# 1NC

### 1

#### Interp – “and/or” means 3 options

Jeongbin Ok, Safety material and system¶ EP 2619826 A2 (text from WO2012039632A2), Publication date Jul 31, 2013¶ http://www.google.com/patents/EP2619826A2?cl=en

As used herein "(s)" following a noun means the plural and/or singular forms of the noun. As used herein the term "and/or" means "and" or "or" or both.

#### Resolutional use implies a choice of restrictions

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 – plan avoids controversy of the resolution – question is whether court and/or Congress can check the executive. Impossible to get specific disads to generic “should restrict” affs and decreases solvency advocate burden of the aff.

#### And, plan is legally void, impossible agreement – zero solvency, roll-back, jurisdiction

CONTRACT CHAPTER 149 OF THE LAWS¶ 1959 EDITION¶ PRINTED BY¶ C. F. ROWORTH LIMITED, 54, GRAFTON WAY, LONDON, W.1.¶ [Appointed by the Government of Cyprus the Government Printers of this Edition of Laws within, the meaning of the Evidence (Colonial Statutes)Act, 1907.] 1959¶ [1st January, 1931.]¶ 1949 Cap. 192. 25 of 53. 7 of 56

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.¶ If the event becomes impossible, such contracts become void.

### 2

#### Interpretation:

#### War powers authority is derived from congressional statute – restrictions are increased via statutory or judicial prohibitions on the source

CURTIS A. BRADLEY, Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School, Harvard Journal of Law & Public Policy [Vol. 33 No. 1] 2010.

http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty\_scholarship

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.¶ 1¶ For the most part, the Supreme Court has also followed this¶ approach in deciding executive power issues relating to the¶ war on terror. In Hamdi v. Rumsfeld, for example, Justice¶ O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on¶ Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2¶ Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3 The Court’s decision in Boumediene v. Bush 4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus review in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detain ees.5¶ In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.¶ Statutory authority was also a central issue in the much‐¶ discussed Al‐Marri case in the Fourth Circuit.6¶ Although the Su‐¶ preme Court vacated the Fourth Circuit’s decision as moot, the¶ decision still provides an instructive example. Al‐Marri involved¶ a Qatari citizen, Ali Saleh Kahlah al‐Marri, who came to the¶ United States on September 10, 2001, and was later arrested and¶ charged with various counts of fraud.7¶ Shortly before al‐Marri’s¶ trial, President Bush designated him an enemy combatant, and¶ he was moved to military custody.8¶ As justification for this ac‐¶ tion, the Bush Administration alleged that al‐Marri was an al¶ Qaeda sleeper agent who had come to the United States to await¶ instructions to carry outfurther attacks after September 11.9

#### Violation:

#### The plan is an implicit delegation of “authority” – must stamp the originating statute to “increase restrictions on”

Graham Cronogue, Duke University School of Law, J.D. expected 2013; A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW [Vol. 22:377 2012] http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil

The AUMF’s broad “all necessary and appropriate force” language ¶ confers on the President complete Congressional authorization to wage war ¶ against the specified groups. First, the AUMF’s “all necessary and ¶ appropriate force” language mirrors that found in a declaration of war and, ¶ far from imposing any constraints, bolsters the President’s powers ¶ significantly.37 In Bas v. Tingy, the Court found that Congress could make ¶ narrow authorizations that are “limited in place, in objects, and in time.”38¶ Yet, the AUMF authorization is much broader than that typically found in a ¶ limited or quasi-war context where the President can only use certain ¶ armed forces against a specific type of target in a specified way.39 In the Quasi-War with France, for example, the President’s actions were limited to a specific place and type of enemy force.40 Indeed, the use of force was restricted to the high seas and armed French vessels.41 In these examples, ¶ the President was not authorized to use force in enemy ports or against ¶ many other members of the enemy’s military.42 In contrast, the AUMF does not explicitly limit where or what kind of force the President may ¶ use.43 Rather, it leaves this determination open to the President and merely ¶ names the class of targets.44¶ Second, the AUMF’s language illustrates congressional acquiescence ¶ or approval of broad presidential authority to use force. “[T]he enactment ¶ of legislation closely related to the question of the President’s authority in a ¶ particular case which evinces legislative intent to accord the President ¶ broad discretion may be considered to ‘invite’ ‘measures on independent ¶ presidential responsibility.’”45 The language in the AUMF is very similar to ¶ declarations of war and authorizations, in which presidents have exercised ¶ plenary power in determining the means and type of force.46 In these ¶ “perfect” wars, “all the members act[ed] under a general authority, and all ¶ the rights and consequences of war attach to their condition.”47 For ¶ instance, the Gulf of Tonkin Resolution allowed the President to “take all ¶ necessary measures” and was used as broad authority to wage combat and ¶ detain enemies.48 Similarly, the AUMF allows for the use of “all necessary ¶ and appropriate force.” Presidents have commonly exercised broad ¶ authority under similar grants of power, and Congress’s failure to act in ¶ limiting these powers here suggests acquiescence to this interpretation.49¶ More convincingly than in Dames & Moore, where Congress failed to ¶ object to executive action, there are numerous comments from the ¶ legislature that the President should have broad authority under the ¶ AUMF.50 Given these statements and Congress’s ample opportunity to ¶ limit the scope or type of force, Congress must have acquiesced to past ¶ executive practice and interpretation. Furthermore, the plurality in Hamdi also treated the AUMF as a broad ¶ authorization to use force.51 In upholding the President’s power to detain ¶ enemy combatants, the Court leaned heavily on the similarities between the ¶ current authorization and that of broad authorizations characteristic of full ¶ wars.52 The Court found that the President had many of the same powers ¶ usually granted to the President by war declarations.53 Then, it looked to ¶ past exercises of presidential power to find what actions Congress would ¶ have implicitly authorized.54 Specifically, the Court found that detention ¶ was as “fundamental and accepted an incident to war as to be an exercise of ¶ the ‘necessary and appropriate force’ Congress has authorized the President ¶ to use.”55¶ Given that the AUMF does not contain any specific limitation on the ¶ type of force and that the language describing this force is hashed in the ¶ extremely broad terms, the AUMF must grant the President significant ¶ authority to act. This authority is certainly still constrained by the laws of ¶ war and other independent constitutional checks on the Executive, but it ¶ appears that Congress delegated the President extremely broad powers. ¶ Finally, based on the plurality’s opinion in Hamdi, the exact scope of these ¶ powers will be interpreted in light of past actions by the Executive but still ¶ remains far from clear.56¶ D. Where? ¶ Another significant issue not addressed by the AUMF is where this ¶ “force” may be applied. Again, the text of the statute offers little guidance, ¶ as it does not mention any geographic limitation. The statute does confirm ¶ the existence of a threat to American citizens at home and abroad.57 Of ¶ course, one plausible reading is that there is no limitation whatsoever. ¶ Under this reading, if an organization that satisfies the 9/11 requirement is ¶ in the United States or in a foreign country, the President is always ¶ authorized to use force against that target. Given the President’s duty to protect Americans and the context in ¶ which the AUMF was passed, the AUMF seemingly authorizes force at home. The AUMF passed after an attack on American soil, and the United ¶ States seemed in a very real sense part of the theater of war. Furthermore, ¶ force under the AUMF is designed to “prevent any future acts of ¶ international terrorism against the United States” and its citizens at home.58¶ Since al-Qaeda could have small cells in the United States, a territorial ¶ limitation precluding force at home might hamstring this objective. Despite ¶ these factors, the plurality in Hamdi limited its holding to apply the AUMF ¶ to an American citizen captured in the traditional battlefield.59 However, it ¶ seems that the need to detain enemy combatants picked up on the foreign ¶ battlefield and prevent them from engaging in conflict is at least as strong ¶ as when the enemy is in the United States.60 Later, the Court in Padilla¶ upheld the application of the AUMF to an American citizen captured on ¶ American soil, suggesting the AUMF should apply at home.61¶ The true difficulty with the AUMF’s geographical limitation comes ¶ when the organization or person is in another country. The AUMF does ¶ authorize actions against “nations,” so it clearly is not limited to domestic ¶ threats. However, what happens if the target is in a state that is not an ¶ eligible target? This issue implicates fundamental questions of sovereignty ¶ that have become especially important in the case of targeted killings in ¶ Pakistan and Yemen. Despite the importance of this issue, the AUMF ¶ remains silent on this point. ¶ II. THE IMPORTANCE OF CONGRESSIONAL AUTHORIZATION ¶ In order to evaluate the significance of the AUMF, we must first ¶ determine whether the President actually needs authorization to defend the ¶ United States against these terrorist threats or if he can use his inherent ¶ constitutional authority to accomplish the same goal. The President’s ¶ inherent powers as Commander in Chief are at their height during times of ¶ war and emergency. Therefore, I will first examine the question of “were ¶ we at war.” In light of this answer and the President’s inherent authority, I ¶ will look at whether the AUMF provides any benefits in the prosecution of ¶ this conflict. A. Were We at War? ¶ The text of the AUMF confers on the President strong authorization to ¶ combat a category of enemies for an undefined period of time and in an unspecified location. His powers are much broader than that typically ¶ authorized in limited or quasi-wars. Moreover, the President has ordered ¶ transnational air strikes, electronic surveillance, detentions, and military ¶ invasions pursuant to his powers under the AUMF.62 Yet, the AUMF is not ¶ a formal declaration of war and its targets are not all states or state actors. ¶ This absence of a formal declaration might suggest that we are not in a ¶ state of war. However, if the United States was not in a state of war with alQaeda, the President’s inherent authority to act might be severely limited, ¶ making the AUMF an essential component to the use of force. ¶ The Court held in the Prize cases that a “state of actual war may exist ¶ without any formal declaration of it by either party; and this is true of both ¶ a civil and a foreign war.”63 Rather, a state of war can exist de facto.64 In ¶ the Prize cases, the Court considered President Lincoln’s order of a ¶ blockade against the South “official and conclusive evidence . . . that a ¶ state of war existed which demanded and authorized a recourse to such a ¶ Here, President Bush proclaimed that al-Qaeda’s attacks on American ¶ soil were “acts of war.”69 Even prior to September 11, al-Qaeda had ¶ attacked American embassies, ships, and military bases on several ¶ occasions, leading President Clinton to declare a state of armed conflict ¶ against al-Qaeda.70 But on September 11, 2001, the conflict escalated ¶ dramatically. Al-Qaeda inflicted massive casualties against American ¶ civilians, caused catastrophic economic damage, and fundamentally altered¶ measure.”65 In addition to the President’s declaration, the Court found that ¶ the Queen of England’s proclamation of neutrality after the firing on Fort ¶ Sumter was also adequate evidence of war.66 The Court acknowledged its ¶ deference to the President’s characterization of the conflict and ¶ classification of the enemy as “belligerents.”67 Thus, the President’s ¶ characterization of the conflict and the actions of the enemy can create a ¶ state of war even absent congressional action.68¶ America’s security and foreign policy goals. The President has framed the ¶ conflict as a war and the subsequent invasions, detentions, and killings ¶ confirm this view. These actions as well as the ongoing threat from alQaeda elevate the conflict to a de facto state of war. ¶ It is important to note, however, that the Prize cases dealt with a ¶ defensive war during a national crisis; the confederate rebels severely ¶ threatened the territorial integrity of the United States.71 In the immediate ¶ aftermath of 9/11 and given the ease with which foreign militants can ¶ inflict damage across state borders, the United States could probably claim ¶ that actions at home and overseas were part of a defensive war. Though the ¶ Prize cases should authorize the executive actions immediately following ¶ the attack, it is not clear whether they would authorize executive action ¶ today.72 With the death of the 9/11 mastermind and increased security ¶ measures, actions against al-Qaeda are looking less defensive and more ¶ offensive. Furthermore, the passage of time has made the scenario seem ¶ less like the emergency that required rapid executive action. For these ¶ reasons, it is unclear whether the United States today is actually in a ¶ defensive war with al-Qaeda under the Prize cases framework.73¶ B. Importance of Congressional Authorization¶ Though the President’s inherent authority to act in times of emergency ¶ and war can arguably make congressional authorization of force ¶ unnecessary, it is extremely important for the conflict against al-Qaeda and ¶ its allies. First, as seen above, the existence of a state of war or national ¶ emergency is not entirely clear and might not authorize offensive war ¶ anyway. Next, assuming that a state of war did exist, specific congressional authorization would further legitimate and guide the executive branch in the prosecution of this conflict by setting out exactly what Congress authorizes and what it does not. Finally, Congress should specifically set out what the President can and cannot do to limit his discretionary authority and prevent adding to the gloss on executive power. ¶ Even during a state of war, a congressional authorization for conflict ¶ that clearly sets out the acceptable targets and means would further ¶ legitimate the President’s actions and help guide his decision making ¶ during this new form of warfare. Under Justice Jackson’s framework from ¶ Youngstown, presidential authority is at its height when the Executive is acting pursuant to an implicit or explicit congressional authorization.74 In ¶ this zone, the President can act quickly and decisively because he knows ¶ the full extent of his power.75 In contrast, the constitutionality of ¶ presidential action merely supported by a president’s inherent authority ¶ exists in the “zone of twilight.”76 Without a congressional grant of power, ¶ the President’s war actions are often of questionable constitutionality ¶ because Congress has not specifically delegated any of its own war powers ¶ to the executive.77¶ This problem forces the President to make complex judgments ¶ regarding the extent and scope of his inherent authority. The resulting ¶ uncertainty creates unwelcome issues of constitutionality that might hinder ¶ the President’s ability to prosecute this conflict effectively. In timesensitive and dangerous situations, where the President needs to make splitsecond decisions that could fundamentally impact American lives and ¶ safety, he should not have to guess at the scope of his authority. Instead, ¶ Congress should provide a clear, unambiguous grant of power, which ¶ would mitigate many questions of authorization. Allowing the President to ¶ understand the extent of his authority will enable him to act quickly, ¶ decisively but also constitutionally. ¶ Finally, a grant or denial of congressional authorization will allow ¶ Congress to control the “gloss” on the executive power. There is ¶ considerable tension between the President’s constitutional powers as ¶ Commander in Chief and Congress’s war making powers.78 This tension is ¶ not readily resolved simply by looking at the Constitution.79 Instead courts look to past presidential actions and congressional responses when evaluating the constitutionality of executive actions.80 Indeed Justice ¶ Frankfurter noted in Youngstown that “a systematic, unbroken, executive ¶ practice, long pursued to the knowledge of the Congress and never before ¶ questioned . . . may be treated as a gloss on ‘executive Power’ vested in the ¶ President by § 1 of Art. II.”81 Thus, congressional inaction can be deemed as implicit delegation of war making power to the executive.82 Whether the United States is in a state of war or not, an authorization ¶ of force provides legitimacy and clarity to the war effort. If the President ¶ acts pursuant to such an authorization his authority is at its height; ¶ consequently, he can operate with greater certainty that his actions are ¶ constitutional.83 Absent such a declaration, the President’s power is much less clear. While the President has the authority to frame the conflict and he might still be able to act pursuant to his inherent powers, he is operating in ¶ the zone of twilight.84 Congressional authorizations remove this uncertainty by stamping specific acts with congressional approval or disapproval. This ¶ process also allows Congress to exert control over what the President can do in the future and prevents the “gloss” that comes from congressional ¶ acquiescence.85

#### Vote to require a statutory source:

#### Stabilizes topical authority and both restriction mechanisms – best chance of predictable aff limits and complementary neg ground

#### pleas for reasonability just warrant precision – only check on bi-directionality and Commander-in-Chief affs

Colby P. Horowitz 2013 “CREATING A MORE MEANINGFUL ¶ DETENTION STATUTE: LESSONS LEARNED ¶ FROM HEDGES V. OBAMA,” FORDHAM L.R. Vol. 81, http://fordhamlawreview.org/assets/pdfs/Vol\_81/Horowitz\_April.pdf

Thus, there at least two ways to interpret section 1021 under Justice ¶ Jackson’s framework. The government believes that section 1021 places ¶ the executive firmly in Zone 1. It has argued on appeal in Hedges that ¶ section 1021 is “an essentially verbatim affirmation by Congress of the ¶ Executive Branch’s interpretation of the AUMF.”335 This is supported by ¶ the government’s 2009 brief to the D.C. District Court, which is almost ¶ identical to the description of detention authority in section 1021.336 If ¶ section 1021 places the President in Zone 1, he has clear statutory authorization and does not need to rely on his general Commander-in-Chief powers (which courts view more narrowly).337 Additionally, in Zone 1, any ¶ ambiguities or vague terms in the statute might actually expand the President’s authority.338

338. See Chesney, supra note 33, at 792–93 (explaining that some observers view ambiguities in detention statutes as constituting “an implied delegation of authority to the executive to provide whatever further criteria may be required”).

### 3

#### The Executive branch of the United States should make necessary adjustments to its targeted killing policy to ensure compliance with relevant domestic and international law, including principles of necessity, distinction, and proportionality. The Executive branch should publicly articulate its legal rationale for its targeted killing policy, including the process and safeguards in place for target selection.

#### The CP’s the best middle ground---preserves the vital counter-terror role of targeted killings while resolving all their downsides

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

Despite President Barack Obama's recent call to reduce the United States' reliance on drones, they will likely remain his administration's weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused.

Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage.

So drone warfare is here to stay, and it is likely to expand in the years to come as other countries' capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid.

#### Counterplan solves counter-terror coop

Jennifer Daskal, their author, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165

4. Procedural Requirements Currently, officials in the executive branch carry out all such ex ante review of out-of-battlefield targeting and detention decisions, reportedly with the involvement of the President, but without any binding and publicly articulated standards governing the exercise of these authorities. n163 All ex post review of targeting is also done internally within the executive branch. There is no public accounting, or even acknowledgment, of most strikes, their success and error rates, or the extent of any collateral damage. Whereas the Department of Defense provides solatia or condolence payments to Afghan civilians who are killed or injured as a result of military actions in Afghanistan (and formerly did so in Iraq), there is no equivalent effort in areas outside the active conflict zone. n164 Meanwhile, the degree of ex post review of detention decisions depends on the location of detention as opposed to the location of capture. Thus, [\*1219] Guantanamo detainees are entitled to habeas review, but detainees held in Afghanistan are not, even if they were captured far away and brought to Afghanistan to be detained. n165 Enhanced ex ante and ex post procedural protections for both detention and targeting, coupled with transparency as to the standards and processes employed, serve several important functions: they can minimize error and abuse by creating time for advance reflection, correct erroneous deprivations of liberty, create endogenous incentives to avoid mistake or abuse, and increase the legitimacy of state action. a. Ex Ante Procedures Three key considerations should guide the development of ex ante procedures. First, any procedural requirements must reasonably respond to the need for secrecy in certain operations. Secrecy concerns cannot, for example, justify the lack of transparency as to the substantive targeting standards being employed. There is, however, a legitimate need for the state to protect its sources and methods and to maintain an element of surprise in an attack or capture operation. Second, contrary to oft-repeated rhetoric about the ticking time bomb, few, if any, capture or kill operations outside a zone of active conflict occur in situations of true exigency. n166 Rather, there is often the time and need for advance planning. In fact, advance planning is often necessary to minimize damage to one's own troops and nearby civilians. n167 Third, the procedures and standards employed must be transparent and sufficiently credible to achieve the desired legitimacy gains. These considerations suggest the value of an independent, formalized, ex ante review system. Possible models include the Foreign Intelligence [\*1220] Surveillance Court (FISC), n168 or a FISC-like entity composed of military and intelligence officials and military lawyers, in the mode of an executive branch review board. n169 Created by the Foreign Intelligence Surveillance Act (FISA) in 1978, n170 the FISC grants ex parte orders for electronic surveillance and physical searches, among other actions, based on a finding that a "significant purpose" of the surveillance is to collect "foreign intelligence information." n171 The Attorney General can grant emergency authorizations without court approval, subject to a requirement that he notify the court of the emergency authorization and seek subsequent judicial authorization within seven days. n172 The FISC also approves procedures related to the use and dissemination of collected information. By statute, heightened restrictions apply to the use and dissemination of information concerning U.S. persons. n173 Notably, the process has been extraordinarily successful in protecting extremely sensitive sources and methods. To date, there has never been an unauthorized disclosure of an application to or order from the FISC court. An ex parte review system for targeting and detention outside zones of active hostility could operate in a similar way. Judges or the review board would approve selected targets and general procedures and standards, while still giving operators wide rein to implement the orders according to the approved standards. Specifically, the court or review board would determine whether the targets meet the substantive requirements and would [\*1221] evaluate the overarching procedures for making least harmful means-determinations, but would leave target identification and time-sensitive decisionmaking to the operators. n174 Moreover, there should be a mechanism for emergency authorizations at the behest of the Secretary of Defense or the Director of National Intelligence. Such a mechanism already exists for electronic surveillance conducted pursuant to FISA. n175 These authorizations would respond to situations in which there is reason to believe that the targeted individual poses an imminent, specific threat, and in which there is insufficient time to seek and obtain approval by a court or review panel as will likely be the case in instances of true imminence justifying the targeting of persons who do not meet the standards applicable to operational leaders. As required under FISA, the reviewing court or executive branch review board should be notified that such an emergency authorization has been issued; it should be time-limited; and the operational decisionmakers should have to seek court or review board approval (or review, if the strike has already taken place) as soon as practicable but at most within seven days. n176 Finally, and critically, given the stakes in any application namely, the deprivation of life someone should be appointed to represent the potential target's interests and put together the most compelling case that the individual is not who he is assumed to be or does not meet the targeting criteria. The objections to such a proposal are many. In the context of proposed courts to review the targeting of U.S. citizens, for example, some have argued that such review would serve merely to institutionalize, legitimize, and expand the use of targeted drone strikes. n177 But this ignores the reality of their continued use and expansion and imagines a world in which targeted [\*1222] killings of operational leaders of an enemy organization outside a zone of active conflict is categorically prohibited (an approach I reject n178). If states are going to use this extraordinary power (and they will), there ought to be a clear and transparent set of applicable standards and mechanisms in place to ensure thorough and careful review of targeted-killing decisions. The formalization of review procedures along with clear, binding standards will help to avoid ad hoc decisionmaking and will ensure consistency across administrations and time. Some also condemn the ex parte nature of such reviews. n179 But again, this critique fails to consider the likely alternative: an equally secret process in which targeting decisions are made without any formalized or institutionalized review process and no clarity as to the standards being employed. Institutionalizing a court or review board will not solve the secrecy issue, but it will lead to enhanced scrutiny of decisionmaking, particularly if a quasi-adversarial model is adopted, in which an official is obligated to act as advocate for the potential target. That said, there is a reasonable fear that any such court or review board will simply defer. In this vein, FISC's high approval rate is cited as evidence that reviewing courts or review boards will do little more than rubber-stamp the Executive's targeting decisions. n180 But the high approval rates only tell part of the story. In many cases, the mere requirement of justifying an application before a court or other independent review board can serve as an internal check, creating endogenous incentives to comply with the statutory requirements and limit the breadth of executive action. n181 Even if this system does little more than increase the attention paid to the stated requirements and expand the circle of persons reviewing the factual basis for the application, those features in and of themselves can lead to increased reflection and restraint. Additional accountability mechanisms, such as civil or criminal sanctions in the event of material misrepresentations or omissions, the granting of far-reaching authority to the relevant Inspectors General, and meaningful ex post review by Article III courts, n182 are also needed to help further minimize abuse. Conversely, some object to the use of courts or court-like review as stymying executive power in wartime, and interfering with the President's Article II powers. n183 According to this view, it is dangerous and potentially unconstitutional to require the President's wartime targeting decisions to be subject to additional reviews. These concerns, however, can be dealt with through emergency authorization mechanisms, the possibility of a presidential override, and design details that protect against ex ante review of operational decisionmaking. The adoption of an Article II review board, rather than an Article III-FISC model, further addresses some of the constitutional concerns. Some also have warned that there may be no "case or controversy" for an Article III, FISC-like court to review, further suggesting a preference for an Article II review board. n184 That said, similar concerns have been raised with respect to FISA and rejected. n185 Drawing heavily on an analogy to courts' roles in issuing ordinary warrants, the Justice Department's Office of Legal Counsel concluded at the time of enactment that a case and controversy existed, even though the FISA applications are made ex parte. n186 [\*1224] Here, the judges would be issuing a warrant to kill rather than surveil. While this is significant, it should not fundamentally alter the legal analysis. n187 As the Supreme Court has ruled, killing is a type of seizure. n188 The judges would be issuing a warrant for the most extreme type of seizure. n189 It is also important to emphasize that a reviewing court or review board would not be "selecting" targets, but determining whether the targets chosen by executive branch officials met substantive requirements much as courts do all the time when applying the law to the facts. Press accounts indicate that the United States maintains lists of persons subject to capture or kill operations lists created in advance of specific targeting operations and reportedly subject to significant internal deliberation, including by the President himself. n190 A court or review board could be incorporated into the existing ex ante decisionmaking process in a manner that would avoid interference with the conduct of specific operations reviewing the target lists but leaving the operational details to the operators. As suggested above, emergency approval mechanisms could and should be available to deal with exceptional cases where ex ante approval is not possible. Additional details will need to be addressed, including the temporal limits of the court's or review board's authorizations. For some high-level operatives, inclusion on a target list would presumably be valid for some set period of [\*1225] time, subject to specific renewal requirements. Authorizations based on a specific, imminent threat, by comparison, would need to be strictly time-limited, and tailored to the specifics of the threat, consistent with what courts regularly do when they issue warrants. In the absence of such a system, the President ought to, at a minimum, issue an executive order establishing a transparent set of standards and procedures for identifying targets of lethal killing and detention operations outside a zone of active hostilities. n192 To enhance legitimacy, the procedures should include target list reviews and disposition plans by the top official in each of the agencies with a stake in the outcome the Secretary of Defense, the Director of the CIA, the Secretary of State, the Director of Homeland Security, and the Director of National Intelligence, with either the Secretary of Defense, Director of National Intelligence, or President himself, responsible for final sign-off. n193 In all cases, decisions should be unanimous, or, in the absence of consensus, elevated to the President of the United States. n194 Additional details will need to be worked out, including critical questions about the standard of proof that applies. Given the stakes, a clear and convincing evidentiary standard is warranted. n195 While this proposal is obviously geared toward the United States, the same principles should apply for all states engaged in targeting operations. n196 States would ideally subject such determinations to independent review or, alternatively, clearly articulate the standards and procedures for their decisionmaking, thus enhancing accountability. b. Ex Post Review For targeted-killing operations, ex post reviews serve only limited purposes. They obviously cannot restore the target's life. But retrospective review either by a FISC-like court or review board can serve to identify errors or overreaching and thereby help avoid future mistakes. This can, and ideally would, be supplemented by the adoption of an additional Article III damages mechanism. n197 At a minimum, the relevant Inspectors General should engage in regular and extensive reviews of targeted-killing operations. Such post hoc analysis helps to set standards and controls that then get incorporated into ex ante decisionmaking. In fact, post hoc review can often serve as a more meaningful and often more searching inquiry into the legitimacy of targeting decisions. Even the mere knowledge that an ex post review will occur can help to protect against rash ex ante decisionmaking, thereby providing a self-correcting mechanism. Ex post review should also be accompanied by the establishment of a solatia and condolence payment system for activities that occur outside the active zone of hostilities. Extension of such a system beyond Afghanistan and Iraq would help mitigate resentment caused by civilian deaths or injuries and would promote better accounting of the civilian costs of targeting operations. n198

**4**

#### Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms

Posner 9/3, Law Prof at University of Chicago (Eric, Obama Is Only Making His War Powers Mightier, [www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html](http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/09/obama_going_to_congress_on_syria_he_s_actually_strengthening_the_war_powers.html)) CMR

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

#### **Plan *signals* lack of *presidential resolve*---*process* is *more important* than the actual decision---invites *conflict escalation* and *challenges from adversaries***

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[Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War” page number below, CMR]

A growing game-theoretic literature within international relations sug¶ gests that these very same **congressional actions can**, however uninten¶ tionallv, also **raise** or lower **the military costs for the president of using**¶ **his preferred policy course**. **High-profile** congressional support for or¶ opposition **to the president’s military policies** does more than shape real¶ and anticipated public opinion and affect the president’s levels of polit-¶ ¡cal capital in Washington. It also **sends important** signals **of American**¶resolve **or** disunity **to foreign actors**. **Target state leaders conduct their**¶ **own cost-benefit analyses when plotting their military policy courses,**¶ **and** they **may incorporate congressional signals into these calculations**.¶ An **extensive literature** in international relations **examines the importance of signal credibility for interstate crisis bargaining and the initiation of military action**.°2 In the international system. states are con¶ stantly sending signals about their expectations of and intentions toward¶ other state actors. **When challenged** by another country, **a state’s leaders**¶ not only must weigh the costs and benefits of complying with their ad¶ versarv’s demand; but, perhaps even more criticall, they must also evaluate **the opposing state’s willingness to follow through on its threat** (o¶ use force ¡f necessary to achieve its objective. **The decision of Congress**¶ **to back or oppose the president’s threat** thus **conveys important information about American resolve to the target state**. Moreover, **when the**¶ **president decides whether or not to threaten a target state with military**¶ **action, he may anticipate the effect of likely congressional reactions to**¶ **his decision** **or the credibility of the signal he will send** to the target.¶ Thus, because they can affect signal credibility, even anticipated congressional support or opposition **can affect the cost-benefit calculations**¶ **of** both **the president and the leader of the target state** at the conflict ini¶ tiation Phase.3¶ Signals **of American resolve or disunity may** also **affect the target**¶ **state’s calculations and**, ¡n turn, **the military costs to the president of**¶ **staying the course** throughout the conflict conduct phasc. **Public displays of legislative support for the president’s conduct of military op**¶ **erations enhance the credibility of executive commitments to stay the**¶ **course, and may** deter the target state from escalating its resistance in¶ the hope of outlasting Anwrican political will. **Conversely, as presidents** throughout American history **have admonished would-be opponents in Congress.** open legislative opposition to the president’s military course **sends** visible signals **of American ambivalence, which may**¶ **steel the target State’s resolve to continue to resist once a conflict has begun**. For example, Vice President Dick Cheney was particularly aggres¶ sive ¡n leveling this charge against Democratic opponents of the war ¡n¶ Iraq. In response Lo congressional efforts to set a timetable for phased¶ withdrawal from Iraq ¡n early 2007, Chencv minced few words: “When¶ members of Congress pursue an antiwar strategy that’s been called ‘slow¶ hlccding’ they arc not supporting the troops. they arc undermining¶ them.” **Vocal opposition in Congress**. he charged, **was a prescription for**¶certain defeat **as it was tantamount to “telling the enemy simply to watch**¶ **the clock and wait us out.”** A number of congressional Republicans¶ echoed Cheney’s rhetoric; for example, South Carolina Senator Jim De-¶ Mint asserted in 2007 that responsibility for American deaths in iraq be¶ longed not to President Bush, but to Democratic opponents of the war ¡n¶ Congress. “Al-Qaida knows that we’ve got a lot of wimps in Congress,”¶ DeMint said. “I believe a lot of the casualties can be laid at the feet of¶ all the talk in Congress about how we’ve got to get out, we’ve got to cut¶ and run.”67 [PAGES 69-71]

#### Collapses hegemony

Douthat 9/7/13 (Ross, former senior editor @ the Atlantic, “Gambling With the Presidency”, <http://www.nytimes.com/2013/09/08/opinion/sunday/douthat-gambling-with-the-presidency.html?partner=rssnyt&emc=rss>, CMR)

A lot of observers I respect, conservative and liberal, are hoping for exactly that outcome. They want to see the war-weary American public vindicated at the expense of a Washington establishment that’s spent a decade badly overestimating the efficacy of military interventions. And they hope that in the long run, the shock of a “no” vote might help restore some of the constitutional balance that’s been lost to presidential power grabs and Congressional abdications.¶ But it’s important to recognize just how unprecedented such a vote would be, and how far the ripples might ultimately spread. It wouldn’t just be a normal political rebuke of President Obama. It would be a remarkable institutional rebuke of his presidency, with unknowable consequences for the credibility of American foreign policy, not only in Syria but around the world.¶ Presidential credibility is an intangible thing, and the term has been abused over the years by overeager hawks and cult-of-the-presidency devotees. But the global system really does depend on other nations’ confidence that the United States means what it says — that the promises the White House and the State Department make are binding, that our military commitments aren’t just so much bluster, and that when the president speaks on foreign policy he has the power to live up to his words.¶ It is to President Obama’s great discredit that he has staked this credibility on a vote whose outcome he failed to game out in advance. But if he loses that vote, the national interest as well as his political interests will take a tangible hit: for the next three years, American foreign policy will be in the hands of a president whose promises will ring consistently hollow, and **whose ability to make good on** his **strategic commitments will be** very much **in doubt**.¶ This is not an argument that justifies voting for a wicked or a reckless war, and members of Congress who see the Syria intervention in that light must necessarily oppose it.¶ But if they do, **they should be prepared for the consequences: a damaged president, a** potentially crippled foreign policy and a long, hard, dangerous road to January 2017.

#### Nuclear war

Kagan 7---Robert Kagan, senior associate at the Carnegie Endowment for International Peace and senior transatlantic fellow at the German Marshall Fund, August-September 2007, “End of Dreams, Return of History,” Hoover Policy Review, online: <http://www.hoover.org/publications/policyreview/8552512.html>, CMR

The jostling for status and influence among these ambitious nations and would-be nations is a second defining feature of the new post-Cold War international system. **Nationalism** in all its forms **is back**, if it ever went away, **and so is** international competition **for power**, influence, honor, **and status**. **American predominance prevents** these **rivalries from intensifying** — its regional as well as its global predominance. **Were the** United States **to diminish its influence** in the regions where it is currently the strongest power, the **other nations would settle disputes** as great and lesser powers have done in the past: sometimes through diplomacy and accommodation but often **through** confrontation and **wars** of varying scope, intensity, and destructiveness. One novel aspect of such a multipolar world is that most of these powers would possess **nuclear weapons**. That could make wars between them less likely, or it **could** simply **make them** more catastrophic.

### 5

#### US will *avoid debt default* and *economic collapse*

Lindsay 10/3 (James M, “The World Next Week: The Debt Ceiling Looms, Obama Attends APEC and ASEAN Summits (Maybe)”, <http://blogs.cfr.org/lindsay/2013/10/03/the-world-next-week-the-debt-ceiling-looms-obama-attends-apec-and-asean-summits-maybe/>, CMR)

Congress continues to bicker over legislation that would end the U.S. government shutdown that began on Tuesday. Those negotiations are now being complicated by the need also to craft agreement on raising the national debt ceiling. **If Congress fails to reach an agreement** by October 17 **to raise the debt ceiling**, **the U.S. government will** be at risk of **default**ing on the national debt. That would be disastrous for the U.S. economy and the international financial system, potentially **surpassing** the **damage done by the financial crash of** 20**08**-2009. So far the financial markets have taken the political wrangling over the debt ceiling in stride. The markets seem to be calculating that past debt ceiling stand-offs were resolved at the last moment and that this one will be as well. But **if** the **conventional wisdom turns out** to be **wrong**—and sometimes it does—**the market correction will be** quick and severe. And no one will like the result.

#### Plan kills agreement

Seeking Alpha 9/10/13 (“Syria Could Upend Debt Ceiling Fight”, <http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight>)

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.¶ I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four.¶ While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling.¶ Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues.¶ Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.¶ I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011.¶ As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%. Investors must be prepared for this "black swan" event.¶ Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time.¶ Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade.¶ I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree (Syria said it was willing to consider), the U.S. would not have to strike, canceling the congressional vote. The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks.¶ The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama.¶ Remember, in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.

#### Nuclear war

Cesare Merlini 11, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs, May 2011, “A Post-Secular World?”, Survival, Vol. 53, No. 2

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism**.**

### Norms Adv

**Obama can circumvent – covert loopholes inevitable**

**Lohmann 13 (**Julia, director of the Harvard Law National Security Research Committee, BA in political science from the University of California, Berkeley, “Distinguishing CIA-Led from Military-Led Targeted Killings,” <http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/effects-of-particular-tactic-on-issues-related-to-targeted-killings/>)

The U.S. military—in particular, the Special Operations Command (SOCOM), and its subsidiary entity, the Joint Special Operations Command (JSOC)—is responsible for carrying out military-led targeted killings.¶ Military-led targeted killings are subject to various legal restrictions, including a complex web of statutes and executive orders. For example, because the Covert Action Statute does not distinguish among institutions undertaking covert actions, targeted killings conducted by the military that fall within the definition of “covert action” set forth in 50 U.S.C. § 413(b) are subject to the same statutory constraints as are CIA covert actions. 50 U.S.C. § 413b(e). However, as Robert Chesney explains, many military-led targeted killings may fall into one of the CAS exceptions—for instance, that for traditional military activities—so that the statute’s requirements will not always apply to military-led targetings. Such activities are exempted from the CAS’s presidential finding and authorization requirements, as well as its congressional reporting rules.¶ Because such unacknowledged military operations are, in many respects, indistinguishable from traditional covert actions conducted by the CIA, **this** exception **may provide a “loophole” allowing the President to circumvent existing oversight mechanisms** without substantively changing his operational decisions. However, at least some military-led targetings do not fall within the CAS exceptions, and are thus subject to that statute’s oversight requirements. For instance, Chesney and Kenneth Anderson explain, some believe that the traditional military activities exception to the CAS only applies in the context of overt hostilities, yet it is not clear that the world’s tacit awareness that targeted killing operations are conducted (albeit not officially acknowledged) by the U.S. military, such as the drone program in Pakistan, makes those operations sufficiently overt to place them within the traditional military activities exception, and thus outside the constraints of the CAS.¶ Chesney asserts, however, that despite the gaps in the CAS’s applicability to military-led targeted killings, those targetings are nevertheless subject to a web of oversight created by executive orders that, taken together, largely mirrors the presidential authorization requirements of the CAS. But, this process is not enshrined in statute or **regulation** and arguably **could be changed or revoked by the President at any time**. Moreover, **this internal Executive Branch process does not involve Congress or the Judiciary** in either ex ante or ex post **oversight** of military-led targeted killings, and thus, Philip Alston asserts, **it may be insufficient to provide a meaningful check against** arbitrary and overzealous **Executive actions**.

**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 U**nited **S**tates ¶ **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 U**nited **S**tates ¶ **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** ¶ **U**nited **S**tates **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 **selfconstraining 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 tech**nologies. ¶ (Robotic soldiers—or future ﬁghting machines—¶ are next in line). **In such circumstances, the role** ¶ **of norms is much more limited**.

#### Syria proves no drone wars---they’re useless against any adversary with an air defense system

Audrey Kurth Cronin 9-2, Professor of Public Policy at George Mason University, 9/2/13, “Drones Over Damascus,” http://www.foreignaffairs.com/articles/139889/audrey-kurth-cronin/drones-over-damascus

For the past four years, Americans have been preoccupied with drone technology as a cheap, low-risk, and discriminate way to eliminate emerging global threats without getting entangled in protracted conflicts. The U.S. government has even dramatically changed its military force structure to make armed drones a lynchpin of U.S. power projection. Yet these weapons have been virtually useless in the last two conflicts that the United States has faced, first in Libya and now in Syria. Why is that?

Broadly speaking, the United States has used armed drone strikes overseas in two ways: during war and to prevent war. Battlefield use of weaponized drones is not new (it dates back to World War I), and is fairly ubiquitous. A spring 2013 report by the U.S. Air Force estimated that unmanned aircraft fired about a quarter of all missiles used in coalition air strikes in Afghanistan in the early part of this year. Drones have proved remarkably effective at providing reconnaissance to U.S. troops on the ground, protecting them from enemy attacks, and reducing civilian casualties. When used within a war, in other words, drones are a great way to give U.S. soldiers an edge.

Armed drones have a preventive role to play, as well. They can keep terrorist threats at bay, and thus reduce the chance that Washington will need to send troops to battle insurgents in faraway places. Since 2009, U.S. counterterrorism efforts have involved hundreds of remote-controlled strikes by unmanned aerial vehicles. These were meant to prevent attacks on the United States and its allies by al Qaeda, the Taliban, and other groups. In these cases, the argument goes, discriminate targeting to prevent such attacks beats invading countries after them.

Prevention has thus become a watchword of U.S. policy, but its logic has rarely been applied to belligerent states. The international community had plenty of warning that the Syrian government might use chemical weapons, and now Syrian President Bashar al-Assad has apparently employed sarin gas to kill thousands of civilians. Photographs of rows of children left dead and videos of civilians running in fear have shocked the world. The last time the gas was used -- in Japan by Aum Shinrikyo, a terrorist group, to kill 13 people on the Tokyo subway -- pales in comparison with the recent slaughter in Syria. Could the United States have deployed its drone fleet to destroy Syrian arsenals or to kill those planning to make use of them before this happened?

The answer is no. Armed drones have serious limitations, and the situation in Syria lays them bare. They are only useful where the United States has unfettered access to airspace, a well-defined target, and a clear objective. In Syria, the United States lacks all three.

First, the airspace. So far, armed drones have been used either over countries that do not control their own airspace (Somalia, Mali, Afghanistan) or where the government has given the United States some degree of permission (Yemen, Pakistan). Those circumstances are rare. When the foe can actually defend itself, the use of armed drones is extraordinarily difficult and could constitute an act of war -- one that could easily draw the United States into the heart of a conflict.

Drones are slow and noisy; they fly at a low altitude; and they require time to hover over a potential target before being used. They are basically sitting ducks. Syria has an air force and air defenses that could easily pick American drones out of the sky. The only real way for the United States to use them would be to first destroy Syrian planes and anti-aircraft batteries. But that would be no different from a full-scale intervention and would negate the tactical advantage of remote strikes. In other words, the conditions under which armed drones are effective as preventive weapons are limited. And the more drones are used for prevention and during war, the more state belligerents will take note of that fact, and will make sure that those conditions are never met on their own territory.

Second, the target. Using armed drones against the Syrian government’s enormous chemical weapons stockpiles would have risked causing the very release of deadly agents that the United States was trying to avoid. Drones are precise but not perfect. Like cruise missiles, their effectiveness mainly depends upon the quality of their targeting information. Worse, an imperfect attack could inadvertently give the Assad government political cover to use the weapons with impunity. Assad could blame the release of chemical weapons on a misfired U.S. drone strike. Since U.S. drones are deeply despised in the Middle East, that argument could enjoy wide hearing.

Perhaps the United States might instead have tried to target chemical weapons delivery systems or tried to kill the people who were loading or moving them. But intelligence has been insufficient for such delicate operations. And even if U.S. officials got it right, a remote drone attack would have risked giving the rebels access to remaining stockpiles of chemical weapons or delivery systems. As the United States knows, some of those group are connected to al Qaeda. In such a mess of a situation, and especially in the presence of Syria’s large arsenal, there is no alternative to putting humans on the ground to secure dangerous, volatile weapons. Drones –- or cruise missiles, for that matter -- cannot do it.

Third, the objective. The United States wants to punish the Assad regime for using chemical weapons against the Syrian people and to prevent them from being used again. Drone attacks are ill suited for this purpose. They are unlikely either to inflict sufficient pain or to deter other tyrants from following Assad’s lead. A broader objective is to reinforce the global norm against the use of chemical weapons, and such a lofty goal can only be accomplished with a robust international response.

In a politically complex environment -- one in which the United States is not at war and the targets are unclear -- armed drones are really not all that useful. They might seem like a cool new tool to many observers and policymakers, but the horrible predicament in Syria reveals the sharp limitations of the technology -- and the serious problem of relying upon it so heavily in the U.S. force structure. Rather than looking for a quick technological fix, U.S. policymakers should invest more in good analysis and robust human assets on the ground, so as to sort friend from foe. The United States can take the pilot out of the aircraft, but it cannot remove human judgment, risk, and willpower from war -- especially if it plans to keep intervening in murky conflicts in the Middle East.

**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 Chinese drone aggression – political constraints**

**Erickson 5/23** – associate professor at the Naval War College and an Associate in Research at Harvard University’s Fairbank Center (Andrew, and Austin Strange, researcher at the Naval War College’s China Maritime Studies Institute and a graduate student at Zhejiang University, “China Has Drones. Now What?”, 2013, <http://www.foreignaffairs.com/articles/139405/andrew-erickson-and-austin-strange/china-has-drones-now-what?page=show>, CMR)

Indeed, the time to fret about when China and other authoritarian countries will acquire drones is over: they have them. The question now is when and how they will use them. But as with its other, less exotic military capabilities, **Beijing has cleared only a technological hurdle** -- **and its behavior will continue to be constrained by politics**.¶ China has been developing a drone capacity for over half a century, starting with its reverse engineering of Soviet Lavochkin La-17C target drones that it had received from Moscow in the late 1950s. Today, Beijing’s opacity makes it difficult to gauge the exact scale of the program, but according to Ian Easton, an analyst at the Project 2049 Institute, by 2011 China’s air force alone had over 280 combat drones. In other words, its fleet of unmanned aerial vehicles is already bigger and more sophisticated than all but the United States’; in this relatively new field Beijing is less of a newcomer and more of a fast follower. And the force will only become more effective: the Lijian (“sharp sword” in Chinese), a combat drone in the final stages of development, will make China one of the very few states that have or are building a stealth drone capacity.¶ This impressive arsenal may tempt China to pull the trigger. The fact that a Chinese official acknowledged that Beijing had considered using drones to eliminate the Burmese drug trafficker, Naw Kham, made clear that it would not be out of the question for China to launch a drone strike in a security operation against a nonstate actor. Meanwhile, as China’s territorial disputes with its neighbors have escalated, there is a chance that Beijing would introduce unmanned aircraft, especially since India, the Philippines, and Vietnam distantly trail China in drone funding and capacity, and would find it difficult to compete. Beijing is already using drones to photograph the Senkaku/Diaoyu Islands it disputes with Japan, as the retired Chinese Major General Peng Guangqian revealed earlier this year, and to keep an eye on movements near the North Korean border.¶ **Beijing**, however, **is unlikely to use its drones lightly**. **It already faces tremendous criticism** from much of the international community **for its perceived brazenness in** continental and maritime **sovereignty disputes**. **With its leaders attempting to allay notions that China’s rise poses a threat** to the region, **injecting drones** conspicuously into these disputes **would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the U**nited **S**tates **could eventually exploit**. For now, **Beijing** is showing that it **understands these risks, and** to date it **has limited its use of drones** in these areas to surveillance, according to recent public statements from China’s Defense Ministry.¶ What about using drones outside of Chinese-claimed areas? **That China did not**, in fact, launch a drone **strike** on **the Burmese drug criminal underscores its caution**. According to Liu Yuejin, the director of the antidrug bureau in China’s Ministry of Public Security, **Beijing considered using a drone** carrying a 20-kilogram TNT payload **to bomb Kham’s mountain** redoubt in northeast Myanmar. Kham had already evaded capture three times, so a drone strike may have seemed to be the best option. The authorities apparently had at least two plans for capturing Kham. The method they ultimately chose was to send Chinese police forces to lead a transnational investigation that ended in April 2012 with Kham’s capture near the Myanmar-Laos border. **The** ultimate **decision to refrain** from the strike **may reflect** both **a fear of political reproach and a lack of confidence in untested drones, systems, and operators**.¶ **The restrictive position** that **Beijing takes on sovereignty in international forums will further constrain its use of drones**. **China is not likely to publicly deploy drones** for precision strikes or in other military assignments **without first having been granted a credible mandate to do so**. The gold standard of such an authorization is a resolution passed by the UN Security Council, the stamp of approval that has permitted Chinese humanitarian interventions in Africa and antipiracy operations in the Gulf of Aden. China might consider using drones abroad with some sort of regional authorization, such as a country giving Beijing explicit permission to launch a drone strike within its territory. But **even with** the **endorsement** of the international community or specific states, **China would have to weigh any benefits of a drone strike** abroad **against the potential for mishaps and perceptions** that **it was infringing on other countries’ sovereignty -- something Beijing regularly decries** when others do it.¶ The **limitations** on China’s drone use **are reflected in the country’s academic literature** on the topic. The bulk of Chinese drone research is dedicated to scientific and technological topics related to design and performance. The articles that do discuss potential applications primarily point to major combat scenarios -- such as a conflagration with Taiwan or the need to attack a U.S. aircraft carrier -- which would presumably involve far more than just drones. **Chinese researchers have thought a great deal about the utility of drones** **for** domestic **surveillance and law enforcement**, as well as for non-combat-related tasks near China’s contentious borders. **Few scholars**, **however**, **have** publicly **considered** the **use of drone strikes overseas**.¶ Yet there is a reason why the United States has employed drones extensively despite domestic and international criticism: it is much easier and cheaper to kill terrorists from above than to try to root them out through long and expensive counterinsurgency campaigns. Some similar challenges loom on China’s horizon. Within China, Beijing often considers protests and violence in the restive border regions, such as Xinjiang and Tibet, to constitute terrorism. It would presumably consider ordering precision strikes to suppress any future violence there. **Even if** such **strikes are operationally prudent, China’s leaders understand** that **they would damage the country’s image abroad**, but they prioritize internal stability above all else. Domestic surveillance by drones is a different issue; there should be few barriers to its application in what is already one of the world’s most heavily policed societies. China might also be willing to use stealth drones in foreign airspace without authorization if the risk of detection were low enough; it already deploys intelligence-gathering ships in the exclusive economic zones of Japan and the United States, as well as in the Indian Ocean.¶ Still, although China enjoys a rapidly expanding and cutting-edge drone fleet, it is bound by the same rules of the game as the rest of the military’s tools. Beyond surveillance, the other non-lethal military actions that China can take with its drones are to facilitate communications within the Chinese military, support electronic warfare by intercepting electronic communications and jamming enemy systems, and help identify targets for Chinese precision strike weapons, such as missiles. **Beijing’s overarching approach remains** one of **caution** -- something Washington must bear in mind with its own drone program.

#### No Chinese aggression in the SCS

Fravel 2012—Associate Professor of Political Science and member of the Security Studies Program at MIT. (Taylor, All Quiet in the South China Sea, 3/22/12, www.foreignaffairs.com/articles/137346/m-taylor-fravel/all-quiet-in-the-south-china-sea?page=show)

Little noticed, however, has been China's recent adoption of a new -- and much more moderate -- approach. The primary goals of the friendlier policy are to restore China's tarnished image in East Asia and to reduce the rationale for a more active U.S. role there. ¶ The first sign of China's new approach came last June, when Hanoi dispatched a special envoy to Beijing for talks about the countries' various maritime disputes. The visit paved the way for an agreement in July 2011 between China and the ten members of the Association of Southeast Asian Nations (ASEAN) to finally implement a declaration of a code of conduct they had originally drafted in 2002 after a series of incidents in the South China Sea. In that declaration, they agreed to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes."¶ Since the summer, senior Chinese officials, especially top political leaders such as President Hu Jintao and Premier Wen Jiabao, have repeatedly reaffirmed the late Deng Xiaoping's guidelines for dealing with China's maritime conflicts to focus on economic cooperation while delaying the final resolution of the underlying claims. In August 2011, for example, Hu echoed Deng's approach by stating that "the countries concerned may put aside the disputes and actively explore forms of common development in the relevant sea areas."¶ Authoritative Chinese-language media, too, has begun to underscore the importance of cooperation. Since August, the international department of People's Daily (under the pen name Zhong Sheng) has published several columns stressing the need to be less confrontational in the South China Sea. In January 2012, for example, Zhong Sheng discussed the importance of "pragmatic cooperation" to achieve "concrete results." Since the People's Daily is the official paper of the Central Committee of the Chinese Communist Party, such articles should be interpreted as the party's attempts to explain its new policy to domestic readers, especially those working lower down in party and state bureaucracies.¶ In terms of actually setting aside disputes, China has made progress. In addition to the July consensus with ASEAN, in October China reached an agreement with Vietnam on "basic principles guiding the settlement of maritime issues." The accord stressed following international law, especially the UN Convention on the Law of the Sea. Since then, China and Vietnam have begun to implement the agreement by establishing a working group to demarcate and develop the southern portion of the Gulf of Tonkin near the disputed Paracel Islands.¶ China has also initiated or participated in several working-level meetings to address regional concerns about Beijing's assertiveness. Just before the East Asian Summit last November, China announced that it would establish a three billion yuan ($476 million) fund for China-ASEAN maritime cooperation on scientific research, environmental protection, freedom of navigation, search and rescue, and combating transnational crimes at sea. The following month, China convened several workshops on oceanography and freedom of navigation in the South China Sea, and in January it hosted a meeting with senior ASEAN officials to discuss implementing the 2002 code of conduct declaration. The breadth of proposed cooperative activities indicates that China's new approach is probably more than just a mere stalling tactic.¶ Beyond China's new efforts to demonstrate that it is ready to pursue a more cooperative approach, the country has also halted many of the more assertive behaviors that had attracted attention between 2009 and 2011. For example, patrol ships from the Bureau of Fisheries Administration have rarely detained and held any Vietnamese fishermen since 2010. (Between 2005 and 2010, China detained 63 fishing boats and their crews, many of which were not released until a hefty fine was paid.) And Vietnamese and Philippine vessels have been able to conduct hydrocarbon exploration without interference from China. (Just last May, Chinese patrol ships cut the towed sonar cable of a Vietnamese ship to prevent it from completing a seismic survey.) More generally, China has not obstructed any recent exploration-related activities, such as Exxon's drilling in October of an exploratory well in waters claimed by both Vietnam and China. Given that China retains the capability to interfere with such activities, its failure to do so suggests a conscious choice to be a friendlier neighbor. ¶ The question, of course, is why did the Chinese shift to a more moderate approach? More than anything, Beijing has come to realize that its assertiveness was harming its broader foreign policy interests. One principle of China's current grand strategy is to maintain good ties with great powers, its immediate neighbors, and the developing world. Through its actions in the South China Sea, China had undermined this principle and tarnished the cordial image in Southeast Asia that it had worked to cultivate in the preceding decade. It had created a shared interest among countries there in countering China -- and an incentive for them to seek support from Washington. In so doing, China's actions provided a strong rationale for greater U.S. involvement in the region and inserted the South China Sea disputes into the U.S.-Chinese relationship.¶ By last summer, China had simply recognized that it had overreached. Now, Beijing wants to project a more benign image in the region to prevent the formation of a group of Asian states allied against China, reduce Southeast Asian states' desire to further improve ties with the United States, and weaken the rationale for a greater U.S. role in these disputes and in the region.¶ So far, Beijing's new approach seems to be working, especially with Vietnam. China and Vietnam have deepened their political relationship through frequent high-level exchanges. Visits by the Vietnamese Communist Party general secretary, Nguyen Phu Trong, to Beijing in October 2011 and by the Chinese heir apparent, Xi Jinping, to Hanoi in December 2011 were designed to soothe spirits and protect the broader bilateral relationship from the unresolved disputes over territory in the South China Sea. In October, the two also agreed to a five-year plan to increase their bilateral trade to $60 billion by 2015. And just last month, foreign ministers from both countries agreed to set up working groups on functional issues such as maritime search and rescue and establish a hotline between the two foreign ministries, in addition to starting talks over the demarcation of the Gulf of Tonkin.

#### They don’t have any reverse causal evidence for Caucus conflict – their Clayton evidence says they already have the drones and war is inevitable. Doesn’t make a US signaling argument.

#### Outside pressure can’t contain conflict – recent effort proves

Arakelyan 10/3

Lilit “Civilian Deaths Underline Armenia-Azerbaijan Tensions”, <http://iwpr.net/report-news/civilian-deaths-underline-armenia-azerbaijan-tensions>, CMR

**Ambassadors from** the Minsk Group’s three co-chair states – the **U**nited **S**tates, **Russia** and France –**met the foreign ministers of Armenia and Azerbaijan** at the United Nations on **September 27**, **but made** no progress.¶ In a statement, **the co-chairs** said they had “**stressed the commitment of their three countries to support** the **peaceful settlement** of the Nagorny Karabakh conflict based on the non-use of force or the threat of force, territorial integrity, and equal rights and self-determination of peoples”.¶ Poghosyan said the Minsk Group was failing to do its job properly.¶ “The problem is that they try to operate honestly, impartially and without bias, but when they do act, they avoid taking responsibility. **After every incident, they limit themselves to** spineless statements, with appeals and requests addressed to both sides,” he said.

### Terror Adv

#### Allied terror coop is high now, despite frictions

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

#### Cooperation’s inevitable\*\*

Mueller 12 (John, Prof @ Ohio State, Terrorism and Security, in “Controversies in Globalization,” page 149-150, CMR)

Overall, with 9/11 and subsequent activity, bin Laden and his gang seem mainly to have succeeded in uniting the world, including its huge Muslim portion, against their violent global jihad. No matter how much they might disagree on other issues (most notably America’s war on Iraq), there is a compelling incentive for states – including Arab and Muslim ones – to cooperate to deal with any international terrorist problem emanating from groups and individuals connected to, or sympathetic with, al-Qaeda. Although these multilateral efforts, particularly by such Muslim States as Sudan, Syria, Libya, Pakistan, and even Iran, may not have received sufficient publicity, these countries have had a vital interest, because they felt directly threatened by the militant network, and their diligent and aggressive efforts have led to important breakthroughs against al-Qaeda. ¶ **This** post-9/11 **willingness** of governments around the world to take on terrorists **has been reinforced and amplified as they reacted to subsequent,** if sporadic, **terrorist activity** with**in** **their own countries**. Thus a terrorist bombing in Balin in 2002 galvanized the Indonesia government into action and into extensive arrests and convictions. **When terrorists attacked** Saudis in **Saudi** Arabia in 2002, **that country** **seems**, very much for self-interested reasons, **to have become** considerably **more serious about** dealing with internal **terrorism**, including a clampdown on radical clerics and preachers. Some inept terrorist **bombings in** **Casablanca** in 2003 **inspired** a similar determined **crackdown by Moroccan authorities.** **The** main **result** **of** al-Qaeda-linked **suicide terrorism in Jordan** in 2003 **was to outrage** Jordanians and other **Arabs** against the perpetrators. Massive protests were held, and in polls, those expressing a lot of confidence in Osama Bin Laden to “do the right thing” plunged from 25 percent to less than 1 percent. In polls conducted in 35 predominately Muslim coutnries, more than 90 percent condemned bin Laden’s terrorism on religious grounds. [149-150]

#### No WMD terrorism – lack of desire and capability – empirically the threat is overblown

Mueller 11. John Mueller, Professor and Woody Hayes Chair of National Security Studies, Mershon Center for International Security Studies and Department of Political Science, “The Truth About al Qaeda”, 8/2/2011, <http://www.foreignaffairs.com/articles/68012/john-mueller/the-truth-about-al-qaeda?page=show>, CMR

The chief lesson of 9/11 should have been that small bands of terrorists, using simple methods, can exploit loopholes in existing security systems. But instead, **many** preferred to **engage in mass**ive **extrapolation**: **If 19 men could hijack four airplanes** simultaneously, the thinking went, then **surely al Qaeda would soon make an atomic bomb.** As a misguided Turkish proverb holds, "If your enemy be an ant, imagine him to be an elephant." The new information unearthed in Osama bin Laden's hideout in Abbottabad, Pakistan, suggests that the United States has been doing so for a full decade. **Whatever al Qaeda's threatening rhetoric and occasional nuclear fantasies, its potential as a menace**, particularly as an atomic one, **has been much inflated**. **The public has** now **endured a decade of dire warnings about** the imminence of a **terrorist atomic attack**. In 2004, the former CIA spook Michael Scheuer proclaimed on television's 60 Minutes that it was "probably a near thing," and in 2007, the physicist Richard Garwin assessed the likelihood of a nuclear explosion in an American or a European city by terrorism or other means in the next ten years to be 87 percent. By 2008, Defense Secretary Robert Gates mused that what keeps every senior government leader awake at night is "the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear." **Few**, it seems, **found** much **solace in** the fact **that** **an al Qaeda computer** seized in Afghanistan in 2001 **indicated** that **the group's budget for research on w**eapons of **m**ass **d**estruction (almost all of it focused on primitive chemical weapons work) **was** some $2,000 to $4,000. In the wake of the killing of Osama bin Laden, officials now have more al Qaeda computers, which reportedly contain a wealth of information about the workings of the organization in the intervening decade. A multi-agency task force has completed its assessment, and according to first reports, it has found that **al Qaeda members have** **primarily been engaged in dodging drone strikes and complaining about how cash-strapped they are**. Some **reports suggest** **they've** also **been looking at quite a bit of** pornography. The full story is not out yet, but **it seems** breathtakingly unlikely **that the miserable little group has** had **the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a** fancy, super-high-tech **facility to fabricate a bomb**. **It** is a process that **requires trusting corrupted foreign collaborators** and other criminals, **obtaining and transporting** highly guarded **material**, **setting up a** machine **shop staffed with top scientists** and technicians, **and rolling the** heavy, cumbersome, and untested finished **product into position to be detonated by a skilled crew**, all the **while attracting no attention from outsiders.** The documents also reveal that after fleeing Afghanistan, bin Laden maintained what one member of the task force calls an "obsession" with attacking the United States again, even though 9/11 was in many ways a disaster for the group. It led to a worldwide loss of support, a major attack on it and on its Taliban hosts, and a decade of furious and dedicated harassment. And indeed, bin Laden did repeatedly and publicly threaten an attack on the United States. He assured Americans in 2002 that "the youth of Islam are preparing things that will fill your hearts with fear"; and in 2006, he declared that his group had been able "to breach your security measures" and that "operations are under preparation, and you will see them on your own ground once they are finished." Al Qaeda's animated spokesman, Adam Gadahn, proclaimed in 2004 that "the streets of America shall run red with blood" and that "the next wave of attacks may come at any moment." The **obsessive desire notwithstanding**, such **fulminations have clearly lacked substance**. Although hundreds of millions of people enter the United States legally every year, and countless others illegally, **no true al Qaeda cell has been found in the country since 9/11** and exceedingly few people have been uncovered who even have any sort of "link" to the organization. The closest effort at an al Qaeda operation within the country was a decidedly nonnuclear one by an Afghan-American, Najibullah Zazi, in 2009. Outraged at the U.S.-led war on his home country, Zazi attempted to join the Taliban but was persuaded by al Qaeda operatives in Pakistan to set off some bombs in the United States instead. Under surveillance from the start, he was soon arrested, and, however "radicalized," he has been talking to investigators ever since, turning traitor to his former colleagues. Whatever training Zazi received was inadequate; he repeatedly and desperately sought further instruction from his overseas instructors by phone. At one point, he purchased bomb material with a stolen credit card, guaranteeing that the purchase would attract attention and that security video recordings would be scrutinized. Apparently, his handlers were so strapped that they could not even advance him a bit of cash to purchase some hydrogen peroxide for making a bomb. For al Qaeda, then, the operation was a failure in every way -- except for the ego boost it got by inspiring the usual dire litany about the group's supposedly existential challenge to the United States, to the civilized world, to the modern state system. Indeed, **no** Muslim **extremist has succeeded in detonating** even **a simple bomb in the U**nited **S**tates **in the last ten years**, and except for the attacks on the London Underground in 2005, neither has any in the United Kingdom. **It seems** wildly unlikely **that al Qaeda is remotely ready to go nuclear**. Outside of war zones, the amount of killing carried out by **al Qaeda** and al Qaeda linkees, maybes, and wannabes throughout the entire world since 9/11 stands at perhaps a few hundred per year. That's a few hundred too many, of course, but it scarcely presents an existential, or elephantine, threat. And **the likelihood that a**n **American will be killed by a terrorist** of any ilk **stands at one in 3.5 million per year**, even with 9/11 included. **That probability will remain unchanged** unless terrorists are able to increase their capabilities massively -- and obtaining nuclear weapons would allow them to do so. Although al Qaeda may have dreamed from time to time about getting such weapons, no other terrorist group has even gone so far as to indulge in such dreams, with the exception of the Japanese cult **Aum Shinrikyo**, which leased the mineral rights to an Australian sheep ranch that sat on uranium deposits, purchased some semi-relevant equipment, and tried to buy a finished bomb from the Russians. That experience, however, **cannot be very encouraging to** the would-be atomic **terrorist**. Even though it was flush with funds and undistracted by drone attacks (or even by much surveillance), **Aum Shinrikyo abandoned its atomic efforts in frustration very early on. It then moved to bio**logical **weapons**, another complete failure that inspired its leader to suggest that fears expressed in the United States of a biological attack were actually a ruse to tempt terrorist groups to pursue the weapons. **The group did** finally **manage to release some sarin gas** in a Tokyo subway **that killed 13 and led to the group's terminal shutdown, as well as to 16 years** (and counting) **of pronouncements that WMD terrorism is the wave of the future. No elephants there, either**.

#### No Russia impact

#### a. Safeguards

**Ryabikhin et al. ‘9** [Dr. Leonid Ryabikhin, Executive Secretary, Committee of Scientist for Global Security and Arms Control; Senior Fellow, EastWest Institute, General (Ret.) Viktor Koltunov, Deputy Director, Institute for Strategic Stability of Rosatom, and Dr. Eugene Miasnikov, Senior Research Scientist, Center for Arms Control, Energy and Environmental Studies, 21-23 June 2009, “De-alerting: Decreasing the Operational Readiness of Strategic Nuclear Forces\*” Discussion paper presented at the seminar on “Re-framing De-Alert: Decreasing the Operational Readiness of Nuclear Weapons Systems in the U.S.-Russia Context” in Yverdon, Switzerland, http://www.ewi.info/system/files/RyabikhinKoltunovMiasnikov.pdf]

Most of the experts define de-alerting as implementing some reversible physical changes in a weapon system that would significantly increase time between the decision to use the weapon and the actual moment of its launch. The proponents of this concept consider it as one of the ways to maintain strategic stability. They provide the following arguments in support of this concept. 􀂃 Radical changes have occurred in US-Russian relations. Russia and the United States are building strategic partnership relationship. In such situation the high alert readiness of strategic offensive forces targeted at each other does not correspond to the character of our relations. 􀂃 Strategic nuclear forces high alert readiness in combination with a concept of launch-on-warning strike increases the risk of “accidental” nuclear war (as a result of mistakes in the C3I system, inadequate situation analysis, mistaken decision-making, unauthorized action of personnel or even terrorists, provocation from the “third” states or non-state actors, etc.); 􀂃 False signals about missile attacks obtained from early warning system that may trigger an accidental launch. This assumption was very popular when the Russian early warning system was weakened as a result of collapse of the Soviet Union. Analysis of the above **arguments** shows, that they do not have solid grounds. **Today Russian and U.S. ICBMs are** not targeted at any state**. High alert status of the Russian and U.S. strategic nuclear forces has not been an obstacle for building a strategic partnership. The issue of the possibility of an “accidental” nuclear war** itself **is** hypothetical. **Both states have developed and implemented constructive organizational and technical measures that practically exclude launches resulting from unauthorized action of personnel or terrorists. Nuclear weapons are maintained under** very strict system of control **that excludes any accidental** or unauthorized **use and guarantees that these weapons can only be used provided that there is an appropriate authorization by the national leadership**. Besides that it should be mentioned that even the Soviet Union and the United States had taken important bilateral steps toward decreasing the risk of accidental nuclear conflict. **Direct emergency telephone “red line” has been established** between the White House and the Kremlin in **1963**. **In 1971** **the** **USSR and USA signed** **the Agreement on Measures to Reduce the Nuclear War Threat**. **This Agreement established the actions of each side in case of even a hypothetical accidental missile launch and it contains the requirements for the owner of the launched missile to deactivate and eliminate the missile.** Both the Soviet Union and the United States have developed proper measures to observe the agreed requirements.

#### The *plan’s framework* produces *new terrorist safe-havens* and injects *debilitating uncertainty* into drone operations

Blank 13 – Director, International Humanitarian Law Clinic, Emory University School of Law (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE”, 161 U. Pa. L. Rev. Online 347, lexis, CMR)

As Daskal aptly describes, the primary contours of the debate over **the scope of the battlefield** are **shaped by the territorially prescribed view** on one side and the broadly conceived "global battlefield" on the other. n17 From a policy standpoint, the latter poses the risk of spiraling violence and a degradation of sovereignty; the former **offers terrorists and** other armed **groups** an unnecessary bonus of safe haven **simply by crossing an international border.** In an earlier piece, I have argued for a middle ground, based on an understanding of the relevant legal parameters that can offer guidance in analyzing the geographic space of conflict. n18 In this sense, I firmly agree with the motivation behind Daskal's effort to transcend the "impasse" seemingly created by a dichotomous, all-or-nothing view of the geography of conflict. However, **attempting to navigate these** thorny questions **through new binding legal frameworks** that copy and borrow from two or more distinct legal regimes **poses a separate set of concerns, with the risk of** more **comprehensive long-term consequences**.

This Part highlights two of these concerns, specifically within the context of one overarching question: would a new law of war framework apply only to conflicts with terrorist groups or to all LOAC-triggering situations? To the extent that this new framework would become the dominant framework for all conflict situations, the operational and law-development concerns discussed in this Part loom large. However, **if the new framework were to apply only in the event of conflicts like that between the U.S. and al Qaeda**--a conflict between a state and a transnational terrorist group-two equally **significant questions arise**. First, **how--and by whom--would the determination be made as to whether a particular conflict situation fits** $=P354 **within the** regular LOAC framework or **the new rules-based framework**? **The risk of additional layers of complexity, legal challenge, and uncertainty** as a result of having to make this additional determination first **would be great and poses** a significant concern. Second, would there thus be two different standards for training and for enforcement, depending on the framework under which a particular unit was operating? Here **the consequences for clarity and predictability are** quite simply enormous.

#### Yes public support – but the plan spills-over to *complete ban* on drones

Anderson 13

[Kenneth, Professor of Law, Visiting Fellow, The Hoover Institution on War, Revolution and Peace, Stanford University, Member, Hoover Task Force on National Security and Law, Non-Resident Visiting Fellow, The Brookings Institution (Governance Studies), Senior Fellow, The Rift Valley Institute, “The Case for Drones”, 5/24, <http://dyn.realclearpolitics.com/printpage/?url=http://www.realclearpolitics.com/articles/2013/05/24/the_case_for_drones_118548-full.html>, CMR]

Without a hardheaded effort on the part of Congress and the executive branch to make drone policy, the efforts to discredit drones will continue. The current wide public support in the United States today should not mask the ways in which public perception and sentiment can be shifted, here and abroad. The campaign of **delegitimation is modeled on** the one against **Guantanamo** Bay during the George W. Bush administration; the British campaigning organization Reprieve tweets that it will make drones the Obama administration’s Guantanamo. Then as now, administration officials did not, or were unforgivably slow to, believe that a mere civil-society campaign could force a reset of their policies. **They** miscalculated then and, as former Bush administration officials John Bellinger and Jack Goldsmith have repeatedly warned, they **might** well **be** miscalculating now.¶ U.S. counterterrorism policy overall needs to be embedded in policies, processes, and laws that get beyond mere executive-branch discretion and bear the stamp of the two political branches coming together in tools available in a stable way across presidential administrations of both parties. We are not there now. While the critics are not wrong to call for reform of drone-warfare processes, many of them see these merely as the first step to ending drone warfare altogether. They are advocating procedural reforms not to give it a permanent and steady framework for the long run, but effectively to outlaw the practice.

#### No backlash – domestic support is broad – courts and congress will defer to the president

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The Stability of the Legal and Oversight Framework¶ If the United States were ever to target a larger number of its citizens abroad, the problem ¶ of the legal and oversight framework in which it does so would emerge acutely. The courts, ¶ so far, have shown no interest in involving themselves in sorting out who can be killed ¶ and under what circumstances. Prior to the Awlaki strike, his father, Nasser Awlaki, filed ¶ suit—with the aid of the American Civil Liberties Union and the Center for Constitutional Rights—in an effort to preclude the targeting of his son. A district court in Washington dismissed the case, on grounds that he lacked standing to bring it (in other words, ¶ the father could not claim to represent the son), and that targeting is a political question ¶ in which the judiciary has no role. Judge John D. Bates—the same Judge Bates that ruled ¶ in the Abu Ali case—was fully aware of the oddity of the case and the oddity of declining ¶ to hear it. In dismissing the matter, he wrote that “Stark, and perplexing, questions readily ¶ come to mind.” Asked Judge Bates: ¶ How is it that judicial approval is required when the United States decides to ¶ target a U.S. citizen overseas for electronic surveillance, but that, according to ¶ defendants, judicial scrutiny is prohibited when the United States decides to ¶ target a U.S. citizen overseas for death? Can a U.S. citizen—himself or through ¶ another—use the U.S. judicial system to vindicate his constitutional rights while ¶ simultaneously evading U.S. law enforcement authorities, calling for “jihad ¶ against the West,” and engaging in operational planning for an organization that ¶ has already carried out numerous terrorist attacks against the United States? ¶ There were other questions too—all of them interesting. Can the courts really make realtime targeting decisions? Are they really positioned to weigh the benefits and costs of ¶ possible diplomatic and military responses, and ultimately decide whether, and under ¶ what circumstances, the use of military force against such threats is justified? Would the ¶ United States really litigate these questions, thereby disclosing in advance to the prospective target “the precise standards under which [the United States] will take that military ¶ action”? Ultimately, however, Judge Bates avoided all of the questions. “No matter how ¶ interesting and no matter how important this case may be . . . we cannot address it unless ¶ we have jurisdiction.”123¶ At least for now, the courts—though fully aware of the significance of their hands off ¶ approach—show no sign of insinuating themselves into the process.¶ Because the courts appear determined to avoid entering the debate over the parameters of ¶ when, how, and where an American abroad can be killed in the name of counterterrorism, ¶ Congress becomes the only plausible external source for the imposition of restraint on ¶ the Executive Branch. Congressional intervention, however, seems highly unlikely as long ¶ as drone strikes remain as popular—and as apparently effective—as they are. If Obama, ¶ derided as a Marxist and crypto-Muslim by his foes, asserts the right to use drone strikes ¶ against Americans, any other likely administration will as well. Not surprisingly, in the ¶ 2012 election Governor Mitt Romney also endorsed drone strikes “entirely” and stated ¶ that “we should continue to use it to go after the people who represent a threat to this ¶ nation and to our friends.”124¶ As long as the number of Americans targeted with lethal force remains so tiny, leaving ¶ such targeting questions entirely in executive hands makes sense. The Awlaki intelligence ¶ appears to have been vetted extensively. Awlaki was put on public notice that his surrender would be accepted. He knew that he was being targeted. As long as such targeting is ¶ a once-a-decade event, the anomalies Judge Bates identifies are less significant. Surveillance, after all, is common and regularized. It makes sense to have a statute governing it.

# Block

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### AT: Perm Do Both

**Links to the NB or severs**

#### The counterplan aloneis key to effective drone operations---the permutation sends the signal that the rest of the government sides with critics of drones over the executive---that delegitimizes drones and collapses the program

Kenneth Anderson 10, Professor of International Law at American University, 3/8/10, “Predators Over Pakistan,” The Weekly Standard, <http://www.weeklystandard.com/print/articles/predators-over-pakistan>

Obama deserves support and praise for this program from across the political spectrum. More than that, though, the drone strikes need an aggressive defense against increasingly vocal critics who are moving to create around drone warfare a narrative of American wickedness and cowardice and of CIA perfidy.

Here the administration has dropped the ball. It has so far failed to provide a robust affirmation of the propositions that underwrite Predator drone warfare. Namely:

n Targeted killings of terrorists, including by Predators and even when the targets are American citizens, are a lawful practice;

n Use of force is justified against terrorists anywhere they set up safe havens, including in states that cannot or will not prevent them;

n These operations may be covert—and they are as justifiable when the CIA is tasked to carry them out secretly as when the military does so in open armed conflict.

n All of the above fall within the traditional American legal view of “self-defense” in international law, and “vital national security interests” in U.S. domestic law.

There are good reasons for Republicans and centrist Democrats to make common cause in defending these propositions. On the one hand, they should want to aggressively protect the administration against its external critics—the domestic and international left—who are eager to prosecute Americans for their actions in the war on terror. They should also want to make clear that in defending drone strikes, they are defending the American (and not just the Obama) legal and strategic position. Moreover, it will be the American view of domestic and international law for future administrations, Democratic and Republican.

At the same time, congressional Republicans and centrist Democrats need to put Obama’s senior legal officials on the record and invite them to defend their own administration, defend it to the full extent that the Obama administration’s actions require. Which is to say, Congress needs to hear publicly from senior administration lawyers and officials who might be personally less-than-enthused about targeted killings of terrorists and not eager to endorse them publicly, or to do so only with hedged and narrow legal rationales from which they can later walk away.

Consider, for instance, the diffidence of Harold Koh, the legal adviser of the Department of State. In an informal public discussion with his predecessor, John Bellinger, aired on C-SPAN on February 17, he was asked about drones and targeted killings and declined to say that the practice was lawful. (Granted, it was in an unscripted setting, which cannot be taken as anyone’s last word and on which it would be unfair to place too much weight.) All he said was that if he concluded that it was unlawful, he would, if he thought it appropriate, resign his position. He added that he remained at his post. The statement falls far short of the defense one might hope for from such a high-ranking administration lawyer. More than a year into the new administration, that ought surely to strike the general counsels of the CIA, the Pentagon, the Director of National Intelligence, the NSC, and other agencies directly conducting these activities as somewhat less than reassuring.

### Solvency

**Disclosing target criteria builds credibility, enacts domestic accountability, and doesn’t link to the terror disad**

Gregory **McNeal 13**, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Related to defending the process, and using performance data is the possibility that the U.S. government could publish the targeting criteria it follows. That criteria need not be comprehensive, but it could be sufficiently detailed as to give outside observers an idea about who the individuals singled out for killing are and what they are alleged to have done to merit their killing. As Bobby Chesney has noted, "Congress could specify a statutory standard which the executive branch could then bring to bear in light of the latest intelligence, with frequent reporting to Congress as to the results of its determinations."521 What might the published standards entail? First, Congress could clarify the meaning of associated forces, described in Part I and II. In the alternative, it could do away with the associated forces criteria altogether, and instead name each organization against which force is being authorized,522 such an approach would be similar to the one followed by the Office of Foreign Assets Control when it designates financial supporters of terrorism for sanctions.523¶ The challenge with such a reporting and designation strategy is that it doesn’t fit neatly into the network based targeting strategy and current practices outlined in Parts I-III. If the U.S. is seeking to disrupt networks, then how can there be reporting that explains the networked based targeting techniques without revealing all of the links and nodes that have been identified by analysts? Furthermore, for side payment targets, the diplomatic secrecy challenges identified in Part I remain --- there simply may be no way the U.S. can publicly reveal that it is targeting networks that are attacking allied governments. These problems are less apparent when identifying the broad networks the U.S. believes are directly attacking American interests, however publication of actual names of targets will be nearly impossible (at least ex ante) under current targeting practices.¶ As was discussed above, the U.S. government and outside observers may simply be using different benchmarks to measure success. Some observers are looking to short term gains from a killing while others look to the long term consequences of the targeted killing policy. Should all of these metrics and criteria be revealed? Hardly. However, the U.S. should articulate what strategic level goals it is hoping to achieve through its targeted killing program. Those goals certainly include disrupting specified networks. Articulating those goals, and the specific networks the U.S. is targeting may place the U.S. on better diplomatic footing, and would certainly engender mechanisms of domestic political accountability.

**Executive-branch transparency and bringing U.S. practice in line with policy builds the international diplomatic capital to press for drone norms**

Kristin **Roberts 13**, News Editor, National Journal, 3/22/13, “When the Whole World Has Drones,” <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>

But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions.

A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs.

Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists.

The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

#### Executive review signals binding US commitment to restraint and rebuilds credibility

McNeal 13 Gregory McNeal, professor at Pepperdine University, national security specialist focusing on the institutions and challenges associated with global security, with substantive expertise in national security law and policy, criminal law, and international law, former Assistant Director of the Institute for Global Security, co-directed a transnational counterterrorism grant program for the U.S. Department of Justice, and served as a legal consultant to the Chief Prosecutor of the Department of Defense Office of Military Commissions on matters related to the prosecution of suspected terrorists held in the detention facility in Guantanamo Bay, Cuba, “Five Ways to Reform the Targeted Killing Program”, April 23, 2013, <http://www.lawfareblog.com/2013/04/five-ways-to-reform-the-targeted-killing-program/>, CMR

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

## Prez Powers

### 2NC---Cred Theory True

#### The impact is the end of hegemony

TR 9—Air Force Academy graduate. Master’s in Unconventional Warfare, American Military U. Co-founder of The PULSE Review (The Realist, Why We Are Called the Paper Tiger, 7 June 2009, http://pulsereview.com/?p=1111, CMR)

What we perceive is what we believe. When other nations perceive that America will not act in its interests, they perceive us as a paper tiger. The reader may note that the “Paper Tiger” rhetoric has been absent as of late. After all, other nations perceived us conquering one country, sustaining operations in another, and persuading several other countries to sit down and play nice. Whatever other nations consider us, a paper tiger is not one of them currently. We built our credibility by doing what we said we would do. Credibility, is the lynch pin of international relations. It creates the difference between diplomatic lip service and statements that actually effect change. Some nations have a great deal of credibility - there is little doubt they will do what they threaten. The Chinese are an example of this, as was the former Soviet Union. Other nations vary in credibility. As Americans, we have seen our national credibility oscillate wildly. No matter what our credibility is, America sustains a very strong ability to project power. Other nations understand that our credibility is a function of our will, and our will shifts. These shifts in will to enforce our decisions create credibility issues. North Korea is a credibility issue, as is Iran. Both nations routinely ignore international declarations in ostentatious ways, like launching missiles, or stating they plan to become nuclear powers. Most nations break international law in one way or another. Some do it fairly overtly, such as the Chinese claiming exorbitant swaths of sea lanes as their territory. Still others are mostly suspected of breaking the law through assassinations or other nefarious acts. When the international community, and America, tell a country not to do something, and don’t back their words with actions, credibility is lost. Any parent, schoolteacher, drill sergeant, or leader of any sort clearly understands the issue. No repercussions equates to tacit acceptance of the actions. A clear failure of actions to follow words undermines the credibility of the words. When words fail, actions tend to become necessary. This is the innate reason that words must carry weight. It is far better to deter a nation from doing something, than to revert to the use force to stop that nation further down the path. Pay now, or pay later, with interest. This applies to credit cards, education, physical fitness, and international affairs. When America says “Stop, or I will stop you” if the words do not stop the nation, America will have to act to protect its interests, potentially at a greater cost, later. It is better to stop something with words than with actions, for words are far cheaper. Words are cheap, but their credibility is bought with blood and treasure. When a nation maintains the credibility of its words, the long term cost is less. North Korea is a case in point. The international community has gotten to the point where maintaining the dysfunctional regime is preferable to ending it. If North Korea destabilizes (pretend with me that it is stable for the moment), the South will be in dire peril. Between the military and economic consequences, the South will potentially be destabilized itself. Millions of refugees with nothing more than the clothes on their back, malnourished, uneducated, and in need of a great deal of care, will come South - assuming South Korea can even take care of itself in the aftermath of potential armed conflict. The reason we don’t act now is the hope that North Korea will somehow get better, or the desire to let it be someone else’s problem. Hope is neither a plan nor a strategy. Passing the buck is not a legitimate strategy either. In the bitter, unfortunate end, North Korea must either become a legitimate state, or meet the end of illegitimate states. The question is, how much harm will North Korea inflict on the world beforehand? Paper Tigers and fallen nations go hand in hand. When other nations, or non-state actors (Bin Laden) perceive America as a Paper Tiger, they end up provoking America beyond endurance, and reap what they sow a thousand fold. As Americans, we end up paying far more than we should due to the wild oscillation of credibility we routinely engage in. If we don’t want other nations to perceive us as paper tigers and act accordingly, we have to maintain our credibility. It is better for everyone involved — especially us.

#### Credibility outweighs their internal link

Fettweis 4 (Christopher, Professor at the U.S. Army War College, December 2004, “Resolute Eagle or Paper Tiger? Credibility, Reputation and the War on Terror,” online: <http://www.allacademic.com/meta/p67147_index.html>) CMR

**If decision makers interpreted interests along material lines**, **then analysts** of foreign policy **would need to look no further** in order **to explain state behavior**. **However**, **time and again nations take on tasks** **that appear to be counter to what a rational evaluation** of interests **would recommend**---to borrow Barbara Tuchman’s memorable phrase, they engage in a “march of folly.”6 **How could U.S. policymakers fail to disengage from Vietnam,** for instance, when it was clear that the costs in blood and treasure were not proportional to any potential benefits that could conceivably be gained from an anti-communist South Vietnam? To prominent realists such as Hans Morgenthau and Kenneth Waltz, intervention in isolated, resource-poor Vietnam was irrational, “moralistic” and mistaken. Only “if developments in Vietnam might indeed tilt the world’s balance in America’s disfavor,” argued Waltz, would the war be worthwhile.7 They did not, of course---from a material perspective, Vietnam was next to irrelevant to U.S. national security. Clearly some other compelling forces had to be at work. State behavior cannot be explained absent an understanding ofthe forces at work withinthe human mind. **Intangible interests,** ones **whose roots are psychological and inherently unmeasurable**, often **drive decisions in directions inexplicable to the empirical analyst**. The war in **Vietnam was fought more to** send messages to adversaries**, allies and neutrals than in pursuit of any material benefits that victory would bring**. Diplomatic historian Robert McMahon spoke for the vast majority of observers when he argued that **Vietnam’s importance did not derive from tangible interests, but “**primarily **from the meanings that others would ascribe to American actions there**.”8 The reputation and credibilityof the United States was at stake, or so decision-makers thought, **and those were assets well worth a fight**. **One cannot understand** **the major U.S. foreign policy actions**---from Korea to Iraq---**without understanding** the **messages** that **policymakers** hoped to **send through their actions**. The conventional wisdom holds that a healthy reputation **of the U**nited **S**tates **is** absolutely vital **for** not only its national security, but for the very maintenance of **world** order and **peace. It is this belief, which McMahon** has **called the “credibility imperative,” that has driven action in consistent** and observable **ways since** the end of **World War II**.9

### UQ

#### Obama signaling US strength – UN speech proves – no Syria thumper

Zogby 9/30 – President, Arab American Institute

Dr James J Zogby, “A good week for diplomacy”, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=362077>, CMR

By any measure, last week was a big one for diplomacy at the United Nations. On Tuesday, President Obama set the tone for the week delivering an important and potentially far-reaching speech before the General Assembly. In his remarks, he reflected on the challenges America faces in attempting to protect its core interests and project its values in a rapidly changing world.¶ It was a humble speech: that recognised that force cannot always advance progress in democratisation; that we live in a world of "imperfect choices" and "unintended consequences" which must always be factored into any discussion of the use of force; and that after more than a decade or war, Americans have developed a "hard earned humility" regarding foreign interventions.¶ Obama acknowledges all this, noting that although "we've worked to end a decade of war", his Administration must still contend with the mess left behind by the mindset of "perpetual war"- specifically citing the controversies emanating from the failure to close Guantanamo, the continuing use of drones, and the NSA's intrusive electronic spying programme.¶ The speech, however, was not a pacifist manifesto since President Obama acknowledged that even with these complicating considerations, there were times when America would need to act in defence of its core interests, or to stop a humanitarian catastrophe. And there would be times when the "credible threat of force" might be required to transform a situation or avert a crisis.¶ And there was no suggestion that America was withdrawing from the world or the Middle East. More than one half of the speech was focused on his commitment to the region - focusing on: the need to end the slaughter in Syria; a way to engage Iran; resolving the Israeli-Palestinian conflict; and continuing US support for Egypt.¶ But there was more to the week than a speech. Throughout the past several days the US and Iran flirted with each other, sending repeated positive signals about their commitment to turn a page to work to address concerns relating to Iran's nuclear programme. The P5+1 meeting ended on a positive note, with all sides acknowledging a change in tone and the promise of more constructive talks in the future. Then came the news of a late-Friday surprise phone call between Presidents Obama and Rouhani in which it was reported that the two leaders agreed to focus their efforts on not only the nuclear issue, but on other regional matters - most notably achieving a negotiated settlement to the conflict in Syria.¶ There was also news about progress on a Security Council resolution on Syria that would press the Syrian government to comply with the agreement to surrender their chemical weapons' stockpile. The US and its allies may have wanted the resolution to be tougher and to say and do more to punish the Assad regime. But given the realities of the Council, the fact that a consensus was reached that may hasten the removal of chemical weapons is itself important.¶ There were critics who responded in full force. The President's speech was denounced as a muddled celebration of weakness, and a surrender of leadership. The Security Council resolution on Syria was dismissed as toothless. The outreach to Iran was derided as dangerous. And there were those who suggested that credit for the week should not go to Obama, but to President Putin and President Rouhani.¶ But the critics were wrong. It was smart for the President to recognise and seize on openings when they occur. Credit, of course, must be given to the Iranian and Russian leaders. But there can be no denying that Obama, by not behaving as George Bush might have: was able to wring the best out of what was a bad situation; replace hollow boasting and absolutist proclamations with a commitment to dialogue based on mutual respect; and put us on the path to the resolution of some (not all) problems, without risking involvement in a new war.

**Syria is a link magnifier—it only constrains Obama with the plan**

**Bradley 9/2/13**

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One **claim** that is being made about President Obama’s decision to seek congressional authorization for military action in Syria is that it is likely to weaken the authority of the presidency with respect to the use of force. Peter Spiro contends, for example, that Obama’s action is “a watershed in the modern history of war power” that may end up making congressional pre-authorization a necessary condition for even small-scale military operations. David Rothkopf states even more dramatically that “Obama’s decision may have done more—for better or worse—to dial back the imperial presidency than anything his predecessors or Congress have done for decades.” If this claim is correct, it will be welcome news to those concerned about the growth of executive power and a matter of concern for those who are fans of robust executive unilateralism. Unfortunately, the commentators making this claim do not identify **the mechanism** through which the weakening of presidential war authority will occur and have relied instead only on **vague intuitions.** As an initial matter, we need to bracket the issue of whether Obama’s action will weaken his own power as a political matter. This is a complicated issue: on the one hand, it may signal weakness both to Congress and to other nations; on the other hand, if he obtains congressional authorization, he may be in an ultimately stronger political position, as Jack Goldsmith has pointed out. As I understand it, the claim being made by Spiro, Rothkopf, and others is that the power of the presidency more generally is being weakened. **How might this happen?** Not through an influence on judicial doctrine: Although courts sometimes take account of historic governmental practices when assessing the scope of presidential authority, they have consistently invoked limitations on standing and ripeness, as well as **the political question doctrine**, to avoid addressing constitutional issues relating to war powers. In the absence of judicial review, what is the causal mechanism by which the “precedent” of Obama seeking congressional authorization for the action in Syria could constrain future presidential action? When judicial review is unavailable, the most obvious way in which the President is constrained is through the political process—pressure from Congress, the public, his party, etc. In an extreme case, this pressure could take the form of impeachment proceedings, but it does not take such an extreme case for the pressure to have a significant effect on presidential decisionmaking. Indeed, it is easy to think of political considerations that might have motivated Obama to go to Congress with respect to Syria. That’s all fairly clear, but what is unclear is how a non-judicial precedent, such as Obama’s decision to seek congressional authorization for Syria, will have an effect on later decisions with respect to the use of force. The intuition, I think, is that Obama’s action will strengthen the hand of critics of later efforts by presidents to act unilaterally. It will give the critics more “ammunition,” so to speak. But why is this so, and what is meant, specifically, **by “ammunition**”? Obama claims that he is seeking congressional authorization for policy reasons, **not because he is required to do so**, and a later president is likely to reiterate that explanation. Moreover, if Obama is seeking congressional authorization for Syria because of political considerations (weak international and domestic support, public weariness about war, etc.), why would a later president feel compelled to follow that precedent when those political considerations do not apply? It is easier to imagine a constraining precedential effect, I think, if Congress votes down an authorization bill on Syria, and the President then declines to take action. After all, Obama has already stated that **he has made a decision as Commander in Chief to use force.** If he responds to a negative vote in Congress by not doing so, it might seem like a concession against interest that he lacks authority to act when Congress is opposed. **Even if** this did produce a constraining precedent, **it would have limited effect**, since it would not apply when (as is often the case) **Congress does not take action one way or the other.** But even here, the mechanism of the constraint is uncertain: Obama would likely claim that he was declining to take action for political reasons, such as the reduced likelihood of success created by the disunity between the branches, or the passage of time, or the lack of sufficient international support. Why would a future president facing different circumstances feel constrained by Obama’s inaction?

### Link---2NC Wall

#### Congressional restrictions cause adversaries to doubt the credibility of our threats --- causes crisis escalation

Matthew Waxman 8/25/13, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued:¶ In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the most important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179

#### Plan allows Congress to vocally oppose crisis intervention --- or they literally don’t solve anything--- that destroys international perception of U.S. resolve

Waxman 8/25/13 Matthew Waxman, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, citing William Howell, Sydney Stein Professor in American Politics @ U-Chicago, and Jon Pevehouse, Professor of Political Science @ U-Wisconsin-Madison, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

When members of Congress vocally oppose a use of force, they undermine the president’s ability to convince foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, allies may be reluctant to contribute to a military campaign, and adversaries are likely to fight harder and longer when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests.145

### Link---Military Backlash

#### Perception of the micromanagement by the plan causes military backlash

**Ruffaa et al ’13** [Chiara Ruffaa, Department of Peace and Conﬂict Research, Uppsala University, Christopher Dandekerb, Department of Peace and Conﬂict Research, Uppsala University, Pascal Vennessonc, S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, “Soldiers drawn into politics? The inﬂuence of tactics in civil –military relations,” June, Small Wars & Insurgencies, Vol. 24, No. 2, 322–334, <http://www.kcl.ac.uk/kcmhr/publications/assetfiles/other/Ruffa2013politics.pdf>]

Actions in the theater of operation may have consequences for civil–military¶ relations back home. Furthermore, the desired objectives to be achieved have¶ shifted. Recent literature has agreed on ‘a shift away from the idea of the pursuit¶ of victory to that of success’ speciﬁcally at ‘establishing security condition’.16¶ Another feature of contemporary operations is the ‘process of dispersion of¶ military authority to lower levels of the command chain’.17 The dispersion of¶ military authority combines coercive and hierarchical elements typical of a¶ military organization with ‘group consensus’ and persuasive forms of authority¶ and it has led to the emergence of different leadership styles.18While sometimes¶ combined with micromanagement, this dispersion has led to greater autonomy for¶ soldiers in the ﬁeld and to a reduced control. Military operations have traditionally¶ been exceptional environments but in contemporary missions decisions often¶ have to be taken without orders.19 To be sure, communication technology has¶ encouraged both decentralization and centralization. Still, it is only a technology¶ and much depends on culture and organization of the user. This becomes¶ particularly difﬁcult to control when soldiers have wider margins of maneuver.¶ These interventions, Afghanistan and Iraq in particular, are ‘wars of contested¶ choice’, meaning that notwithstanding their differences they are not of existential¶ necessity.20 To complicate things further, politicians get involved while the¶ operation is ongoing; they **sometimes change the political objectives during the mission** or they have a moral and politically unrealistic view of the political¶ objectives to be achieved. This is the result of a combination of two constituent¶ elements, of what has been called the ‘dialectic of control’: dispersion and¶ micromanagement.21 Dispersion occurs when the military authority is dispersed¶ across levels of command; while micromanagement refers to a growing tendency¶ of centralizing control.22 Dispersion and micromanagement lead to a¶ compression of the three levels of war, namely strategic, operational, and¶ tactical.23 While these two elements may seem at odds with each other, they are¶ in fact connected. Micromanagement matters as much as dispersion. The tensions¶ between micromanagement---which refers to a centralized control and a topdown process---and diffusion lead to inconsistencies between orders given from¶ the top (without in-depth knowledge of the context) and diffusion of the level of¶ command. While potentially effective for operational activities, micromanagement risks being potentially frustrating when soldiers have to carry out activities¶ that range from humanitarian tasks to building bridges because they need to¶ assess on the ground where this is needed. Thus communications technologies are¶ double edged: (a) technology allows for either dispersion with local actors being¶ able to use a common picture with others to make local decisions that nonetheless¶ conform to the strategic principles set down by higher authority, or (b) they allow¶ senior ofﬁcers to micromanage as they think they know best because they can see¶ the detail that the lower levels can not. The key point here is that which direction¶ is taken---(a) or (b)---depends on factors such as the command culture of the military organization; the personality and orientation of senior ofﬁcers; and the¶ political nervousness/sensitivity/choices of ministers worried or not about what is¶ going on ‘down there’ and the consequences for the mission, their reputation, and¶ that of the government of which they are a part. These elements taken together¶ have created a set of conditions that have changed soldiers’ role in operations and¶ have made the tactical level more relevant and altered the ways in which they¶ connect to politicians and the political process.

#### That triggers the DA and there’s an independent nuclear war impact

COHEN 1997 [Eliot, PhD from Harvard in political science, Professor of Strategic Studies at the Paul H. Nitze School of Advanced International Studies (SAIS) at the Johns Hopkins University, Director of the Strategic Studies Program at SAIS, served as Counselor to the United States Department of State under Secretary Condoleezza Rice from 2007 to 2009, http://www.fpri.org/americavulnerable/06.CivilMilitaryRelations.Cohen.pdf]

Left uncorrected, the trends in American civil-military relations could breed certain pathologies. The most serious possibility is that of a dramatic civil-military split during a crisis involving the use of force. In the recent past, such tensions did not result in open division. For example, Franklin Roosevelt insisted that the United States invade North Africa in 1942, though the chiefs of both the army and the navy vigorously opposed such a course, favoring instead a buildup in England and an invasion of the continent in 1943. Back then it was inconceivable that a senior military officer would leak word of such a split to the media, where it would have reverberated loudly and destructively. To be sure, from time to time individual officers broke the vow of professional silence to protest a course of action, but in these isolated cases the officers paid the accepted price of termination of their careers. In the modern environment, such cases might no longer be isolated. Thus, presidents might try to shape U.S. strategy so that it complies with military opinion, and rarely in the annals of statecraft has military opinion alone been an adequate guide to sound foreign policy choices. Had Lincoln followed the advice of his senior military advisers there is a good chance that the Union would have fallen. Had Roosevelt deferred to General George C. Marshall and Admiral Ernest J. King there might well have been a gory debacle on the shores of France in 1943. Had Harry S. Truman heeded the advice of his theater commander in the Far East (and it should be remembered that the Joint Chiefs generally counseled support of the man on the spot) there might have been a third world war. Throughout much of its history, the U.S. military was remarkably politicized by contemporary standards. One commander of the army, Winfield Scott, even ran for president while in uniform, and others (Leonard Wood, for example) have made no secret of their political views and aspirations. But until 1940, and with the exception of periods of outright warfare, the military was a negligible force in American life, and America was not a central force in international politics. That has changed. Despite the near halving of the defense budget from its high in the 1980s, it remains a significant portion of the federal budget, and the military continues to employ millions of Americans. More important, civil-military relations in the United States now no longer affect merely the closet-room politics of Washington, but the relations of countries around the world. American choices about the use of force, the shrewdness of American strategy, the soundness of American tactics, and the will of American leaders have global consequences. What might have been petty squabbles in bygone years are now magnified into quarrels of a far larger scale, and conceivably with far more grievous consequences. To ignore the problem would neglect one of the cardinal purposes of the federal government: “to provide for the common defense” in a world in which security cannot be taken for granted.

## Terror Adv

### UQ---2NC Must-Read

#### Status quo target vetting is carefully calibrated to avoid every aff impact in balance with CT--- there’s only a risk that restrictions destroy it

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Target vetting is the process by which the government integrates the opinions of subject matter experts from throughout the intelligence community.180 The United States has developed a formal voting process which allows members of agencies from across the government to comment on the validity of the target intelligence and any concerns related to targeting an individual. At a minimum, the vetting considers the following factors: target identification, significance, collateral damage estimates, location issues, impact on the enemy, environmental concerns, and intelligence gain/loss concerns.181 An important part of the analysis also includes assessing the impact of not conducting operations against the target.182 Vetting occurs at multiple points in the kill-list creation process, as targets are progressively refined within particular agencies and at interagency meetings.

A validation step follows the vetting step. It is intended to ensure that all proposed targets meet the objectives and criteria outlined in strategic guidance.183 The term strategic is a reference to national level objectives—the assessment is not just whether the strike will succeed tactically (i.e. will it eliminate the targeted individual) but also whether it advances broader national policy goals.184 Accordingly, at this stage there is also a reassessment of whether the killing will comport with domestic legal authorities such as the AUMF or a particular covert action finding.185 At this stage, participants will also resolve whether the agency that will be tasked with the strike has the authority to do so.186 Individuals participating at this stage analyze the mix of military, political, diplomatic, informational, and economic consequences that flow from killing an individual. Other questions addressed at this stage are whether killing an individual will comply with the law of armed conflict, and rules of engagement (including theater specific rules of engagement). Further bolstering the evidence that these are the key questions that the U.S. government asks is the clearly articulated target validation considerations found in military doctrine (and there is little evidence to suggest they are not considered in current operations). Some of the questions asked are:

• Is attacking the target lawful? What are the law of war and rules of engagement considerations?

• Does the target contribute to the adversary's capability and will to wage war?

• Is the target (still) operational? Is it (still) a viable element of a target system? Where is the target located?

• Will striking the target arouse political or cultural “sensitivities”?

• How will striking the target affect public opinion? (Enemy, friendly, and neutral)?

• What is the relative potential for collateral damage or collateral effects, to include casualties?

• What psychological impact will operations against the target have on the adversary, friendly forces, or multinational partners?

• What would be the impact of not conducting operations against the target?187

As the preceding criteria highlight, many of the concerns that critics say should be weighed in the targeted killing process are considered prior to nominating a target for inclusion on a kill-list.188 For example, bureaucrats in the kill-list development process will weigh whether striking a particular individual will improve world standing and whether the strike is worth it in terms of weakening the adversary's power.189 They will analyze the possibility that a strike will adversely affect diplomatic relations, and they will consider whether there would be an intelligence loss that outweighs the value of the target.190 During this process, the intelligence community may also make an estimate regarding the likely success of achieving objectives (e.g. degraded enemy leadership, diminished capacity to conduct certain types of attacks, etc.) associated with the strike. Importantly, they will also consider the risk of blowback (e.g. creating more terrorists as a result of the killing).191

## T

### A2 We Meet

#### “The closer the farther” – plan’s attempted explicitness actually makes it worse – reverse-delegates authority

Graham Cronogue, Duke University School of Law, J.D. expected 2013; A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW [Vol. 22:377 2012] http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil

Compared to Representative McKeon’s proposal, these new provisions would narrow the scope of authorization. The President would ¶ not be able to use this authorization to attack new groups that both spring ¶ up outside our current theater and have no relation to al-Qaeda, the Taliban ¶ or the newly defined associated forces. However, part (5) of my ¶ authorization would ensure that the President is not unnecessarily restricted ¶ in responding to new and emergent threats from organizations that do not ¶ collaborate and support al-Qaeda. In this way, the proposal incorporates ¶ Robert Chesney’s suggestion, “[i]t may be that it [is] better to draw the statutory circle narrowly, with language making clear that the narrow framing does not signify an intent to try and restrict the President’s authority to act when necessary against other groups in the exercise of ¶ lawful self-defense.”128 The purpose of the new AUMF should not be to ¶ give the President a carte blanche to attack any terrorist or extremist group ¶ all over the world. The purpose of this authorization is to provide clear ¶ authorization for the use of force against al-Qaeda and its allies. Moreover, ¶ if a new group is created that has no relation to any of the relevant actors ¶ defined in this statute, Congress can pass another authorization that ¶ addresses this reality. The purpose of congressional authorization should ¶ not be to authorize the President to act against every conceivable threat to ¶ American interests. In fact, such an authorization would effectively strip ¶ Congress of its constitutional war making powers. Instead, the new ¶ proposal should provide clear domestic authorization for the use of force against those nations that present the greatest threat to the United States ¶ today.

#### Implicit restriction is effects T

David J. Barron & Martin S. Lederman, Harvard Law Review, February 2008. “THE COMMANDER IN CHIEF AT THE LOWEST EBB — A CONSTITUTIONAL HISTORY,” http://www.harvardlawreview.org/media/pdf/barron\_lederman2.pdf

Chief Justice Marshall held, in effect, that even though the President might well have had the inherent constitutional power to issue ¶ such an order in the absence of a statute,85 that did not matter because ¶ federal statutory law had prohibited the seizure by implication. By ¶ providing the Executive with “authority [to seize] vessels bound or ¶ sailing to a French port,” he concluded, “the legislature seem to have ¶ prescribed that the manner in which this law shall be carried into execution, was to exclude a seizure of any vessel not bound to a French¶ port.”86 In other words, a statute authorizing seizure of ships heading in one direction implicitly restricted what might otherwise have been the Commander in Chief’s constitutional authority to seize ships going in the opposite direction. And while Chief Justice Marshall was ¶ plainly troubled by his ultimate conclusion that the officer following ¶ the commander’s orders enjoyed no good faith immunity from liability,87 there is no suggestion in his opinion, or that of any Justice of the ¶ Court — and no evidence that any of the parties, including the Executive, argued — that Congress could not limit the President’s tactical ¶ flexibility in this respect.88

#### Fiat doesn’t make the aff T – only better plan-writing

Nancy Kassop, Presented at Hofstra University Symposium, President or King? Evaluating the Expansion of Executive Power from Abraham Lincoln to George W. Bush. November 4-5, 2009. “REVERSE EFFECT: CONGRESSIONAL AND JUDICIAL RESTRAINTS

ON PRESIDENTIAL POWER,” online

From the examples above, it is possible to suggest some explanations for why congressional efforts to require accountability from presidents have proven so elusive. The cycle begins with the discovery of presidential excess, usually brought to light either by scandal, as in Iran-contra, or by eventual congressional recognition of its own abdication of its authority, as with intelligence operations and war powers. Congress launches internal inquiries, exposes executive branch wrongdoing or use of constitutionally questionable authority, and vows to take action to forestall such abuses in the future. Well-meaning intentions give way to political reality, as legislative compromises produce not only weaker results than initially promised, but Congress also a) acknowledges new power in the president that had not previously been understood to reside in the office (as in the Hughes-Ryan Amendment), or b) delegates away its own constitutional authority to the president (as in the War Powers Resolution), or c) uses ambiguous legislative language (as in the ―timely fashion‖ notification requirement in the Intelligence Oversight Act) that presidents can interpret to fit their purposes. Additionally, the courts can play a role by interpreting legislative language inconsistent with Congress‘s intent or by abdicating a judicial role entirely and, thus, wiping out challenges to the president‘s actions (as in the International Emergency Economic Powers Act). Ultimately, presidents maintain their own arsenal of unilateral tools (e.g., presidential directives, executive orders, executive agreements or signing statements that direct non-enforcement or selective enforcement of statutes) by which to implement legislation in ways that accommodate their political purposes and broaden their constitutional authority (as in the Case-Zablocki Act). The examples offered here – and the accompanying analysis – are just the tip of the iceberg in an inquiry as to why efforts to restrain executive power so often fail to meet that objective. It seems that whenever we talk about how to contain expansive presidential power, what we really end up discussing is Congress. The source of efforts to keep presidential power within bounds certainly lies in all three branches, to some degree, but more often than not, it falls to Congress to monitor and enforce constitutional limits on the chief executive. The efforts of the 1970s present a cautionary tale of how not to do this, and one hopes that wiser legislative drafters in the future will learn from past failures.

#### Plan vagueness begets authorization – related legislation sparks confusion and provides territory for executive expansion, crushing limits \*\*\*

Graham Cronogue, Duke University School of Law, J.D. expected 2013; A NEW AUMF: DEFINING COMBATANTS IN THE ¶ WAR ON TERROR, DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW [Vol. 22:377 2012] http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil

Second, the AUMF’s language illustrates congressional acquiescence or approval of broad presidential authority to use force. “[T]he enactment of legislation closely related to the question of the President’s authority in a particular case which evinces legislative intent to accord the President broad discretion may be considered to ‘invite’ ‘measures on independent presidential responsibility.’”45 The language in the AUMF is very similar to ¶ declarations of war and authorizations, in which presidents have exercised ¶ plenary power in determining the means and type of force.46 In these ¶ “perfect” wars, “all the members act[ed] under a general authority, and all ¶ the rights and consequences of war attach to their condition.”47 For ¶ instance, the Gulf of Tonkin Resolution allowed the President to “take all ¶ necessary measures” and was used as broad authority to wage combat and ¶ detain enemies.48 Similarly, the AUMF allows for the use of “all necessary ¶ and appropriate force.” Presidents have commonly exercised broad authority under similar grants of power, and Congress’s failure to act in limiting these powers here suggests acquiescence to this interpretation.49¶ More convincingly than in Dames & Moore, where Congress failed to ¶ object to executive action, there are numerous comments from the ¶ legislature that the President should have broad authority under the ¶ AUMF.50 Given these statements and Congress’s ample opportunity to limit the scope or type of force, Congress must have acquiesced to past executive practice and interpretation.

### A2 CI (Lobel 8)

#### Their card is about authorizations that include restrictions – not the plan or they are extra-topical

Lobel, professor of law at the University of Pittsburgh, 2008

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf)

\*\*\*THEIR EVIDENCE\*\*\* Throughout American history, Congress has placed restrictions on the President’s power as Commander in Chief to conduct warfare. On numerous occasions, Congress has authorized the President to conduct warfare but placed significant restrictions on the time, place and manner of warfare. Congress has regulated the tactics the President could employ, the armed forces he could deploy, the geographical area in which those forces could be utilized, and the time period and specific purposes for which the President was authorized to use force. Its regulations have both swept broadly and set forth detailed instructions and procedures for the President to follow. This historical practice is consistent with the Constitution’s text and Framers’ intent, which made clear that the President was not to have the broad powers of the British King, but was subject to the control and oversight of Congress in the conduct of warfare. \*\*\*THEIR EVIDENCE\*\*\*

#### Their card is about a long arc of history

Lobel, professor of law at the University of Pittsburgh, 2008

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf)

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#### Thus, their card only SEEMS to say what they need – the author’s introductory lens will assure you that Lobel actually means ONLY those Commander-in-Chief powers that Congress has carried forward in statutory authorizations qualify as allocate-able “war powers authority” – a key phrase their ev does not specify

Lobel, professor of law at the University of Pittsburgh, 2008

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf)

For the last half of the twentieth century, the focus of scholarly and political debate has been on the President’s power as Commander in Chief to¶ initiate warfare, not the allocation of power between the President and Congress to conduct warfare authorized by Congress. Modern presidents asserted a power to initiate warfare without congressional authorization, a position hotly debated in Congress, the courts, and the academy. Even the passage of the War Powers Resolution of 1973 did not quell the dispute between Congress and the President as to the extent of independent Executive authority to initiate warfare.21 This debate has largely subsumed and submerged the important related, yet independent, question of the scope of the President’s Commander in Chief power to conduct a war that Congress has duly authorized.22

#### This conflation occurs in their evidence

Lobel 8 (Jules – Professor of Law, University of Pittsburgh Law School, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, 2008, Ohio State Law Journal, 69 Ohio St. L.J. 391, lexis)

\*\*\*THEIR EVIDENCE\*\*\*More generally, the Court held that Congress has the power to authorize limited, undeclared war in which the President's power as Commander in Chief would be restricted. In such wars, the Commander in Chief's power would extend no further than Congress had authorized. As President Adams recognized, Congress had as a functional matter "declared war within the meaning of the Constitution" against France, but "under certain restrictions and limitations." n123 Under this generally accepted principle in our early constitutional history, Congress could limit the type of armed forces used, the number of such forces available, the weapons that could be utilized, the theaters of actions, and the rules of combat. In short, it could dramatically restrict the President's power to conduct the war.\*\*\*THEIR EVIDENCE\*\*\*

#### Means they do not meet – War Powers Resolution initiated a legal superstructure on top of Commander-in-Chief authority – cannot go straight to the source, topical legislative territory IS THIS middle ground

Nancy Kassop, Presented at Hofstra University Symposium, President or King? Evaluating the Expansion of Executive Power from Abraham Lincoln to George W. Bush. November 4-5, 2009. “REVERSE EFFECT: CONGRESSIONAL AND JUDICIAL RESTRAINTS

ON PRESIDENTIAL POWER,” online

An example of a ―statutory superstructure is the War Powers Resolution of 1973, born¶ out of Congress‘s frustration and inability to assert its own constitutional prerogatives and to¶ effectively challenge a president during an unpopular war. The Constitution gives Congress in¶ Article I and the president in Article II specific and distinct war powers responsibilities, but¶ questions of how and when each branch was supposed to act have engendered controversy¶ since the nation‘s founding. The War Powers Resolution, similar to other framework laws,¶ may be viewed as a separate layer of law sitting on top of those constitutional articles (hence,¶ ―a statutory superstructure‖) as an attempt to clarify the respective duties of each institution and to provide an orderly process through a series of sequential actions by which those duties¶ are exercised. In this sense and in the most charitable description of the resolution, although it¶ does not change or add to the Constitution, it ―facilitates the legal authorities specified in Articles I and II. Similar descriptions would apply to other framework laws.¶ Koh focused exclusively on the use of these laws in foreign policy decision-making,¶ where they were ―designed not only to restrain executive discretion, but also to increase¶ congressional input into key foreign policy decisions,‖ [4] although this description applies as¶ well to such laws in the domestic policy arena. As examples, in addition to the War Powers¶ Resolution of 1973, he cites the National Emergencies Act of 1976 and the International¶ Emergency Economic Powers Act of 1977, to which one can also add the Case-Zablocki Act¶ of 1972 (regulating executive agreements), the Hughes Ryan Amendment to the Foreign¶ Assistance Act of 1974 (requiring presidential reporting to Congress of covert actions), the¶ Foreign Intelligence Surveillance Act (FISA) of 1978 (regulating national security¶ surveillance), and the Intelligence Oversight Act of 1980 (the product of the 1976 Church and¶ Pike congressional committee hearings on intelligence operations, establishing congressional¶ intelligence committees and requiring presidential ―findings‖ for covert operations). In the¶ domestic policy field, examples include the Congressional Budget and Impoundment Control¶ Act of 1974 (establishing new congressional budget committees and a new budget process),¶ the Ethics in Government Act of 1978 (containing provisions to determine the need for and¶ selection of an independent counsel), and the Presidential Records Act of 1978 (establishing¶ governmental control of presidential records and a process for public release of them).¶

#### “restrictions” is a hollow term without statutory reference

Victorian Law Reform Commission, Chapter 6 of the “Easements and Covenants: Final Report 22,” 1905, http://www.lawreform.vic.gov.au/sites/default/files/EandC\_Final\_Report\_ch\_6.pdf

6.14 Restrictive covenants need to be distinguished from covenants in statutory ¶ agreements and restrictions in a registered plan (statutory restrictions). ¶ 6.15 ‘Restrictive covenant’ is a well-defined legal term and its legal consequences are ¶ fully specified in case law. It belongs in the realm of property law. Its clarity is ¶ being marred by legislation that extends the legal tests and procedures that apply ¶ to restrictive covenants to statutory agreements and uses the term ‘restrictive ¶ covenant’ to define restrictions. ¶ 6.16 There is a need to clarify meanings and to use standard and consistent definitions ¶ in legislation. Due to uncertainty about the legal effects, multiple methods are sometimes used to create an enforceable restriction.15 In other cases, the method used does not create an enforceable restriction at all.¶ 6.17 Some believe that a restriction can be created by including it in a ‘memorandum ¶ of common provisions’ lodged with the Registrar. The memorandum is simply a ¶ means of shortening instruments such as plans and transfers. It is a repository of ¶ provisions that can be incorporated by reference into instruments subsequently ¶ lodged in the Office of Titles.16 The memorandum itself does not create a ¶ restriction.¶ 6.18 In our discussion below, we attempt to sharpen the distinction between restrictive ¶ covenants and statutory agreements and restrictions.¶ STATUTORY AGREEMENTS¶ 6.19 A statutory agreement contains a promise made by a landowner to a government ¶ agency or statutory authority relating to the use of the land. It binds the ¶ landowner and his or her successors by force of the legislation under which the ¶ agreement is made.17¶ 6.20 Statutory agreements are normally used where the government agency or ¶ statutory authority owns no land that benefits from the covenant.18 Because there ¶ is no benefited land, the agreement would not be enforceable in equity as a ¶ restrictive covenant. These agreements are sometimes called ‘covenants in gross’, ¶ although this is not a property right recognised by equity.¶ 6.21 The agreements may be varied or released either by agreement, by the relevant ¶ Minister or Secretary, and in some cases by the Victorian Civil and Administrative ¶ Tribunal (VCAT).19¶ 6.22 A number of Victorian statutes provide for statutory agreements for regulatory ¶ purposes, such as environmental, conservation or cultural purposes. Examples ¶ are Land Management Co-operative agreements under the Conservation, Forests ¶ and Lands Act 1987 (Vic) and Cultural Heritage Agreements under the Aboriginal ¶ Heritage Act 2006 (Vic).¶ 20 6.23 The most common type of statutory agreement is a planning agreement made ¶ under section 173 of the Planning and Environment Act 1987 (Vic) (Planning and ¶ Environment Act) (section 173 agreement) between a landowner who has applied ¶ for a planning permit and a ‘responsible authority’ (usually a council or the ¶ Minister) that is empowered to grant it. A responsible authority may require the ¶ applicant to enter into an agreement with it as a condition of the permit.21¶ 6.24 Once a section 173 agreement is recorded by the Registrar, it runs with the land ¶ and is enforceable by the responsible authority against ‘any person who derives ¶ title from the person who entered into it’.22 The agreement can be used to ensure ¶ that permit conditions are enforceable against not only the permit applicant but ¶ all subsequent owners of the land. ¶ 6.25 The legislation under which statutory agreements are made usually provides ¶ that, if the agreement is recorded by the Registrar, the burden of the agreement ¶ is enforceable by the relevant authority against successors of the person who ¶ entered into the agreement as if it were a restrictive covenant.¶ 23 Such provisions ¶ seek to equate a statutory agreement with something it is not. The equation does ¶ not work. ¶ 6.26 Not only can statutory agreements impose restrictions on the use of land, they ¶ can also include covenants that impose positive obligations (positive covenants). ¶ A positive covenant requires the landowner to take some deliberate action, such ¶ as paying money or completing works.24 If not for the operation of the legislation ¶ under which the statutory agreement is made, the positive covenant could not ¶ run with the land.25¶ 6.27 The equitable rules for the enforcement of restrictive covenants are inadequate ¶ or unsuitable for positive covenants. Whenever legislation allowing positive ¶ covenants to run with land has been proposed or introduced in other jurisdictions, ¶ additional provisions have always been required. The Ontario Law Reform ¶ Commission said that ‘it would not be sufficient ... merely to reform the law of ¶ restrictive covenants and make it applicable to positive covenants’.26¶ 6.28 A provision that makes a statutory agreement enforceable ‘as if it were a ¶ restrictive covenant’ may also have the effect of giving the landowner a right to ¶ apply under section 84(1) of the Property Law Act 1958 (Vic) (Property Law Act) ¶ for an order to ‘discharge’ or ‘modify’ the covenant. Section 85 of the Property ¶ Law Act provides that, where proceedings are taken to enforce a restrictive ¶ covenant, the person against whom the proceedings are taken may apply for an ¶ order under section 84. ¶ 6.29 Section 84(1) of the Property Law Act is not a suitable mechanism for removing ¶ and varying statutory agreements.27 Its tests and procedures are designed for ¶ restrictive covenants, in which there is benefited land as well as benefited owners. ¶ It is not designed for statutory agreements that do not benefit land, nor for ¶ agreements that impose positive obligations. ¶ 6.30 Statutory agreements are created for regulatory purposes under statute. They should be enforced, removed and varied in accordance with provisions specified in the statute under which they are created. ¶ 6.31 A review of the Planning and Environment Act in 2009 by the Department of ¶ Planning and Community Development found that the provisions for removal and ¶ variation of section 173 agreements, other than by consent, are inadequate.28¶ New provisions have been drafted and included in a draft Exposure Bill.29 If these ¶ or similar provisions are adopted, they could provide a model for other statutory ¶ agreements. RESTRICTIONS 6.32 The term ‘restriction’ is sometimes used in a functional sense, to mean the effect ¶ of any legal instrument (such as a transfer, plan or statutory agreement) that ¶ imposes a specific restriction on the use of a lot. Sometimes it is used to mean the ¶ instrument itself. For the sake of clarity, we use the term in its functional sense.30 ‘Restriction’ has no fixed meaning in legislation. Its meaning depends on the context. The Subdivision Act contains a definition but it is inadequate and the ¶ related statutes do not assist:¶ • The Subdivision Act defines ‘restriction’ as ‘a restrictive covenant or ¶ restriction which can be registered or recorded in the register under the ¶ Transfer of Land Act’.31¶ • The Transfer of Land Act provides for the recording of ‘restrictive covenants’ ¶ only.32 Plans that may include restrictions can be registered, but the ¶ restrictions specified in the plans are not recorded.33¶ • Adding to the confusion, the Planning and Environment Act defines ¶ ‘registered restrictive covenant’ to mean ‘a restriction within the meaning ¶ of the Subdivision Act’.34¶ 6.34 This ‘circle of definitions’ was the subject of comment by VCAT in Focused Vision ¶ Pty Ltd v Nillumbik SC:¶ 35¶ [I]t is confusing to employ the defined word itself in a definition. The result ¶ is that there is no effective definition and no fixed meaning in law of the concept of restriction.36

#### Err against all vagueness – strategic tool of the President to bust our topic – the plan must be coherent not just topical terminology

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Various administrations, eager to press the limits of presidential war power, seem to¶ understand that they may not—legally and politically—use the words “war” or “hostilities.” Apparently they recognize that using words in their normal sense, as understood by¶ members of Congress, federal judges, and the general public, would acknowledge congressional preeminence. Other than repelling sudden attacks and protecting American¶ lives overseas, presidents may not take the country from a state of peace to a state or war¶ without seeking and obtaining statutory authority. To sidestep that constitutional principle, presidents have gone to great lengths to explain to Congress and the public that what they are doing is not what they are doing. When President Harry Truman went to¶ war against North Korea in 1950 without coming to Congress for authority, he described¶ the military operation as “a police action under the United Nations” (Fisher 1995, 34).¶ Other presidents, including Lyndon Johnson and Bill Clinton, have been duplicitous¶ with words and actions in their use of military force (Fisher 2011b). “Non-Kinetic” Assistance¶ In describing its military actions in Libya, the Obama administration distinguished¶ between “kinetic” and “non-kinetic” actions, with the latter apparently referring to¶ no use of military force. The March 21, 2011, letter from President Obama to Congress¶ identiﬁed particular kinetic activities. U.S. forces had “targeted the Qadhaﬁ regime’s air¶ defense systems, command and control structures, and other capabilities of Qadhaﬁ’s¶ armed forces used to attack civilians and civilian populated areas” (U.S.White House¶ 2011a). On May 20, in a letter to Congress, President Obama referred to U.S. participation that consists of “non-kinetic” support of the NATO operation. Activities not¶ directly using military force included intelligence, logistical support, and search and¶ rescue missions. The letter acknowledged continued applications of military force: “aircraft that have assisted in the suppression and destruction of air defenses in support of the¶ no-ﬂy zone” and “since April 23, precision strikes by unmanned aerial vehicles against a¶ limited set of clearly deﬁned targets in support of the NATO-led coalition’s efforts” (U.S.¶ White House 2011c, 1).¶ Seeking Support from Senate Resolution 85¶ OLC in its April 1 memo relied in part on legislative support from the Senate: “On¶ March 1, 2011, the United States Senate passed by unanimous consent Senate Resolution¶ 85. Among other things, the Resolution ‘strongly condemn[ed] the gross and systematic¶ violations of human rights in Libya, including violent attacks on protesters demanding¶ democratic reforms,’ ‘call[ed] on Muammar Gadhaﬁ to desist from further violence,’ and¶ ‘urge[d] the United Nations Security Council to take such further action as may be¶ necessary to protect civilians in Libya from attack, including the possible imposition¶ of a no-ﬂy zone over Libyan territory’ ” (U.S. Justice Department 2011, 2). Action by¶ “unanimous consent” implies that senators strongly endorsed the resolution, but the¶ legislative record provides no support for that impression. Even if there had been¶ evidence of senators involved in drafting, debating, and adopting this language, a¶ resolution passed by a single chamber contains no statutory support. Passage of Senate¶ Resolution 85 reveals little other than marginal involvement by a few senators.¶ Resolution 7 of Senate Resolution 85 urged the Security Council “to take such¶ further action as may be necessary to protect civilians in Libya from attack, including the¶ possible imposition of a no-ﬂy zone over Libyan territory.” When was this no-ﬂy language¶ added to the resolution? Were senators adequately informed of this amendment? There¶ is evidence they were not. The legislative history of Senate Resolution 85 is sparse. There¶ were no hearings or committee report. The resolution was not referred to any committee.¶ Sponsors of the resolution included ten Democrats (Bob Menendez, Frank Lautenberg,¶ Dick Durbin, Kirsten Gillibrand, Bernie Sanders, Sheldon Whitehouse, Chuck Schumer,¶ Bob Casey, Ron Wyden, and Benjamin Cardin) and one Republican (Mark Kirk).¶ There was no debate on Senate Resolution 85. It appears that the only senators on the¶ ﬂoor were Senator Schumer and the presiding ofﬁcer. Schumer asked for unanimous consent to take up the resolution. No one objected, possibly because there was no one¶ present to object. Senate “deliberation” took less than a minute. When one watches¶ Senate action on C-SPAN, consideration of the resolution began at 4:13:44 p.m. and¶ ended at 4:14:19: a total of 35 seconds. On March 30, Senator John Ensign (R-Nev.)¶ objected that Senate Resolution 85 “received the same amount of consideration that¶ a bill to name a post ofﬁce has. This legislation was hotlined” (U.S. Congress 2011b,¶ S1952). That is, Senate ofﬁces were notiﬁed by automated phone calls and e-mails of¶ pending action on the resolution, often late in the evening when few senators are present.¶ According to some Senate aides, “almost no members” knew that the no-ﬂy zone¶ language had been added to the resolution (Carroll 2011). At 4:03 p.m., through the¶ hotlined procedure, Senate ofﬁces received Senate Resolution 85 with the no-ﬂy zone¶ provision but without ﬂagging the signiﬁcant change (Carroll 2011). Senator Mike Lee¶ (R-Utah) noted, “Clearly, the process was abused. You don’t use a hotline to bait and¶ switch the country into a military conﬂict” (Carroll 2011). Senator Jeff Sessions (R-Ala.)¶ remarked, “I am also not happy at the way some resolution was passed here that seemed¶ to have authorized force in some way that nobody I know of in the Senate was aware that¶ it was in the resolution when it passed” (U.S. Congress 2011c, S2010).¶ The “Mandate” for Military Action¶ President Obama’s speech to the nation on March 28, 2011, described his Libyan¶ actions in this manner: “The United States has done what we said we would do.” His¶ reference to “the United States” did not mean the executive and legislative branches¶ working jointly. Obama alone made the military commitment. He did identify some¶ supporting political institutions: “We had a unique ability to stop the violence: an¶ international mandate to action, a broad coalition prepare to join us, the support of Arab¶ countries, and a plea for help from the Libyan people themselves” (U.S. White House¶ 2011b, 3). Absent from this picture were Congress and the American people. President¶ Obama in this speech spoke of “a plea for help from the Libyan people themselves.” He¶ offered his support “for a set of universal rights, including the freedom for people to¶ express themselves” and for governments “that are ultimately responsive to the aspirations of the people” (U.S. White House 2011b, 4). Yet throughout this period there had¶ been no effort by the president or his administration to listen to the American people or¶ secure their support.¶ On May 20, in a letter to Congress, President Obama said that he acted militarily¶ against Libya “pursuant to a request from the Arab League and authorization by the¶ United Nations Security Council” (U.S. White House 2011c, 1). Obama went beyond¶ the Security Council resolution in several ways, such as attempting regime change and¶ giving direct aid to the rebels. When the administration submitted its June 15 report to¶ Congress, it claimed that President Obama acted militarily in Libya “with a mandate¶ from the United Nations” (Boehner 2011, 1). There is only one permitted mandate under¶ the U.S. Constitution for the use of military force against another nation that has not¶ attacked or threatened the United States. That mandate must come from Congress. Senate Joint Resolution 20, introduced on June 21, 2011, was designed to authorize the use of U.S. armed forces in Libya. In two places the resolution uses the word¶ “mandate.” Security Council Resolution 1970 “mandates international economic sanctions and an arms embargo.” Security Council Resolution 1973 “mandates ‘all necessary¶ measures’ to protect civilians in Libya, implement a ‘no-ﬂy zone’, and enforce an arms¶ embargo against the Qaddaﬁ regime.” The Security Council cannot mandate, order, or¶ command the United States. Under the U.S. Constitution, mandates come from laws¶ enacted by Congress.¶ Presidential Obfuscation¶ When presidents and executive ofﬁcials attempt to defend military actions that¶ cannot be justiﬁed by talking straight, they resort to what can accurately be called¶ “double-talk.” This term may appear to be too crude and unscholarly when analyzing the¶ presidency, but its meaning ﬁts the conduct. Double-talk is deﬁned as “language used to¶ deceive, usually through concealment or misrepresentation of truth” (Merriam Webster’s¶ Collegiate Dictionary 1993, 347). Another dictionary explains that the term “appears to be¶ earnest and meaningful but in fact is a mixture of sense and nonsense.” It produces in the¶ listener “a strong suspicion that he is either hard of hearing or slowing going mad.” The¶ language is typically “inﬂated, involved, and often deliberately ambiguous” (Webster’s¶ Third New International Dictionary 1993, 679). Presidents frequently use double-talk,¶ deception, and false statements in their efforts to justify military initiatives (Fisher¶ 2010).

### Limits

#### Only explicit reference solves limits – authority must be guided by statutory updates and amendments to maintain clarity

Graham Cronogue, Duke University School of Law, J.D. expected 2013; A NEW AUMF: DEFINING COMBATANTS IN THE ¶ WAR ON TERROR, DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW [Vol. 22:377 2012] http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil

On September 11, 2001, the United States entered into a new kind of ¶ struggle, one that challenges long-observed norms of war and conflict. ¶ Throughout history, wars have typically been declared and fought between ¶ states and against clearly identifiable combatants, but this new enemy is ¶ neither organized by state affiliation nor located in a specific geographic ¶ area. Further, this enemy often lives among, dresses like, and even targets ¶ civilians. These profound differences make it extremely difficult to apply ¶ traditional rules of war. Just one week after the devastating attacks on the ¶ Pentagon and World Trade Center, Congress hastily passed the ¶ Authorization for Use of Military Force to address this threat and its new ¶ challenges. This statute authorized the President to: ¶ [U]se all necessary and appropriate force against those nations, ¶ organizations, or persons he determines planned, authorized, committed, ¶ or aided the terrorist attacks that occurred on September 11, 2001, or ¶ harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, ¶ organizations or persons.2¶ This congressional authorization gave the president the authority to ¶ use force against those involved in the 9/11 attacks and their allies, but the ¶ war on terror has moved beyond this mandate. In 2001, al-Qaeda, the ¶ Taliban, and Osama bin Laden were clearly the “enemy.”3¶ The AUMF ¶ addressed this threat by providing domestic authorization for the use of ¶ force against all entities closely tied to 9/11. However, ten years after the ¶ attacks, bin Laden is dead and the Taliban is a shadow of its former self.4¶ Yet the United States still uses the AUMF to justify the use of force against ¶ new terrorist and extremist groups, many of which were not closely ¶ involved in 9/11 and may not have even existed in 2001. Given this ¶ disconnect, politicians have advocated amending, scrapping, or reaffirming ¶ the AUMF to have it reflect the present reality of the conflict. ¶ The Obama administration argues that the AUMF should remain the ¶ same and has taken pains to expand the authorization to cover new terrorist ¶ threats from organizations unrelated to al-Qaeda.5¶ However, this ten-year old authorization must be revised. The United States is facing a new and ¶ still evolving enemy; our law on conflict must evolve with it. We should not expect the President to simply reinterpret or stretch statutory language ¶ when considering such fundamentally important issues as national security, ¶ deadly force, and indefinite detention. This “stretching” out of the statute ¶ will create significant questions of legality and authorization in times when ¶ we cannot afford to hesitate or second-guess. The President and the armed ¶ forces need an updated, clear, and explicit authorization to execute this war ¶ effectively and know the limits of their power. In short, Congress must ¶ amend or update the AUMF to reflect the current reality of conflict and ¶ guide the President’s prosecution of this war.

## Norms

### Circumvention

#### The executive will bypass your plan – empirics prove.

Frederick A.O. Schwartz, attorney and Aziz Z. Huq, associate counsel Brennan Center for Justice, NYU Law School, UNCHECKED AND UNBALANCED: PRESIDENTIAL POWER IN A TIME OF TERROR, 2007, p. 153.

Familiar failings from the Cold War era and earlier history returned to haunt the nation in the wake of 9/11. But this time abuses were compounded by a new and dangerous idea. To justify illicit invasions of liberty and privacy, the executive branch's lawyers argued that the president has unlimited power to violate federal statutes. President Bush agreed. Specifically, he asserted under the Constitution a novel authority in the name of "national security" or "military necessity" to disregard permanently any law enacted by Congress. The Administration used this power to justify set-asides of long-standing federal statutes barring torture, indefinite detention, and warrantless spying. In the Cold War, the FBI and the CIA violated the law but hid or denied their actions. After 9/11, government overreaching claimed a legal basis through theories about "executive power." Abuse became official policy and practice of the United States. No sitting president before President Bush asserted or used power under the Constitution to set aside laws wholesale. Such power means a president can ignore statutes passed by Congress whenever he claims that "national security" or "military necessity" is at issue. This claim finds precedent in the seventeenth-century British kings' royal "prerogative" power to "suspend" or "dispense" with laws enacted by Parliament.' But that power, grounded in ideas about the "divine" right of kings, did not survive the English Civil War and the Glorious Revolution of 1688, which ended the Stuart dynasty. Certainly, it did not find its way into our founding documents, the 1776 Declaration of Independence and the Constitution of 1787.

# 2NR

### A2 Ct Appeals Arizona ‘8

#### 1. REJECT ORDINARY DEFS – CAA explicitly assumes “dictionary” definitions because it speaks to a vague statute, PROOF this card shouldn’t control a topic capable of specific statutory reference – that’s our 1NC interp

THEIR CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

\*\*\*THEIR EVIDENCE\*\*\* P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition."). P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.\*\*\*THEIR EVIDENCE\*\*\*

#### Conflation nullifies the term – uphold precision or bust the topic

Eric Heinze 3 (Senior Lecturer in Law, University of London, Queen Mary. He has held fellowships from the Fulbright Foundation and the French and German governments. He teaches Legal Theory, Constitutional Law, Human Rights and Public International Law. JD Harvard) “The Logic of Liberal Rights A study in the formal analysis of legal discourse” google books page 20

The term ‘restriction’, defined so broadly, embraces any number of familiar concepts: ‘deprivation’, ‘denial’, ‘encroachment’, ‘incursion’, ‘infringement’, ‘interference’, ‘limitation’, ‘regulation’. Those terms commonly comport differences in meaning or nuance, and are not all interchangeable in standard legal usage. For example, a ‘deprivation’ may be distinguished from a ‘limitation’ or ‘regulation’ in order to denote a full denial of a right (e.g. where private property is wholly appropriated by the state 16 Agents without compensation) as opposed to a partial constraint (e.g. where discrete restrictions are imposed on the use of property which nonetheless remains profitably usable). Similarly, distinctions between acts and omissions can leave the blanket term ‘restriction’ sounding inapposite when applied to an omission: if a state is accused of not doing enough to give effect to a right, we would not colloquially refer to such inaction as a ‘restriction’. Moreover, in a case of extreme abuse, such as extrajudicial killing or torture, it might sound banal to speak merely of a ‘restriction’ on the corresponding right. However, the term ‘restriction’ will be used to include all of those circumstances, in so far as they all comport a purpose or effect of extinguishing or diminishing the right-seeker’s enjoyment of an asserted right. (The only significant distinction which will be drawn will be between that concept of ‘restriction’ and the concept of ‘breach’ or ‘violation’. The terms ‘breach’ or ‘violation’ will be used to denote a judicial determination about the legality of the restriction.6) Such an axiom may seem unwelcome, in so far as it obliterates subtleties which one would have thought to be useful in law. It must be stressed that we are seeking to eliminate that variety of terms not for all purposes, but only for the very narrow purposes of a formal model, for which any distinctions among them are irrelevant.

#### 2. “war powers authority” is special – allocation assumes particular context, abstract definitions won’t fit

David J. Barron & Martin S. Lederman, Harvard Law Review, February 2008. “THE COMMANDER IN CHIEF AT THE LOWEST EBB — A CONSTITUTIONAL HISTORY,” http://www.harvardlawreview.org/media/pdf/barron\_lederman2.pdf, page 1099.

We do mean to argue, however, that it is folly to think a sound constitutional judgment can be made as to the proper allocation of war powers without facing up to what the historical practice between the branches has actually shown. A change in constitutional practice cannot be made by turning away from history and examining the relative virtues of the President and the Congress in the abstract. Such an approach would be as impossible as it is indeterminate, because it would ¶ ask us to “both exorcis[e] from ourselves the influences of our own traditions and ignor[e] the lessons our society has learned over time.”648¶ Judgments about the proper constitutional roles of the political ¶ branches in war are necessarily embedded in historical narratives that, ¶ however unconsciously, inform present understandings.

### A2 limitations – Plummer ’29

#### Plummer is too old to be contextually informed – 1929 predates the War Powers Resolution and World War 2

#### Plummer also specifies a context of property interest, not war powers

Plummer 29 J., Court Justice, MAX ZLOZOWER, Respondent, v. SAM LINDENBAUM et al., Appellants Civ. No. 3724COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT100 Cal. App. 766; 281 P. 102; 1929 Cal. App. LEXIS 404September 26, 1929, Decided, lexis

\*\*\*THEIR EVIDENCE\*\*\*The word "restriction," when used in connection with the grant of interest in real property, is construed as being the legal equivalent of "condition." Either term may be used to denote a limitation upon the full and unqualified enjoyment of the right or estate granted. The words "terms" and "conditions" are often used synonymously when relating to legal rights. "Conditions and restrictions" are that which limits or modifies the existence or character of something; a restriction or qualification. It is a restriction or limitation modifying or destroying the original act with which it is connected, or defeating, terminating or enlarging an estate granted; something which defeats or qualifies an estate; a modus or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate may be either defeated, enlarged, or created upon an uncertain event; a quality annexed to land whereby an estate may be defeated; a qualification or restriction annexed to a deed or device, by virtue of which an estate is made to vest, to be enlarged or defeated upon the happening or not happening of a particular event, or the performance or nonperformance of a particular act.\*\*\*THEIR EVIDENCE\*\*\*