue with respect to China's dispute with the several claimant states over the Spratlys. Ultimately, it is not improbable that China would seize one or several of the Spratlys under foreign control as a means to demonstrate its resolve in the disputes and the region; but to do so is to engage in unnecessary risk. The consequences stemming from such action are too great for Beijing to ignore.

**Although it is unlikely that China's neighbors would be able to mount more than a diplomatic protest**, the fuss deriving from such an incident could prove more burdensome for China than it is willing to risk. The real consequence for China of any and all conflict in the region is and has always been an American intervention. As is, it would benefit Beijing to seek a peaceful, mutually agreed upon resolution, rather than brute force.

## Pakistan

### Loose nukes 2nc – secure

#### No impact to Pakistani loose nukes – they’re separated.

Koring, ‘9

[Paul, Globe and Mail, “Pakistan’s nuclear arsenal safe, security experts say”, 10-16-9

<http://www.theglobeandmail.com/news/world/pakistans-nuclear-arsenal-safe-security-experts-say/article1325820/>, CMR]

Pakistan's nuclear-weapons security is modeled on long-standing safeguards developed by the major powers and includes separately storing the physical components needed for a nuclear warhead and keeping them apart and heavily guarded. "Even if insurgents managed to get a fully assembled weapon, they would lack the 'secret decoder ring' [the special security codes] needed to arm it," Mr. Pike said. Thought to possess a relatively modest nuclear arsenal of between 70 and 100 warheads, Pakistan is even more secretive about its security measures than most nuclear-weapons states. But even if those measures were somehow breached, Mr. Pike said, even a complete nuclear weapon would be a limited threat in the hands of terrorists. "If they did try to hot-wire it to explode in the absence of knowing the approved firing sequences, it would probably only trigger the high-explosives, making a jim-dandy of a dirty bomb," he said, referring to an explosion that spreads radioactive material over a small area, but is not a nuclear blast.

# 1NR

### O/V

#### Link alone turns the case—political squabbling over authority allows the executive to ignore restraints.

CCR 9 (Center for Constitutional Rights, “Restore. Protect. Expand. Amend the War Powers Resolution”, <http://ccrjustice.org/files/CCR_White_WarPowers.pdf>)

In a great many instances, neither the President nor Congress, nor even the courts have been willing to trigger the War Powers Resolution mechanism. This is in part because the courts will not enforce the Resolution where Congress is either silent or acts ambiguously, even though the law clearly requires the troops to be withdrawn in such circumstances. In 1999, in the case of Yugoslavia, Congress voted not to authorize war, yet failed to pass legislation ordering the troops home and in fact funded the military action. Clearly, without reform of the legislation to address its weaknesses and without a concerted effort by a new executive in concert with Congress, the debate over war powers and responsibilities will remain paralyzed. War Powers in the George W. Bush Years In instances where Congress is too opposed, divided, conflicted or unsure to affirmatively authorize warfare, both the Constitution and the War Powers Resolution require that the United States not go to war. And yet, the Bush administration repeatedly forged ahead in defiance of the law, relying on an unconstitutional claim of executive power and the cynical political expectation that Congress would not want to be responsible for withholding support from American troops or ending a war once it was launched.

### UQ

#### Second, err negative on the question of veto overrides – Lobe says it will be a tough fight but the dynamics of an override are tough – so as long as Obama doesn’t further harm his relations with Democrats, he’ll win the fight

**Lindsay, 11/25/13 -** Senior Vice President, Director of Studies, and Maurice R. Greenberg Chair at the Council on Foreign Relations(James, “Will Congress Overrule Obama’s Iran Nuclear Deal?” <http://blogs.cfr.org/lindsay/2013/11/25/will-congress-overrule-obamas-iran-nuclear-deal/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+jlindsay+%28James+M.+Lindsay%3A+The+Water%27s+Edge%29>)

Does this mean that Congress is going to take Iran policy out of Obama’s hands? Not quite. Any sanctions bill could be vetoed, something the president presumably would do to save his signature diplomatic initiative. The odds that sanctions proponents could override a veto aren’t good. Congress hasn’t overridden one in foreign policy since it imposed anti-apartheid sanctions on South Africa over Ronald Reagan’s objections back in 1986. In that respect, Obama is in a much stronger position than he was back in September when he sought to persuade Congress to authorize a military strike on Syria. Then the difficulties of passing legislation worked against him; now they work for him. One reason Obama should be able to make a veto stick is party loyalty. Many congressional Democrats won’t see it in their interest to help Republicans rebuke him, and he only needs thirty-four senators to stand by him. Senator Reid has already begun to soften his commitment to holding a sanction vote. As Majority Leader he has considerable freedom to slow down bills and to keep them from being attached to must-pass legislation that would be politically hard for Obama to veto.

#### Menendez hasn’t been able to win enough Democrats because Obama’s outreach is working

**Tamari, 12/20/13** – Washington correspondent for the Philadelphia Inquirer (Jonathan, “Unsanctioned Fight”, <http://www.politico.com/magazine/story/2013/12/bob-menendezs-unsanctioned-fight-with-the-white-house-101396_Page3.html#.UsYRCfRDuYI>)

Menendez says the threat of sanctions will let the Iranians know that a hammer is poised to strike if they are simply stalling. “If this all falls apart, we don’t have months,” he told me. Obama rejected that idea Friday. “It’s not going to be hard for us to turn the dials back or strengthen sanctions even further,” he said. “I'll work with members of Congress to put even more pressure on Iran, but there’s no reason to do it right now.” Menendez’s plan faces a steep climb. Senate Majority Leader Harry Reid (D-Nev.) will determine if or when it gets a vote when Congress returns in January, and Menendez is facing pushback from fellow Democrats. Ten committee chairs wrote Reid this week urging him to keep the Senate from unilaterally advancing new sanctions and potentially scuttling negotiations.

### Links

#### War power loss places Obama on the defensive

Samples 11 (John, director of the Center for Representative Government at the Cato Institute, “Congress Surrenders the War Powers Libya, the United Nations, and the Constitution”, Oct 27, <http://www.cato.org/sites/cato.org/files/pubs/pdf/pa687.pdf>, CMR)

But political representation has other facets. It has given voice to public dissatisfaction ¶ about wars proper and limited wars. Congress “has historically been actively engaged ¶ in debates over the proper conduct of major ¶ military initiatives. It has proposed, publicly ¶ debated, and voted on various legislative ¶ initiatives to authorize or curtail the use of ¶ force.” Congress has also held hearings about ¶ the conduct of limited and proper wars.215¶ Many believe that such legislative actions ¶ have little effect on the president. Yet such actions can affect the cost-benefit calculations ¶ of the president in pursuing or failing to pursue a limited war. Congress can raise the costs ¶ of a policy by shaping and mobilizing public ¶ opinion against a war, thereby increasing the ¶ cost in political capital a president must pay ¶ to sustain a policy. Congressional actions also ¶ signal disunity (or unity) to foreign actors, ¶ who in turn act on their expectations, thereby ¶ raising the costs of a limited war. Congressional actions also affect presidential expectations about how the conduct of a war will ¶ be received in the legislature; Congress can ¶ thus influence presidential policies without ¶ directly overturning them.216 Systematic evidence indicates that since 1945 Congress has ¶ been able to influence presidential policies ¶ through these means.217 Although short of ¶ constitutional propriety, congressional voice ¶ can matter in war-making.

#### That forces concessions elsewhere

Saunders 13 (Elizabeth N. Saunders, George Washington University, “The Electoral Disconnection in US Foreign Policy”, January, <http://mortara.georgetown.edu/document/1242780359442/SaundersElectoralDisconnectionJan2013.pdf>, CMR)

Self-interested elites can impose costs on the president in exchange for their support (or ¶ for refraining from criticism) in two principal ways. The first is by forcing the president to pay ¶ political costs to achieve his preferred policy, without affecting the policy itself. Such cost raising bargains force the president to spend political capital that he might have expended ¶ elsewhere.70 If the expected political costs are too high, the president may decide not to pursue a ¶ military operation at all, or to curtail an operation already in progress. A second possibility is a ¶ more direct bargain or compromise that changes the final form of the president’s decision, ¶ affecting either the policy itself or how the policy is implemented. The configuration of elites ¶ involved in a particular issue will affect whether cost-raising or policy-adjusting outcomes ¶ emerge. A complete discussion of how likely different elites are to impose certain types of costs ¶ on the president is beyond the scope of this paper, but here it is important to note that the process ¶ of elite coalition management can have significant consequences for policy choices and ¶ implementation, particularly when elites are able to extract policy-adjusting concessions. The ¶ president may be pulled away from his ideal point to accommodate elites, even if public opinion ¶ is not pushing

### TK Link

#### Restrictions on Obama’s use of drones would be a loss- likely to veto and destroy himself politically

Alex Newman, Correspondent at The New American magazine since 2007, University of Florida

B.S., Journalism 3-28-2013 <http://www.thenewamerican.com/usnews/constitution/item/14936-gop-lawmakers-seek-to-restrain-obama-on-killing-americans>

Responding to a tsunami of outrage across the political spectrum over the Obama administration’s lawless power grabs, a coalition of liberty-minded Republicans introduced a bill in Congress last week that would specifically prohibit the executive branch from using military strikes on U.S. soil to murder American citizens. The lawmakers behind the wildly popular effort said it was aimed at protecting the Constitution and the unalienable rights of Americans. ¶ The three-page legislation (H.R. 1269), dubbed the “Life, Liberty, and Justice for All Americans Act,” addresses widespread public concerns and has already attracted broad support among activists opposed to the federal government’s wild claims — especially the notion that the president can unilaterally decide to extra-judicially execute or indefinitely detain anyone in the world without due process, trial, or even formal charges. Incredibly, according to the administration, even Americans can be killed or “disappeared” by Obama.¶ The woefully uninformed may wonder why a law prohibiting something so obviously unlawful would be necessary. After all, the U.S. government is supposed to be limited by the Constitution and its Bill of Rights. The document, of course, enshrines the unalienable right to due process of law and a trial by jury before a person can be deprived of life, liberty, or property. The Declaration of Independence also points out that those rights come from God — not government.¶ The Obama administration, however, has openly admitted to believing that it can execute Americans without even charging them with a crime. In fact, it has already done so in multiple cases, including the deliberate execution by drone-fired missile of a 16-year-old American boy in Yemen. The teen’s only apparent “crime” was being related to his late father, an alleged Islamic extremist who was also blown to bits by a U.S. missile despite never having been charged with anything.¶ The Justice Department, headed by disgraced Attorney General Eric “Fast and Furious” Holder, actually produced a “memo” purporting to justify the criminal practice. The White House later claimed that executing Americans without due process is “legal,” “necessary,” “ethical,” and “wise.” Meanwhile, under the National Defense Authorization Act (NDAA), the president supposedly has the authority to use the U.S. military to indefinitely detain anyone suspected of supporting “terrorism” — again without charges or trial. ¶ If passed into law, however, the “Life, Liberty, and Justice for All Americans Act” would aim to help put the executive branch in its proper constitutional place. “The President may not use lethal military force against a citizen of the United States who is located in the United States,” the bill explains, offering only a narrow exception to the prohibition that would apply to all agencies and departments. “Nothing in this section shall be construed to suggest that the Constitution would otherwise allow the killing of a citizen of the United States without due process of law.” ¶ In a statement announcing the bill, the three lawmakers behind it explained why it was needed. “The Constitution protects Americans from being assassinated by their own government using drones or any other weapons,” said Rep. Justin Amash, a popular Republican from Michigan who has developed a reputation as one of the strongest supporters of the Constitution in Congress. “Our bill affirms citizens’ constitutionally protected right to due process and ensures that Americans do not have to fear that military force will be used against them in their homes, offices, and, yes, even in cafés.”¶ GOP Rep. Trey Radel of Florida, another congressman developing a reputation for constitutional fidelity, echoed those remarks. America, he said, is the greatest nation on earth because the U.S. Constitution protects life and assures liberty for all citizens. “The government should be vigilant in defense of our rights especially with the use of military force, and most importantly when it comes to using that force against Americans within our borders," Rep. Radel explained.¶ Finally, liberty-minded Republican Congressman Thomas Massie of Kentucky, the third lawmaker behind the bill, explained that the federal government does not have the authority to execute Americans on U.S. soil without the constitutionally guaranteed right of due process. “Constituents in my district are deeply concerned about the privacy, safety, and constitutionality of government drones in U.S. airspace,” Rep. Massie said in a statement unveiling the legislation.¶ Of course, concern over the Obama administration’s bizarre justifications for murdering U.S. citizens without due process has been simmering for years on both the right and left — and among more-principled members of both parties in Congress. On March 6, however, the deadly serious issue exploded into the public consciousness across America after popular conservative Sen. Rand Paul (R-Ky.) led a historic 13-hour filibuster on the Senate floor in defense of Americans’ unalienable rights.¶ “I rise today to begin to filibuster John Brennan’s nomination for the CIA. I will speak until I can no longer speak,” said Sen. Paul, who promptly became something of a hero to millions of Americans. “I will speak as long as it takes, until the alarm is sounded from coast to coast that our Constitution is important, that your rights to trial by jury are precious, that no American should be killed by a drone on American soil without first being charged with a crime, without first being found to be guilty by a court.” ¶ Critics of the administration’s extra-judicial assassination program have been winning the battle for public opinion by a landslide. In fact, a Gallup poll released this week revealed that about 80 percent of Americans were opposed to using drones to attack U.S. citizens suspected of terrorism in the “Homeland.” Just 13 percent supported the idea, while seven percent were undecided. Killing American “suspected terrorists” in other countries is also opposed by a majority of citizens — not that constitutionally guaranteed rights could be infringed upon based on public sentiment anyway. ¶ Even the most ruthless Third World despots would never dare to claim openly that they have the authority to murder anyone, anywhere, anytime, without trial or even charging the target with a crime. The “establishment” wing of both the Democrat Party and the GOP, however, despite swearing an oath to uphold the Constitution, has come out swinging to support Obama’s lawlessness on the issue.¶ Among Democrats, even House Minority Leader Nancy Pelosi — who duped voters into believing she opposed war and supported civil liberties — announced her support of the president’s extrajudicial killing spree last month. Speaking to a liberal reporter, Rep. Pelosi of California said she was not even sure whether the Obama administration should tell the public after it executes an American without due process. "Maybe,” she responded. “It just depends."¶ In the Republican Party, two of the most prominent so-called RINOs – Republicans In Name Only — have also admitted they support Obama’s murder-by-drone machinations. Sen. Lindsey Graham of South Carolina even proposed a resolution to commend the president for his extra-judicial assassination program. Sen. John McCain from Arizona, meanwhile, rightly opposed torture, yet for some reason claimed to believe that opposition to execution of Americans without charge or trial is a hallmark of what he childishly called “wacko birds” before publicly apologizing. ¶ Obama claims his invented authority to murder or indefinitely detain anyone applies only to suspected “al-Qaeda” terrorists, their supporters, or vaguely defined “associated forces.” However, with indisputable evidence that the administration has itself been supporting self-styled al-Qaeda leaders in both Libya and Syria, the question of who might be labeled a suspected terrorist becomes crucial. If al-Qaeda is getting U.S. weapons, funding, and training from Obama to overthrow certain Middle Eastern regimes, whom does the president really consider to be a terrorist?¶ According to official documents released by multiple federal agencies and departments in recent years, the real terror threat to the “Homeland” is actually regular Americans: pro-life activists, gun owners, conservatives, constitutionalists, Ron Paul supporters, libertarians, veterans, opponents of illegal immigration, and others. Even a U.S. military “think tank” recently put out a shoddy “study” claiming that conservatives were the real danger. The Justice Department, meanwhile, was exposed last year training state and local police to consider mundane political bumper stickers as possible indicators of domestic terrorism.¶ The legislation to prohibit the assassination of Americans on U.S. soil was filed last week and has now been referred to the House Judiciary, Armed Services, and Intelligence committees. No hearings have been scheduled yet, according to legislative staffers. If the bill eventually reaches the president’s desk, Obama may well try to veto it, of course — though doing so would likely be an albatross around his neck even among his most ardent supporters.¶ Still, lawmakers could override a potential veto. With 80 percent of Americans opposed to drone strikes targeting Americans on U.S. soil, members of Congress from both parties would probably have a very tough time explaining their opposition to the legislation to constituents. Activists are already rallying to support “Life, Liberty, and Justice for All Americans.” Whether more lawmakers will follow suit remains to be seen.

### Negs Succeed

#### Deal key to prevent war and Iran prolif

Shank and Gould 9/12

Michael Shank, Ph.D., is director of foreign policy at the Friends Committee on National Legislation. Kate Gould is legislative associate for Middle East policy at FCNL, No Iran deal, but significant progress in Geneva, 9/12/13, http://communities.washingtontimes.com/neighborhood/cause-conflict-conclusion/2013/nov/12/no-iran-deal-significant-progress-geneva/

Congress should welcome, not stubbornly dismiss, diplomatic efforts to finalize the interim accord and support the continued conversation to reach a more comprehensive agreement. The sanctions that hawks on the Hill are pushing derail such efforts and increase the prospects of war. There is, thankfully, a growing bipartisan contingent of Congress who recognizes that more sanctions could undercut the delicate diplomatic efforts underway. Senator Carl Levin, D-Mich., chair of the Senate Armed Services Committee, cautioned early on that, “We should not at this time impose additional sanctions.” Senator Tim Johnson, D-S.D., chair of the Banking Committee, is still weighing whether to press forward with new sanctions in his committee. Separately, as early as next week, the Senate could vote on Iran sanctions amendments during the chamber’s debate on the must-pass annual defense authorization bill. This caution against new sanctions, coming from these more sober quarters of the Senate, echoes the warnings from a wide spectrum of former U.S. military officials against new sanctions. There is broad recognition by U.S. and Israeli security officials that the military option is not the preferred option; a diplomatic one is. This widespread support for a negotiated solution was highlighted last week when 79 national security heavyweights signed on to a resounding endorsement of the Obama Administration’s latest diplomatic efforts. Any member of Congress rejecting a diplomatic solution moves the United States toward another war in the Middle East. Saying no to this deal-in-the-works, furthermore, brings the world no closer toward the goal of Iran giving up its entire nuclear program. Rather, it would likely result in an unchecked Iranian enrichment program, while the United States and Iran would teeter perilously close on the brink of war. A deal to prevent war and a nuclear-armed Iran is within reach and it would be dangerous to let it slip away. Congress can do the right thing here, for America’s security and Middle East’s stability, and take the higher diplomatic road. Pandering to harsh rhetoric and campaign contributors is no way to sustain a foreign policy agenda. It will only make America and her assets abroad less secure, not more. The time is now to curb Iran’s enrichment program as well as Congress’s obstructionism to a peaceful path forward.

#### This specific deal solves

Fars 12-30 Senior Negotiator: Iranian Parliament’s 60% Grade Enrichment Law Binding for Gov’t http://english.farsnews.com/newstext.aspx?nn=13921009000373

TEHRAN (FNA)- If the Iranian parliament approves the pending draft bill which requires the government to enrich uranium to the 60 percent grade, it will be binding for the government, Iranian Deputy Foreign Minister and senior negotiator in the talks with the world powers Seyed Abbas Araqchi said.¶ Araqchi’s comments came as the number of signatories to the draft bill presented to the Presiding Board of the Iranian parliament on Wednesday to require the government of President Hassan Rouhani to enrich uranium to the 60 percent grade reached the two-third quorum on Sunday.¶ The Iranian deputy foreign minister pointed to the draft bill, and said, “This is an idea which has been brought up at the parliament and whatever is passed in the parliament and becomes a law will be binding for us.”¶ On December 25, Iranian lawmakers drafted a bill that, if passed, would oblige the government to produce 60-percent enriched uranium in line with the requirements of the nation’s civilian nuclear program.¶ The bill was presented after Washington breached the recent Geneva deal between Iran and the world powers by blacklisting a dozen companies and individuals for evading US sanctions.¶ On Saturday, a senior Iranian lawmaker underlined the parliament's responsibility for safeguarding and saving the country's resources for the next generations, and said the legislature's new bill has been drafted to the same end.

### Turns China

#### New round of sanctions would threaten broad enforcement of extraterritorial sanctions

Kahl-Director, Middle East Security Program, Center for a New American Security-11/13/13

<http://docs.house.gov/meetings/FA/FA00/20131113/101478/HHRG-113-FA00-Wstate-KahlC-20131113.pdf>

Second, and somewhat paradoxically, escalating sanctions at this moment could actually end up weakening international pressure on Iran. For better or worse, Rouhani has already succeeded in shifting international perceptions of Iran. If the United States, rather than Iran, comes across as the intransigent party, it will become much more difficult to maintain the international coalition currently isolating Tehran. In particular, if negotiations on a comprehensive framework collapse because of Washington’s unwillingness to make a deal on limited enrichment – a deal Russia and China and numerous other European and Asian nations support – it will likely become much harder to enforce sanctions. Some fence sitters in Europe and Asia will start to flirt with Iran again, leaving the United States in the untenable position of choosing between imposing extraterritorial sanctions on banks and companies in China, India, Japan, South Korea, Turkey and elsewhere, or acquiescing to the erosion of the comprehensive sanctions regime.

#### Turns China

Leverett-professor at Pennsylvania State University's School of International Affairs-2/25/13

Imposing secondary sanctions on non-US entities transacting with Iran could backfire on Washington if implemented.

<http://www.aljazeera.com/indepth/opinion/2013/02/201322584515426148.html>

Secondary sanctions Secondary sanctions are a legal and political house of cards. They almost certainly violate American commitments under the World Trade Organisation, which allows members to cut trade with states they deem national security threats but not to sanction other members over lawful business conducted in third countries. If challenged on the issue in the WTO's Dispute Resolution Mechanism, Washington would surely lose. India aims to cash in on Iran sanctions Consequently, US administrations have been reluctant to impose secondary sanctions on non-US entities transacting with Iran. In 1998, the Clinton administration waived sanctions against a consortium of European, Russian and Asian companies developing an Iranian gas field; over the next decade, Washington declined to make determinations whether other non-US companies' Iranian activities were sanctionable. The Obama administration now issues blanket waivers for countries continuing to buy Iranian oil, even when it is questionable they are really reducing their purchases. Still, legal and reputational risks posed by the threat of US secondary sanctions have reduced the willingness of companies and banks in many countries to transact with Iran, with negative consequences for its oil export volumes, the value of its currency and other dimensions of its economic life. Last year, the European Union - which for years had condemned America's prospective "extraterritorial" application of national trade law and warned it would go to the WTO's Dispute Resolution Mechanism if Washington ever sanctioned European firms over Iran-related business - finally subordinated its Iran policy to American preferences, banning Iranian oil and imposing close to a comprehensive economic embargo against the Islamic Republic. In recent weeks, however, Europe's General Court overturned European sanctions against two of Iran's biggest banks, ruling that the EU never substantiated its claims that the banks provided "financial services for entities procuring on behalf of Iran's nuclear and ballistic missile programmes". The European Council has two months to respond - but removing sanctions against the banks would severely weaken Europe's sanctions regime. Other major players in Iran's economy, including the Central Bank of Iran and the National Iranian Oil Company, are now challenging their own sanctioned status. On the other side of the world, America is on a collision course with China over sanctions. In recent years, Beijing has tried to accommodate US concerns about Iran. It has not developed trade and investment positions there as rapidly as it might have, and has shifted some Iran-related transactional flows into renminbito to help the Obama administration avoid sanctioning Chinese banks (similarly, India now pays for some Iranian oil imports in rupees). Whether Beijing has really lowered its aggregate imports of Iranian oil is unclear - but it clearly reduces them when the administration is deciding about six-month sanctions waivers for countries buying Iranian crude. The administration is taking its own steps to forestall a Sino-American conflict over sanctions. Besides issuing waivers for oil imports, the one Chinese bank Washington has barred from the US financial system for Iran-related transactions is a subsidiary of a Chinese energy company - a subsidiary with no business in the US. However, as Congress enacts additional layers of secondary sanctions, President Obama's room to manoeuver is being progressively reduced. Therein lies the looming policy train wreck.

### Turns Terror

#### Turns terrorism – biggest link, guts solvency

Avraham 9/9

Rachel, “Analysis: The Main Terror Threat is Iran, Not Syria”, <http://www.jerusalemonline.com/rachel/analysis-the-main-terror-threat-is-iran-not-syria-1579>, CMR

Speaking at the World Summit on Counter-Terrorism, Maj. General Amos Gilad reiterated that the “main effort should be to prevent Iran from going nuclear. Israel has to focus on this threat. **A nuclear Iran can change the entire order in the Middle East.**” He claimed that **Iranian officials have even admitted** that **their nuclear program will help terrorist organizations** like Hezbollah, **by providing them with a** nuclear umbrella **that will** protect them against retaliation whenever they engage in acts of terrorism, thus thwarting Israeli and western counter-terror measures. ¶ Prof. Uzi Arad, head of the National Security Council, added that from an international legal perspective, Iran is also a greater violator than Syria. While emphasizing that there are many atrocities being committed in Syria as we speak and that Assad has done “terrible things,” he claims that the Geneva Convention only prohibits using chemical weapons on foreign fighters, not ones own citizens. Furthermore, Syria never ratified the Chemical Weapons Convention, implying that Syria cannot be held legally responsible for using chemical weapons against her own people.¶ To the contrary, Arad emphasized that Iran has violated the Nuclear Non-Proliferation Treaty, to which Iran ratified, by internationally seeking to develop nuclear weapons. “Their level of breach is higher than the Syrians,” Arad stated. Additionally, he believes that “from a strategic point of view, our eyes should be on Iran, even if you look at Syria.” **Iran is the** main sponsor **of terrorism in the Middle East**, while Syria is merely a proxy state of Iran. ¶ Israeli Defense Minister Boogie Ya’alon emphasized, “**When we talk about states that support terrorism, Iran** tops the list.” He stated that Iran supports terrorism around the world as a means to export their revolution to other nations, with a special emphasis on Shiite communities in countries like Lebanon and Bahrain. He accused Iran of taking advantage of the instability caused by the Arab Spring to promote radical Islam. ¶ Ya’alon stated that Iran exploits the fact that the majority of states in the Middle East were artificially formed by the Sykes-Picot Agreement and were only held together by a dictator, causing these countries to descend into chaos once the dictator was overthrown. He also noted that Iran was behind the attempted assassination of the Saudi Ambassador, as well as the Burgas terror assault and numerous attacks on Israeli embassies, demonstrating the extent to which Iran is a threat to world peace. ¶ These **Israeli security experts view Iran’s nuclear program to be a threat to global security**, while Assad’s regime is mainly a threat to his own people, even though there are spillovers into the Golan Heights and other areas. To confirm this point, Arad claims that more Americans support the United States attacking Iran to prevent the country from becoming a nuclear power than starting a war to protect the Syrian people from Assad’s atrocities, since the American people understand that Iran is a greater global threat than Syria.