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#### Debt ceiling will be raised now but it’s not certain --- Obama’s ironclad political capital is forcing the GOP to give in

Brian Beutler 10/3/13, “Republicans finally confronting reality: They’re trapped!,” Salon <http://www.salon.com/2013/10/03/republicans_finally_confronting_reality_theyre_trapped/>

After struggling for weeks and weeks in stages one through four, Republicans are finally entering the final stage of grief over the death of their belief that President Obama would begin offering concessions in exchange for an increase in the debt limit.¶ The catalyzing event appears to have been an hour-plus-long meeting between Obama and congressional leaders at the White House on Wednesday. Senior administration officials say that if the meeting accomplished only one thing it was to convey to Republican leaders the extent of Obama’s determination not to negotiate with them over the budget until after they fund the government and increase the debt limit. These officials say his will here is stronger than at any time since he decided to press ahead with healthcare reform after Scott Brown ended the Democrats’ Senate supermajority in 2010.¶ There’s evidence that it sunk in.¶ First, there’s this hot mic moment in which Senate Minority Leader Mitch McConnell tells Sen. Rand Paul, R-Ky., that the president’s position is ironclad.¶ Then we learn that House Speaker John Boehner has told at least one House Republican privately what he and McConnell have hinted at publicly for months, which is that they won’t execute their debt limit hostage. Boehner specifically said, according to a New York Times report, and obliquely confirmed by a House GOP aide, that he would increase the debt limit before defaulting even if he lost more than half his conference on a vote.¶ None of this is to say that Republicans have “folded” exactly, but they’ve pulled the curtain back before the stage has been fully set for the final act, and revealed who’s being fitted with the red dye packet.

#### Obama’s political capital is key --- it’s his sole focus now

Jonathan Allen 9/19, Politico, 9/19/13, GOP battles boost President Obama, dyn.politico.com/printstory.cfm?uuid=17961849-5BE5-43CA-B1BC-ED8A12A534EB

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other. And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve. If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit. For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal. Meanwhile, “on the looming fiscal issues, Democrats — both liberal and conservative, executive and congressional — are virtually 100 percent united,” said Sen. Charles Schumer (D-N.Y.). Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect. The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law. “I didn’t go to Harvard or Princeton, but I can count,” Sen. Bob Corker (R-Tenn.) tweeted, subtly mocking Cruz’s Ivy League education. “The defunding box canyon is a tactic that will fail and weaken our position.” While it is well-timed for the White House to interrupt a bad slide, Obama’s singular focus on the budget battle is hardly a last-minute shift. Instead, it is a return to the narrative arc that the White House was working to build before the Syria crisis intervened. And it’s so important to the president’s strategy that White House officials didn’t consider postponing Monday’s rollout of the most partisan and high-stakes phase even when a shooter murdered a dozen people at Washington’s Navy Yard that morning. The basic storyline, well under way over the summer, was to have the president point to parts of his agenda, including reducing the costs of college and housing, designed to strengthen the middle class; use them to make the case that he not only saved the country from economic disaster but is fighting to bolster the nation’s finances on both the macro and household level; and then argue that Republicans’ desire to lock in the sequester and leverage a debt-ceiling increase for Obamacare cuts would reverse progress made. The president is on firm ground, White House officials say, because he stands with the public in believing that the government shouldn’t shut down and that the country should pay its bills.

#### Targeted killing restrictions sap political capital – spills over to other issues

Vladeck 13 (Steve – professor of law and the associate dean for scholarship at American University Washington College of Law, “Drones, Domestic Detention, and the Costs of Libertarian Hijacking”, 3/14, http://www.lawfareblog.com/2013/03/drones-domestic-detention-and-the-costs-of-libertarian-hijacking/)

The same thing appears to be happening with targeted killings. Whether or not Attorney General Holder’s second letter to Senator Paul actually answered the relevant question, it certainly appeared to mollify the junior Senator from Kentucky, who declared victory and withdrew his opposition to the Brennan nomination immediately upon receiving it. Thus, as with the Feinstein Amendment 15 months ago, the second Holder letter appears to have taken wind out of most of the libertarian critics’ sails, many of whom (including the Twitterverse) have now returned to their regularly scheduled programming. It seems to me that both of these episodes represent examples of what might be called “libertarian hijacking”–wherein libertarians form a short-term coalition with progressive Democrats on national security issues, only to pack up and basically go home once they have extracted concessions that don’t actually resolve the real issues. Even worse, in both cases, such efforts appeared to consume most (if not all) of the available oxygen and political capital, obfuscating, if not downright suppressing, the far more problematic elements of the relevant national security policy. Thus, even where progressives sought to continue the debate and/or pursue further legislation on the relevant questions (for an example from the detention context, consider Senator Feinstein’s Due Process Guarantee Act), the putative satisfaction of the libertarian objections necessarily arrested any remaining political inertia (as Wells cogently explained in this post on Senator Paul and the DPGA from November).

#### Debt ceiling collapses the global economy --- fast timeframe and no resiliency

Adam Davidson 9/10/13, economy columnist for The New York Times, co-founder of Planet Money, NPR’s team of economics reporters, “Our Debt to Society,” NYT, http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&\_r=0

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.¶ Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.¶ Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.¶ Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.¶ While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.¶ The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

#### Economic collapse causes global 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**.**

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#### Courts have refused to review targeted killing because of the political question doctrine---breaking the doctrine on targeted killings triggers a slippery slope

Christopher Ehrfurth 11, 10/10/11, “The Extrajudicial Killing of Anwar al-Awlaki,” http://law.marquette.edu/facultyblog/2011/10/10/the-extrajudicial-killing-of-anwar-al-awlaki/

The legality of the extrajudicial assassination of al-Awlaki was the subject of a civil suit in 2010. After learning that his son had been placed on a CIA/Joint Special Operations Command “kill list”, al-Awlaki’s father brought suit in the U.S. District Court for the District of Columbia against President Obama, Secretary of Defense Robert Gates, and CIA Director Leon Panetta. In an attempt to enjoin the executive branch from killing his son, al-Awlaki introduced several claims based in both constitutional and tort law. The court’s lengthy opinion begins with a compelling recitation of the questions presented: ¶ 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? Can the Executive order the assassination of a U.S. citizen without first affording him any form of judicial process whatsoever, based on the mere assertion that he is a dangerous member of a terrorist organization? How can the courts, as plaintiff proposes, make real-time assessments of the nature and severity of alleged threats to national security, determine the imminence of those threats, 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? When would it ever make sense for the United States to disclose in advance to the “target” of contemplated military action the precise standards under which it will take that military action? And how does the evolving AQAP relate to core al Qaeda for purposes of assessing the legality of targeting AQAP (or its principals) under the September 18, 2001 Authorization for the Use of Military Force? ¶ Al-Aulaqi v. Obama, 727 F.Supp.2d 1, 8-9 (D.D.C. 2010). ¶ Before contemplating the more compelling issues, the court first decided the issue of standing. Al-Awlaki’s father lacked “next-friend” standing because he failed to provide an adequate reason justifying why Anwar could not appear in court on his own behalf. His father claimed that if Anwar presented himself to authorities he would be exposed to attack. The court disagreed, citing public government statements indicating that if al-Awlaki surrendered peacefully he could not be executed without due process. ¶ The court also denied third party standing, holding that Anwar’s father could not show that a parent suffers an injury in fact if his adult child is threatened with a future extrajudicial killing. Anwar’s status as an adult was of particular importance because a parent does not have a constitutionally (or common law) protected liberty interest in maintaining a relationship with his adult child free from government influence. ¶ Prudential standing was denied because, among other reasons, the court refused to “unnecessarily adjudicate rights” that it believed al-Awlaki did not wish to assert himself. The court noted that al-Awlaki made numerous public statements professing his contempt for the U.S. legal system. Al-Awlaki did not believe that he was bound by U.S. laws because, in his view, they are contrary to the teachings of Allah. I personally find it difficult to believe that a person would not want to contest his own assassination, but it also seems unlikely that al-Awlaki would wish to assert legal rights in a court system that he did not recognize as authoritative, especially in a country that he openly despised. ¶ Ultimately, the most compelling issues were not addressed because the court found that judicial review was inappropriate. The court held that separation of powers and the political question doctrine prohibited interfering with the executive branch’s orders with respect to military action abroad. Meaningful review was deemed impossible, because it would require an unmanageable assessment of the quality of the President’s interpretation of military intelligence and his resulting decision (based upon that intelligence) to use military force against terrorist targets overseas: ¶ [T]his Court does not hold that the Executive possesses “unreviewable authority to order the assassination of any American whom he labels an enemy of the state.” (citation omitted), the Court only concludes that it lacks the capacity to determine whether a specific individual in hiding overseas, whom the Director of National Intelligence has stated is an “operational” member of AQAP, (citation omitted), presents such a threat to national security that the United States may authorize the use of lethal force against him. This Court readily acknowledges that it is a “drastic measure” for the United States to employ lethal force against one of its own citizens abroad, even if that citizen is currently playing an operational role in a “terrorist group that has claimed responsibility for numerous attacks against Saudi, Korean, Yemeni, and U.S. targets since January 2009,”(citation omitted) But as the D.C. Circuit explained in Schneider, a determination as to whether “drastic measures should be taken in matters of foreign policy and national security is not the stuff of adjudication, but of policymaking.” (citation omitted) Because decision-making in the realm of military and foreign affairs is textually committed to the political branches, and because courts are functionally ill-equipped to make the types of complex policy judgments that would be required to adjudicate the merits of plaintiff’s claims, the Court finds that the political question doctrine bars judicial resolution of this case. ¶ Al-Aulaqi, 727 F.Supp.2d at 52-53. ¶ It is unfortunate that the Aulaqi case never made it beyond the issue of standing, but perhaps that was the proper outcome. Although Awlaki was a U.S. citizen (and a citizen of Yemen), he was also clearly a member of al-Qaeda. Shortly after 9/11, Congress passed the Authorization for Use of Military Force (“AUMF”). The AUMF provides that: ¶ [T]he President is authorized to use 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…in order to prevent any future acts of international terrorism against the United States…¶ Everyone (except for the guy who leaves “9/11 was inside job” comments beneath every news article on the internet) knows that al-Qaeda is the organization that planned and committed the terrorist attacks that occurred on 9/11. Al-Awlaki was indisputably a member of al-Qaeda. The Executive’s killing of al-Awlaki was certainly aimed at preventing future acts of international terrorism against the United States. If the AUMF can be read as authorizing al-Awlaki’s killing, then it would appear that the President assassinated him with congressional approval. In that scenario, Justice Jackson’s concurrence in Youngstown would indicate that the President was acting at the highest ebb of his authority. ¶ Still, many columnists and politicians like Ron Paul believe that Obama’s decision was illegal on due process grounds. Might Ron Paul be engaging in political grandstanding? I do seem to remember hearing something about an upcoming election. On the other hand, the AUMF only authorizes necessary and appropriate force. In his suit against the Executive, al-Aulaqi suggested that imminence is the key factor in determining whether lethal force is justified. It would have been interesting to find out what legal standard the court would apply to the use of lethal force on foreign soil against a member of al-Qaeda holding U.S. citizenship, but that issue was never addressed. ¶ Was the force used against al-Awlaki necessary and appropriate? It seems difficult to determine without a meaningful presentation of evidence against al-Awlaki. Personally, I don’t think I’ll hold my breath waiting for the day that the general public is offered an explanation as to why al-Awlaki couldn’t be captured and tried in a U.S. courtroom. It is troubling to know that the President can order the extrajudicial execution of a U.S. citizen based upon secret evidence. On the other hand, it has been said that the Constitution is not a suicide pact, and it’s comforting to know that the President is tracking and killing those who are actively trying to kill Americans. ¶ After reading the al-Aulaqi opinion, I was left feeling unsatisfied with the court’s decision to defer to the other branches of government, but I understood why it did so. In many ways, the moral issue of al-Awlaki’s murder leaves me feeling the same way. I think it’s unfortunate that al-Awlaki was not indicted, captured, and tried in Federal court. I also understand that applying traditional due process to a terrorist abroad might create a logistical nightmare and place many innocent lives in danger. Is this a slippery slope? If so, wouldn’t requiring the judicial approval of military strategy abroad be just as slippery? Either way, I respect those who speak out in favor of due process. I also wonder how many of those people, if faced with the same choice as the President, would choose differently.

#### Setting a precedent against the PQD spills over to climate change cases---litigants are turning to the Courts now and asking them to abrogate the PQD

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Two sets of problems, one manifested at a microcosmic level and the other about as macrocosmic as imaginable, powerfully illustrate these propositions. Not coincidentally, both stem from concerns about temperature and its chemical and climactic effects, concerns playing an increasingly central role in the American policy process. As those concerns have come to the fore, courts have correspondingly warmed to the idea of judicial intervention, drawn by the siren song of making the world a better place and fueled by the incentives for lawyers to convert public concern into private profit. In both the fuel temperature and global warming cases, litigants, at times justifying their circumvention of representative democracy by pointing to the slow pace of policy reform, have turned to the courts. By donning the cloak of adjudication, they have found judges for whom the common law doctrines of unjust enrichment, consumer fraud, and nuisance appear to furnish constitutionally acceptable and pragmatically useful tools with which to manage temperature’s effects. Like the proverbial carpenter armed with a hammer to whom everything looks like a nail, those judges are wrong. For both retail gasoline and global climate, the judicial application of common law principles provides a constitutionally deficient—and structurally unsound—mechanism for remedying temperature’s unwanted effects.

It has been axiomatic throughout our constitutional history that there exist some questions beyond the proper reach of the judiciary. In fact, the political question doctrine originates in no less august a case than Marbury v. Madison, where Chief Justice Marshall stated that “[q]uestions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”1 Well over a century after that landmark ruling, the Supreme Court, in Baker v. Carr, famously announced six identifying characteristics of such nonjusticiable political questions, which, primarily as a “function of the separation of powers,” courts may not adjudicate.2 Of these six characteristics, the Court recently made clear that two are particularly important: (1) the presence of “a textually demonstrable constitutional commitment of the issue to a coordinate political department;” and (2) “a lack of judicially discoverable and manageable standards for resolving it.”3

The spectrum of nonjusticiable political questions in a sense spans the poles formed by these two principles. At one pole, the Constitution’s specific textual commitments shield issues expressly reserved to the political branches from judicial interference. At the other pole lie matters not necessarily reserved in so many words to one of the political branches but nonetheless institutionally incapable of coherent and principled resolution by courts acting in a truly judicial capacity; such matters are protected from judicial meddling by the requirement that “judicial action must be governed by standard, by rule” and by the correlative axiom that “law pronounced by the courts must be principled, rational, and based upon reasoned distinctions.”4

At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. A perfect exemplar of such problems is the nest of puzzles posed by humaninduced climate change. When matters of that character are taken to court for resolution by judges, what marks them as “political” for purposes of the “political question doctrine” is not some problem-specific language but, rather, the demonstrable intractability of those matters to principled resolution through lawsuits. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, the judicial unmanageability of an issue serves as powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches.5

It has become commonplace that confusion and controversy have long distinguished the doctrine that determines, as a basic matter of the Constitution’s separation of powers, which questions are “political” in the specific sense of falling outside the constitutional competence of courts and which are properly justiciable despite the “political” issues they may touch. But that the principles in play have yet to be reduced to any generally accepted and readily applied formula cannot mean that courts are simply free to toss the separation of powers to the winds and plunge ahead in blissful disregard of the profoundly important principles that the political question doctrine embodies. Unfortunately, that appears to be just what some courts have done in the two temperature-related cases—one involving hot fuels, the other a hot earth— that inspired this publication. In the first, a court allowed a claim about measuring fuels to proceed despite a constitutional provision specifically reserving the issue to Congress. In the second—a case in which the specific issue could not have been anticipated, much less expressly reserved, but in which the only imaginable solutions clearly lie beyond judicial competence—a court, rather than dismissing the case as it ought to have done, instead summarily dismissed the intractable obstacles to judicial management presented by climate change merely because it was familiar with the underlying cause of action. As this pair of bookend cases demonstrates, the political question doctrine is feeling heat from both directions.

#### That crushes global coordination necessary to solve climate change

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But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. In the wake of the recent Copenhagen climate negotiations, America is at a crossroads regarding its energy policy. At Copenhagen, the world—for the first time including both the United States and China—took a tremulous first step towards a comprehensive and truly global solution to climate change.44 By securing a modicum of international consensus—albeit not yet with binding commitments—President Obama laid the foundation for what could eventually be a groundbreaking congressional overhaul of American energy policy, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45

Against this backdrop, courts would be wise to heed the conclusion of one report that what “makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—stand at the precipice of major systemic climate reform, if not in the coming year then in the coming decade. It would be disastrous for climate policy if, as at least one commentator has predicted,47 courts were to “beat Congress to the punch” and begin to concoct common law “solutions” to climate change problems before the emergence of a legislative resolution. Not only does judicial action in this field require costly and irreversible technological change on the part of defendants, but the prior existence of an ad hoc mishmash of common law regimes will frustrate legislators’ attempts to design coherent and systematic marketbased solutions.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But if courts were to require reductions of randomly chosen defendants—with no regard for whether they are efficient reducers— they would inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market. And as one analyst succinctly put it before Congress, “[a]n insufficient number of participants will doom an emissions trading market.”49

There is no doubt that the “Copenhagen Accord only begins the battle” against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord’s audacious vision into concrete reality.50 But whatever one’s position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle.

CONCLUSION

Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power–even where standing problems are at low ebb, as with the Motor Fuel case–then constitutional governance, and in turn the protection of individual rights and preservation of legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine’s bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

### 3

#### 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 United States Congress should enact a resolution and issue a white paper stating that, in the conduct of its oversight it has reviewed ongoing targeted killing operations and determined that the United States government is conducting such operations in full compliance with relevant laws, including but not limited to the Authorization to Use Military Force of 2001, covert action findings, and the President’s inherent powers under the Constitution. The Executive branch should limit offensive drone use to counterterror operations.

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

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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.

#### Solves---the combination of executive disclosure and Congressional support boosts accountability and legitimacy

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>

Perhaps the most obvious way to add accountability to the targeted killing process is for someone in government to describe the process the way this article has, and from there, defend the process. The task of describing the government’s policies in detail should not fall to anonymous sources, confidential interviews, and selective leaks. Government’s failure to defend policies is not a phenomenon that is unique to post 9/11 targeted killings. In fact, James Baker once noted

"In my experience, the United States does a better job at incorporating intelligence into its targeting decisions than it does in using intelligence to explain those decisions after the fact. This in part reflects the inherent difficulty in articulating a basis for targets derived from ongoing intelligence sources and methods. Moreover, it is hard to pause during ongoing operations to work through issues of disclosure…But articulation is an important part of the targeting process that must be incorporated into the decision cycle for that subset of targets raising the hardest issues…"519

Publicly defending the process is a natural fit for public accountability mechanisms. It provides information to voters and other external actors who can choose to exercise a degree of control over the process. However, a detailed public defense of the process also bolsters bureaucratic and professional accountability by demonstrating to those within government that they are involved in activities that their government is willing to publicly describe and defend (subject to the limits of necessary national security secrecy). However, the Executive branch, while wanting to reveal information to defend the process, similarly recognizes that by revealing too much information they may face legal accountability mechanisms that they may be unable to control, thus their caution is understandable (albeit self-serving).520

It’s not just the Executive branch that can benefit from a healthier defense of the process. Congress too can bolster the legitimacy of the program by specifying how they have conducted their oversight activities. The best mechanism by which they can do this is through a white paper. That paper could include:

A statement about why the committees believe the U.S. government's use of force is lawful. If the U.S. government is employing armed force it's likely that it is only doing so pursuant to the AUMF, a covert action finding, or relying on the President's inherent powers under the Constitution. Congress could clear up a substantial amount of ambiguity by specifying that in the conduct of its oversight it has reviewed past and ongoing targeted killing operations and is satisfied that in the conduct of its operations the U.S. government is acting consistent with those sources of law. Moreover, Congress could also specify certain legal red lines that if crossed would cause members to cease believing the program was lawful. For example, if members do not believe the President may engage in targeted killings acting only pursuant to his Article II powers, they could say so in this white paper, and also articulate what the consequences of crossing that red line might be. To bolster their credibility, Congress could specifically articulate their powers and how they would exercise them if they believed the program was being conducted in an unlawful manner. Perhaps stating: "The undersigned members affirm that if the President were to conduct operations not authorized by the AUMF or a covert action finding, we would consider that action to be unlawful and would publicly withdraw our support for the program, and terminate funding for it."

A statement detailing the breadth and depth of Congressional oversight activities. When Senator Feinstein released her statement regarding the nature and degree of Senate Intelligence Committee oversight of targeted killing operations it went a long way toward bolstering the argument that the program was being conducted in a responsible and lawful manner. An oversight white paper could add more details about the oversight being conducted by the intelligence and armed services committees, explaining in as much detail as possible the formal and informal activities that have been conducted by the relevant committees. How many briefings have members attended? Have members reviewed targeting criteria? Have members had an opportunity to question the robustness of the internal kill-list creation process and target vetting and validation processes? Have members been briefed on and had an opportunity to question how civilian casualties are counted and how battle damage assessments are conducted? Have members been informed of the internal disciplinary procedures for the DoD and CIA in the event a strike goes awry, and have they been informed of whether any individuals have been disciplined for improper targeting? Are the members satisfied that internal disciplinary procedures are adequate?

3) Congressional assessment of the foreign relations implications of the program. The Constitution divides some foreign policy powers between the President and Congress, and the oversight white paper should articulate whether members have assessed the diplomatic and foreign relations implications of the targeted killing program. While the white paper would likely not be able to address sensitive diplomatic matters such as whether Pakistan has privately consented to the use of force in their territory, the white paper could set forth the red lines that would cause Congress to withdraw support for the program. The white paper could specifically address whether the members have considered potential blow-back, whether the program has jeopardized alliances, whether it is creating more terrorists than it kills, etc. In specifying each of these and other factors, Congress could note the types of developments, that if witnessed would cause them to withdraw support for the program. For example, Congress could state "In the countries where strikes are conducted, we have not seen the types of formal objections to the activities that would normally be associated with a violation of state's sovereignty. Specifically, no nation has formally asked that the issue of strikes in their territory be added to the Security Council's agenda for resolution. No nation has shot down or threatened to shoot down our aircraft, severed diplomatic relations, expelled our personnel from their country, or refused foreign aid. If we were to witness such actions it would cause us to question the wisdom and perhaps even the legality of the program."

## Terrorism

### Uniqueness

#### No AQAP organization and attacks are localized

Robert Pape 8/22/13, professor of political science at the University of Chicago, and director of the Chicago Project on Security and Terrorism and David Schneyer is a research associate at the Chicago Project on Security and Terrorism, 8/22/13, "WHY WE SHOULDN’T BE AFRAID OF AL-QAEDA IN YEMEN," http://www.yementimes.com/en/1705/opinion/2782/Why-we-shouldn%E2%80%99t-be-afraid-of-Al-Qaeda-in-Yemen.htm

¶ Last week, the U.S. State Department closed and evacuated 19 of its embassies and issued a worldwide travel alert based on intelligence concerning a terrorist organization based in Yemen. Many Americans are asking what this means. Is an attack on U.S. soil imminent?¶ ¶ While nothing is certain, of course, it is unlikely that such an attack would take place in the United States, or even outside of Yemen.**¶** ¶ The intelligence seems to be reliable. But individual data points can be exaggerated or ignored, depending on the domestic political environment of the time. In this case, the State Department acted due to “increased chatter” that it monitored among terrorist groups. Intelligence officials highlighted one communication in particular, in which Al-Qaeda leader Ayman Al-Zawahiri gave his blessing to an attack proposed by Nasser Al-Wuhayshi. Wuhayshi is the leader of Al-Qaeda in the Arabian Peninsula (AQAP)—a sort of “franchise affiliate” based in Yemen, not to be confused with the central Al-Qaeda organization.¶ ¶ Such information certainly warrants our attention. But talk is cheap, and it is critical that we don’t give terrorist organizations more credit than they are worth. In order to understand what a terrorist organization is truly capable of, we must look at its past behavior. In this case, Al-Qaeda in the Arabian Peninsula is a deadly organization within its own borders, but it has not demonstrated that it possesses the means to successfully carry out an attack on U.S. soil. The one known attempt (carried out by the so-called “underwear bomber”) failed due to incompetence—the device did not properly detonate.¶ ¶ Let’s look at the data: AQAP has carried out 39 suicide attacks through 2012, with only one taking place outside of Yemen (just across the border in Jeddah, Saudi Arabia). Suicide attacks represent precisely the sort of attack we would fear—they are far more deadly than any other type. Now, AQAP has certainly proven itself capable of killing foreigners within its own borders, and so we should absolutely take the intercepted communication seriously with respect to our embassy in Yemen. But this is a far cry from being able to carry out an attack on foreign soil.¶ ¶ Consider 9/11, for instance, which obviously we failed to prevent. This failure was not a tactical one, or even a failure to “connect the dots.” Rather, it was a failure to properly assess the threat. In fact, a memo stating “Bin Laden determined to attack U.S.” made it to the White House by early August, 2001—the intelligence was there, but it was simply not given its due credibility or seriousness. ¶ ¶ Clearly, Al-Qaeda proved itself capable of attacking the United States across multiple borders long before 2001. But AQAP has not demonstrated this capability, and “increased chatter” among its leaders, no matter how heavy, is simply not enough evidence to be overly-concerned, unless the government has not revealed other critical details. Even if Al-Zawahiri were directing the attack—which U.S. intelligence officials confirmed he was not—the main Al-Qaeda group (now based in Pakistan) has not carried out a successful major attack on Western soil since the London bombings in 2005. Ayman Al-Zawahiri giving his blessing to AQAP leaders only proves how weak the main Al-Qaeda group really is.

#### No terror attacks- Al Qaeda weak and focused on local initiatives- anti-western rhetoric is posturing

Thomas Hegghammer 7/18/13, PhD in political science Zuckerman Fellow, Center for International Security and Cooperation, Stanford University Senior Research Fellow, Norwegian Defense Research Establishment (FFI), 7/18/13, "The Future of Anti-Western Jihadism," Statement before the House Committee on Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade On “Global al-Qaeda: Affiliates, Objectives, and Future Challenges,” http://docs.house.gov/meetings/FA/FA18/20130718/101155/HHRG-113-FA18-Wstate-HegghammerT-20130718.pdf¶

The decline of al-Qaida Core is the easiest aspect of the current state of affairs to explain. It is¶ fundamentally a story of what terrorism scholars call government “learning”, i.e., gradual accumulation of information about the identity and location of the members of the rebel group, which in turn allows for increasingly targeted and more effective repressive measures. At the beginning of the war on terror, al-Qaida enjoyed an informational advantage over the US government – as do all terrorist groups at the outset of their campaigns – because it knew where to¶ find us but we did not know where to find them. With the help of time and massive investments in**¶** intelligence, we were able to map the organization, contain it, and eliminate leaders faster than it could train new ones. Learning is also behind the moderate decline in attacks by independents. Advances in data mining and analysis have allowed governments to collect, accumulate, and exploit data about the¶ fringes of the jihadi network to a much greater extent than before, allowing for the identification of many, though not all, plots before they reach execution. Governments are helped here by the fact¶ that true lone wolves are extremely rare, and that, for most individuals, the radicalization process**¶** involves socialization with other activists and/or consumption of jihadi propaganda online, both of which leave traces to be exploited. This, incidentally, is one of several reasons why the Internet is proving to be less of a boon to terrorists than many analysts predicted some years ago. For all their skill using the internet for propaganda distribution, jihadists are struggling use the web for operational purposes; they are having particular problems avoiding surveillance and establishing¶ trust between one another online. The more contentious question is why the affiliates are not attacking in the West more often. One argument holds that this is a capability issue, i.e, that the groups are not operationally¶ capable of circumventing the many countermeasures and detection systems that Western¶ governments have put in place since 9/11. This argument is unconvincing for two main reasons. One¶ is that several affiliates, especially AQIM and al-Shabaab, do have economic resources and human¶ assets that should arguably enable them to carry out at least some attacks in the West. The other¶ reason is if capability was the main problem, we should still expect to see more attempts. The¶ combination of high intent and low capability is observable in the form of failed and foiled attacks. The fact that we do not see many such attempts, except from AQAP, suggests most affiliates are not really trying.¶ I argue that the relatively low supply of anti-Western plots from the affiliates reflects low motivation, which in turn has two origins: a preference for local targets and fear of US retaliation. For all their anti-Western rhetoric and declared allegiance to al-Qaida Core, many affiliates appear to¶ place greater emphasis on achieving local political objectives than inflicting harm on the West. We¶ can infer this preference from the content of group declarations. Some groups say explicitly that¶ they do not plan to attack in the West; others are more ambiguous in their statements, but reveal their preferences by devoting more attention to local topics than to global ones or describing close¶ enemies with more vitriol than distant ones. Groups also reveal their preferences by the way they allocate operational resources. Most affiliates devote their resources overwhelmingly to local or regional operations. Even those organizations that have attempted operations against the West have conducted a much larger number of operations in the local theatre. This is in stark contrast to AQ core, which devoted nearly all of its resources after 2001 to attacks in the West. By far the most plausible explanation for these allocations is that groups value local political gains higher than**¶** international ones. If your aim is to establish control over a given territory and you are caught up in a¶ fight with a regional enemy, it makes little strategic sense to attack the West. However, you might have an incentive to launch verbal attacks on the West, because this makes you appear strong and**¶** principled in your local setting. Attacking the West makes even less strategic sense for such groups given the cost to the organization of provoking the ire of the American military. There is solid evidence from captured¶ documentation that leaders of jihadi organizations think strategically and make decisions based on¶ an informed calculus of costs and benefits. Leaders are, as a rule, not suicidal or irrational. There is also extensive evidence – from internal strategy documents – that leaders are aware of the**¶** capabilities of the US military and seek to avoid unnecessary exposure to these capabilities. In the 1990s, some jihadi leaders explicitly admitted fearing US retaliation and cited it as a reason not to¶ pursue Osama bin Ladin’s “America first” strategy. Such explicit admissions are rare today, but it would be surprising if the prospect of retaliation did not factor into the decision calculus in an era where the US has proven much more willing to use force against terrorists than perhaps ever before¶ in modern history. Most likely, affiliate leaders understand that targeting the US homeland might bring their own demise.

### Link

#### Judicial interference creates a chilling effect that prevents the execution of targeted killing missions

Philip Alston 11, the John Norton Pomeroy Professor of Law, New York University School of Law, was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010, 2011, “ARTICLE: The CIA and Targeted Killings Beyond Borders,” Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283

Three conclusions can be drawn from this survey of potential judicial remedies for CIA misconduct or illegality in relation to targeted killings. The first is that a virtual consensus seems to be shared by the executive branch, Congress, and the courts that alleged misconduct by the CIA should almost never be subjected to domestic legal adjudication. The second is that by dint of various judicially created doctrines, such as the state secrets privilege, U.S. courts have abdicated responsibility in situations in which the courts in countries like Israel, the United Kingdom, Canada, and Australia, and the European Court of Human Rights (monitoring the situation in 47 European states), have all chosen to declare to be justiciable at least in part. The third conclusion is that each branch tends to assume that the other holds open at least some remedial possibilities, while remaining steadfast in not providing it themselves. Congress looks to the courts, the courts look to Congress, and the CIA invokes Congressional oversight in its defense.¶ The final link in this vicious circle is that the CIA itself will go to great lengths to avoid any criminal prosecution of its personnel. This was clearly illustrated when Attorney General Eric Holder appointed a prosecutor to examine whether those involved in the CIA's interrogations [\*401] program had committed any criminal offences. Almost immediately, seven former CIA Directors requested the President to terminate the inquiry on various grounds. They included the need for "permanence in the legal rules" governing the measures taken by such personnel, the risk that the disclosure of information would assist al Qaeda, that foreign intelligence agencies would in future be reluctant to cooperate with the CIA, and that the nation's ability to protect itself would be seriously damaged. n430 The former Attorney General called the investigation "absolutely outrageous" and "unconscionable" and added that "it's going to do no good and demoralize [the CIA] for a long time." n431 After two years, the Attorney General announced that all but two of the almost 100 cases referred to the prosecutor had been closed. n432 In response, the chair of the House Intelligence Committee noted that "an undeserved cloud of doubt and suspicion" had finally been lifted from the CIA and expressed the hope that the CIA could henceforth "move forward with their critical work free from the chilling effect of further investigation," n433 while the ranking member of the Senate Judiciary Committee expressed relief that "our intelligence professionals in the field can stop looking over their shoulders" and [\*402] suggested that the Attorney General should "quit armchair quarterbacking intelligence decisions in the field." n434

### Turn

#### Targeted killing’s vital to counterterrorism---disrupts leadership and makes carrying out attacks impossible

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities -- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties.

Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership.

If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature.

Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

#### Constraining targeted killing’s role in the war on terror causes extinction

Louis Rene Beres 11, Professor of Political Science and International Law at Purdue, 2011, “After Osama bin Laden: Assassination, Terrorism, War, and International Law,” Case Western Reserve Journal of International Law, 44 Case W. Res. J. Int'l L. 93

Even after the U.S. assassination of Osama bin Laden, we are still left with the problem of demonstrating that assassination can be construed, at least under certain very limited circumstances, as an appropriate instance of anticipatory self-defense. Arguably, the enhanced permissibility of anticipatory self-defense that follows generally from the growing destructiveness of current weapons technologies in rogue hands may be paralleled by the enhanced permissibility of assassination as a particular strategy of preemption. Indeed, where assassination as anticipatory self-defense may actually prevent a nuclear or other highly destructive form of warfare, reasonableness dictates that it could represent distinctly, even especially, law-enforcing behavior.

For this to be the case, a number of particular conditions would need to be satisfied. First, the assassination itself would have to be limited to the greatest extent possible to those authoritative persons in the prospective attacking state. Second, the assassination would have to conform to all of the settled rules of warfare as they concern discrimination, proportionality, and military necessity. Third, the assassination would need to follow intelligence assessments that point, beyond a reasonable doubt, to preparations for unconventional or other forms of highly destructive warfare within the intended victim's state. Fourth, the assassination would need to be founded upon carefully calculated judgments that it would, in fact, prevent the intended aggression, and that it would do so with substantially less harm [\*114] to civilian populations than would all of the alternative forms of anticipatory self-defense.

Such an argument may appear manipulative and dangerous; permitting states to engage in what is normally illegal behavior under the convenient pretext of anticipatory self-defense. Yet, any blanket prohibition of assassination under international law could produce even greater harm, compelling threatened states to resort to large-scale warfare that could otherwise be avoided. Although it would surely be the best of all possible worlds if international legal norms could always be upheld without resort to assassination as anticipatory self-defense, the persisting dynamics of a decentralized system of international law may sometimes still require extraordinary methods of law-enforcement. n71

Let us suppose, for example, that a particular state determines that another state is planning a nuclear or chemical surprise attack upon its population centers. We may suppose, also, that carefully constructed intelligence assessments reveal that the assassination of selected key figures (or, perhaps, just one leadership figure) could prevent such an attack altogether. Balancing the expected harms of the principal alternative courses of action (assassination/no surprise attack v. no assassination/surprise attack), the selection of preemptive assassination could prove reasonable, life-saving, and cost-effective.

What of another, more common form of anticipatory self-defense? Might a conventional military strike against the prospective attacker's nuclear, biological or chemical weapons launchers and/or storage sites prove even more reasonable and cost-effective? A persuasive answer inevitably depends upon the particular tactical and strategic circumstances of the moment, and on the precise way in which these particular circumstances are configured.

But it is entirely conceivable that conventional military forms of preemption would generate tangibly greater harms than assassination, and possibly with no greater defensive benefit. This suggests that assassination should not be dismissed out of hand in all circumstances as a permissible form of anticipatory self-defense under international law. [\*115]

What of those circumstances in which the threat to particular states would not involve higher-order (WMD) n72 military attacks? Could assassination also represent a permissible form of anticipatory self-defense under these circumstances? Subject to the above-stated conditions, the answer might still be "yes." The threat of chemical, biological or nuclear attack may surely enhance the legality of assassination as preemption, but it is by no means an essential precondition. A conventional military attack might still, after all, be enormously, even existentially, destructive. n73 Moreover, it could be followed, in certain circumstances, by unconventional attacks.

#### Nuclear terrorism is feasible---high risk of theft and attacks escalate

Vladimir Z. Dvorkin ‘12 Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Extinction---equivalent to full-scale nuclear war

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

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

### Link Defense — Backlash

#### Alternatives to drones are worse for credibility---and even eliminating them’s not enough to solve

Amitai Etzioni 12, senior advisor to the Carter White House; taught at Columbia University, Harvard and The University of California at Berkeley; and is a university professor and professor of international relations at The George Washington University, 4/2/12, “In Defense of Drones,” http://nationalinterest.org/commentary/defense-drones-6715

Rohde acknowledges that we are dealing with people who make and plant bombs and train suicide bombers, and people who otherwise could not be reached. He reminds us that those we are going after, in the case of Pakistan, are in "the remote tribal areas, which is basically this Taliban safe haven, where they retreat from Afghanistan, and rest and train and recoup. So the only way the United States can sort of pressure the Taliban once they cross the border into Pakistan are these drone strikes.” Well put, but hardly a reason we should not order more drones rather than stand them down.

Why are drones so bad? Mr. Rohde, who was kidnapped by the Taliban and held by them for seven months, a period during which drones were buzzing above his head, tells us that the drones are "haunting.” He found that once the drones were widely used, "the Taliban did not gather in large groups for trainings. . . . And so they're very nervous. . . . They don't move in large convoys. So it definitely slows them down.” I can understand those who argue that we must find a political solution to the conflicts and that military means alone will not suppress the Taliban nor prevent the area from serving as a staging ground for the next 9/11. But as long as fight we must, what exactly is wrong with slowing down our adversaries, making them nervous and preventing them from training in large groups?

In addition, Rohde argues that drones are bad for public relations. He says that "in every country that they're carried out, they are seen as this sort of oppressive American weapon. They attract tremendous public attention and they also fuel tremendous resentment." True enough, but in nations in which the United States uses no drones, it is much resented—in Egypt, for instance. Muslims have many reasons to resent Washington, including its support of Israel and of autocrats in the Middle East, torture of prisoners in Abu Ghraib, the burning of Korans, the collateral damage of bombers other than drones—and above all, American attempts to much change their ways of life.

Moreover, few things agitate Muslims around the world, polls show, more than the presence of American troops—which would have to be used if drones were parked. This was recently highlighted when the Libyan rebels welcomed American and other NATO forces’ bombardment of the Qaddafi forces, even after, in some cases, the rebels suffered casualties as a result of friendly fire—but they strongly opposed any foreign boots on their ground. Drones are alienating, but not more so, and often less, than other things we must do if we are going to fight terrorists and those who harbor them.

#### There’s no impact to anti-drones backlash

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

This is the crux of the problem. We stand at the beginning of the Drone Age and the genie is not going to climb back into the bottle. The chances that this way of war will, over time, reduce the amount of random violence in the world are essentially nil. Obama’s drone policy has set an ominous precedent, and not only for future residents of the White House. It promises, over the long term, to engender more violence than it prevents because it excites no public backlash. That, for the permanent national security apparatus that has deftly moulded the worldview of a novice president, is its irresistible allure. It doesn’t provoke significant protest even on the part of people who condemn hit-jobs done with sticky bombs, radioactive isotopes or a bullet between the eyes – in the style of Mossad or Putin’s FSB. That America appears to be laidback about drones has made it possible for the CIA to resume the assassination programme it was compelled to shut down in the 1970s without, this time, awakening any politically significant outrage. It has also allowed the Pentagon to wage a war against which antiwar forces are apparently unable to rally even modest public support.

### Link Defense — Casualties

#### Casualties are way down and drones are far more precise than alternatives---our ev uses the best data

Michael Cohen 13, Fellow at the Century Foundation, 5/23/13, “Give President Obama a chance: there is a role for drones,” The Guardian, http://www.theguardian.com/commentisfree/2013/may/23/obama-drone-speech-use-justified

Drone critics have a much different take. They are passionate in their conviction that US drones are indiscriminately killing and terrorizing civilians. The Guardian's own Glenn Greenwald argued recently that no "minimally rational person" can defend "Obama's drone kills on the ground that they are killing The Terrorists or that civilian deaths are rare". Conor Friedersdorf, an editor at the Atlantic and a vocal drone critic, wrote last year that liberals should not vote for President Obama's re-election because of the drone campaign, which he claimed "kills hundreds of innocents, including children," "terrorizes innocent Pakistanis on an almost daily basis" and "makes their lives into a nightmare worthy of dystopian novels". ¶ I disagree. Increasingly it appears that arguments like Friedersdorf makes are no longer sustainable (and there's real question if they ever were). Not only have drone strikes decreased, but so too have the number of civilians killed – and dramatically so. ¶ This conclusion comes not from Obama administration apologists but rather, Chris Woods, whose research has served as the empirical basis for the harshest attacks on the Obama Administration's drone policy. ¶ Woods heads the covert war program for the Bureau of Investigative Journalism (TBIJ), which maintains one of three major databases tabulating civilian casualties from US drone strikes. The others are the Long War Journal and the New America Foundation (full disclosure: I used to be a fellow there). While LWJ and NAJ estimate that drone strikes in Pakistan have killed somewhere between 140 and 300 civilians, TBIJ utilizes a far broader classification for civilians killed, resulting in estimates of somewhere between 411-884 civilians killed by drones in Pakistan. The wide range of numbers here speaks to the extraordinary challenge in tabulating civilian death rates. ¶ There is little local reporting done on the ground in northwest Pakistan, which is the epicenter of the US drone program. As a result data collection is reliant on Pakistani news reporting, which is also dependent on Pakistani intelligence, which has a vested interest in playing up the negative consequences of US drones. ¶ When I spoke with Woods last month, he said that a fairly clear pattern has emerged over the past year – far fewer civilians are dying from drones. "For those who are opposed to drone strikes," says Woods there is historical merit to the charge of significant civilian deaths, "but from a contemporary standpoint the numbers just aren't there." ¶ While Woods makes clear that one has to be "cautious" on any estimates of casualties, it's not just a numeric decline that is being seen, but rather it's a "proportionate decline". In other words, the percentage of civilians dying in drone strikes is also falling, which suggests to Woods that US drone operators are showing far greater care in trying to limit collateral damage. ¶ Woods estimates are supported by the aforementioned databases. In Pakistan, New America Foundation claims there have been no civilian deaths this year and only five last year; Long War Journal reported four deaths in 2012 and 11 so far in 2013; and TBIJ reports a range of 7-42 in 2012 and 0-4 in 2013. In addition, the drop in casualty figures is occurring not just in Pakistan but also in Yemen. ¶ These numbers are broadly consistent with what has been an under-reported decline in drone use overall. According to TBIJ, the number of drone strikes went from 128 in 2010 to 48 in 2012 and only 12 have occurred this year. These statistics are broadly consistent with LWJ and NAF's reporting. In Yemen, while drone attacks picked up in 2012, they have slowed dramatically this year. And in Somalia there has been no strike reported for more than a year. ¶ Ironically, these numbers are in line with the public statements of CIA director Brennan, and even more so with Senator Dianne Feinstein of California, chairman of the Select Intelligence Committee, who claimed in February that the numbers she has received from the Obama administration suggest that the typical number of victims per year from drone attacks is in "the single digits".¶ Part of the reason for these low counts is that the Obama administration has sought to minimize the number of civilian casualties through what can best be described as "creative bookkeeping". The administration counts all military-age males as possible combatants unless they have information (posthumously provided) that proves them innocent. Few have taken the White House's side on this issue (and for good reason) though some outside researchers concur with the administration's estimates.¶ Christine Fair, a professor at Georgetown University has long maintained that civilian deaths from drones in Pakistan are dramatically overstated. She argues that considering the alternatives of sending in the Pakistani military or using manned aircraft to flush out jihadists, drone strikes are a far more humane method of war-fighting.

#### Tech advances and tighter rules of engagement are substantially reducing civilian casualties---alternatives to drones are worse

Rosa Brooks 13, Professor of Law, Georgetown University Law Center and Bernard L. Schwartz Senior Fellow, New America Foundation, 4/23/13, “The Constitutional and Counterterrorism Implications of Targeted Killing,” <http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf>

\*We do not endorse gendered language

First, critics often assert that US drone strikes are morally wrong because the kill innocent civilians. This is undoubtedly both true and tragic -- but it is not really an argument against drone strikes as such. War kills innocent civilians, period. But the best available evidence suggests that US drone strikes kill civilians at no higher a rate, and almost certainly at a lower rate, than most other common means of warfare. ¶ Much of the time, the use of drones actually permits far greater precision in targeting than most traditional manned aircraft. Today's unmanned aerial vehicles (UAVs) can carry very small bombs that do less widespread damage, and UAVs have no human pilot whose fatigue might limit flight time. Their low profile and relative fuel efficiency combines with this to permit them to spend more time on target than any manned aircraft. Equipped with imaging technologies that enable operators even thousands of miles away to see details as fine as individual faces, modern drone technologies allow their operators to distinguish between civilians and combatants far more effectively than most other weapons systems.¶ That does not mean civilians never get killed in drone strikes. Inevitably, they do, although the covert nature of most US strikes and the contested environment in which they occur makes it impossible to get precise data on civilian deaths. This lack of transparency inevitably fuels rumors and misinformation. However, several credible organizations have sought to track and analyze deaths due to US drone strikes. The British Bureau of Investigative Journalism analyzed examined reports by "government, military and intelligence officials, and by credible media, academic and other sources," for instance, and came up with a range, suggesting that the 344 known drone strikes in Pakistan between 2004 and 2012 killed between 2,562 and 3,325 people, of whom between 474 and 881 were likely civilians.1 (The numbers for Yemen and Somalia are more difficult to obtain.) The New America Foundation, with which I am affiliated, came up with slightly lower numbers, estimating that US drone strikes killed somewhere between 1,873 and 3,171 people overall in Pakistan, of whom between 282 and 459 were civilians. 2¶ Whether drones strikes cause "a lot" or "relatively few" civilian casualties depends what we regard as the right point of comparison. Should we compare the civilian deaths caused by drone strikes to the civilian deaths caused by large-scale armed conflicts? One study by the International Committee for the Red Cross found that on average, 10 civilians died for every combatant killed during the armed conflicts of the 20th century.3 For the Iraq War, estimates vary widely; different studies place the ratio of civilian deaths to combatant deaths anywhere between 10 to 1 and 2 to 1.4¶ The most meaningful point of comparison for drones is probably manned aircraft. It's extraordinarily difficult to get solid numbers here, but one analysis published in the Small Wars Journal suggested that in 2007 the ratio of civilian to combatant deaths due to coalition air attacks in Afghanistan may have been as high as 15 to 1.5 More recent UN figures suggest a far lower rate, with as few as one civilian killed for every ten airstrikes in Afghanistan.6 But drone strikes have also gotten far less lethal for civilians in the last few years: the New America Foundation concludes that only three to nine civilians were killed during 72 U.S. drone strikes in Pakistan in 2011, and the 2012 numbers were also low.7 In part, this is due to technological advances over the last decade, but it's also due to far more stringent rules for when drones can release weapons.¶ Few details are known about the precise targeting procedures followed by either US armed forces or the Central Intelligence Agency with regard to drone strikes. The Obama Administration is reportedly finalizing a targeted killing “playbook,”8 outlining in great detail the procedures and substantive criteria to be applied. I believe an unclassified version of this should be should be made public, as it may help to diminish concerns reckless or negligent targeting decisions. Even in the absence of specific details, however, I believe we can have confidence in the commitment of both military and intelligence personnel to avoiding civilian casualties to the greatest extent possible. The Obama Administration has stated that it regards both the military and the CIA as bound by the law of war when force is used for the purpose of targeted killing. 9 (I will discuss the applicable law of war principles in section IV of this statement). What is more, the military is bound by the Uniform Code of Military Justice. ¶ Concern about civilian casualties is appropriate, and our targeting decisions, however thoughtfully made, are only as good as our intelligence—and only as wise as our overall strategy. Nevertheless, there is no evidence supporting the view that drone strikes cause disproportionate civilian casualties relative to other commonly used means or methods of warfare. On the contrary, the evidence suggests that if the number of civilian casualties is our metric, drone strikes do a better job of discriminating between civilians and combatants than close air support or other tactics that receive less attention.

## Drone Prolif

### Oversight Now

#### Internal and external accountability mechanisms are effective now---and they’ll stay that way as drone missions increase

Jack Goldsmith 12, Harvard Law professor and a member of the Hoover Task Force on National Security and Law, 3/19/12, “Fire When Ready,” http://www.foreignpolicy.com/articles/2012/03/19/fire\_when\_ready

In this new age of drone warfare, probing the constitutional legitimacy of targeted killings has never been more vital. The Obama administration has carried out well over 200 drone strikes in its first three years, and the practice promises to ramp up even more in the next few years as the United States decreases its footprint in Afghanistan and relies even more heavily on special operations and covert actions centered around the use of drones. There are contested legal issues surrounding drone strikes, and -- in contrast to issues like military detention and military commissions -- courts have not pushed back against the presidency on this issue. But judicial review is not the only constitutional check on the presidency, especially during war. Awlaki's killing and others like it have solid legal support and are embedded in an unprecedentedly robust system of legal and political accountability that includes courts but also includes other institutions and actors as well.

When the Obama administration made the decision to kill Awlaki, it did not rely on the president's constitutional authority as commander in chief. Rather, it relied on authority that Congress gave it, and on guidance from the courts. In September 2001, Congress authorized the president "to use all necessary and appropriate force against those nations, organizations, or persons he determines" were responsible for 9/11. Whatever else the term "force" may mean, it clearly includes authorization from Congress to kill enemy soldiers who fall within the statute. Unlike some prior authorizations of force in American history, the 2001 authorization contains no geographical limitation. Moreover, the Supreme Court, in the detention context, has ruled that the "force" authorized by Congress in the 2001 law could be applied against a U.S. citizen. Lower courts have interpreted the same law to include within its scope co-belligerent enemy forces "associated" with al Qaeda who are "engaged in hostilities against the United States."

International law is also relevant to targeting decisions. Targeted killings are lawful under the international laws of war only if they comply with basic requirements like distinguishing enemy soldiers from civilians and avoiding excessive collateral damage. And they are consistent with the U.N. Charter's ban on using force "against the territorial integrity or political independence of any state" only if the targeted nation consents or the United States properly acts in self-defense. There are reports that Yemen consented to the strike on Awlaki. But even if it did not, the strike would still have been consistent with the Charter to the extent that Yemen was "unwilling or unable" to suppress the threat he posed. This standard is not settled in international law, but it is sufficiently grounded in law and practice that no American president charged with keeping the country safe could refuse to exercise international self-defense rights when presented with a concrete security threat in this situation. The "unwilling or unable" standard was almost certainly the one the United States relied on in the Osama bin Laden raid inside Pakistan.

These legal principles are backed by a system of internal and external checks and balances that, in this context, are without equal in American wartime history. Until a few decades ago, targeting decisions were not subject to meaningful legal scrutiny. Presidents or commanders typically ordered a strike based on effectiveness and, sometimes, moral or political considerations. President Harry Truman, for example, received a great deal of advice about whether and how to drop the atomic bomb on Hiroshima and Nagasaki, but it didn't come from lawyers advising him on the laws of war. Today, all major military targets are vetted by a bevy of executive branch lawyers who can and do rule out operations and targets on legal grounds, and by commanders who are more sensitive than ever to legal considerations and collateral damage. Decisions to kill high-level terrorists outside of Afghanistan (like Awlaki) are considered and approved by lawyers and policymakers at the highest levels of the government.

### No Precedent

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

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

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

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

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

#### Zero chance that U.S. self-restraint causes any other country to give up their plans for drones

Max Boot 11, the Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations, 10/9/11, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, <http://www.commentarymagazine.com/2011/10/09/drone-arms-race/>

The New York Times engages in some scare-mongering today about a drone ams race. Scott Shane notes correctly other nations such as China are building their own drones and in the future U.S. forces could be attacked by them–our forces will not have a monopoly on their use forever. Fair enough, but he goes further, suggesting our current use of drones to target terrorists will backfire:

If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them.

“The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the University of Pittsburgh and author of Missile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.”

This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.

The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example. In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.

Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected assassination of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone?

While a decision on our part to stop drone strikes would be unlikely to alter Russian or Chinese thinking, it would have one immediate consequence: al-Qaeda would be strengthened and could regenerate the ability to attack our homeland. Drone strikes are the only effective weapon we have to combat terrorist groups in places like Pakistan or Yemen where we don’t have a lot of boots on the ground or a lot of cooperation from local authorities. We cannot afford to give them up in the vain hope it will encourage disarmament on the part of dictatorial states.

#### No causal link between U.S. drone doctrine and other’ countries choices---means can’t set a precedent

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way:

Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat.

“Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.”

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?)

It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.

Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.

But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.

Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do – but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

### Prolif Inev

#### No impact to global drone prolif and it’s impossible to solve

Alejandro Sueldo 12, J.D. candidate and Dean’s Fellow at the University of California, Berkeley, School of Law and a PhD candidate at the Department of War Studies at King’s College London of the University of London, 4/11/12, “The coming drone arms race,” <http://dyn.politico.com/printstory.cfm?uuid=70B6B991-ECA7-4E5F-BE80-FD8F8A1B5E90>

Of particular concern are the legal and policy challenges posed if other states imitate the U.S. targeted killing program. For Washington is setting a precedent whereby states can send drones, often over sovereign borders, to kill foreigners or their own citizens, who are deemed threats.

Other states may also follow Washington’s example and develop their own criteria to define imminent threats and use drones to counter them.

Washington will find it increasingly difficult to protest other nations’ targeted killing programs — particularly when the United States has helped define this lethal practice. U.S. opposition will prove especially difficult when other states justify targeted killings as a matter of domestic affairs.

Should enough states follow the U.S. example, the practice of preemptively targeting and killing suspected threats may develop into customary international law.

Such a norm, however, which requires consistent state practice arising out of a sense of legal obligation, now looks unlikely. While targeted killing policies are arguably executed by states citing a legal obligation to protect themselves from imminent threats, widespread state practice is still uncommon.

But international law does not forbid drones. And given the lack of an international regime to control drones, state and non-state actors are free to determine their future use.

This lack of international consensus about how to control drones stems from a serious contradiction in incentives. Though drones pose grave challenges, they also offer states lethal and non-lethal capabilities that are of great appeal. Because the potential for drone technology is virtually limitless, states are now unwilling to control how drones evolve.

### No Drone Wars

#### No risk of drone wars

Joseph Singh 12, researcher at the Center for a New American Security, 8/13/12, “Betting Against a Drone Arms Race,” http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2eSvaZnfQ

In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology.

Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team.

Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones.

What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use.

Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best.

Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations.

Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### Drones will only ever be used in highly permissive environments that lack air defense

Michael W. Lewis 12, Associate Professor of Law at Ohio Northern University Pettit College of Law, Spring 2012, “ARTICLE: SYMPOSIUM: THE 2009 AIR AND MISSILE WARFARE MANUAL: A CRITICAL ANALYSIS: Drones and the Boundaries of the Battlefield,” Texas International Law Journal, p. lexis

Like any weapons system drones have significant limitations in what they can achieve. Drones are extremely vulnerable to any type of sophisticated air defense system. They are slow. Even the jet-powered Avenger recently purchased by the Air Force only has a top speed of around 460 miles per hour, n20 meaning that it cannot escape from any manned fighter aircraft, not even the outmoded 1970s-era fighters that are still used by a number of nations. n21 Not only are drones unable to escape manned fighter aircraft, they also cannot hope to successfully fight them. Their air-to-air weapons systems are not as sophisticated as those of manned fighter aircraft, n22 and in the dynamic environment of an air-to-air engagement, the drone operator could not hope to match the situational awareness n23 of the pilot of manned fighter aircraft. As a result, the outcome of any air-to-air engagement between drones and manned fighters is a foregone conclusion. Further, drones are not only vulnerable to manned fighter aircraft, they are also vulnerable to jamming. Remotely piloted aircraft are dependent upon a continuous signal from their operators to keep them flying, and this signal is vulnerable to disruption and jamming. n24 If drones were [\*299] perceived to be a serious threat to an advanced military, a serious investment in signal jamming or disruption technology could severely degrade drone operations if it did not defeat them entirely. n25

These twin vulnerabilities to manned aircraft and signal disruption could be mitigated with massive expenditures on drone development and signal delivery and encryption technology, n26 but these vulnerabilities could never be completely eliminated. Meanwhile, one of the principal advantages that drones provide - their low cost compared with manned aircraft n27 - would be swallowed up by any attempt to make these aircraft survivable against a sophisticated air defense system. As a result, drones will be limited, for the foreseeable future, n28 to use in "permissive" environments in which air defense systems are primitive n29 or non-existent. While it is possible to find (or create) such a permissive environment in an inter-state conflict, n30 permissive environments that will allow for drone use will most often be found in counterinsurgency or counterterrorism operations.

## Adventurism

### No U.S. Adventurism

#### Drones don’t cause U.S adventurism---their ev is baseless speculation

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

Mary Dudziak of the University of Southern California’s Gould School of Law opines that “[d]rones are a technological step that further isolates the American people from military action, undermining political checks on . . . endless war.” Similarly, Noel Sharkey, in The Guardian, worries that drones represent “the ﬁnal step in the industrial revolution of war—a clean factory of slaughter with no physical blood on our hands and none of our own side killed.”

This kind of cocktail-party sociology does not stand up to even the most minimal critical examination. Would the people of the United States, Afghanistan, and Pakistan be better off if terrorists were killed in “hot” blood—say, knifed by Special Forces, blood and brain matter splashing in their faces? Would they be better off if our troops, in order to reach the terrorists, had to go through improvised explosive devices blowing up their legs and arms and gauntlets of machinegun ﬁre and rocket-propelled grenades—traumatic experiences that turn some of them into psychopath-like killers?

Perhaps if *all* or *most* ﬁghting were done in a cold-blooded, push-button way, it might well have the effects suggested above. However, as long as what we are talking about are a few hundred drone drivers, what they do or do not feel has no discernible effects on the nation or the leaders who declare war. Indeed, there is no evidence that the introduction of drones (and before that, high-level bombing and cruise missiles that were criticized on the same grounds) made going to war more likely or its extension more acceptable. Anybody who followed the American disengagement in Vietnam after the introduction of high-level bombing, or the U.S. withdrawal from Afghanistan (and Iraq)—despite the considerable increases in drone strikes—knows better. In effect, the opposite argument may well hold: if the United States could not draw on drones in Yemen and the other new theaters of the counterterrorism campaign, the nation might well have been forced to rely more on conventional troops and prolong our involvement in those areas, a choice which would greatly increase our casualties and zones of warfare.

[Italics in original]

#### Syria proves no U.S. drone adventurism---they’ll never be used against any adversary with a halfway-decent military

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.

### Threshold For War

#### Drones don’t lower the threshold for war because decisions to intervene aren’t driven by technological capabilities

Michael Aaronson 13, Professorial Research Fellow and Executive Director of cii – the Centre for International Intervention – at the University of Surrey, and Adrian Johnson, Director of Publications at RUSI, the book reviews editor for the RUSI Journal, and chair of the RUSI Editorial Board, “Conclusion,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf

Another, more general, criticism of drones is that, by offering the absence of personal and political risk, they ‘lower the bar to war’.8 By inducing a ‘false faith in the efficacy and morality of armed attack’, unmanned systems could ‘weaken the moral presumption against the use of force’.9

These, too, are critiques that must be taken seriously. The decision to take military action must always be made heavily. If the object of war is to make a better peace, then it must be waged with due regard not just for one’s own cost in blood and treasure, but also for that of the adversary.

Yet it is a mistake to ascribe too much to technology as a dynamo of intervention itself. It is true that major Western militaries now prepare for an era of ‘light-footprint’ intervention born of budget austerity and war exhaustion from the protracted counter-insurgencies of the post-9/11 era. But the Western record of intervention has not been linear. For the Libya intervention, there is the Syria non-intervention; the West intervened firmly in Bosnia in 1995, but only after the earlier failures resulted in the worst massacre in Europe since the Second World War at Srebrenica; the withdrawal from Somalia and the shameful inaction over Rwanda sits in the historical record alongside the determined, forceful, sustained military action in Kosovo of 1999 and the preventative diplomacy in Macedonia of 2001. Technological capabilities can shape the form of intervention, but ultimately its drivers and determinants are political and moral. President Sarkozy and Prime Minister Cameron, for instance, pushed for intervention in Libya on moral grounds despite serious equipment deficiencies that meant reliance on American assets – and, in the case of Cameron, much against the counsel of his own military.10

#### Drones don’t make it ‘too easy’ to use force, and even if they do, the net impact is less than that of the conventional wars they replace

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

Then there a further idea that drones make it “too easy” to reach across borders and that is the difference today; a long-standing legal doctrine suddenly made far too powerful by reason of new technology. I am not convinced. That drones – precisely because they are accepted as both more sparing of civilians and more sparing of one’s own forces – makes it “too easy” to use force, reduces the disincentive against using force, has proven irresistible to many as a criticism of drones and targeted killing. I address some of the questions in this draft article. Still, one consideration is simply that the number of “resorts to force” is not enough to damn drones and targeted killing. One must also consider the intensity of the fighting that ensues by comparison to conventional war, as well as the question of whether they increase or diminish the damage that might otherwise arise from conventional wars that take place in lieu of these more discrete uses of force.

### No Global U.S. Drone War

#### No chance of U.S. drone strikes expanding globally---missions are limited to counter-terror ops where governments can’t secure order

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

THE OBJECTION TO CIVILIAN DEATHS DRAWS OUT A related criticism: Why should the United States be able to conduct these drone strikes in Pakistan or in Yemen, countries that are not at war with America? What gives the United States the moral right to take its troubles to other places and inflict damage by waging war? Why should innocent Pakistanis suffer because the United States has trouble with terrorists?

The answer is simply that like it or not, the terrorists are in these parts of Pakistan, and it is the terrorists that have brought trouble to the country. The U.S. has adopted a moral and legal standard with regard to where it will conduct drone strikes against terrorist groups. It will seek consent of the government, as it has long done with Pakistan, even if that is contested and much less certain than it once was. But there will be no safe havens. If al-Qaeda or its affiliated groups take haven somewhere and the government is unwilling or unable to address that threat, America's very long-standing view of international law permits it to take forcible action against the threat, sovereignty and territorial integrity notwithstanding.

This is not to say that the United States could or would use drones anywhere it wished. Places that have the rule of law and the ability to respond to terrorists on their territory are different from weakly governed or ungoverned places. There won't be drones over Paris or London -- this canard is popular among campaigners and the media but ought to be put to rest. But the vast, weakly governed spaces, where states are often threatened by Islamist insurgency, such as Mali or Yemen, are a different case altogether.

#### The administration doesn’t even claim authority to execute drone strikes beyond those allowed by the AUMF

Garrett Epps 13, Professor of Law, University of Baltimore, 2/16/13, “Why a Secret Court Won't Solve the Drone-Strike Problem,” http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/

Let's frame the issue properly. The present administration does *not* claim that the president has "inherent authority" to attack anyone anywhere. Instead, from the documents and speeches we've seen, the administration says it can order drone attacks only as provided by the Authorization for the Use of Military Force passed by Congress after the September 11 attacks--that is, 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."

Unlike the fictional President Bennett in Tom Clancy's Clear and Present Danger, then, President Obama can't suddenly send the drone fleet down to take out, say, Colombian drug lords or the Lord's Resistance Army in Uganda. That's a marked change from the overall position of the last administration, and it's an important limitation on the president's claimed authority.

[Italics in original]

# 1NR

### Case

#### Drones don't cause more war and adventurism

#### a. comparing ease of tech to ease of intervention is wrong- tech empirically can shape the form of intervention,but its ultimate drivers are political and moral- that's Aaronson

#### drones will never be used against any adversary with a halfway-decent military ---Syria proves no U.S. drone adventurism-

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#### No chance of U.S. drone strikes expanding globally---missions are limited to counter-terror ops where governments can’t secure order

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This is not to say that the United States could or would use drones anywhere it wished. Places that have the rule of law and the ability to respond to terrorists on their territory are different from weakly governed or ungoverned places. There won't be drones over Paris or London -- this canard is popular among campaigners and the media but ought to be put to rest. But the vast, weakly governed spaces, where states are often threatened by Islamist insurgency, such as Mali or Yemen, are a different case altogether.

### Solvency---2NC

#### The counterplan establishes transparency over targeted killing policy from within the executive branch---it discloses the administration’s legal rationale for the policy and the criteria for target selection. It also mandates that targeted killings be narrowed to comply with domestic and international law---particularly three international legal principles:

#### 1) Necessity---whether the target an imminent threat, and whether a kill order is the only viable method to neutralize the threat

#### 2) Distinction---can the target be clearly identified as a combatant, as distinguished from a civilian

#### 3) Proportionality---does the strategic value of the attack justify the risk, if any, of collateral damage

#### This combination of legal justification and transparency solves the case---it prevents overreach in drone operations and builds legitimacy, which solves any international perception or precedent args, while preserving targeted killings as an effective counter-terrorism tool employed by an unconstrained executive---that’s Byman.

#### Strongly err neg---their authors don’t understand how thorough and effective inter-executive mechanisms are---adding transparency’s clearly sufficient

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>

To date scholars have lacked a thorough understanding of the U.S. government’s targeted killing practices. As such, their commentary is oftentimes premised on easily describable issues, and fails to grapple with the multiple levels of intergovernmental accountability present in current practice. When dealing with the theoretical and normative issues associated with targeted killings, scholars have failed to specify what they mean when they aver that targeted killings are unaccountable. Both trends have impeded legal theory, and constrained scholarly discourse on a matter of public import.

This article is a necessary corrective to the public and scholarly debate. It has presented the complex web of bureaucratic, legal, professional, and political accountability mechanisms that exert influence over the targeted killing process. It has demonstrated that many of the critiques of targeted killings rest upon poorly conceived understandings of the process, unclear definitions, and unsubstantiated speculation. The article’s reform recommendations, grounded in a deep understanding of the actual process, reflect an assumption that transparency, performance criteria, and politically grounded independent review can enhance the already robust accountability mechanisms embedded in current practice.

#### Executive transparency and commitment that targeted killings will comply with international law solves the case while preserving the benefits of flexibility and drone strikes

Michael Aaronson 13, Professorial Research Fellow and Executive Director of cii – the Centre for International Intervention – at the University of Surrey, and Adrian Johnson, Director of Publications at RUSI, the book reviews editor for the RUSI Journal, and chair of the RUSI Editorial Board, “Conclusion,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf

As Weizmann and other contributors to this report highlight, it is important to determine whether new capabilities can satisfy the essential criteria of discrimination and proportionality. The answer seems to be that unmanned systems, as they exist, can indeed do so. There is no inherent contradiction between armed drone capability and International Humanitarian Law – a finding echoed by the UN Human Rights Council and the British government.1¶ This is not to glibly dismiss the controversy they have aroused. Many of the critiques of drone warfare2 are reasonable. The US administration argues that its targeting policy is in line with the law of conflict, involving a three-part test that the individual targeted must pose an imminent threat; capture must be too difficult; and the strike must be conducted in line with proportionality and discrimination.3 Aside from innocent casualties, there are two other main lines of ethical objection to the actual conduct of this policy. First, that by so stretching the definition of ‘imminence’ – a justification to be acting in self-defence – the administration has essentially rendered it meaningless. ¶ Second, that ‘signature strikes’ depart too far from discriminatory targeting to adhere to the lawful conduct of war. In the words of one journalist, the operator of a CIA drone over Pakistan ‘almost certainly doesn’t know for sure what he’s shooting at.’4 The latter may be an extreme view, but when targeting is based merely on suspicious patterns of behaviour, it is not radical to argue that the principles of necessity and discrimination are not satisfied, and that the justification of ‘imminence’ is contorted further.¶ However, these are objections to a specific use, not to the nature, of drones. Targeted killing and signature strikes would raise precisely the same quandaries were they undertaken by cruise missiles, manned aerial sorties or special forces. An underlying problem with the CIA drone programme, which the US military seems to have avoided, is the secrecy in which it has been conducted. This has, perhaps unfairly, suggested a wanton disregard for legal constraints (although the drone programme has temporarily been exempted from the ‘Counterterrorism Playbook’, a set of limits for legal conduct5). ¶ A more transparent drone programme, recognising explicit legal limits and allowing independent consideration of compliance, is one possible solution.6 Another suggestion is to remove operations from the CIA – which, after all, is a civilian agency dedicated to secretive operations – and bring them under the control of the Department of Defense, which is accorded privileged combatant status under the Geneva Conventions.7 As this report was going to press, there were good indications that the operational control and oversight might indeed be shifted to the military, with the CIA’s role reduced. ¶ These are all, however, problems of policy – not technology. For drones permit unprecedented levels of persistence and observation in support of effective targeting decisions; and, as Franke points out in her chapter, by far the majority of military drones worldwide are unarmed and used for surveillance. Furthermore, effective engineering could help pilots and operators to make better decisions under stressful circumstances, as Leveringhaus and De Greef argue in their chapter. It is not unreasonable to assume that, on balance, unmanned systems may provide a more effective means of respecting International Humanitarian Law in interventions to come. ¶ There is nothing about drones that necessarily violates the laws and customs of war. Policy-makers should, however, remain alert to the possibility that while drones remain lawful, public opinion may one day turn against the use of unmanned systems precisely because of policy; as the chapter on lawfulness and legitimacy reminds us, these two concepts are linked, but distinct.

### AT names

#### Disclosing target criteria builds diplomatic 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.

### Solves---Boyle

#### Boyle advocates limiting targeted killings to high-value targets, and disclosing the legal rationale for the program

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

Even though it has now been confronted with blowback from drones in the failed Times Square bombing, the United States has yet to engage in a serious analysis of the strategic costs and consequences of its use of drones, both for its own security and for the rest of the world. Much of the debate over drones to date has focused on measuring body counts and carries the unspoken assumption that if drone strikes are efficient—that is, low cost and low risk for US personnel relative to the terrorists killed—then they must also be effective. This article has argued that such analyses are operating with an attenuated notion of effectiveness that discounts some of the other key dynamics—such as the corrosion of the perceived competence and legitimacy of governments where drone strikes take place, growing anti-Americanism and fresh recruitment to militant networks—that reveal the costs of drone warfare. In other words, the analysis of the effectiveness of drones takes into account only the ‘loss’ side of the ledger for the ‘bad guys’, without asking what America’s enemies gain by being subjected to a policy of constant surveillance and attack.¶ In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States. Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156

### Solves---Norms/Precedent/Drone Prolif

#### 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.

#### Legal transparency solves global drone prolif---allows the U.S. to successfully shape international norms

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

The fact remains that by using drones so much, Washington risks setting a troublesome precedent with regard to extrajudicial and extraterritorial killings. Zeke Johnson of Amnesty International contends that "when the U.S. government violates international law, that sets a precedent and provides an excuse for the rest of the world to do the same." And it is alarming to think what leaders such as Syrian President Bashar al-Assad, who has used deadly force against peaceful pro-democracy demonstrators he has deemed terrorists, would do with drones of their own. Similarly, Iran could mockingly cite the U.S. precedent to justify sending drones after rebels in Syria. Even Brennan has conceded that the administration is "establishing precedents that other nations may follow."

Controlling the spread of drone technology will prove impossible; that horse left the barn years ago. Drones are highly capable weapons that are easy to produce, and so there is no chance that Washington can stop other militaries from acquiring and using them. Nearly 90 other countries already have surveillance drones in their arsenals, and China is producing several inexpensive models for export. Armed drones are more difficult to produce and deploy, but they, too, will likely spread rapidly. Beijing even recently announced (although later denied) that it had considered sending a drone to Myanmar (also called Burma) to kill a wanted drug trafficker hiding there.

The spread of drones cannot be stopped, but the United States can still influence how they are used. The coming proliferation means that Washington needs to set forth a clear policy now on extrajudicial and extraterritorial killings of terrorists -- and stick to it. Fortunately, Obama has begun to discuss what constitutes a legitimate drone strike. But the definition remains murky, and this murkiness will undermine the president's ability to denounce other countries' behavior should they start using drones or other means to hunt down enemies. By keeping its policy secret, Washington also makes it easier for critics to claim that the United States is wantonly slaughtering innocents. More transparency would make it harder for countries such as Pakistan to make outlandish claims about what the United States is doing. Drones actually protect many Pakistanis, and Washington should emphasize this fact. By being more open, the administration could also show that it carefully considers the law and the risks to civilians before ordering a strike.

Washington needs to be especially open about its use of signature strikes. According to the Obama administration, signature strikes have eliminated not only low-level al Qaeda and Taliban figures but also a surprising number of higher-level officials whose presence at the scenes of the strikes was unexpected. Signature strikes are in keeping with traditional military practice; for the most part, U.S. soldiers have been trained to strike enemies at large, such as German soldiers or Vietcong guerrillas, and not specific individuals. The rise of unconventional warfare, however, has made this usual strategy more difficult because the battlefield is no longer clearly defined and enemies no longer wear identifiable uniforms, making combatants harder to distinguish from civilians. In the case of drones, where there is little on-the-ground knowledge of who is who, signature strikes raise legitimate concerns, especially because the Obama administration has not made clear what its rules and procedures for such strikes are.

Washington should exercise particular care with regard to signature strikes because mistakes risk tarnishing the entire drone program. In the absence of other information, the argument that drones are wantonly killing innocents is gaining traction in the United States and abroad. More transparency could help calm these fears that Washington is acting recklessly.

#### Transparency solves allied perception, blowback, and drone norms while maintaining the counter-terror benefits of targeted killings

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The Obama administration faces some tough dilemmas, and analysts should be careful not to downplay the security challenges it faces. It must balance the principles of justice and accountability with a very real terrorist threat; and reconcile the need to demonstrate a credibly tough security policy with the ending of a long occupation of Afghanistan while Al-Qa’ida still remains active in the region. Nevertheless, more transparency would provide demonstrable oversight and accountability without sacrificing the necessary operational secrecy of counter-terrorism. It might also help assuage the concern of allies and their publics who worry about what use the intelligence they provide might be put to. A wise long-term vision can balance the short-term demands to disrupt and disable terrorist groups with a longer-term focus to resolve the grievances that give rise to radicalism, and also preclude inadvertently developing norms of drone use that sit uneasily with the civilised conduct of war. Drones are but one kinetic element of a solution to terrorism that is, ultimately, political.

#### Executive-driven transparency clearly solves all their precedent args---if it’s true that current practices by the executive set bad precedents, then reforming them has to resolve that precedent

Laura Twomey 13, Cambridge Journal of International and Comparative Law, 3/14/13, “Setting a Global Precedent: President Obama's Codification of Drone Warfare,” http://www.cjicl.org.uk/index.php/cjicl-blog/setting-a-global-precedent-president-obamas-codification-of-drone-warfare

Rules codified by this Administration, vesting authority in the Executive branch, will play an important part of any future administration's counterterrorism framework. Such rules also set a precedent for leaders in other States, to the effect that it is acceptable for the executive to enjoy unchecked control over their respective targeted killing programmes.

3. Absence of geographic limits in invoking the law of armed conflict (‘LOAC’)

The White Paper argues that the AUMF gives the President authority to target those outside of the area of active hostilities, holding that there is no legal precedent for the proposition that the application of the LOAC is limited in geographical scope. The Paper therefore posits that in the course of a non-international armed conflict, the LOAC follows the participants (members of al-Qaeda or 'associated forces'). This is so, even in instances where the criteria determining the threshold for armed conflict set out in Prosecutor v Tadic are not fulfilled in a territory, that is, where there is no paradigm of hostilities (evidence of protracted armed violence and the presence of organised armed groups). Therefore, the Paper grants authority to conduct targeted killing operations across a much wider geographic scope than previously existing under international humanitarian law.

The White Paper further invokes the 'unwilling or unable' justification to deploy a drone strike where there has not been express or tacit permission on the part of a State's Government to operate on its sovereign territory. This justification has the potential to become problematic in the future. For example, at the moment the US is operating in Pakistan within an understanding of 'implied consent', an approach that may not be acceptable to other States, who may view a drone strike on their territory by another State as an act of war.

4. The temporal scope of the armed conflict with al-Qaeda has not been addressed.

The Administration has not clarified how long this Executive authority to target individuals under the AUMF and Article 51, UN Charter, may last. Is it the case that the authority will expire when armed conflict in Afghanistan comes to an end? Former Attorney General to the Department of Defence, Jeh Johnson, alluded in a November 2012 speech to a 'tipping point' wherein law enforcement methods of apprehension may become the default mode of operation against al-Qaeda operatives, as opposed to the LOAC. However, this matter has not been addressed by the Administration. The codification of the programme's rules suggest this method of conducting perpetual covert warfare is becoming 'the new normal.' However, a long term covert mechanism for conducting war operations sets a similar covert precedent for other States to follow, which is not desirable.

5. An extremely broad interpretive ability is vested in the Executive as to who may be targeted.

The White Paper outlines that a "senior operational leader" of al-Qaeda may be targeted, even if they are an American citizen. The memo does not define how these criteria may be fulfilled. Capture must not be “feasible”, however this term is again not elaborated upon. A “high level official” may make the decision to target if an “imminent threat” has been determined. This imminent threat is later expounded as equivalent to the “continuous plotting of attacks”, a radical redefinition of the word “imminent.” Furthermore, what constitutes an "associated force" of al-Qaeda also remains undefined.

The adoption of similarly broad targeting criteria by other States would lead to an unprecedented reshaping of traditional LOAC enshrined in the Geneva Conventions and found in the relevant customary international law rules. If such broad targeting criteria were to be adopted, it would indicate a marked departure from current ICRC criteria on "direct participation."

Conclusion: The Drone 'Rule Book' and its significance for international law

It is clear that, as the first State to deploy remote targeting technology in a non international armed conflict, the legal framework forged by the US during President Obama's second term will set significant precedent for the future practice of the estimated 40 States developing their own drone technology.

On 7 March 2013, members of the European Parliament expressed deep concern about the “unwelcome precedent” the programme sets, citing its “destabilising effect on the international legal framework” that “destroys ... our common legal heritage.” This 'destabilising effect' arises from the classified and seemingly amorphous substantive legal basis for the programme and the apparent lack of procedural standards in place. It remains to be seen if the classified 'rulebook' will be released for public scrutiny, and allay these concerns.

Reliance on international law in world order is based on consent, consensus, good faith and, crucially in this instance, reciprocity. The US programme may harbour short term gains in the pursuit of al-Qaeda operatives, however, if the aforementioned substantive legal justifications continue to be invoked, it risks engendering long term disadvantages. Pursuing this policy encourages other States to adopt similar policies. Administration officials have cited particular concern about setting precedent for Russia, Iran and China, all of which are developing their own remote targeting technology.

It is therefore suggested that the Administration should take this opportunity to codify the rules, clarify terms where ambiguity may currently allow for broader interpretations, and to bring its regulations in line with the existing framework of international law. This legal framework should then be made available to the public, with covert operational necessities redacted. This could set a valuable legal precedent, of particular importance at this turning point wherein international law must adapt to the 21st century model of warfare, a model which lacks a clear enemy and a demarcated battlefield.

#### Only the CP solves the case---moving too fast to restrict targeted killing’s ineffective---starting with the CP’s legal transparency’s more effective

Afsheen John Radsan 12, Professor, William Mitchell College of Law, Assistant General Counsel at the Central Intelligence Agency from 2002 to 2004; and Richard Murphy, the AT&T Professor of Law, Texas Tech University School of Law, 2012, “The Evolution of Law and Policy for CIA Targeted Killing,” Journal of National Security Law & Policy, Vol. 5, p. 439-463

A thorough review of the arguments against the CIA drone campaign, however, shows that most critics invoke laws that do not bind American officials or laws that are vague. In a zone of ambiguity, one expects those responsible for protecting the United States to interpret their authority broadly. The President and his advisers – notably Harold Koh, the Dean of Yale Law School, currently the State Department Legal Adviser and a human rights specialist of the first order – have argued and concluded that CIA drone strikes are legal.3 The rules of armed conflict and the laws of interstate force permit the United States reasonably to assert the right to use the CIA to fire missiles from unmanned drones to kill “fighting” members of al Qaeda and the Taliban located in countries that are unable (or perhaps unwilling) to control the threat these armed groups pose.

Although critics of the CIA drone program do not demonstrate that its strikes are clearly illegal, some raise important points on how the law, drifting into policy, should constrain drone strikes. As noted, the CIA drone campaign and any similar campaigns pose acute dangers of mistakes and abuses. The law, in response to this type of problem, seeks to ensure accuracy, fairness, and accountability by insisting on regular, responsible procedures. Yet the laws of war, generally speaking, merely require reasonable precautions before striking.4 A simple rule-of-reason seems inadequate for targeted killing that, by its terms, demands “intelligence-driven use of force.”5

To facilitate the evolution of a “due process” of targeted killing, in two earlier pieces, we have attempted to tease controls from the U.S. Constitution and from international humanitarian law’s insistence on reasonable precautions.6 Whether for us or for other commentators, creating fine-grained constraints will not be straightforward. If the constraints are to evolve at all, they are likely to come from a long dialogue among many interested parties. The United States could add to this conversation by publicly adopting standards for its use of drones that ensure accuracy and accountability. The CIA, accordingly, could acknowledge a general role in the drone program without mentioning the names of any participating countries. By giving up a thin veil of secrecy, the CIA would benefit from more informed public scrutiny and might receive more support from some American citizens and allies. But that increased transparency could carry costs, including offending those concerned about the level of collateral damage. Residents of foreign countries closest to the locations of CIA strikes are likely to be the most sensitive. Take Pakistan as one possible example.

We do not expect opponents of CIA drones to give up their rhetorical weapon claiming illegality. Their rhetoric, however, tends to obscure how the law should evolve to result in good policy. The relevant substantive law governing resort to deadly force by states is and necessarily will remain vague. In contrast, the specific procedures for CIA targeted killing cry out for scrutiny and improvement. At the level of specificity that matters to actual drone operators, good law blurs into good policy. At this level, all of the President’s national security team, lawyers and non-lawyers alike, are welcome to advise him on drones.

### Solves---Perception---General

#### The CP shapes the development of global norms on drones and actively builds legitimacy---that means it solves their perception deficits because all their ev is only about the way that drones are perceived now, not how they’re perceived after a vigorous defense by the U.S.

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>

But a thorough reading of the Predator coverage calls to mind how the detention, interrogation, and rendition debates proceeded over the years after 9/11. As Brookings scholar Benjamin Wittes observes, those arguments also had elements of both legal sense and sensibility. Ultimately the battle of international legal legitimacy was lost, even though detention at Guantánamo continues for lack of a better option. It is largely on account of having given up the argument over legitimacy, after all, that it never occurred to the Obama administration not to Mirandize the Christmas Bomber. Baseline perceptions of legitimacy have consequences. ¶ Nor is the campaign to delegitimize targeted killing only about the United States. Legal moves in European courts have already been made against Israeli officials involved in targeted killing against Hamas in the Gaza war. Unsavory members of the U.N. act alongside the world’s most fatuously self-regarding human rights groups to press for war crimes prosecutions. All of this is merely an opening move in a larger campaign to stigmatize and delegitimize targeted killing and drone attacks. What can be done to Israelis can eventually be done to CIA officers. Perhaps a London bookmaker can offer odds on how soon after the Obama administration leaves office CIA officers will be investigated by a court, somewhere, on grounds related to targeted killing and Predator drone strikes. And whether the Obama administration’s senior lawyers will rise to their defense—or, alternatively, submit an amicus brief calling for their prosecution. ¶ Thus it matters when the U.N. special rapporteur on extrajudicial execution, Philip Alston, demands, as he did recently, that the U.S. government justify the legality of its targeted killing program. Alston, a professor at New York University, is a measured professional and no ideologue, and he treads delicately with respect to the Obama administration—but he treads. Likewise it matters when, in mid-January, the ACLU handed the U.S. government a lengthy FOIA request seeking extensive information on every aspect of targeted killing through the use of UAVs. The FOIA request emphasizes the legal justification for the program as conducted by the U.S. military and the CIA. ¶ Legal justification matters, partly for reasons of legitimacy and partly because the United States is, and wants to be, a polity governed by law. This includes international law, at least insofar as it means something other than the opinions of professors and motley member-states at the U.N. seeking to extract concessions. International law, it is classically said, consists of what states consent to by treaty. Add to this “customary law”—as evidenced by how states actually behave and as provided in their statements, their so-called opinio juris. Customary law is evidenced when states do these things because they see them as binding obligations of law, done from a sense of legal obligation—not merely habit, policy, or convenience, practices that they might change at any moment because they did not engage in them as a matter of law. ¶ What the United States says regarding the lawfulness of its targeted killing practices matters. It matters both that it says it, and then of course it matters what it says. The fact of its practices is not enough, because they are subject to many different legal interpretations: The United States has to assert those practices as lawful, and declare its understanding of the content of that law. This is for two important reasons: first to preserve the U.S. government’s views and rights under the law; and second, to make clear what it regards as binding law not just for itself, but for others as well. ¶ Other states, the United Nations, international tribunals, NGOs, and academics can cavil and disagree with what the United States thinks is law. But no Great Power’s consistently reiterated views of international law, particularly in the field of international security, can be dismissed out of hand. It is true of the United States and it is also true of China. It is not a matter of “good” Great Powers or “bad.” Nor is it merely “might makes right.” It is, rather, a mechanism that keeps international law grounded in reality, and not a plaything of utopian experts and enthusiasts, departing this earth for the City of God. It remains tethered to the real world both as law and practice, conditioned by how states see and act on the law. ¶ The venerable U.S. view of the “law of nations” is one of moderate moral realism—the world “as it is,” as the president correctly put it in his Nobel Prize address. It is not the vision of radical utopians and idealists; neither is it that of radical skeptics about the very existence of law in international affairs. On the contrary, the time-honored American view has always been pragmatic about international law (thereby acting to preserve it from radical internationalism and radical skepticism). But upholding the American view requires more than simply dangling the inference that if the United States does it, it means the United States must intend it as law. Traditional international law requires more than that, for good reason. The U.S. government should provide an affirmative, aggressive, and uncompromising defense of the legal sense and sensibility of targeted killing. The U.S. government’s interlocutors and critics are not wrong to demand one, even those whose own conclusions have long since been set in stone. ¶ A clear statement of legal position need not be an invitation to negotiate or alter it, even when others loudly disagree. In international law, a state’s assertion that its policies are lawful, particularly such an assertion from a great power in matters of international security, is an important element all by itself in making it lawful, or at least not unlawful. But in vast areas of security, self-defense, and the use of force, the U.S. government has in recent years left a huge deficit as to how its actions constitute a coherent statement of international law. ¶ For once, Washington should move to get ahead of a contested issue of international legal legitimacy and “soft law.” Why else have an Obama administration, if not to get out in front on a practice that it has ramped up on grounds of both necessity and humanitarian minimization of force? The CIA has taken a few baby steps by selectively leaking some collateral damage data to a few reporters. But the CIA is going to have to say more. The U.S. government needs to defend targeted killings as both lawful, and as an important step forward in the development of more sparing and discriminating—more humanitarian—weaponry.

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

Kenneth Anderson 11, Professor of International Law at American University, 10/3/11, “Public Legitimacy for Targeted Killing Using Drones,” <http://www.volokh.com/2011/10/03/public-legitimacy-for-targeted-killing-using-drones/>

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

#### Publicly disclosing the legal basis for targeted kills establishes broad legitimacy---reject their solvency deficits because critics will never be satisfied---the CP’s at least sufficient to solve the case

Kenneth Anderson 11, Professor of International Law at American University, 6/6/11, “Targeted killing is legitimate and defensible,” The Weekly Standard, <http://www.weeklystandard.com/print/articles/law-and-order_571630.html>

Much more important, however, but also much harder to convey, is the importance of engagement with international law. The time for saying with a shrug, of course it’s illegal or extralegal, is long gone. Needed, rather, is for the United States to articulate on a regular basis its views of why it thinks its counterterrorism programs are consistent with international law. State Department legal adviser Harold Koh, to his credit, has done so both in the case of targeted killing using drone warfare, in a widely remarked speech last year, and more recently in a short statement on the bin Laden killing to the international law blog Opinio Juris.

The United States does not believe it is acting extralegally, let alone illegally, in its counterterrorism programs, and it should be willing to say why. The U.S. government believes, as former State Department lawyer Ashley Deeks observed in a recent, influential paper, that states that are unable or unwilling to deal with terrorists in their midst lose claims of sovereignty, thus allowing other states to reach inside to deal with them. The U.S. government believes, moreover, in Koh’s formulation, that even covert operations undertaken outside of an armed conflict must still adhere to international law principles of necessity, distinction, and proportionality in their conduct; there are limiting principles of international law that the U.S. recognizes and abides by.

The problem is, such public, official articulations are rare. Without question, lawyers at Defense, Justice, the CIA, and other agencies closely scrutinize U.S. practices and operations for legality under both domestic and international law. This is good and proper, particularly as secret opinions can address facts that must remain secret. But it is not enough, because secret opinions, however persuasive, do not convey legitimacy. Public legitimacy does not require that the government reveal secret facts, programs, activities, and other things that ought to remain secret. But there is much that can be shared about the basic interpretations of domestic and international law that inform the necessarily secret work.

It is quite true that wide swaths of critics won’t be satisfied; that’s not the point. The international law community will never be satisfied, and whatever one gives them, if it’s done merely to appease them, they will take as weakness. International law critics will speak with utter confidence and great bluster. “International law” is better understood not so much as a unified field with definitive answers but as a set of more and less “plausible” interpretations, in a world of sovereign states in which there is no final adjudicator to say yes or no. It is fused with diplomacy, politics, and real-world consequences.

The United States should seek to convey that it has a considered, plausible view of the law, whether shared by the critics or not. That view will achieve public legitimacy in no small part because the U.S. government has the confidence to articulate it and defend it as such. This is an approach to the public articulation of international law begun by then-State Department legal adviser John Bellinger in the later years of the Bush administration, and while it requires being willing to weather a great deal of criticism and sometimes abuse, it is the right approach.

Moreover, as current legal adviser Harold Koh has been careful to note in his speeches, these legal views are connected in their claim of plausibility to a long line of jurisprudence articulated by the State Department over decades. One might disagree with the conclusions, but this jurisprudence cannot be dismissed out of hand. The decades-old views of the United States on international law matter more than those of Bolivia or Tajikistan, or subcommittees of the United Nations, or congeries of NGOs. Which is to say, the U.S. view of its counterterrorism activities is that they are not truly “extralegal” but have a legal basis, including limits upon them, even if they are not the limits sought by Washington’s critics.

This call for the U.S. government to put forward its genuine view of the legality of its use of force in the war on terror is not what it might sound like​—​a foolish and misguided call to “engage” with an “international community” that will never approve of such actions. The U.S. government should be utterly clear that in articulating its international law positions, it is not seeking permission. It is not granting anyone in the international community a veto on U.S. action. It has no reason, for example, to engage with the U.N., its special rapporteurs, or the Human Rights Council on this issue.

The United States should, on the contrary, assert its considered view of what it believes is a legal and essential category for the use of force in combating transnational terrorism​—​as well as its limits. It is happy to entertain debate, discussion, and disagreement, but after due consideration of other views and taking them as it thinks proper, it finally abides its own counsel. Washington’s bedrock position on international law, after all, is that the views of a core international actor such as the United States might not be decisive in determining international law​—​no one is​—​but neither can its views ever be merely dismissed, either.

These “intelligence-driven” covert operations are not going away. Integration of military and civilian assets will make them easier and more effective. The United States will conduct such operations more frequently and more visibly than anyone else. A consistent and unapologetic public stance on the basic principles of their legality by counselors to the United States government​—​including lawyers in the CIA​—​is an important mechanism to defend their legitimacy within this country and abroad, and on something more than merely their functional utility. It is hard to imagine that Director Petraeus would settle for less.

#### Criteria disclosure solves credibility exactly as much as the aff---it’s clearly sufficient

Avery Plaw 12, associate professor of political science at the University of Massachusetts, Dartmouth, 11/14/12, “Drones Save Lives, American and Other,” http://www.nytimes.com/roomfordebate/2012/09/25/do-drone-attacks-do-more-harm-than-good/drone-strikes-save-lives-american-and-other

This is a tough call. Drone warfare has done a lot of good for the U.S., and could cause Americans a lot of harm. But my best judgment is that from the U.S. perspective, drone strikes have done more good than harm and should be continued, provided that the Obama administration can offer more clarity on what’s being done and can provide a sound legal justification for doing it.

One point in favor of drone strikes is that they are weakening Al Qaeda, the Taliban and affiliated groups, and hence protecting lives, American and other. Also, there don’t seem to be better means of doing so.

Points against drone strikes are the cost in civilian lives, the alienation of parts of the Islamic world, potential harm to the authority of international law, and the possibility that drone use will spread around the world, generating more conflict and harming long-term U.S. interests.

These are all valid points, and I respect that reasonable people could be convinced by either set. My own reasoning turns on four arguments.

First, states have a primary responsibility for the protection of their own citizens. If drone strikes are the best way to remove an all-too-real threat to American lives, then that is an especially weighty consideration.

Second, I doubt that ending drone strikes would substantially reduce anti-Americanism in the Islamic world or put a dent in radical recruitment.

Third, the U.S can do a lot to moderate some harms caused by its use of drones. By being clearer about what it’s doing and offering detailed legal justification, the U.S. could mitigate damage to international law and the threat of uncontrolled proliferation.

Finally, there is evidence that drone strikes are less harmful to civilians than other means of reaching Al Qaeda and affiliates in remote, lawless regions (for example, large-scale military operations). And that is what is required of states in armed conflict, legally and ethically: where civilian casualties cannot be avoided, they must be minimized.

#### Transparency solves allied perception, blowback, and drone norms while maintaining the counter-terror benefits of targeted killings

Michael Aaronson 13, Professorial Research Fellow and Executive Director of cii – the Centre for International Intervention – at the University of Surrey, and Adrian Johnson, Director of Publications at RUSI, the book reviews editor for the RUSI Journal, and chair of the RUSI Editorial Board, “Conclusion,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf

The Obama administration faces some tough dilemmas, and analysts should be careful not to downplay the security challenges it faces. It must balance the principles of justice and accountability with a very real terrorist threat; and reconcile the need to demonstrate a credibly tough security policy with the ending of a long occupation of Afghanistan while Al-Qa’ida still remains active in the region. Nevertheless, more transparency would provide demonstrable oversight and accountability without sacrificing the necessary operational secrecy of counter-terrorism. It might also help assuage the concern of allies and their publics who worry about what use the intelligence they provide might be put to. A wise long-term vision can balance the short-term demands to disrupt and disable terrorist groups with a longer-term focus to resolve the grievances that give rise to radicalism, and also preclude inadvertently developing norms of drone use that sit uneasily with the civilised conduct of war. Drones are but one kinetic element of a solution to terrorism that is, ultimately, political.

#### Disclosure demonstrates a credible commitment to the rule of law and doesn’t link to the flexibility disad

Major John C. Harwood 12, J.D., The University of Utah College of Law (2001); LL.M., The Judge Advocate General's Legal Center and School, United States Army, (2011), Judge Advocate in the United States Air Force and is presently posted as a legal exchange officer with the Royal Australian Air Force, assigned to the Directorate of Operations and International Law, Defence Legal, Australian Defence Force, Fall 2012, “ARTICLE: KNOCK, KNOCK; WHO'S THERE? ANNOUNCING TARGETED KILLING PROCEDURES AND THE LAW OF ARMED CONFLICT,” Syracuse Journal of International Law & Commerce, 40 Syracuse J. Int'l L. & Com. 1

While the law may not require states to publicly disclose their targeting procedures and an analysis for each individual targeted killing during armed conflict, as a matter of policy the U.S. should provide enough information to allow the public to be satisfied that the government is fulfilling its international obligations. The speeches of the nation's prominent national security lawyers are a good start; however, the government should continue to provide information on the processes and procedures of the targeted killing program, where operational and intelligence considerations allow.

As a beginning point, now that the existence of the targeted killing program is an acknowledged fact, the government should disclose whether the legal structures of aerial targeting are being followed by all the departments and agencies of the government who are engaged in targeted killings. The legal principles that the Air Force and the Department of Defense follow in aerial targeting are well-known and publicly available. While our enemies have occasionally sought to use our adherence to lawful targeting procedures to their benefit, n114 this openness has not been shown to be a hindrance to air-based military operations. n115

Second, the government should discuss in general terms the process of vetting targets and approving them for targeted killing. While covertness and operational security should protect the disclosure of the details of any individual strike, a general description of the procedures would "credibly convey to the public that [the government's] decisions about who is being targeted - [\*26] especially when the target is a U.S. citizen - are sound." n116 The basis of these disclosures, however, should be rooted in policy - as shown, there is no requirement under LOAC to divulge military targeting procedures during an armed conflict.

VI. Conclusion

International observers and human rights groups have rightly scrutinized targeted killing programs for compliance with international law. All programs, procedures, and operations should be subject to rigorous scrutiny; as noted by Mr. Brennan, "there is no more consequential a decision than deciding whether to use lethal force against another human being." n117 Because the subject matter is so weighty, there are no sacred cows in armed conflict. Too often, however, IHRL has been the prism through which criticism of the targeted killing program has come. Rather than providing a license to kill, as is feared by Alston and others, LOAC provides a robust legal framework for analyzing the legality of targeted killings.

To its credit, the Obama administration has taken steps to reassure the public that the targeted killing program is being conducted in a lawful manner; most notably by dispatching high-level officials and attorneys to speak openly and publicly. There is more that could be done, however, without compromising intelligence and ongoing operations. The administration could begin by requiring the CIA to conduct all aerial targeting in accordance with the well-established principles of military aerial targeting, and then publicize this requirement. This would rebut the claim that the CIA's operational-level targeting decisions are being made in a lawless vacuum.

Also, the administration could provide a basic, on-the-record description of the strategic-level target vetting process, rather than the non-specific "just trust us" statements previously made by Mr. Brennan and others. n118 While these steps may not placate the [\*27] critics of targeted killing, and fall far short of what Professor Alston calls for, they would help to reassure the public and the international community that the U.S. is committed to the rule of law during armed conflict.

RPA-based targeted killing has become one of the most frequently used weapons in the ongoing armed conflict against the Taliban and al Qaeda in Afghanistan and Pakistan. n119 This technological leap forward is coming at a time when the U.S. finds itself engaged against an enemy that is not limited by geography or nationality. Considering the current administration's increased reliance on RPA-based targeted killings over the past four years, n120 RPAs are likely to continue to be used to combat al Qaeda, the Taliban, and other insurgents. This growth in the use of RPAs is almost certain to increase in future armed conflicts.

#### Legitimacy of targeted killing is determined by the administrative procedures that produce target lists---transparency and narrow criteria solve

Amos Guiora 12, professor of law at the SJ Quinney College of Law, University of Utah; and Laurie Blank, director of Emory Law's International Humanitarian Law Clinic, 8/10/12, “Targeted killing's 'flexibility' doctrine that enables US to flout the law of war,” The Guardian, http://www.theguardian.com/commentisfree/2012/aug/10/targeted-killing-flexibility-doctrine-flout-law-war

Targeting individuals who pose an imminent threat to the US is a lawful exercise of self-defense. But the current US targeted killing program – using unmanned aerial vehicles (UAVs, or drones) to strike terrorist operatives wherever we find them – raises a big red flag.

This is not simply because the policy uses UAVs – remotely piloted combat aircraft are not inherently unlawful. Nor simply because of civilian deaths: although horrible and tragic, not all civilian deaths from military operations are unlawful. Nor simply because most strikes are in countries with whom we are not at war: states have a right to act in self-defense to protect their national security, even outside of armed conflict. Nor is it simply because intelligence personnel carry out many of the strikes: nothing in international law mandates that only military personnel can engage in combat.

Although important, these critiques do not strike at the heart of the issue. It is the characterization of who we target and when – and how that determination is made – that raises serious questions of law and morality. In a nutshell: are we killing the right people?

Effective counterterrorism requires the nation state to apply self-imposed restraint. Otherwise, violations of international law and morality are inevitable. How counterterrorism is carried out will determine its legality under governing international instruments.

Among the many important international law principles applicable to targeted killing, the obligation of distinction sits at the pinnacle. The notion of counterterrorism as self-defense against imminent threats of harm means that the state must know, in a detailed manner, who poses such a threat, in what circumstances, and how and when such persons can be targeted. This information and analysis lies at the heart of the legitimate target determination.

Decision-makers must then conduct the necessary proportionality analysis: will civilians be harmed and if so, how many? To minimize the number of innocent civilians killed during conflict, the attacking party must refrain from any attacks where the expected civilian casualties will be excessive in relation to the anticipated military gain.

Recent debates have highlighted questions regarding the justness of the US use of targeted strikes as a method of warfare, focusing on the "unmanned" nature of the strikes. But just war concerns do not get to the heart of the issue. Similarly, there is little doubt that UAVs offer extraordinary accuracy and precision in targeting identified targets. Rather, the central issue is the accuracy in identifying those targets in the first place, and identifying those who will also suffer as a result of the attack if launched.

Ultimately, the lawfulness of targeted killing depends, in large part, on the efficacy of the internal administrative measures adopted to identify targets and minimize civilian casualties. Only when those procedures are effective and discriminating will targeted killing be both legal and moral.

Why? Because targeted killing is not about encountering a division of the enemy's forces on the battlefield and stopping it from advancing across the front towards your borders or essential infrastructure. That is the stuff of traditional conflict, of trench warfare and tank warfare and state versus state conflict. Instead, targeted killing rests on the specific identification of individuals who pose an imminent threat to the state's national security and are therefore legitimate targets within the framework of lawful self-defense. The state thus needs a method and a process for figuring out who poses a threat, why they pose a threat, and how that threat can be deterred or eliminated.

The current US approach, however, is far too suggestive of "guilt by association" – targeting individuals whose involvement in terrorism is broadly defined, potentially without reliance on criteria, standards and limits. In a recent speech, President Obama's counterterrorism adviser, John Brennan, stated:

"We are finding increasing recognition in the international community that a more flexible understanding of "imminence" may be appropriate when dealing with terrorist groups, in part because threats posed by non-state actors do not present themselves in the ways that evidenced imminence in more traditional conflicts." [Our italics.]

Brennan's words – whoever his audience and whatever the purpose – drastically undermine American morality and commitment to the rule of law. A "flexible understanding of imminence" ultimately produces an approach that can only be defined as "kill all the bad guys". If everyone who constitutes "a bad guy" is automatically a legitimate target, then careful analysis of threats, imminence, proportionality, credibility, reliability and other factors simply goes out the window.

Expansiveness and flexibility eliminate any sense of what is proportional, in the broadest sense of the term. If all threats are always imminent, then all responses are always proportionate. Self-defense becomes a mantra that justifies all action, regardless of method or procedure.

Flexibility regarding imminence and threat-perception means that the identification of legitimate targets – the true essence of moral operational counterterrorism – becomes looser and less precise. In turn, expanded notions of legitimate target and the right of self-defense introduce greater flexibility with regard to collateral damage – both in terms of who constitutes collateral damage and how much collateral damage is justified in the course of targeting a particular threat.

The result: flexibility plus the absence of criteria, process and procedure means that the notion of proportionality that should guide decision-making and operations ends up entirely out of proportion. In the high-stakes world of operational counterterrorism, there is no room for imprecision and casual definitions. The risks, to innocent civilians on both sides and to our fundamental values, are just too high.

#### Publicly releasing the legal rationale for targeted killings solves credibility---resolves perception of double-standards

Philip Alston 11, the John Norton Pomeroy Professor of Law, New York University School of Law, was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010, 2011, “ARTICLE: The CIA and Targeted Killings Beyond Borders,” Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283

1. Credibility

This argument can be succinctly stated. If the United States firmly believes, as the State Department's Legal Adviser insists it does, that it is acting in full compliance with international law, it should not hesitate to provide the evidence thereof. Because its dealings with other states regularly reflect a "trust, but verify" approach, n594 it can hardly expect that it will be held to a lower standard. Similarly, the United States attaches great importance in its overall foreign policy to the promotion of the rule of law. Thus the 2010 National Security Strategy commits it to "working to strengthen national justice systems" around the world, especially because "[t]hose who intentionally target innocent civilians must be held [\*439] accountable." n595 Civil society groups have also called for the United States government to play a leading role in helping other countries to develop national-level accountability mechanisms. n596 Similarly, in specific cases, such as the alleged killing of a journalist by Pakistan's Inter-Services Intelligence (ISI), the United States n597 and American media outlets have called for transparency and accountability and effective civilian oversight in the ISI's activities. n598 While the human rights violations of which the CIA and its Pakistani counterpart have been accused are very different in nature, it is difficult not to note the parallels in the resistance met by such calls. The CIA would greatly enhance its own credibility and that of the United States if it were to follow the advice given by the United States to the intelligence agencies of other countries.

#### Public disclosure is the obvious solution to international perception---most critics problem is not with the practice but the lack of transparency

Aram Roston 13, investigative journalist, a correspondent at Newsweek Magazine and The Daily Beast, 1/29/13, “Editorial: Targeted Killings and Transparency,” Defense News, http://www.defensenews.com/article/20130129/C4ISR02/301290015/Editorial-Targeted-Killings-Transparency

It’s the latest confounding development in an issue crucial to the C4ISR community. Today’s counterinsurgency operations have driven a profound shift in targeting, away from self-evident military targets, such as headquarters, barracks and anti-aircraft emplacements, to listing, finding and tracking individuals, in some cases even U.S. citizens.

The Obama administration has adopted a legally nuanced practice in the war on terror, generally shunning the capture of suspected terrorists overseas and instead turning to its signature national security tactic: targeted killing with missiles launched from Predator and Reaper UAVs. The Long War Journal tallies 532 people killed by drone strikes in Yemen and Pakistan in 2012 alone, a staggering death toll for a secret program.

Credible critics of drone strikes, such as former Director of National Intelligence Dennis Blair, have argued for years that, in a strategic sense, the tactic is backfiring.

“As the drone campaign wears on, hatred of America is increasing in Pakistan,” he wrote in 2011. “The Hellfires may kill some terrorists, but they certainly sow widespread animosity to the U.S. among the general population.”

But it’s difficult to have a productive debate about a program kept so tightly under wraps. The White House has refused to release the legal opinion upon which it bases its decisions to kill suspected terrorists, among them Anwar al-Awlaki, the American citizen at the center of the case before McMahon. While everything about the program has been treated with obsessive secrecy, lawyers find the legal murkiness the most troubling aspect of the strategy. The closest the White House has come to describing the process for picking drone targets was a speech last March by Attorney General Eric Holder at Northwestern University.

“The president may use force abroad against a senior operational leader of a foreign terrorist organization with which the United States is at war — even if that individual happens to be a U.S. citizen,” Holder said. Killing an American without due process could be lawful, he argued, if the “U.S. government has determined, after a thorough and careful review,” that the American posed an imminent threat, and that capture wasn’t possible.

In her opinion, McMahon called Holder’s remarks “a road map of the decision-making process that the government goes through before deciding to ‘exterminate’ someone ‘with extreme prejudice.’”

The issue isn’t America’s right to use force against enemies in a country where we are an established combatant force. Rather, it is the targeted killing program in other countries, such as Pakistan and Yemen, that is inflaming international public opinion and drawing scrutiny from the international legal community.

The U.N. special rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, and New York University law professor Sarah Knuckey make this argument in this issue of C4ISR Journal. They call on the administration to answer key questions about its targeting killing program.

“Should there be an international legal order,” they ask, “that permits governments around the world to operate ‘secret’ and unaccountable programs to eliminate their enemies wherever they are with few binding limits and no meaningful international scrutiny?”

The solution is simple: more disclosure and clearer explanations by the administration. But that’s a solution the White House continues to resist. It is possible that there are valid reasons for keeping legal opinions secret, but the U.S. is the first nation to carry out a program like this on such a scale. The White House has the moral obligation to explain — to American citizens, to the global community and to U.S. allies — the legal underpinnings of its actions.

#### Self-imposed transparency is highly effective at building executive credibility

Eric A. Posner 7, the Kirkland & Ellis Professor of Law, University of Chicago Law School; and Adrian Vermuele, Professor of Law, Harvard Law School, 2007, “The Credible Executive,” https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74\_3\_Posner\_Vermeule.pdf

The well-motivated executive might commit to transparency as a way to reduce the costs to outsiders of monitoring his actions.94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive’s decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will tend to exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.

Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political preferences opposite to those of the president. Thus, George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking and perhaps even to classified intelligence,95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency—no one expects meetings of the National Security Council to appear on C-SPAN—but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.

There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong. 96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts—especially journalists who might reward sources who give them access by portraying their decisionmaking in a favorable light.97

We will take up the costs of credibility shortly.98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well motivated, precisely because the existence of costs would have given an ill-motivated executive an excuse not to use those mechanisms.

#### Internal executive procedures solve the case---particularly credibility and perception

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

What is my alternative prescription? I offer three things:

First, continued efforts at transparency, as an important government interest in and of itself – and not just to keep the press, Congress and the courts off its back, when its back is against the wall. That is easier said than done. Transparency is hard. The reality is that it is much easier to classify something than it is to de-classify it, and there are huge bureaucratic biases against de-classifying something once it is classified. Put 10 national security officials in a room to discuss de-classifying a certain fact, they will all say I’m for transparency in principle, but at least 7 will be concerned about second-order effects, someone will say “this is really hard, we need to think about this some more,” the meeting is adjourned, and the 10 officials go on to other more pressing matters.

Last year we declassified the basics of the U.S. military’s counterterrorism activities in Yemen and Somalia and disclosed what we were doing in a June 2012 War Powers report to Congress. It was a long and difficult deliberative process to get there, but certain people in the White House persevered, we said publicly and officially what we were doing, and, so far as I can tell, the world has not come to an end.

Second, in my view targeted lethal force is at its least controversial when it is on its strongest, most traditional legal foundation. The essential mission of the U.S. military is to capture or kill an enemy. Armies have been doing this for thousands of years. As part of a congressionally-authorized armed conflict, the foundation is even stronger. Furthermore, the parameters of congressionally-authorized armed conflict are transparent to the public, from the words of the congressional authorization itself, and the Executive Branch’s interpretation of that authorization, which this Administration has made public.

Lethal force outside the parameters of congressionally-authorized armed conflict by the military looks to the public to lack any boundaries, and lends itself to the suspicion that it is an expedient substitute for criminal justice.

Third, the President can and should institutionalize his own process, internal to the Executive Branch, to ensure the quality of the decision-making. In this regard I will note the various public reports that the Obama Administration is considering doing exactly that.[15]

This brings me to my final point. Let’s not lose sight of the reality that in this country we have for some time entrusted the President with awesome powers and responsibilities as Commander in Chief; he controls the nuclear arsenal and he alone has the authority to use it; he alone has the constitutional authority, with certain limits, to deploy thousands of men and women in the U.S. military into hostilities on the other side of the world.

Further, as we entrust the President to conduct war and authorize lethal force against an individual, that presidential-level decision brings with it a whole cadre of cabinet and subcabinet-level national security advisers from across the Defense, State and Justice Departments and the intelligence community who, in my experience, bring to the table different perspectives and engage in very lively, robust debate.

I say only half-jokingly that in 2009, in the existing structure, one of the most aggressive things the new President could do to promote credibility and ensure robust debate within the Executive Branch was add to the mix, as State Department Legal Advisor, a certain progressive human rights law professor from Yale, give him access to all our counterterrorism activities, and give him a voice and a seat at the table. And, over the first four years of the Administration, Harold Koh made me and others work a lot harder.

Now, those who hear or read this will ask “what about the future? Koh is back at Yale. The answer is that the President we entrust with the ultimate responsibility is elected by the people and accountable to them; his legal and policy advisors are chosen just like a federal judge, appointed by the President and confirmed by the Senate. If the Senate is not satisfied that a nominee for a legal position in the national security element of our government will provide independent advice and follow the rule of law, it should exercise its prerogative to withhold its advice and consent. These days, the Senate delays the confirmation of a presidential nominee for a lot less.

I am confident that the man we elected to be President for the next four years, Barack Obama, is sensitive to these issues.

I also have a lot of faith in the new CIA director John Brennan, who happens to be an alumnus of this university. Over the first four years of the Obama Administration, I probably sat with him through somewhere between 50-100 situation room meetings. I believe I know his mind and his values, and in my opinion John Brennan embodies what the President talks about when he says that aggressive counterterrorism policies, the rule of law and American values are not trade-offs, and can co-exist.

#### Legal rationale disclosure boosts legitimacy while checking executive power

Cheri Kramer 11, J.D., Santa Clara University School of Law, 1/1/11, “The Legality of Targeted Drone Attacks as U.S. Policy,” Santa Clara Journal of International Law, http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1105&context=scujil

The heart of the debate over the legality of targeted drone attacks concerns policy considerations. Under both domestic and international law, the use of targeted killing of legal targets is permissible. However, is it good policy?89 And, more urgently, do the targeted killings carried out by the U.S. actually qualify as legal killings?

The answer to both questions is a disappointingly vague "maybe." The definition of good policy is inherently a fact-driven and opinion-based determination. As to the second question, like the notorious three monkeys, the U.S. government seems to have engaged in a "see no evil, hear no evil, speak no evil" policy strategy regarding the use of drones. This is particularly true of its Central Intelligence Agency (CIA), which, until recently, did not officially recognize its drone program, yet employs it extensively to eliminate terrorist targets in northern Pakistan.90

It is no secret that the U.S. relies on drones in its war strategy against the insurgency in Afghanistan.91 Yet the administration repeatedly refuses to produce publicly any guidelines that would set forth the procedures and safeguards used by U.S. forces in determining the legality of a target.92 Given the importance of transparency in international rule of law, and its role as a check on executive power, as well as the political legitimacy to be gained by identifying the procedures used in targeting, President Obama's administration has much to gain by being more forthcoming with the procedures engaged to ensure compliance.

### Theory

#### Executive fiat’s good:

1. **Competition determines legitimacy---if the CP is an opportunity cost to the plan than any model of debate that eliminates it is arbitrary and self-serving for the aff.**

#### Neg ground and limits --- the topic is huge and constantly shifting --- the Exec CP is the neg’s only stable advocacy --- without it our research burden becomes unmanageable because there would be thousands of small affs that ban individual actions of the executive.

#### Education --- comparisons between internal and external constraint are THE core controversy of War Powers --- ensures the aff should be able to generate offensive --- our solvency advocates proves

#### No offense --- they only need one reason why Congress or the Courts acting is key --- infinite aff prep proves this is reasonable --- don’t reward their lazy research practices

#### Not a voting issue --- reject the argument not the team

# 2NC

## Drone Prolif

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#### No impact to global drone prolif and it’s impossible to solve

Alejandro Sueldo 12, J.D. candidate and Dean’s Fellow at the University of California, Berkeley, School of Law and a PhD candidate at the Department of War Studies at King’s College London of the University of London, 4/11/12, “The coming drone arms race,” <http://dyn.politico.com/printstory.cfm?uuid=70B6B991-ECA7-4E5F-BE80-FD8F8A1B5E90>

Of particular concern are the legal and policy challenges posed if other states imitate the U.S. targeted killing program. For Washington is setting a precedent whereby states can send drones, often over sovereign borders, to kill foreigners or their own citizens, who are deemed threats.

Other states may also follow Washington’s example and develop their own criteria to define imminent threats and use drones to counter them.

Washington will find it increasingly difficult to protest other nations’ targeted killing programs — particularly when the United States has helped define this lethal practice. U.S. opposition will prove especially difficult when other states justify targeted killings as a matter of domestic affairs.

Should enough states follow the U.S. example, the practice of preemptively targeting and killing suspected threats may develop into customary international law.

Such a norm, however, which requires consistent state practice arising out of a sense of legal obligation, now looks unlikely. While targeted killing policies are arguably executed by states citing a legal obligation to protect themselves from imminent threats, widespread state practice is still uncommon.

But international law does not forbid drones. And given the lack of an international regime to control drones, state and non-state actors are free to determine their future use.

This lack of international consensus about how to control drones stems from a serious contradiction in incentives. Though drones pose grave challenges, they also offer states lethal and non-lethal capabilities that are of great appeal. Because the potential for drone technology is virtually limitless, states are now unwilling to control how drones evolve.

## Drone Prolif

### Oversight Now

#### Internal and external accountability mechanisms are effective now---and they’ll stay that way as drone missions increase

Jack Goldsmith 12, Harvard Law professor and a member of the Hoover Task Force on National Security and Law, 3/19/12, “Fire When Ready,” http://www.foreignpolicy.com/articles/2012/03/19/fire\_when\_ready

In this new age of drone warfare, probing the constitutional legitimacy of targeted killings has never been more vital. The Obama administration has carried out well over 200 drone strikes in its first three years, and the practice promises to ramp up even more in the next few years as the United States decreases its footprint in Afghanistan and relies even more heavily on special operations and covert actions centered around the use of drones. There are contested legal issues surrounding drone strikes, and -- in contrast to issues like military detention and military commissions -- courts have not pushed back against the presidency on this issue. But judicial review is not the only constitutional check on the presidency, especially during war. Awlaki's killing and others like it have solid legal support and are embedded in an unprecedentedly robust system of legal and political accountability that includes courts but also includes other institutions and actors as well.

When the Obama administration made the decision to kill Awlaki, it did not rely on the president's constitutional authority as commander in chief. Rather, it relied on authority that Congress gave it, and on guidance from the courts. In September 2001, Congress authorized the president "to use all necessary and appropriate force against those nations, organizations, or persons he determines" were responsible for 9/11. Whatever else the term "force" may mean, it clearly includes authorization from Congress to kill enemy soldiers who fall within the statute. Unlike some prior authorizations of force in American history, the 2001 authorization contains no geographical limitation. Moreover, the Supreme Court, in the detention context, has ruled that the "force" authorized by Congress in the 2001 law could be applied against a U.S. citizen. Lower courts have interpreted the same law to include within its scope co-belligerent enemy forces "associated" with al Qaeda who are "engaged in hostilities against the United States."

International law is also relevant to targeting decisions. Targeted killings are lawful under the international laws of war only if they comply with basic requirements like distinguishing enemy soldiers from civilians and avoiding excessive collateral damage. And they are consistent with the U.N. Charter's ban on using force "against the territorial integrity or political independence of any state" only if the targeted nation consents or the United States properly acts in self-defense. There are reports that Yemen consented to the strike on Awlaki. But even if it did not, the strike would still have been consistent with the Charter to the extent that Yemen was "unwilling or unable" to suppress the threat he posed. This standard is not settled in international law, but it is sufficiently grounded in law and practice that no American president charged with keeping the country safe could refuse to exercise international self-defense rights when presented with a concrete security threat in this situation. The "unwilling or unable" standard was almost certainly the one the United States relied on in the Osama bin Laden raid inside Pakistan.

These legal principles are backed by a system of internal and external checks and balances that, in this context, are without equal in American wartime history. Until a few decades ago, targeting decisions were not subject to meaningful legal scrutiny. Presidents or commanders typically ordered a strike based on effectiveness and, sometimes, moral or political considerations. President Harry Truman, for example, received a great deal of advice about whether and how to drop the atomic bomb on Hiroshima and Nagasaki, but it didn't come from lawyers advising him on the laws of war. Today, all major military targets are vetted by a bevy of executive branch lawyers who can and do rule out operations and targets on legal grounds, and by commanders who are more sensitive than ever to legal considerations and collateral damage. Decisions to kill high-level terrorists outside of Afghanistan (like Awlaki) are considered and approved by lawyers and policymakers at the highest levels of the government.

#### [Read] External oversight’s credible and effective now, while preserving flexibility necessary for drone missions

Jack Goldsmith 12, Harvard Law professor and a member of the Hoover Task Force on National Security and Law, 3/19/12, “Fire When Ready,” http://www.foreignpolicy.com/articles/2012/03/19/fire\_when\_ready

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The lawyers and policymakers are guided in part by Supreme Court and lower court decisions that, in the context of reviewing military detentions, have interpreted the meaning, scope, and limits of the congressional authorization to use force. The executive branch also has tools at its disposal -- an elaborate intelligence bureaucracy, precision weapons, and computer targeting algorithms -- to minimize collateral damage in war like never before (indeed, these tools sometimes force an operation or target to be avoided or aborted). We do not know the full details of targeting decisions, but we do know -- from administration speeches and press coverage of internal deliberations -- that Obama administration policymakers and lawyers seriously grapple with the legal limits of their authorities, construe them narrowly to meet the case at hand, and are constrained in who they target.

Congress too is involved. The executive branch only targets enemy forces that fall within the parameters set by Congress in 2001. All major targeting operations conducted as "covert actions" must, under laws in place before 9/11, be conducted in conformity with presidential "findings" and reported to congressional intelligence committees. These committees lack a formal veto, but they have many ways to push back against covert actions they dislike. House Minority Leader Nancy Pelosi is said to have scaled back a covert operation in 2004 to influence the outcome of elections in Iraq by complaining to the White House, while the House Intelligence Committee reportedly persuaded the Obama administration not to arm the Libyan rebels in 2011. Operations by the U.S. military are also reported to and scrutinized by congressional armed services committees through less formal means.

More broadly, Congress as a whole is well aware of the president's targeted killing program, and many congressional committees have held public hearings on targeted killing in the last few years. And yet, in contrast to its actions to tighten the president's traditional military authorities in other contexts (like interrogation, military detention, and military commissions), Congress has not tightened the president's power to target. Instead, Congress chose to reaffirm the 2001 authorization on which the president has rested his targeting practices in December 2011, and to bless the judicial construction of the statute that extended the president's authorities to co-belligerents like Awlaki, all without a word about limitations on targeted killing. Congress did this against the backdrop of many public reports that the 2001 statute was relied on to kill Awlaki.

The targeted killing of Awlaki was also subject to a limited but important form of judicial scrutiny. In 2010, the ACLU and the Center for Constitutional Rights brought a novel lawsuit that sought to enjoin the president from killing Awlaki. Judge John Bates of the U.S. District Court for the District of Columbia dismissed the case, in part because of "the impropriety of judicial review." Bates explained that the Constitution places "responsibility for the military decisions at issue in this case 'in the hands of those who are best positioned and most politically accountable for making them'" -- Congress and the president. This ruling, based on extensive precedent, is almost certainly right. Commanders in chief have always had discretion over targeting decisions in wars authorized by Congress. No court has ever suggested that judicial approval for these decisions was appropriate or necessary. This is so even though the U.S. military killed U.S. citizens in the Civil War and most likely in World War II as well, when some fought in the Italian and German armies. The Supreme Court itself has ruled -- in the context of military commissions and military detention -- that U.S. citizenship does not by itself preclude the commander in chief from exercising traditional forms of military force.

### No Precedent

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

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

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

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

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

#### Zero chance that U.S. self-restraint causes any other country to give up their plans for drones

Max Boot 11, the Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations, 10/9/11, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, <http://www.commentarymagazine.com/2011/10/09/drone-arms-race/>

The New York Times engages in some scare-mongering today about a drone ams race. Scott Shane notes correctly other nations such as China are building their own drones and in the future U.S. forces could be attacked by them–our forces will not have a monopoly on their use forever. Fair enough, but he goes further, suggesting our current use of drones to target terrorists will backfire:

If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them.

“The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the University of Pittsburgh and author of Missile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.”

This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.

The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example. In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.

Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected assassination of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone?

While a decision on our part to stop drone strikes would be unlikely to alter Russian or Chinese thinking, it would have one immediate consequence: al-Qaeda would be strengthened and could regenerate the ability to attack our homeland. Drone strikes are the only effective weapon we have to combat terrorist groups in places like Pakistan or Yemen where we don’t have a lot of boots on the ground or a lot of cooperation from local authorities. We cannot afford to give them up in the vain hope it will encourage disarmament on the part of dictatorial states.

#### [Read] No causal link between U.S. drone doctrine and other’ countries choices---means can’t set a precedent

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way:

Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat.

“Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.”

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?)

It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.

Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.

But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.

Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do – but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

### No Drone Wars

#### No risk of drone wars

Joseph Singh 12, researcher at the Center for a New American Security, 8/13/12, “Betting Against a Drone Arms Race,” http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2eSvaZnfQ

In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology.

Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team.

Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones.

What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use.

Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best.

Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations.

Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### [Read] Drones will only ever be used in highly permissive environments that lack air defense

Michael W. Lewis 12, Associate Professor of Law at Ohio Northern University Pettit College of Law, Spring 2012, “ARTICLE: SYMPOSIUM: THE 2009 AIR AND MISSILE WARFARE MANUAL: A CRITICAL ANALYSIS: Drones and the Boundaries of the Battlefield,” Texas International Law Journal, p. lexis

Like any weapons system drones have significant limitations in what they can achieve. Drones are extremely vulnerable to any type of sophisticated air defense system. They are slow. Even the jet-powered Avenger recently purchased by the Air Force only has a top speed of around 460 miles per hour, n20 meaning that it cannot escape from any manned fighter aircraft, not even the outmoded 1970s-era fighters that are still used by a number of nations. n21 Not only are drones unable to escape manned fighter aircraft, they also cannot hope to successfully fight them. Their air-to-air weapons systems are not as sophisticated as those of manned fighter aircraft, n22 and in the dynamic environment of an air-to-air engagement, the drone operator could not hope to match the situational awareness n23 of the pilot of manned fighter aircraft. As a result, the outcome of any air-to-air engagement between drones and manned fighters is a foregone conclusion. Further, drones are not only vulnerable to manned fighter aircraft, they are also vulnerable to jamming. Remotely piloted aircraft are dependent upon a continuous signal from their operators to keep them flying, and this signal is vulnerable to disruption and jamming. n24 If drones were [\*299] perceived to be a serious threat to an advanced military, a serious investment in signal jamming or disruption technology could severely degrade drone operations if it did not defeat them entirely. n25

These twin vulnerabilities to manned aircraft and signal disruption could be mitigated with massive expenditures on drone development and signal delivery and encryption technology, n26 but these vulnerabilities could never be completely eliminated. Meanwhile, one of the principal advantages that drones provide - their low cost compared with manned aircraft n27 - would be swallowed up by any attempt to make these aircraft survivable against a sophisticated air defense system. As a result, drones will be limited, for the foreseeable future, n28 to use in "permissive" environments in which air defense systems are primitive n29 or non-existent. While it is possible to find (or create) such a permissive environment in an inter-state conflict, n30 permissive environments that will allow for drone use will most often be found in counterinsurgency or counterterrorism operations.

# Terrorism

## Impact

### Drones DA---2NC

#### Expansive targeted killing policies provide and unparalleled to strike at terrorist groups without the downsides of large-scale interventions or counterinsurgency campaigns---drones disrupt leadership and make planning large-scale attacks impossible---that means even if they win their offense that drones make some people join terror groups who otherwise wouldn’t, there’s no effective leadership or capacity for those groups to actually do anything---that’s Anderson.

#### There’s a high risk of unchecked terrorism going nuclear---theft of material, unguarded research reactors, dirty bombs, etc are all high-risk internal links to nuclear strikes---but they obviously require high-value leadership and global coordination---that’s Dvorkin.

#### The impact’s extinction---even a single terrorist nuclear detonation in a city could cause global cooling on-part with nuclear winter---terrorists would look to maximize damage and hit in the densest cities---it’s equivalent to full-scale superpower nuclear exchange---that’s Toon.

#### Expansive targeted killing’s key to winning the entire war on terrorism

John Yoo 12, Professor of Law, University of California at Berkeley, School of Law; Visiting Scholar, American Enterprise Institute, 2011/12, “Assassination or Targeted Killings After 9/11,” New York Law School Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Yoo-56-1.pdf

Launching a missile to kill al-Qaeda commanders like Derwish, even though he was an American citizen, is legal. They are members of the enemy forces, the equivalent of officers—Derwish amounted to a captain or major in command of al-Qaeda cells, the equivalent of enemy military units. The U.S. military and intelligence services are legally and morally free to target them for attack whether they were on the front lines or behind them. Killing an enemy commander will better promote the principles behind the rules of civilized war than other means. Over the centuries, the laws and customs of war have developed to reduce the harm to noncombatants and limit the use of force to that which is proportional to military objectives. By specifically targeting enemy leaders, the United States can render enemy forces leaderless and frustrate their operations, prevent the enemy from mounting effective plots and campaigns, and reduce both civilian and military casualties.

Using targeted killing as a primary tactic also takes better account of the new kind of war facing the United States. The United States has prevailed in conventional wars by invading the territory of an enemy nation, destroying its armed forces on the battlefield, and capturing key cities and population centers. It has won by outproducing its opponents. During the lead-up to World War II, President Franklin D. Roosevelt aptly declared the United States to be the great “arsenal of democracy.”37 Historically, the United States has deployed its large productive capacity and population in war, and its large, well-equipped and well-supplied armies and navies have, generally speaking, overwhelmed the soldiers of the other side.

The United States cannot win the war on terrorism by producing more tanks, fielding more army divisions, or setting more carrier battle groups and submarines to sail than this enemy. This did not work in Vietnam and it will not work against the even more diffuse enemy of today. Military plans based on traditional deterrence and the threat of retaliation will not be effective against this terrorist network because it has no territory or armed forces to crush, and its members welcome death. The amount of actual force needed to frustrate or cripple al-Qaeda is quite small, and well within the capabilities of a single division of U.S. troops.

Indeed, the problem is not with the strength of America’s power, but how and where to aim it. Al-Qaeda does not mass its operatives into units onto a battlefield, or at least it has not after its setbacks in Afghanistan in the fall and winter of 2001. Instead, al-Qaeda will continue to disguise its members as civilians, hide its bases in remote mountains and deserts or among unsuspecting city populations, and avoid military confrontation. The only way for the United States to defeat al-Qaeda is to destroy its ability to function—by selectively killing or capturing its key members.

In fact, the unique circumstances of the war on terrorism make a compelling case for taking out individual al-Qaeda leaders. Al-Qaeda is a social network of friends, acquaintances, or companies interlocked through various cross-ownerships and relationships; it is not unlike the Internet, which gives it remarkable resiliency. A killed or captured leader seems to be quickly replaced by the promotion of a more junior member and, as in Iraq, other arms of the network spring to the fore. Most nation-states would have collapsed after the kinds of losses inflicted by the armed forces and the CIA over the last decade: thousands of operatives killed, two thirds of al-Qaeda’s leadership killed or captured, and its open bases and infrastructure destroyed in Afghanistan.38 But al-Qaeda operatives continue to attempt to infiltrate the United States, and they have succeeded in carrying out new terrorist attacks in London, Madrid, and Bali.39

#### No turns---reducing targeted killings can’t make al-Qaeda any less likely to attack us

John Yoo 12, Professor of Law, University of California at Berkeley, School of Law; Visiting Scholar, American Enterprise Institute, 2011/12, “Assassination or Targeted Killings After 9/11,” New York Law School Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Yoo-56-1.pdf

What about reciprocity? Former attorney general Reno warned President Clinton that attacking Osama bin Laden would make American officials and leaders targets. In retrospect, those concerns were misplaced and the exercise of restraint did not avert 9/11. If anything, it seems to have encouraged it by convincing al-Qaeda’s leaders that the United States would not meaningfully respond to attacks. The 9/11attacks made clear that all of America—leaders and civilians—were al-Qaeda’s target. It is absurd to believe that if the United States refrains from targeting Osama bin Laden or his commanders, then al-Qaeda would refuse to launch similar attacks. Reciprocity is an important principle at work in law and policy, and underlies the laws of war. The international legal system has no supranational government with a legislature that can make laws on behalf of the world, or an executive branch with an army or police force that can meaningfully enforce those laws. War crimes trials at The Hague will not deter al-Qaeda. Usually, nations at war will restrain their conduct if their opponent will do so as well, and neither gains any corresponding advantage. If a nation violates the laws of war, its enemy will do the same.96 Restraint in an individual instance can be more humanitarian97 and might have the hoped for effect. But it is reciprocity, both positive and negative, that has historically induced the enemy to obey the laws of war. Germany was deterred from using chemical weapons in World War II not out of humanitarian concern for allied suffering, but because the allies were fully prepared to retaliate in kind.98

Al-Qaeda will never follow the rules of war. Al-Qaeda gains its only tactical advantages by systematically flouting them. American restraint in the use of force, the methods of attack, or the treatment of prisoners does not affect the incentives of al-Qaeda members, who seek a goal of salvation in the afterlife. Suicide bombers are not susceptible to deterrence. However, al-Qaeda’s utterly lawless nature does not free the United States from all constraints. Standard principles of reciprocity counsel that the United States follow customary rules on targeting and the use of force. But there is also ample historical and legal precedent for American policymakers to address creatively the unique threat that al-Qaeda poses. There could be some areas in which rules of conduct could be negotiated—terrorist groups in the United Kingdom-IRA and the Israeli-Palestinian conflicts have successfully engaged in prisoner exchanges. But for al-Qaeda to agree to play on a level playing field with the United States would be tantamount to its accepting defeat. Instead, the United States will have to draw on some old concepts, such as those used to confront piracy, and marry them to new ones, such as precision targeting through intelligence and technology. The integration of real-time intelligence with strikes by special forces and drone attacks, under this legal framework, has made possible some of the United States’ most important victories to date.

## Uniqueness

### Uniqueness

#### No AQAP organization and attacks are localized

Robert Pape 8/22/13, professor of political science at the University of Chicago, and director of the Chicago Project on Security and Terrorism and David Schneyer is a research associate at the Chicago Project on Security and Terrorism, 8/22/13, "WHY WE SHOULDN’T BE AFRAID OF AL-QAEDA IN YEMEN," http://www.yementimes.com/en/1705/opinion/2782/Why-we-shouldn%E2%80%99t-be-afraid-of-Al-Qaeda-in-Yemen.htm

¶ Last week, the U.S. State Department closed and evacuated 19 of its embassies and issued a worldwide travel alert based on intelligence concerning a terrorist organization based in Yemen. Many Americans are asking what this means. Is an attack on U.S. soil imminent?¶ ¶ While nothing is certain, of course, it is unlikely that such an attack would take place in the United States, or even outside of Yemen.**¶** ¶ The intelligence seems to be reliable. But individual data points can be exaggerated or ignored, depending on the domestic political environment of the time. In this case, the State Department acted due to “increased chatter” that it monitored among terrorist groups. Intelligence officials highlighted one communication in particular, in which Al-Qaeda leader Ayman Al-Zawahiri gave his blessing to an attack proposed by Nasser Al-Wuhayshi. Wuhayshi is the leader of Al-Qaeda in the Arabian Peninsula (AQAP)—a sort of “franchise affiliate” based in Yemen, not to be confused with the central Al-Qaeda organization.¶ ¶ Such information certainly warrants our attention. But talk is cheap, and it is critical that we don’t give terrorist organizations more credit than they are worth. In order to understand what a terrorist organization is truly capable of, we must look at its past behavior. In this case, Al-Qaeda in the Arabian Peninsula is a deadly organization within its own borders, but it has not demonstrated that it possesses the means to successfully carry out an attack on U.S. soil. The one known attempt (carried out by the so-called “underwear bomber”) failed due to incompetence—the device did not properly detonate.¶ ¶ Let’s look at the data: AQAP has carried out 39 suicide attacks through 2012, with only one taking place outside of Yemen (just across the border in Jeddah, Saudi Arabia). Suicide attacks represent precisely the sort of attack we would fear—they are far more deadly than any other type. Now, AQAP has certainly proven itself capable of killing foreigners within its own borders, and so we should absolutely take the intercepted communication seriously with respect to our embassy in Yemen. But this is a far cry from being able to carry out an attack on foreign soil.¶ ¶ Consider 9/11, for instance, which obviously we failed to prevent. This failure was not a tactical one, or even a failure to “connect the dots.” Rather, it was a failure to properly assess the threat. In fact, a memo stating “Bin Laden determined to attack U.S.” made it to the White House by early August, 2001—the intelligence was there, but it was simply not given its due credibility or seriousness. ¶ ¶ Clearly, Al-Qaeda proved itself capable of attacking the United States across multiple borders long before 2001. But AQAP has not demonstrated this capability, and “increased chatter” among its leaders, no matter how heavy, is simply not enough evidence to be overly-concerned, unless the government has not revealed other critical details. Even if Al-Zawahiri were directing the attack—which U.S. intelligence officials confirmed he was not—the main Al-Qaeda group (now based in Pakistan) has not carried out a successful major attack on Western soil since the London bombings in 2005. Ayman Al-Zawahiri giving his blessing to AQAP leaders only proves how weak the main Al-Qaeda group really is.

#### No terror attacks- Al Qaeda weak and focused on local initiatives- anti-western rhetoric is posturing

Thomas Hegghammer 7/18/13, PhD in political science Zuckerman Fellow, Center for International Security and Cooperation, Stanford University Senior Research Fellow, Norwegian Defense Research Establishment (FFI), 7/18/13, "The Future of Anti-Western Jihadism," Statement before the House Committee on Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade On “Global al-Qaeda: Affiliates, Objectives, and Future Challenges,” http://docs.house.gov/meetings/FA/FA18/20130718/101155/HHRG-113-FA18-Wstate-HegghammerT-20130718.pdf¶

The decline of al-Qaida Core is the easiest aspect of the current state of affairs to explain. It is¶ fundamentally a story of what terrorism scholars call government “learning”, i.e., gradual accumulation of information about the identity and location of the members of the rebel group, which in turn allows for increasingly targeted and more effective repressive measures. At the beginning of the war on terror, al-Qaida enjoyed an informational advantage over the US government – as do all terrorist groups at the outset of their campaigns – because it knew where to¶ find us but we did not know where to find them. With the help of time and massive investments in**¶** intelligence, we were able to map the organization, contain it, and eliminate leaders faster than it could train new ones. Learning is also behind the moderate decline in attacks by independents. Advances in data mining and analysis have allowed governments to collect, accumulate, and exploit data about the¶ fringes of the jihadi network to a much greater extent than before, allowing for the identification of many, though not all, plots before they reach execution. Governments are helped here by the fact¶ that true lone wolves are extremely rare, and that, for most individuals, the radicalization process**¶** involves socialization with other activists and/or consumption of jihadi propaganda online, both of which leave traces to be exploited. This, incidentally, is one of several reasons why the Internet is proving to be less of a boon to terrorists than many analysts predicted some years ago. For all their skill using the internet for propaganda distribution, jihadists are struggling use the web for operational purposes; they are having particular problems avoiding surveillance and establishing¶ trust between one another online. The more contentious question is why the affiliates are not attacking in the West more often. One argument holds that this is a capability issue, i.e, that the groups are not operationally¶ capable of circumventing the many countermeasures and detection systems that Western¶ governments have put in place since 9/11. This argument is unconvincing for two main reasons. One¶ is that several affiliates, especially AQIM and al-Shabaab, do have economic resources and human¶ assets that should arguably enable them to carry out at least some attacks in the West. The other¶ reason is if capability was the main problem, we should still expect to see more attempts. The¶ combination of high intent and low capability is observable in the form of failed and foiled attacks. The fact that we do not see many such attempts, except from AQAP, suggests most affiliates are not really trying.¶ I argue that the relatively low supply of anti-Western plots from the affiliates reflects low motivation, which in turn has two origins: a preference for local targets and fear of US retaliation. For all their anti-Western rhetoric and declared allegiance to al-Qaida Core, many affiliates appear to¶ place greater emphasis on achieving local political objectives than inflicting harm on the West. We¶ can infer this preference from the content of group declarations. Some groups say explicitly that¶ they do not plan to attack in the West; others are more ambiguous in their statements, but reveal their preferences by devoting more attention to local topics than to global ones or describing close¶ enemies with more vitriol than distant ones. Groups also reveal their preferences by the way they allocate operational resources. Most affiliates devote their resources overwhelmingly to local or regional operations. Even those organizations that have attempted operations against the West have conducted a much larger number of operations in the local theatre. This is in stark contrast to AQ core, which devoted nearly all of its resources after 2001 to attacks in the West. By far the most plausible explanation for these allocations is that groups value local political gains higher than**¶** international ones. If your aim is to establish control over a given territory and you are caught up in a¶ fight with a regional enemy, it makes little strategic sense to attack the West. However, you might have an incentive to launch verbal attacks on the West, because this makes you appear strong and**¶** principled in your local setting. Attacking the West makes even less strategic sense for such groups given the cost to the organization of provoking the ire of the American military. There is solid evidence from captured¶ documentation that leaders of jihadi organizations think strategically and make decisions based on¶ an informed calculus of costs and benefits. Leaders are, as a rule, not suicidal or irrational. There is also extensive evidence – from internal strategy documents – that leaders are aware of the**¶** capabilities of the US military and seek to avoid unnecessary exposure to these capabilities. In the 1990s, some jihadi leaders explicitly admitted fearing US retaliation and cited it as a reason not to¶ pursue Osama bin Ladin’s “America first” strategy. Such explicit admissions are rare today, but it would be surprising if the prospect of retaliation did not factor into the decision calculus in an era where the US has proven much more willing to use force against terrorists than perhaps ever before¶ in modern history. Most likely, affiliate leaders understand that targeting the US homeland might bring their own demise.

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### UQ---Review Precluded by PQD Now

#### Judicial review of targeted killing is precluded now by the political question doctrine---the plan requires abrogating it

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

In August 2010, Aulaqi's father, Nasser al-Aulaqi, filed suit against the federal government and requested an injunction against the targeted killing of his son. n7 The complaint alleged that a targeted killing would violate Anwar al-Aulaqi's Fifth Amendment right to due process of law before a deprivation of life. n8 In response, the DOJ argued that the decision to target Aulaqi for extrajudicial killing was purely within executive branch authority

and that to litigate this matter would require judicial infringement on executive power. n9 Nasser al-Aulaqi asserted that the Executive Branch claimed the [\*1356] power to kill an American without producing any justification. n10 The government's response essentially suggested that, in fact, it had this power in the context of counterterrorism and that this power was not subject to judicial review. n11

In December 2010, the District Court for the District of Columbia rejected Nasser al-Aulaqi's claims and granted summary judgment to the government. n12 While acknowledging the profound and troubling nature of the issues at stake in the case, n13 the court deferred to the assertion of executive authority and declined to review the evidence against Aulaqi. n14 The court held that these issues were nonjusticiable and that Aulaqi's father did not have standing to bring this claim on behalf of his son. n15

### UQ---PQD Strong Now

#### Judicial deference is high – there’s strict adherence to the political question doctrine

Bradley 9-2 (Curtis A., William Van Alstyne Professor of Law – Duke Law School, “War Powers, Syria, and Non-Judicial Precedent,” Lawfare Blog, 2013, http://www.lawfareblog.com/2013/09/war-powers-syria-and-non-judicial-precedent/)

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.

## Internal Link

### Internal-Link UQ---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

#### Dear god Mcneal is just so much better than your authors

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>

To date scholars have lacked a thorough understanding of the U.S. government’s targeted killing practices. As such, their commentary is oftentimes premised on easily describable issues, and fails to grapple with the multiple levels of intergovernmental accountability present in current practice. When dealing with the theoretical and normative issues associated with targeted killings, scholars have failed to specify what they mean when they aver that targeted killings are unaccountable. Both trends have impeded legal theory, and constrained scholarly discourse on a matter of public import.

This article is a necessary corrective to the public and scholarly debate. It has presented the complex web of bureaucratic, legal, professional, and political accountability mechanisms that exert influence over the targeted killing process. It has demonstrated that many of the critiques of targeted killings rest upon poorly conceived understandings of the process, unclear definitions, and unsubstantiated speculation. The article’s reform recommendations, grounded in a deep understanding of the actual process, reflect an assumption that transparency, performance criteria, and politically grounded independent review can enhance the already robust accountability mechanisms embedded in current practice.

#### It’s the most comprehensive review of the process possible

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>

To overcome the lack of empirical evidence which plagues theoretical discourse regarding targeted killings, I conducted field research using proven qualitative research techniques employed by case study researchers.18 The results of that research are contained in Parts II and III of this article, which explain how targeted killings are conducted. Part II addresses how kill-lists are made and Part III addresses how targeted killings are executed. The case study began with a review of hundreds of pages of military policy memoranda, disclosures of government policies through Freedom of Information Act (FOIA) requests by NGOs and filings in court documents, public statements by military and intelligence officials, and descriptive accounts reported by the press and depicted in non-fiction books. I supplemented these findings by observing and reviewing aspects of the official training for individuals involved in targeted killings and by conducting confidential interviews with members of the military, special operations, and intelligence community who are involved in the targeted killing process. An earlier version of this article included citations to the confidential interviews, however every piece of information gathered in an interview has been substantiated by a publicly available source, obviating the need to cite to any individual interview. These research techniques resulted in a richly detailed depiction of the targeted killing process, the first of its kind to appear in any single publication. As such, these sections are quite lengthy, but the description is essential to legal theory as it is impossible to accurately critique on accountability grounds a process for which no empirical account exists.

#### This also proves the executive CP solves the case---the problem is not lack of accountability, it’s the relative emphasis on certain goals within the targeting program---which the CP can clearly adjust effectively

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>

Clearly, many of the concerns raised by critics are already considered within the kill-list creation process.198 Perhaps critics are expressing doubt as to whether the concerns listed above are being attributed sufficient weight, or are thoroughly debated. Or perhaps they are concerned that the U.S. Government is not attributing to these factors the weight that critics would assign to them. That concern has less to do with a lack of accountability than it does with policy choices, and how to hold those making policy choices accountable. Thus a critical component of accountability is to resolve who it is that makes the ultimate decision with regard to the policy choice to add a name to a killlist. That decision is addressed in the final steps known as voting and nominating.

## AT: Abbas

### Low-Level Militants Key

#### Targeting low-level militants is key to all aspects of counter-terror---in-depth network analysis means the people we target don’t seem important to observers, but they’re actually vital to the effectiveness of terror groups

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>

This becomes obvious when one considers that national security bureaucrats will look beyond criticality and vulnerability, and also engage in network-based analysis. Network-based analysis looks at terrorist groups as nodes connected by links, and assesses how components of that terrorist network operate together and independently of one another.143 Contrary to popular critiques of the targeting process that liken it to a “haphazardly prosecuted assassination program,” in reality modern targeting involves applying pressure to various nodes and links within networks to disrupt and degrade their functionality.144

To effectively pursue a network-based approach, bureaucrats rely in part on what is known as “pattern of life analysis” which involves “connecting the relationships between places and people by tracking their patterns of life.” This analysis draws on the interrelationships among groups “to determine the degree and points of their interdependence,” it assesses how activities are linked and looks to “determine the most effective way to influence or affect the enemy system.”145 While the enemy moves from point to point, reconnaissance or surveillance tracks and notes every location and person visited. Connections between the target, the sites they visit, and the persons they interact with are documented, built into a network diagram, and further analyzed.146 Through this process links and nodes in the enemy's network emerge.147 The analysis charts the “social, economic and political networks that underpin and support clandestine networks,”148 identifying key decision-makers and those who support or influence them indirectly.149 This may mean that analysts will track logistics and money trails, they may identify key facilitators and non-leadership persons of interests, and they will exploit human and signals intelligence combined with computerized knowledge integration that generates and cross-references thousands of data points to construct a comprehensive picture of the enemy network.150 “This analysis has the effect of taking a shadowy foe and revealing his physical infrastructure . . . as a result, the network becomes more visible and vulnerable, thus negating the enemy’s asymmetric advantage of denying a target.”151

Viewing targeting in this way demonstrates how seemingly low-level individuals such as couriers and other “middle-men” in decentralized networks such as al Qaeda are oftentimes critical to the successful functioning of the enemy organization.152 Targeting these individuals can “destabilize clandestine networks by compromising large sections of the organization, distancing operatives from direct guidance, and impeding organizational communication and function.”153 Moreover, because clandestine networks rely on social relationships to manage the trade-off between maintaining secrecy and security, attacking key nodes can have a detrimental impact on the enemy’s ability to conduct their operations.154 Thus, while some individuals may seem insignificant to the outside observer, when considered by a bureaucrat relying on network based analytical techniques, the elimination of a seemingly low level individual might have an important impact on an enemy organization. Moreover, because terrorist networks rely on secrecy in communication, individuals within those networks may forge strong ties that remain dormant for the purposes of operational security.155 This means that social ties that appear inactive or weak to a casual observer such as an NGO, human rights worker, journalist, or even a target’s family members may in fact be strong ties within the network.156 Furthermore, because terrorist networks oftentimes rely on social connections between charismatic leaders to function, disrupting those lines of communication can significantly impact those networks.157

#### Targeting low-level operatives is key to the entire war on terror---just because their authors don’t understand why, that doesn’t mean they’re right

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>

While al Qaeda has relied heavily on social hierarchy and key individuals to inspire action at lower levels,158 it can best be understood as a decentralized social network. Such social networks have hubs and nodes that can be targeted with strikes aimed at pressuring the network to harass it, leveraging the deaths of middle-men to disable it, and desynchronizing the network by targeting decision-makers and figureheads to alienate operatives and leaders.159 Of course networks are notably resistant to the loss of any one node, therefore the focus of targeting is to identify the critical person whose removal will cause the most damage to the network, and to remove sufficient critical nodes simultaneously, such that the network cannot reroute linkages.160 For example, Osama Bin Laden's courier, Abu Ahmed al-Kuwaiti, was Bin Laden's sole means of communicating with the rest of al Qaeda. By tracking al-Kuwaiti, analysts could determine the links and nodes in Bin Laden’s network. Moreover, if the government chose to kill al-Kuwaiti, a mere courier, it would have prevented Bin Laden from leading his organization (desynchronizing the network) until Bin Laden could find a trustworthy replacement. Finding such a replacement would be a difficult task considering that al Kuwaiti lived with Bin Laden, and was his trusted courier for years.161 Similarly the example of the U.S. experience in Iraq is instructive:

Al-Qaeda in Iraq task organized itself across a range of operational and support specialties that required the services of “facilitators, financiers, computer specialists, or bomb makers.” Attacking these leverage points enabled [attackers] to attempt to destroy the clandestine network's functionality; to damage the network “so badly that it cannot perform any function or be restored to a usable condition without being entirely rebuilt.” This deprofessionalized the network and imposed additional recruitment and training costs that further diminished operational capacity.162

As these examples demonstrate, sometimes targeting even low-level operatives can make a contribution to the U.S. war effort against al Qaeda and associated forces. Of course, there are legal consequences associated with this dispersal of al Qaeda and associated forces into a network, and to the manner in which the U.S. government determines if individuals are sufficiently tied to groups with whom the U.S. sees itself at war. Perhaps one of the biggest challenges is that to an external observer, it is not clear what criteria apply to identify an individual or a group as an associated force.163 As one NGO critic has stated, “It's difficult to see how any killings carried out in 2012 can be justified as in response to [the attacks that took place] in 2001. Some states seem to want to invent new laws to justify new practices.”164 However, just because it’s difficult for a worker at an NGO to see the relationship, it does not mean that the relationship does not exist. Nevertheless, the legal challenges have not been lost on the Obama administration, as Daniel Klaidman noted:

[President Obama] understood that in the shadow wars, far from conventional battlefields, the United States was operating further out on the margins of the law. Ten years after 9/11, the military was taking the fight to terrorist groups that didn't exist when Congress granted George Bush authority to go to war against al- Qaeda and the Taliban. Complicated questions about which groups and individuals were covered . . . were left to the lawyers. Their finely grained distinctions and hair-splitting legal arguments could mean the difference between who would be killed and who would be spared.165

Accountability for these “finely grained” legal distinctions is bound up in bureaucratic analysis that is not readily susceptible to external review. It relies on thousands of data points, spread across geographic regions and social relationships making it inherently complex and opaque. Accordingly, the propriety of adding an individual to a kill-list will be bound up in the analyst’s assessment of these targeting factors, and the reliability of the intelligence information underlying the assessment. How well that information is documented, how closely that information is scrutinized, and by whom, will be a key factor in any assessment of whether targeted killings are accountable.

## AT: Allies

### SQ Solves – Yes Allied Coop

#### 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.”

### Coop Inevitable – Self-Interest

#### EU cooperation on terrorism intel high and inevitable – in their self interest

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 its drive to bolster its counterterrorism capabilities, the EU has also made promoting law enforcement and intelligence cooperation with the United States a top priority. Washington has largely welcomed these efforts, recognizing that they may help root out terrorist cells both in Europe and elsewhere, and prevent future attacks against the United States or its interests abroad. 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. Contacts between U.S. and EU officials on police, judicial, and border control policy matters have increased substantially since 2001. A number of new U.S.-EU agreements have also been reached; these include information-sharing arrangements between the United States and EU police and judicial bodies, two new U.S.-EU treaties on extradition and mutual legal assistance, and accords on container security and airline passenger data. In addition, the United States and the EU have been working together to curb terrorist financing and to strengthen transport security.

## 1NC Link Turn D

### Link Defense — Backlash

#### Alternatives to drones are worse for credibility---and even eliminating them’s not enough to solve

Amitai Etzioni 12, senior advisor to the Carter White House; taught at Columbia University, Harvard and The University of California at Berkeley; and is a university professor and professor of international relations at The George Washington University, 4/2/12, “In Defense of Drones,” http://nationalinterest.org/commentary/defense-drones-6715

Rohde acknowledges that we are dealing with people who make and plant bombs and train suicide bombers, and people who otherwise could not be reached. He reminds us that those we are going after, in the case of Pakistan, are in "the remote tribal areas, which is basically this Taliban safe haven, where they retreat from Afghanistan, and rest and train and recoup. So the only way the United States can sort of pressure the Taliban once they cross the border into Pakistan are these drone strikes.” Well put, but hardly a reason we should not order more drones rather than stand them down.

Why are drones so bad? Mr. Rohde, who was kidnapped by the Taliban and held by them for seven months, a period during which drones were buzzing above his head, tells us that the drones are "haunting.” He found that once the drones were widely used, "the Taliban did not gather in large groups for trainings. . . . And so they're very nervous. . . . They don't move in large convoys. So it definitely slows them down.” I can understand those who argue that we must find a political solution to the conflicts and that military means alone will not suppress the Taliban nor prevent the area from serving as a staging ground for the next 9/11. But as long as fight we must, what exactly is wrong with slowing down our adversaries, making them nervous and preventing them from training in large groups?

In addition, Rohde argues that drones are bad for public relations. He says that "in every country that they're carried out, they are seen as this sort of oppressive American weapon. They attract tremendous public attention and they also fuel tremendous resentment." True enough, but in nations in which the United States uses no drones, it is much resented—in Egypt, for instance. Muslims have many reasons to resent Washington, including its support of Israel and of autocrats in the Middle East, torture of prisoners in Abu Ghraib, the burning of Korans, the collateral damage of bombers other than drones—and above all, American attempts to much change their ways of life.

Moreover, few things agitate Muslims around the world, polls show, more than the presence of American troops—which would have to be used if drones were parked. This was recently highlighted when the Libyan rebels welcomed American and other NATO forces’ bombardment of the Qaddafi forces, even after, in some cases, the rebels suffered casualties as a result of friendly fire—but they strongly opposed any foreign boots on their ground. Drones are alienating, but not more so, and often less, than other things we must do if we are going to fight terrorists and those who harbor them.

#### There’s no impact to anti-drones backlash

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

This is the crux of the problem. We stand at the beginning of the Drone Age and the genie is not going to climb back into the bottle. The chances that this way of war will, over time, reduce the amount of random violence in the world are essentially nil. Obama’s drone policy has set an ominous precedent, and not only for future residents of the White House. It promises, over the long term, to engender more violence than it prevents because it excites no public backlash. That, for the permanent national security apparatus that has deftly moulded the worldview of a novice president, is its irresistible allure. It doesn’t provoke significant protest even on the part of people who condemn hit-jobs done with sticky bombs, radioactive isotopes or a bullet between the eyes – in the style of Mossad or Putin’s FSB. That America appears to be laidback about drones has made it possible for the CIA to resume the assassination programme it was compelled to shut down in the 1970s without, this time, awakening any politically significant outrage. It has also allowed the Pentagon to wage a war against which antiwar forces are apparently unable to rally even modest public support.

### Link Defense — Casualties

#### Casualties are way down and drones are far more precise than alternatives---our ev uses the best data

Michael Cohen 13, Fellow at the Century Foundation, 5/23/13, “Give President Obama a chance: there is a role for drones,” The Guardian, http://www.theguardian.com/commentisfree/2013/may/23/obama-drone-speech-use-justified

Drone critics have a much different take. They are passionate in their conviction that US drones are indiscriminately killing and terrorizing civilians. The Guardian's own Glenn Greenwald argued recently that no "minimally rational person" can defend "Obama's drone kills on the ground that they are killing The Terrorists or that civilian deaths are rare". Conor Friedersdorf, an editor at the Atlantic and a vocal drone critic, wrote last year that liberals should not vote for President Obama's re-election because of the drone campaign, which he claimed "kills hundreds of innocents, including children," "terrorizes innocent Pakistanis on an almost daily basis" and "makes their lives into a nightmare worthy of dystopian novels". ¶ I disagree. Increasingly it appears that arguments like Friedersdorf makes are no longer sustainable (and there's real question if they ever were). Not only have drone strikes decreased, but so too have the number of civilians killed – and dramatically so. ¶ This conclusion comes not from Obama administration apologists but rather, Chris Woods, whose research has served as the empirical basis for the harshest attacks on the Obama Administration's drone policy. ¶ Woods heads the covert war program for the Bureau of Investigative Journalism (TBIJ), which maintains one of three major databases tabulating civilian casualties from US drone strikes. The others are the Long War Journal and the New America Foundation (full disclosure: I used to be a fellow there). While LWJ and NAJ estimate that drone strikes in Pakistan have killed somewhere between 140 and 300 civilians, TBIJ utilizes a far broader classification for civilians killed, resulting in estimates of somewhere between 411-884 civilians killed by drones in Pakistan. The wide range of numbers here speaks to the extraordinary challenge in tabulating civilian death rates. ¶ There is little local reporting done on the ground in northwest Pakistan, which is the epicenter of the US drone program. As a result data collection is reliant on Pakistani news reporting, which is also dependent on Pakistani intelligence, which has a vested interest in playing up the negative consequences of US drones. ¶ When I spoke with Woods last month, he said that a fairly clear pattern has emerged over the past year – far fewer civilians are dying from drones. "For those who are opposed to drone strikes," says Woods there is historical merit to the charge of significant civilian deaths, "but from a contemporary standpoint the numbers just aren't there." ¶ While Woods makes clear that one has to be "cautious" on any estimates of casualties, it's not just a numeric decline that is being seen, but rather it's a "proportionate decline". In other words, the percentage of civilians dying in drone strikes is also falling, which suggests to Woods that US drone operators are showing far greater care in trying to limit collateral damage. ¶ Woods estimates are supported by the aforementioned databases. In Pakistan, New America Foundation claims there have been no civilian deaths this year and only five last year; Long War Journal reported four deaths in 2012 and 11 so far in 2013; and TBIJ reports a range of 7-42 in 2012 and 0-4 in 2013. In addition, the drop in casualty figures is occurring not just in Pakistan but also in Yemen. ¶ These numbers are broadly consistent with what has been an under-reported decline in drone use overall. According to TBIJ, the number of drone strikes went from 128 in 2010 to 48 in 2012 and only 12 have occurred this year. These statistics are broadly consistent with LWJ and NAF's reporting. In Yemen, while drone attacks picked up in 2012, they have slowed dramatically this year. And in Somalia there has been no strike reported for more than a year. ¶ Ironically, these numbers are in line with the public statements of CIA director Brennan, and even more so with Senator Dianne Feinstein of California, chairman of the Select Intelligence Committee, who claimed in February that the numbers she has received from the Obama administration suggest that the typical number of victims per year from drone attacks is in "the single digits".¶ Part of the reason for these low counts is that the Obama administration has sought to minimize the number of civilian casualties through what can best be described as "creative bookkeeping". The administration counts all military-age males as possible combatants unless they have information (posthumously provided) that proves them innocent. Few have taken the White House's side on this issue (and for good reason) though some outside researchers concur with the administration's estimates.¶ Christine Fair, a professor at Georgetown University has long maintained that civilian deaths from drones in Pakistan are dramatically overstated. She argues that considering the alternatives of sending in the Pakistani military or using manned aircraft to flush out jihadists, drone strikes are a far more humane method of war-fighting.

#### Tech advances and tighter rules of engagement are substantially reducing civilian casualties---alternatives to drones are worse

Rosa Brooks 13, Professor of Law, Georgetown University Law Center and Bernard L. Schwartz Senior Fellow, New America Foundation, 4/23/13, “The Constitutional and Counterterrorism Implications of Targeted Killing,” <http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf>

\*We do not endorse gendered language

First, critics often assert that US drone strikes are morally wrong because the kill innocent civilians. This is undoubtedly both true and tragic -- but it is not really an argument against drone strikes as such. War kills innocent civilians, period. But the best available evidence suggests that US drone strikes kill civilians at no higher a rate, and almost certainly at a lower rate, than most other common means of warfare. ¶ Much of the time, the use of drones actually permits far greater precision in targeting than most traditional manned aircraft. Today's unmanned aerial vehicles (UAVs) can carry very small bombs that do less widespread damage, and UAVs have no human pilot whose fatigue might limit flight time. Their low profile and relative fuel efficiency combines with this to permit them to spend more time on target than any manned aircraft. Equipped with imaging technologies that enable operators even thousands of miles away to see details as fine as individual faces, modern drone technologies allow their operators to distinguish between civilians and combatants far more effectively than most other weapons systems.¶ That does not mean civilians never get killed in drone strikes. Inevitably, they do, although the covert nature of most US strikes and the contested environment in which they occur makes it impossible to get precise data on civilian deaths. This lack of transparency inevitably fuels rumors and misinformation. However, several credible organizations have sought to track and analyze deaths due to US drone strikes. The British Bureau of Investigative Journalism analyzed examined reports by "government, military and intelligence officials, and by credible media, academic and other sources," for instance, and came up with a range, suggesting that the 344 known drone strikes in Pakistan between 2004 and 2012 killed between 2,562 and 3,325 people, of whom between 474 and 881 were likely civilians.1 (The numbers for Yemen and Somalia are more difficult to obtain.) The New America Foundation, with which I am affiliated, came up with slightly lower numbers, estimating that US drone strikes killed somewhere between 1,873 and 3,171 people overall in Pakistan, of whom between 282 and 459 were civilians. 2¶ Whether drones strikes cause "a lot" or "relatively few" civilian casualties depends what we regard as the right point of comparison. Should we compare the civilian deaths caused by drone strikes to the civilian deaths caused by large-scale armed conflicts? One study by the International Committee for the Red Cross found that on average, 10 civilians died for every combatant killed during the armed conflicts of the 20th century.3 For the Iraq War, estimates vary widely; different studies place the ratio of civilian deaths to combatant deaths anywhere between 10 to 1 and 2 to 1.4¶ The most meaningful point of comparison for drones is probably manned aircraft. It's extraordinarily difficult to get solid numbers here, but one analysis published in the Small Wars Journal suggested that in 2007 the ratio of civilian to combatant deaths due to coalition air attacks in Afghanistan may have been as high as 15 to 1.5 More recent UN figures suggest a far lower rate, with as few as one civilian killed for every ten airstrikes in Afghanistan.6 But drone strikes have also gotten far less lethal for civilians in the last few years: the New America Foundation concludes that only three to nine civilians were killed during 72 U.S. drone strikes in Pakistan in 2011, and the 2012 numbers were also low.7 In part, this is due to technological advances over the last decade, but it's also due to far more stringent rules for when drones can release weapons.¶ Few details are known about the precise targeting procedures followed by either US armed forces or the Central Intelligence Agency with regard to drone strikes. The Obama Administration is reportedly finalizing a targeted killing “playbook,”8 outlining in great detail the procedures and substantive criteria to be applied. I believe an unclassified version of this should be should be made public, as it may help to diminish concerns reckless or negligent targeting decisions. Even in the absence of specific details, however, I believe we can have confidence in the commitment of both military and intelligence personnel to avoiding civilian casualties to the greatest extent possible. The Obama Administration has stated that it regards both the military and the CIA as bound by the law of war when force is used for the purpose of targeted killing. 9 (I will discuss the applicable law of war principles in section IV of this statement). What is more, the military is bound by the Uniform Code of Military Justice. ¶ Concern about civilian casualties is appropriate, and our targeting decisions, however thoughtfully made, are only as good as our intelligence—and only as wise as our overall strategy. Nevertheless, there is no evidence supporting the view that drone strikes cause disproportionate civilian casualties relative to other commonly used means or methods of warfare. On the contrary, the evidence suggests that if the number of civilian casualties is our metric, drone strikes do a better job of discriminating between civilians and combatants than close air support or other tactics that receive less attention.

## AT: Drones Fail

### Drones Key---General---2NC

#### Prefer our evidence---critics are wrong---drones are highly effective at CT, and don’t cause high civilian casualties or blowback

Alex Young 13, Associate Staff, Harvard International Review, 2/25/13, “A Defense of Drones,” Harvard International Review, http://hir.harvard.edu/a-defense-of-drones

The War on Terror is no longer a traditional conflict. The diffuse, decentralized nature of terrorist organizations had already made this an unconventional war; now, the use of unmanned aircraft has added another non-traditional layer. Conventional military strategies have failed in Iraq and Afghanistan: the United States has, in many cases, stopped sending people into combat, opting instead for airstrikes by unmanned aerial vehicles. Over the past decade, US military and intelligence agencies have expanded their use of unmanned Predator and Reaper drones; these robotic aircraft are generally used to carry out targeted strikes against known members of terrorist groups. US reliance on drones in Afghanistan, Pakistan, Yemen, and other countries has changed the nature of the war on terror.

This strategy is not without controversy. The Obama administration’s heavy use of unmanned drones in the War on Terror has come under fire from a variety of opponents, including human rights groups, think tanks, and even foreign governments. Critics claim that drone strikes cause civilian casualties, incorrectly target only the most prominent leaders of terrorist groups, and create backlash against the US. To hear some tell it, the use of drones exacerbates, rather than solves, the problem of terrorism.

The reality is not so bleak: drones are very good at what they do. Unmanned attacks are highly effective when it comes to eliminating specific members of terrorist organizations, disrupting terrorist networks without creating too much collateral damage. Their effectiveness makes drone strikes a vital part of US counterterrorism strategy.

Predator and Reaper drones are not the indiscriminate civilian-killers that some make them out to be: strikes are targeted and selective. This has become increasingly true as drone technology has improved, and as the military has learned how best to use them. A confluence of factors has made drone strikes much better at eliminating enemy militants while avoiding civilians: drones now carry warheads that produce smaller blast radiuses, and the missiles carrying those warheads are guided using laser, millimeter-wave, and infrared seekers. The result has been less destructive drone strikes that reach their intended target more reliably. A number of non-technological shifts have also made drones a more useful tool: Peter Bergen, a national security analyst for CNN, summarized on July 13th, 2012 that more careful oversight, a deeper network of local informants, and better coordination between the US and Pakistani intelligence communities have also contributed to better accuracy. Data gathered by the Long War Journal indicates that the civilian casualty rate for 2012 and the beginning of 2013 is only 4.5 percent. Even Pakistani Major General Ghayur Mehmood acknowledges that, “most of the targets [of drone strikes] are hard-core militants.” Imprecise drone strikes that cause many civilian casualties are now a thing of the past. This improved accuracy may also help to mitigate anti-American sentiment that stems from civilian casualties.

#### Targeted killings play several irreplaceable functions in CT:

#### 1) Leadership decapitation

#### a) Drones are key---militants can’t replace senior leaders

Patrick B. Johnston 13, Associate Political Scientist, RAND Corporation, and Anoop Sarbahi, postdoctoral scholar in the Department of Political Science at the University of California, Los Angeles, July 2013, “The Impact of U.S. Drone Strikes on Terrorism in Pakistan and Afghanistan,” <http://patrickjohnston.info/materials/drones.pdf>

We expect drone strikes that kill terrorist leaders will be associated with reductions in terrorist attacks. Previous research convincingly demonstrates that conducting effective terrorist attacks requires skilled individuals, many of whom are well-educated and come from upper middle- class backgrounds. 21 Indeed, captured documents containing detailed biographical data on foreign al Qa’ida militants in Iraq illustrate that among the foreign terrorists—who are conventionally known to be more sophisticated than local fighters—their most commonly listed “occupation” prior to arriving in Iraq was that of “student.” For militants for whom information on “experience” was available, “computers” was the most commonly listed experience type, just ahead of “weapons.”22

In the context of northwest Pakistan, where militant freedom of movement is limited by the threat of drone strikes, we expect that militant groups will be unable to replace senior leaders killed in drone strikes because recruiting and deploying them, perhaps from a foreign country with a Salafi jihadist base, will be costly and difficult. This is not to say that leaders killed in drone strikes are irreplaceable. On the contrary, other militants are likely to be elevated within their organization to replace them. But we also anticipate that those elevated to replace killed leaders will be, on average, of lower quality to the organization than their predecessors. Thus, we predict that the loss of leaders will be associated with the degradation of terrorists’ ability to produce violence. This logic implies Hypothesis 3:

H3: All else equal, drone strikes that kill one or mor e terrorist leader(s) will lead to a decrease in terrorist violence.

#### b) Data supports our decapitation args

Patrick B. Johnston 13, Associate Political Scientist, RAND Corporation, and Anoop Sarbahi, postdoctoral scholar in the Department of Political Science at the University of California, Los Angeles, July 2013, “The Impact of U.S. Drone Strikes on Terrorism in Pakistan and Afghanistan,” <http://patrickjohnston.info/materials/drones.pdf>

Given that killing terrorist leaders or HVIs in terrorist organizations is the purpose of drone strikes, we evaluate whether patterns of militant attacks differ following strikes in which a militant leader was killed. Table 3 provides tests of Hypotheses 3 and 4 against the four metrics of militant violence examined here using the same 2FESL specifications as in table 2. The results are largely consistent with Hypothesis 3—that killing militant leaders is associated with decreased violence. There is little support for Hypothesis 4, that killing HVIs has counterproductive effects on violence. Controlling for the number of drone strikes per agency-week, the first column of table 3 shows that drone strikes that kill a HVI are associated with reductions in the number of militant incidents that occur. This result is statistically significant at the one-percent level. There is, however, weaker evidence that HVI removals reduce militant lethality and IED attacks.45

Overall, the evidence is somewhat consistent with the argument that individuals matter for a terrorist organization’s ability to produce violence at sustained rates. Along with other evidence from macro-level studies of leadership decapitation, the present results suggest that critics who argue against the efficacy of removing key figures may be overemphasizing the extent to which such individuals can be readily replaced.46

#### 2) Signaling resolve

#### a) Drones are key to effective power projection and demonstrations of resolve---both key to global counter-terrorism

Jacqueline L. Hazelton 13, visiting professor in the University of Rochester Department of Political Science and was previously a research fellow at the Belfer Center, Harvard Kennedy School, Winter-Spring 2013, “Drones: What Are They Good For?,” Parameters, Vol. 42.4/43.1

Drones, like other air and sea platforms, are a form of power projection. They give the United States the ability to mount tactical assaults without necessarily putting US personnel directly in harm’s way, potentially evoking domestic opposition. They also allow the United States to avoid putting its forces in foreign territory, potentially eliciting a nationalistic response. Drones are similar to Special Forces in their direct targeting ability, but they can reach remote locations and, again, do not place US troops directly in peril. Nevertheless, drone strikes do require cooperation by individuals and states on the ground. The United States needs, for example, basing rights, agreements to host launch and recovery personnel and search-and-rescue teams, and overflight permissions.7

A significant concern raised in the public debate is that drones make killing too easy. This is a critical issue that connects to questions about US grand strategy and whether drones encourage imperial overreach.8 But because the United States uses a variety of tools to conduct targeted killings—from the Special Forces raid on Osama bin Laden’s Pakistani compound to the missile strike on Dora Farms, where Saddam Hussein and his sons were believed to be sheltering early in the Iraq War—I suggest there is more to gain analytically by first focusing on understanding the tactic, that is, what targeted killing may and may not achieve as a foreign policy tool, then addressing concerns specific to the platform.9

The second core question pertains to the strategic utility of drone strikes for a state. What political goals can drone strikes achieve? In considering this question, I use a theoretical prism that identifies the fundamental political goals of the state’s use of force to defend, deter, compel, and, sometimes, swagger.10

It is possible to consider targeted killings, specifically those conducted by drones, as an element in a defensive strategy. This strategy would be intended to ward off attack and reduce possible damage by killing leaders and facilitators plotting violence against the United States, and disrupting their operations. It is also possible to argue targeted killings deter future attacks by denying armed groups the capability to conduct those attacks, and punishing those planning violence against the United States and its interests. The deterrence-by-denial argument requires consideration not only of targeted killings but also drone strikes to directly degrade targeted groups’ capabilities in other ways (e.g., cause equipment and supply shortages, operational and strategic paralysis, and disruption of operations).

Drone strikes in this analysis might also deter cooperation with a group based on fear or doubt about the group’s likely success.11 It is harder to argue that targeted killings might exercise a compelling effect by threatening greater pain if the targeted organization does not change its behavior.12 Successful compellence requires displaying to the adversary the will and capability to cause terrible pain if the adversary does not change its behavior. The ethical and legal context of drone use by the United States make it unlikely at first glance that policymakers would choose to use drone strikes to cause pain to an adversary by deliberately targeting innocents. In terms of causing pain to the adversary directly, the death or threat of death to a plotter is an organization’s cost of doing business, not a taste of suffering to come if it does not change its behavior.13

There are several other possible strategic effects of drone strikes. Swaggering, here displaying US military power and its seemingly effortless global reach, arguably demonstrates resolve, a quality that has been underlined as an element of US counterterrorism policy.14 Drone strikes can also be seen as the straightforward use of brute force to destroy those who would threaten the United States or its allies.15 In addition, they are an alliance tool supporting other states, such as Yemen and Pakistan.

#### b) Signaling resolve’s key to deterrence

Gabriella Blum 10, Assistant Professor of Law, Harvard Law School, and Philip Heymann, the James Barr Professor of Law, Harvard Law School, June 27, 2010, “Law and Policy of Targeted Killing,” Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2010/06/Vol-1\_Blum-Heymann\_Final.pdf

At the most basic level, targeted killings, which are generally undertaken with less risk to the attacking force than are arrest operations, may be effective. According to some reports, the killing of leaders of Palestinian armed groups weakened the will and ability of these groups to execute suicide attacks against Israelis. By deterring the leaders of terrorist organizations and creating in some cases a structural vacuum, waves of targeted killing operations were followed by a lull in subsequent terrorist attacks, and in some instances, brought the leaders of Palestinian factions to call for a ceasefire. The Obama administration embraced the targeted killing tactic, holding it to be the most effective way to get at Al-Qaeda and Taliban members in the ungoverned and ungovernable tribal areas along the Afghanistan-Pakistan border or in third countries.

Despite the adverse effects such operations may have on the attitudes of the local population toward the country employing targeted killings, the demonstration of superiority in force and resolve may also dishearten the supporters of terrorism.

Publicly acknowledged targeted killings are furthermore an effective way of appeasing domestic audiences, who expect the government “to do something” when they are attacked by terrorists. The visibility and open aggression of the operation delivers a clearer message of “cracking down on terrorism” than covert or preventive measures that do not yield immediate demonstrable results. The result in Israel has been to make a vast majority of citizens supportive of targeted killings, despite the latter’s potential adverse effects. And, perhaps surprisingly, of all the coercive counterterrorism techniques employed by the United States, targeted killings have so far attracted the least public criticism.

#### 3) Drones have psychological and operational impacts on terror organizations---makes them unable to carry out plots

Stratfor 12 – Strategic Forecasting, global intelligence firm, 1/12/12, “Armed UAV Operations 10 Years On,” http://www.stratfor.com/weekly/armed-uav-operations-10-years

One of the most notable uses of the Predator and Reaper has been in the counterterrorism role, both as an intelligence, surveillance and reconnaissance (ISR) platform and as an on-call strike platform. These armed UAVs are operated both by the U.S. Air Force and, in some cases (as with operations conducted over Pakistan), the CIA. Even before the 9/11 attacks, the armed Predator then in development was being considered as a means not only of keeping tabs on Osama bin Laden but also of killing him. Since then, armed UAVs have proved their worth both in the offensive strike role against specific targets and as a means of maintaining a constant level of threat.

The value of the counterterrorism ISR that can be collected by large UAVs alone is limited since so much depends on how and where they are deployed and what they are looking for. This mission requires not only sophisticated signals but also actionable human intelligence. But as a front-line element of a larger, integrated collection strategy, the armed UAV has proved to be a viable and enduring element of the U.S. counterterrorism strategy worldwide.

The ability to loiter is central and has a value far beyond the physical capabilities of a single airframe in a specific orbit. Operating higher than helicopters and with a lower signature than manned, jet-powered fighter aircraft, the UAV is neither visibly nor audibly obvious (though the degree of inconspicuousness depends on, among other things, weather and altitude). Because UAVs are so discreet, potential targets must work under the assumption that an armed UAV is orbiting within striking distance at all times.

Such a constant threat can place considerable psychological pressure on the prey, even when the predator is large and loud. During the two battles of Fallujah, Iraq, in April and November 2004, AC-130 gunships proved particularly devastating for insurgents pinned in certain quadrants of the city, but AC-130s were limited in number and availability. When it was not possible to keep an AC-130 on station at night (in order to keep the insurgents' heads down), unarmed C-130 transports were flown in the same orbits at altitudes where the distinctive sound of a C-130 could be clearly discerned on the ground, thus maintaining the perception of a possible AC-130 reprisal against any insurgent offensive.

Indeed, it is difficult to overstate the psychological and operational impact of this tactic on a group that experiences successful strikes on its members, even if the strikes are conducted only rarely. Counterterrorism targets in areas where UAVs are known to operate must work under tight communications discipline and constraints, since having their cellular or satellite phone conversations tapped risks not only penetration of communications but immediate and potentially lethal attacks.

The UAV threat was hardly the only factor, but consider how Osama bin Laden's communiques declined from comparatively regular and timely videos to rare audiotapes. In 2001, bin Laden was operating with immense freedom of maneuver and impunity despite the manhunt already under way for him. That situation changed even as he fled to Pakistan, and the combination of aggressive signals as well as UAV- and space-based ISR efforts further constrained his operational bandwidth and relevance as he was forced to focus more and more on his own personal survival.

The UAV threat affects not only the targeted individuals themselves but also their entire organizations. When the failure to adhere to security protocols can immediately yield lethal results, the natural response is to constrict communications and cease contact with untrusted allies, affiliates and subordinates. When the minutiae of security protocols start to matter, the standard for having full faith, trust and confidence among those belonging to or connected with a terrorist organization become much higher. And the more that organization's survival is at stake, the more it must focus on survival, thereby reducing its capacity to engage in ambitious operations. On a deeper level, there is also the value of sowing distrust and paranoia within an organization. This has the same ultimate effect of increasing internal distrust and thereby undermining the spare capacity for the pursuit of larger, external objectives.

#### Drones are highly effective in CT

Alex Young 13, Associate Staff, Harvard International Review, 2/25/13, “A Defense of Drones,” Harvard International Review, http://hir.harvard.edu/a-defense-of-drones

The Obama Administration shows no signs of slowing down its drone war. A drone strike killed two prominent Al Qaeda members in South Waziristan on January 3rd, and four more on January 10th. Contrary to common criticisms of drone warfare, though, this continued use of unmanned airstrikes is absolutely a good course of action from the CIA and the White House. Drone warfare has proved to be a step forward, not backward, in the United States’ struggle to subdue international terrorist organizations. Unmanned airstrikes are highly accurate and effective at disrupting terrorism; drones are and must remain an integral part of the War on Terror.

## Link

### 1NC Link

#### Judicial interference creates a chilling effect that prevents the execution of targeted killing missions

Philip Alston 11, the John Norton Pomeroy Professor of Law, New York University School of Law, was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010, 2011, “ARTICLE: The CIA and Targeted Killings Beyond Borders,” Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283

Three conclusions can be drawn from this survey of potential judicial remedies for CIA misconduct or illegality in relation to targeted killings. The first is that a virtual consensus seems to be shared by the executive branch, Congress, and the courts that alleged misconduct by the CIA should almost never be subjected to domestic legal adjudication. The second is that by dint of various judicially created doctrines, such as the state secrets privilege, U.S. courts have abdicated responsibility in situations in which the courts in countries like Israel, the United Kingdom, Canada, and Australia, and the European Court of Human Rights (monitoring the situation in 47 European states), have all chosen to declare to be justiciable at least in part. The third conclusion is that each branch tends to assume that the other holds open at least some remedial possibilities, while remaining steadfast in not providing it themselves. Congress looks to the courts, the courts look to Congress, and the CIA invokes Congressional oversight in its defense.¶ The final link in this vicious circle is that the CIA itself will go to great lengths to avoid any criminal prosecution of its personnel. This was clearly illustrated when Attorney General Eric Holder appointed a prosecutor to examine whether those involved in the CIA's interrogations [\*401] program had committed any criminal offences. Almost immediately, seven former CIA Directors requested the President to terminate the inquiry on various grounds. They included the need for "permanence in the legal rules" governing the measures taken by such personnel, the risk that the disclosure of information would assist al Qaeda, that foreign intelligence agencies would in future be reluctant to cooperate with the CIA, and that the nation's ability to protect itself would be seriously damaged. n430 The former Attorney General called the investigation "absolutely outrageous" and "unconscionable" and added that "it's going to do no good and demoralize [the CIA] for a long time." n431 After two years, the Attorney General announced that all but two of the almost 100 cases referred to the prosecutor had been closed. n432 In response, the chair of the House Intelligence Committee noted that "an undeserved cloud of doubt and suspicion" had finally been lifted from the CIA and expressed the hope that the CIA could henceforth "move forward with their critical work free from the chilling effect of further investigation," n433 while the ranking member of the Senate Judiciary Committee expressed relief that "our intelligence professionals in the field can stop looking over their shoulders" and [\*402] suggested that the Attorney General should "quit armchair quarterbacking intelligence decisions in the field." n434

### Their JR Ev

#### Farely makes the link — says the plan overturns defference — results in effective Judical Review — says the only reason it doesn’t work in the status quo is the lack of the plan — even if you believe their characterization, it changes obama’s drone policy for the worse because it makes him overly carful — here are quotes

Benjamin R. Farley 12, J.D. with honors, Emory University School of Law, 2011. Editor-in-Chief, Emory International Law Review, 2010-2011. M.A., The George Washington University Elliott School of International Affairs, 2007. Winter. 54 S. Tex. L. Rev. 385

a statutory definition of hostilities will provide the judiciary with a meaningful standard for determining presidential compliance with the WPR - assuming the future existence of a plaintiff able to surmount the various prudential doctrines that have counseled against entertaining WPR cases thus far. Finally, Congress should insist that force used under the covert action legal regime actually be covert. That is, force used under covert action's permissive accountability regime should demonstrate an objective intent to avoid the apparent or publicly acknowledged role of the U.S. government. [\*424] Where a use of force is extensive and U.S. involvement is apparent, that use of force should be subject to the more rigorous WPR regime. The U.S. drone campaign over Pakistan may present just such a case - those strikes ceased being covert in any meaningful way years ago. Thus, the current regime reduces the barriers to a more permissive accountability scheme to a mere labeling exercise. Of course, there are other methods by which accountability for the use-of-force decisions - particularly, use-of-force decisions employing drones - might be increased. Some have suggested the establishment of a "drone court," modeled on the Foreign Intelligence Surveillance Court, to provide ex ante judicial review of targeted strikes, at least. n215 Others have suggested the creation of a new cause of action for the families of drone strike targets who argue their family members were wrongly targeted, and the imposition of ex post accountability. n216 Each suggestion has merit; however, neither suggestion will impose substantially greater accountability on the President as long as the judiciary maintains its historical deference to the President in matters implicating use of force. Regardless, these new judicially-focused schemes require Congressional action, too. Thus, even these schemes require Congress to do what it has so far been unwilling to do: legislate mechanisms that enhance accountability for policymakers charged with deciding when and how force is used.

### Chilling Link

#### Courts or review boards for drones restrain executive flexibility---the process independently deters executive action regardless of the court’s rulings

Jennifer C. Daskal 13, 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,” University of Pennsylvania Law Review, 161 U. Pa. L. Rev. 1165

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.

#### Judicial review massively limits the circumstances in which drones can and will be used

David W. Opderbeck 13, Professor of Law, Seton Hall University School of Law, 8/2/13, “Drone Courts,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2305315

Another important objection to the sort of process outlined above is that it would “normalize” the practice of targeted killing.313 The fact is, however, that the practice has already been “normalized” through the executive branch’s internal interpretive processes, as evidenced in the Justice Department White Paper. Absent an outright ban on the use of drones for targeted killings, which does not seem at all likely, judicial review would go a long way towards clarifying and limiting the circumstances under which such force could be used. Further, with the new micro-drone technologies that are on the near future horizon, a judicial forum seems preferable to the existing practice of secret policies crafted solely by a handful of high-level executive branch officials.

### Imminence

#### Judicial review would result in all targeted killings being ruled unconstitutional---courts would conclude they don’t satisfy the requirement of imminence for use of force in self-defense

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

In the alternative, and far more broadly, the DOJ argued that executive authority to conduct targeted killings is constitutionally committed power. n101 Under this interpretation, the President has the authority to defend the nation against imminent threats of attack. n102 This argument is not limited by statutory parameters or congressional authorization, such as that under the AUMF. n103 Rather, the duty to defend the nation is inherent in the President's constitutional powers and is not subject to judicial interference or review. n104

The DOJ is correct in arguing that the President is constitutionally empowered to use military force to protect the nation from imminent attack. n105 As the DOJ noted in its brief in response, the Supreme Court has held that the president has the authority to protect the nation from "imminent attack" and to decide the level of necessary force. n106 The same is true in the international context. Even though Yemen is not a warzone and al-Qaeda is not a state actor, international law accepts the position that countries may respond to specific, imminent threats of harm with lethal force. n107 [\*1367] Under these doctrines of domestic and international law, the use of lethal force against Aulaqi was valid if he presented a concrete, specific, and imminent threat of harm to the United States. n108

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the "imminence" standard. n109 However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants of authority. n110 In the context of targeted killing, a federal court could evaluate the targeted killing program to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. Targeted killing, by its very name, suggests an entirely premeditated and offensive form of military force. n111 Moreover, the overview of the CIA's targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval. n112 While the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat to the nation, the judiciary has the authority to define "imminence" as a legal standard. n113 These [\*1368] are general concepts of law, not political questions, and they are subject to judicial review. n114

Under judicial review, a court would likely determine that targeted killing does not satisfy the imminence standard for the president's authority to use force in defense of the nation. Targeted killing is a premeditated assassination and the culmination of months of intelligence gathering, planning, and coordination. n115 "Imminence" would have no meaning as a standard if it were stretched to encompass such an elaborate and exhaustive process. n116 Similarly, the concept of "defensive" force is eviscerated and useless if it includes entirely premeditated and offensive forms of military action against a perceived threat. n117 Under judicial review, a court could easily and properly determine that targeted killing does not satisfy the imminence standard for the constitutional use of defensive force. n118

#### Expansive interpretation of imminence is key to win the entire war on terror---prevents bio and nuclear terrorism

John Yoo 12, Professor of Law, University of California at Berkeley, School of Law; Visiting Scholar, American Enterprise Institute, 2011/12, “Assassination or Targeted Killings After 9/11,” New York Law School Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Yoo-56-1.pdf

Imminence is not a purely temporal concept. The concept traces its origins to the 1837 Caroline affair, in which British forces pursued Canadian insurgents into American territory, destroyed a vessel, and killed dozens of U.S. citizens.74 After that incident, the United States and Great Britain agreed in 1841 that a preemptive attack was justified if the “necessity of self-defense [was] instant, overwhelming, leaving no choice of means, and no moment for deliberation.”75 Imminence classically depended on timing. Only when an attack is soon to occur, and thus certain, can a nation use force in preemptive self-defense. What about the magnitude of harm posed by a threatened attack? According to conventional doctrine, a nation must wait until an attack is imminent before using force, whether the attack is launched by a small band of cross-border rebels, as in the Caroline affair, or by a terrorist organization armed with biological or chemical weapons. Terrorist groups today can launch a sudden attack with weapons of devastating magnitude. To save lives, it is now necessary to use force earlier and more selectively.

Imminence as a concept also fails to deal with covert activity. Terrorists deliberately disguise themselves as civilians. Their organizations have no territory or populations to defend, and they attack by surprise. This makes it virtually impossible to use force in self-defense once an attack is “imminent.” There is no target to attack in the form of the army of a nation-state. The best defense will be available only during a small window of opportunity when terrorist leaders become visible to the military or intelligence agencies. This can occur, as in the case of bin Laden, well before a major terrorist attack occurs. Imminence doctrine does not address cases in which an attack is likely to happen, but its timing is unpredictable. Rules of self defense need to adapt to the current terrorist threat.

In addition to imminence, the United States needs to account for the degree of expected harm, a function of the probability of attack times, the estimated casualties, and damage. There is ample justification for factoring this in, just as it ought to be a factor in ordinary acts of self-defense, as when one is attacked with a gun, as opposed to a set of fists. At the time of the Caroline decision in the early nineteenth century, the main weapons of war were single-shot weapons and artillery, cavalry, and infantry. There was an inherent technological limit on the destructiveness of armed conflict.

The speed and severity possible today mean that the right to preempt today should be greater than in the past. Weapons of mass destruction have increased the potential harm caused by a single terrorist attack from hundreds or thousands of innocent lives to hundreds of thousands, or even millions. This is not even counting the profound, long-term destruction of cities or contamination of the environment and the resulting long-term death or disease for large segments of the civilian population. WMDs can today be delivered with ease—a suicide bomber could detonate a “dirty bomb” using a truck or spread a biological agent with a small airplane. These threats are difficult to detect, as no broad mobilization and deployment of regular armed forces will be visible. Probability, magnitude, and timing are relevant factors that must be considered in determining when to use force against the enemy.

#### An expansive interpretation of imminence is key to counter-terror

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

First, the target must be considered an “imminent threat.” The white paper’s deﬁnition of “imminent” is an expansive one. According to the paper, the government can label a threat as “imminent” even if it does not have “evidence that a speciﬁc attack on U.S. persons and interests will take place in the immediate future.”26 Rather, a person might be viewed as an “imminent threat” if an “informed, high-level” government ofﬁcial determines that the target has been recently involved in activities that pose a threat of violent attack and “there is no evidence suggesting that [the target] has renounced or abandoned such activities.”27 This deﬁnition has troubled some legal observers such as Jameel Jaffer, deputy director of the ACLU, who contends that the white paper “redeﬁnes the word imminence in a way that deprives the word of its ordinary meaning.”28 As I see it Al-Qaeda and such other groups are not dual-purpose organizations; one does not join them to provide social services and maybe engage in terrorism. They are dedicated to perpetrating harm. Being a member seems enough to condemn someone—just as if he were a solider in an attacking army. He would qualify as a target even when not actually engaging in an attack but say training, or regrouping, or taking a break.

### Low Link Threshold/Any Constraint

#### The link threshold’s as low as possible---internal executive standards are already as stringent as they can be without compromising mission effectiveness

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>

In Part I we discussed the broad legal and policy determinations that lead to the creation of kill-lists, in Part II we narrowed our focus to the bureaucratic and political vetting of those lists. Now the article turns to the legal and policy considerations that inform the kinetic implementation of the targeted killing policy. When it comes time to eliminate a person on the kill-list, the United States has developed an extensive pre-execution set of policies, doctrine and practices designed to ensure that a target is in fact the person on the kill-list. Similarly, once that target is correctly identified, an elaborate process exists for estimating and mitigating the incidental harm to nearby civilians and civilian objects (so called collateral damage) that might flow from attacking the kill-list target. Discussing the mixture of law and policy applicable to the execution of a targeted killing is critical because in most contemporary operations the policy guidelines, special instructions, and rules of engagement are so restrictive that legal issues will rarely be the determinative factor in a strike.225 Rather, policy instruments will often prohibit attacks against persons that would clearly qualify as lawful targets under the law of armed conflict, and those instructions will place such a low threshold for acceptable collateral damage that attacks are usually prohibited before an operation could ever inflict “excessive” harm to civilians.226 As will be discussed in the end of this Part, where policy instruments differ as to strike authority or “acceptable collateral damage” (e.g strikes in Pakistan versus Afghanistan) we see a difference in the number of reported civilian casualties per strike, suggesting that policy instruments can have a significant impact on the conduct of targeted killings.

#### Internal executive constraints are tight enough that some justified strikes are already precluded---no threshold to reduce them further

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

The more sensitive the target, (i.e., the more likely that innocent civilians might be involved), the higher in the ranks that approval must be sought, sometimes extending all the way to the president or the director of the CIA. President Obama is reported to personally review the ﬁles of all known terrorists before he approves their inclusion in a hit list.16

Michael Scheuer, formerly of the CIA, scoffs at the charge that the review process is not rigorous. He reports that the procedure for nominating individuals for targeted killings is so exhaustive that the CIA often failed to kill those who ought to have been eliminated. Quoted in a 2011 article for Newsweek, Scheuer stated that each nomination, including a short document and “an appendix with supporting information,” was passed along to departmental lawyers, who were “very picky. Often this caused a missed opportunity. The whole idea that people got shot because someone has a hunch—I only wish that was true.”17

John Brennan puts together a weekly “potential target list” based on Pentagon recommendations, which his staff then discusses with other agencies (such as the State Department) before making ﬁnal recommendations to the president, according to the Associated Press. It is the president who then makes the ﬁnal decision regarding whether to target someone with a kinetic strike.

#### The threshold for mission interference is low---targeting opportunities turn in matters of minutes

John Yoo 12, Professor of Law, University of California at Berkeley, School of Law; Visiting Scholar, American Enterprise Institute, 2011/12, “Assassination or Targeted Killings After 9/11,” New York Law School Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Yoo-56-1.pdf

Satellite imagery, sophisticated electronic surveillance, unmanned drones, and precision-guided munitions allow American intelligence and U.S. military forces to strike enemy targets virtually anywhere in the world at any time. Today, the United States can reach beyond the traditional battlefield. It no longer relies on strategic bombing of the enemy and its support structure. Once U.S. intelligence agents receive information that, for instance, an enemy leader is in a safe house in western Pakistan or in a car in Yemen, they can deploy force in hours, if not minutes, rather than the days or weeks it used to take to plan and execute attacks. These capabilities allow the United States to match the unconventional organization and tactics of al-Qaeda with a surgical response that can target its leaders without the extensive harm to civilians that has characterized previous wars.