# Relevant Cards

## 1AC Districts

### Plan

#### The United States federal government should limit the President's war powers authority to assert, on behalf of the United States, immunity from judicial review by establishing a cause of action allowing civil suits brought against the United States by those unlawfully injured by targeted killing operations, their heirs, or their estates in security cleared legal proceedings.

### Advantage 1 is Accountability

#### Accountability mechanisms that constrain the executive prevent drone overuse in Yemen

Benjamin R. Farley 12, JD from Emory University School of Law, former Editor-in-Chief of the Emory International Law Review, “Drones and Democracy: Missing Out on Accountability?” Winter 2012, 54 S. Tex. L. Rev. 385, lexis

Effective accountability mechanisms constrain policymakers' freedom to choose to use force by increasing the costs of use-of-force decisions and imposing barriers on reaching use-of-force decisions. The accountability mechanisms discussed here, when effective, reduce the likelihood of resorting to force (1) through the threat of electoral sanctioning, which carries with it a demand that political leaders explain their resort to force; (2) by limiting policymakers to choosing force only in the manners authorized by the legislature; and (3) by requiring policymakers to adhere to both domestic and international law when resorting to force and demanding that their justifications for uses of force satisfy both domestic and international law. When these accountability mechanisms are ineffective, the barriers to using force are lowered and the use of force becomes more likely.¶ Use-of-force decisions that avoid accountability are problematic for both functional and normative reasons. Functionally, accountability avoidance yields increased risk-taking and increases the likelihood of policy failure. The constraints imposed by political, supervisory, fiscal, and legal accountability "make[] leaders reluctant to engage in foolhardy military expeditions... . If the caution about military adventure is translated into general risk-aversion when it comes to unnecessary military engagements, then there will likely be a distributional effect on the success rates of [democracies]." n205 Indeed, this result is predicted by the structural explanation of the democratic peace. It also explains why policies that rely on covert action - action that is necessarily less constrained by accountability mechanisms - carry an increased risk of failure. n206 Thus, although accountability avoidance seductively holds out the prospect of flexibility and freedom of action for policymakers, it may ultimately prove counterproductive.¶ In fact, policy failure associated with the overreliance on force - due at least in part to lowered barriers from drone-enabled accountability avoidance - may be occurring already. Airstrikes are deeply unpopular in both Yemen n207 and Pakistan, n208 and although the strikes have proven critical [\*421] to degrading al-Qaeda and associated forces in Pakistan, increased uses of force may be contributing to instability, the spread of militancy, and the failure of U.S. policy objectives there. n209 Similarly, the success of drone [\*422] strikes in Pakistan must be balanced against the costs associated with the increasingly contentious U.S.-Pakistani relationship, which is attributable at least in part to the number and intensity of drone strikes. n210 These costs include undermining the civilian Pakistani government and contributing to the closure of Pakistan to NATO supplies transiting to Afghanistan, n211 thus forcing the U.S. and NATO to rely instead on several repressive central Asian states. n212 Arguably the damage to U.S.-Pakistan relations and the destabilizing influence of U.S. operations in Yemen would be mitigated by fewer such operations - and there would be fewer U.S. operations in both Pakistan and Yemen if U.S. policymakers were more constrained by use-of-force accountability mechanisms.¶ From a normative perspective, the freedom of action that accountability avoidance facilitates represents the de facto concentration of authority to use force in the executive branch. While some argue that such concentration of authority is necessary or even pragmatic in the current international environment, 168 it is anathema to the U.S. constitutional system. Indeed, the founding generation’s fear of foolhardy military adventurism is one reason for the Constitution’s diffusion of use-of-force authority between the Congress and the President. 169 That generation recognized that a President vested with an unconstrained ability to go to war is more likely to lead the nation into war.

#### Judicial review is key to prevent mistakes – executive targeting decisions are inevitably flawed

Ahmad Chehab 12, Georgetown University Law Center, “RETRIEVING THE ROLE OF ACCOUNTABILITY IN THE TARGETED KILLINGS CONTEXT: A PROPOSAL FOR JUDICIAL REVIEW,” March 30 2012, abstract available at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572

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

#### Overuse of targeted killings in Yemen strengthens AQAP and fuels instability

Danielle Wiener-Bronner 12/13/13, staff writer at the Wire and former Web Editor for Reuters, “Latest Drone Strikes Shows How U.S. Strategy in Yemen Is Backfiring,” http://www.thewire.com/global/2013/12/yemen-drones/356111/

Targeted drone killings are defended by the United States as means to combat al-Qaeda in the most effective way possible. If attacks are carried out correctly, they should minimize civilian casualties, eliminate risk to our own forces, and remove dangerous militant operatives, ideally dismantling terrorist groups from a safe distance.¶ But if the attacks are not carried out correctly, as they often aren't, the results can backfire, which is exactly what's been happening in Yemen, according to Reuters: ¶ Tribal leaders, who have a lot of influence within Yemen's complex social structure, warn of rising sympathy for al Qaeda. Awad Ahmed Mohsen from Majallah, a southern village hit by a drone strike that killed dozens in 2009, told Reuters that America had brought hatred with its drones. Asked if more people joined al Qaeda in the wake of attacks that killed civilians, Mohsen said: "Definitely. And even those who don't join, now sympathize with al Qaeda because of these strikes, these violations. Any American they see, they exact revenge, even if it's a civilian."¶ On Thursday, 14 Yemeni civilians were killed by a U.S. drone strike that mistakenly targeted a wedding convoy, according to Yemeni national security officials. Another official, however, said AQAP militants may have been traveling with the wedding party, but in either case it seems that civilians were not the original targets have been killed. The CIA didn't comment on the strike, per standard procedure. The attack threatens to undo the U.S.'s efforts to scale back its drone program, while making it more palatable to the countries it affects.¶ Reuters reports that al-Qaeda in the Arabian Peninsula (AQAP) has started traveling in smaller groups to avoid the aerial strikes, which may actually make it more difficult to track their motions. And the strikes are angering some Sunni Muslims upset about strikes that kill their supporters, rather than anti-government Shi'ite rebels, fueling sectarian tensions which are already high in the region.¶ If those killed in this week's attack are confirmed to be civilians, according to the Associated Press, it could mean a surge of anti-American sentiment in Yemen: ¶ Civilian deaths have bred resentments on a local level, sometimes undermining U.S. efforts to turn the public against the militants. The backlash in Yemen is still not as large as in Pakistan, where there is heavy pressure on the government to force limits on strikes — but public calls for a halt to strikes are starting to emerge.¶ In May, President Obama promised to increase transparency on the drone strike program and enhance guidelines on their use. But the Bureau of Investigative Journalism found in November that the six months following Obama's speech actually saw an increase of drone strike casualties in Yemen and Pakistan. ¶ Human Rights Watch and Amnesty International reported in October that civilian casualties of drone strikes are higher than the U.S. admits. Around the same time, a U.N. human rights investigator said 400-600 of the 2,200 people killed by drones in the past decade were noncombatants. And in 2012, reports emerged that the Yemeni government works to help the U.S. hide it deadly errors. ¶ Data on drone strikes, like all counter-terrorism efforts, is necessarily shrouded in mystery, making it difficult to measure success. But if drone strikes continue to indiscriminately kill civilians, moderates in Yemen may be driven towards more extremist positions. Even governments working with Washington to coordinate the strikes could turn against the U.S. if drone casualties are not scaled back or eliminated.

#### AQAP is strengthening now

UPI 1/22, “Report: Al Qaeda systematically assassinating Yemen's intelligence officers,” http://www.albawaba.com/news/yemen-al-qaeda-549282

Dozens of top intelligence and military officers have been assassinated in recent months in a savage campaign widely attributed to jihadists while complex attacks have been conducted against key military installations, all indicating Al Qaeda in the Arabian Peninsula is still a force with which to be reckoned.¶ The group, considered the most dangerous of Al Qaeda's affiliates from the badlands of northern Pakistan to Morocco, includes some of the network's most effective commanders, bomb-makers and ideologues.¶ Despite heavy losses, including several important leaders, from U.S. airstrikes in the last couple of years, AQAP remains a coherent force that counterinsurgency analysts say is steadily regrouping.¶ In 2012, the Yemeni military, heavily supported by U.S. airstrikes and equipment, drove AQAP out of the jihadist emirate it had established in south Yemen's Abyan province by exploiting a seething separatist campaign in the region.¶ But now, the analysts say, AQAP has moved into the eastern province of Hadramaut, which covers a third of the impoverished country, to establish a new base of operations under veteran jihadist Nasir al-Wuhayshi, Osama bin Laden's personal secretary in the 1990s.

#### Several Impacts:

#### 1st is Saudi Arabia

#### Strengthened AQAP undermines the Saudi regime

Colonel Hassan Abosaq 12, US Army War College, master of strategic studies degree candidate, 2012, "The Implications of Unstable on Saudi Arabia," Strategy Research Project, www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA560581

AQAP has been vociferous in its opposition to the Saudi regime, and is likely to continue targeting the Kingdom, particularly its oil installations and members of the royal family. In August 2009, an AQAP member attempted to assassinate Prince Mohammed bin Naif, the Saudi Assistant Interior Minister for security affairs. The prince’s attacker was trained in and launched his attack from Yemen, confirming to the Saudis that instability in Yemen poses a security threat to Saudi Arabia. A strengthened AQAP in Yemen is certain to try to put pressure on Saudi Arabia and to strike Saudi targets. AQAP’s military chief, Qasin al-Raymi, warned the Saudi Leadership in July 2011 that they are still regarded as apostates. And he specifically placed King Abdullah, the late Crown Prince Sultan, Interior Minister Prince Naif, and his son Mohammed Bin Naif on the target list.21 In March 2010, Saudi Arabia foiled several planned attacks on oil installation with the arrest of more than 100 suspected al-Qaeda militants. The arrests included 47 Saudis, 51 Yemenis, a Somali, a Bangladeshi, and an Eritrean.22 The wider domestic strife in Yemen has provided AQAP with some breathing space. More worrisome for Saudi Arabia is the increased lawlessness within Yemen. Not only does this provide the space that al-Qaeda needs to regroup, train, recruit, but it also deflects the state resources away from counterterrorism operations. Saudi Arabia has for years been working to infiltrate al-Qaeda in its unstable neighbor to south, Yemen. Saudi Arabia has also been giving Yemen a great deal of assistance to counterterrorism and it is worrying to the Saudis to see all of that assistance diverted from the purposes for which it was intended. In June 2011, AQAP leaped into the security vacuum created by Yemen’s political volatility, and 63 al-Qaeda in the Arabian Peninsula fighters escaped from a Yemeni prison.23 This exemplifies how Yemeni instability emboldens this lethal al-Qaeda affiliate. As the Yemeni military consolidates its strength in an attempt to maintain state control and fight two insurgencies and oppress the protesters, AQAP has further expanded its safe haven in the country’s interior, further increasing their operational capacity. This organization has not only attacked police, foreigners, and diplomatic missions within the country, but also served as a logistic base for acts of terrorism abroad. Yemen also has become the haven for jihad militants not just from Yemen and Saudi Arabia, but from all over the world which includes some Arabs, Americans, Europeans, Africans and others. Al-Qaeda camps, where terrorists from all over the world train are also situated in Yemen. The growing anarchy and al-Qaeda presence could spill over into Saudi Arabia.

#### That destabilizes the Middle East

Anthony Cordesman 11, Arleigh A. Burke Chair in Strategy at CSIS, former director of intelligence assessment in the Office of the Secretary of Defense, former adjunct prof of national security studies at Georgetown, PhD from London University, Feb 26 2011, “Understanding Saudi Stability and Instability: A Very Different Nation,” http://csis.org/publication/understanding-saudi-stability-and-instability-very-different-nation

History scarcely means we can take Saudi stability for granted. Saudi Arabia is simply too critical to US strategic interests and the world. Saudi petroleum exports play a critical role in the stability and growth of a steadily more global economy, and the latest projections by the Department of Energy do not project any major reductions in the direct level of US dependence on oil imports through 2025.¶ Saudi Arabia is as important to the region’s security and stability as it is to the world’s economy. It is the key to the efforts of the Gulf Cooperation Council to create local defenses, and for US strategic cooperation with the Southern Gulf states. It plays a critical role as a counterbalance to a radical and more aggressive Iran, it is the source of the Arab League plan for a peace with Israel, and it has become a key partner in the war on terrorism. The US strategic posture in the Middle East depends on Saudi Arabia having a friendly and moderate regime.

#### Global nuke war

Primakov 9 [September, Yevgeny, President of the Chamber of Commerce and Industry of the Russian Federation; Member of the Russian Academy of Sciences; member of the Editorial Board of Russia in Global Affairs. This article is based on the scientific report for which the author was awarded the Lomonosov Gold Medal of the Russian Academy of Sciences in 2008, “The Middle East Problem in the Context of International Relations”]

The Middle East conflict is unparalleled in terms of its potential for spreading globally. During the Cold War, amid which the Arab-Israeli conflict evolved, the two opposing superpowers directly supported the conflicting parties: the Soviet Union supported Arab countries, while the United States supported Israel. On the one hand, the bipolar world order which existed at that time objectively played in favor of the escalation of the Middle East conflict into a global confrontation. On the other hand, the Soviet Union and the United States were not interested in such developments and they managed to keep the situation under control. The behavior of both superpowers in the course of all the wars in the Middle East proves that. In 1956, during the Anglo-French-Israeli military invasion of Egypt (which followed Cairo’s decision to nationalize the Suez Canal Company) the United States – contrary to the widespread belief in various countries, including Russia – not only refrained from supporting its allies but insistently pressed – along with the Soviet Union – for the cessation of the armed action. Washington feared that the tripartite aggression would undermine the positions of the West in the Arab world and would result in a direct clash with the Soviet Union. Fears that hostilities in the Middle East might acquire a global dimension could materialize also during the Six-Day War of 1967. On its eve, Moscow and Washington urged each other to cool down their “clients.” When the war began, both superpowers assured each other that they did not intend to get involved in the crisis militarily and that that they would make efforts at the United Nations to negotiate terms for a ceasefire. On July 5, the Chairman of the Soviet Government, Alexei Kosygin, who was authorized by the Politburo to conduct negotiations on behalf of the Soviet leadership, for the first time ever used a hot line for this purpose. After the USS *Liberty* was attacked by Israeli forces, which later claimed the attack was a case of mistaken identity, U.S. President Lyndon Johnson immediately notified Kosygin that the movement of the U.S. Navy in the Mediterranean Sea was only intended to help the crew of the attacked ship and to investigate the incident. The situation repeated itself during the hostilities of October 1973. Russian publications of those years argued that it was the Soviet Union that prevented U.S. military involvement in those events. In contrast, many U.S. authors claimed that a U.S. reaction thwarted Soviet plans to send troops to the Middle East. Neither statement is true. The atmosphere was really quite tense. Sentiments both in Washington and Moscow were in favor of interference, yet both capitals were far from taking real action. When U.S. troops were put on high alert, Henry Kissinger assured Soviet Ambassador Anatoly Dobrynin that this was done largely for domestic considerations and should not be seen by Moscow as a hostile act. In a private conversation with Dobrynin, President Richard Nixon said the same, adding that he might have overreacted but that this had been done amidst a hostile campaign against him over Watergate. Meanwhile, Kosygin and Foreign Minister Andrei Gromyko at a Politburo meeting in Moscow strongly rejected a proposal by Defense Minister Marshal Andrei Grechko to “demonstrate” Soviet military presence in Egypt in response to Israel’s refusal to comply with a UN Security Council resolution. Soviet leader Leonid Brezhnev took the side of Kosygin and Gromyko, saying that he was against any Soviet involvement in the conflict. The above suggests an unequivocal conclusion that control by the superpowers in the bipolar world did not allow the Middle East conflict to escalate into a global confrontation. After the end of the Cold War, some scholars and political observers concluded that a real threat of the Arab-Israeli conflict going beyond regional frameworks ceased to exist. However, in the 21st century this conclusionno longer conforms to the reality. The U.S. military operation in Iraq has changed the balance of forces in the Middle East. The disappearance of the Iraqi counterbalance has brought Iran to the fore as a regional power claiming a direct role in various Middle East processes. I do not belong to those who believe that the Iranian leadership has already made a political decision to create nuclear weapons of its own. Yet Tehran seems to have set itself the goal of achieving a technological level that would let it make such a decision (the “Japanese model”) under unfavorable circumstances. Israel already possesses nuclear weapons and delivery vehicles. In such circumstances, the absence of a Middle East settlement opens a dangerous prospect ofa nuclear collision in the region, which would have catastrophic consequences for the whole world**.** The transition to a multipolar world has objectively strengthened the role of states and organizations that are directly involved in regional conflicts, which increases the latter’s danger and reduces the possibility of controlling them. This refers, above all, to the Middle East conflict. The coming of Barack Obama to the presidency has allayed fears that the United States could deliver a preventive strike against Iran (under George W. Bush, it was one of the most discussed topics in the United States). However, fears have increased that such a strike can be launched *Yevgeny Primakov* 1 3 2 RUSSIA IN GLOBAL AFFAIRS VOL. 7 • No. 3 • JULY – SEPTEMBER• 2009 by Israel, which would have unpredictable consequences for the region and beyond. It seems that President Obama’s position does not completely rule out such a possibility.

#### Second is India

#### Safe haven in Yemen lets AQAP launch attacks on India

Shankar Roychowdhury 11, former Indian Chief of Army Staff and a former member of Parliament, Sept 6 2011, “India needs a 360° terror appraisal,” http://archive.asianage.com/columnists/india-needs-360-terror-appraisal-391

In this context, Al Qaeda and its emerging connections in Yemen have become very relevant for India.¶ Yemen’s predominantly tribal culture and harsh inaccessible terrain create an inherent insularity which, in many ways, makes the country an ideal sanctuary for terrorists. Yemen has, in fact, reportedly become the principal new destination for Pashtun and Punjabi Taliban fleeing intensifying attacks by American drones.¶ Al Qaeda in the Arabian Peninsula (AQAP) has gradually established itself here through a web of alliances with the local tribes, including some by intermarriages, particularly in the inaccessible mountains of the Shabwa province, and has now become a strong presence within the country.¶ There is every likelihood that Pakistan’s ISI has established contacts with the AQAP, though the organisation has been targeted by Saudi and Yemeni intelligence and military who consider Al Qaeda a threat to the ruling establishments.¶ Yemen was in the news because of reports that the AQAP was attempting to procure large quantities of castor beans for manufacturing ricin powder, an extremely lethal poison; it’s swiftly fatal if inhaled in even the most minute doses. These were then to be packed into small explosive dispenser packages and smuggled into the US and Europe, and exploded in crowded places like shopping malls, aircraft or subway stations. It would be a dirty chemical bomb from ingredients freely available in the open market, comparatively cheaper and much more accessible than even the smallest nuclear equivalent. Of course, there is much scepticism about the very feasibility of developing such a project in the primitive environments of Yemen, which is where the significance of a possible Pakistani connection with the AQAP comes in.¶ Consider this. Pakistan has already given a Dr A.Q. Khan to the illegal nuclear market.¶ Given the jihadi influence within the Pakistani scientific community, it is not at all impossible that another similar figure may emerge in that country in the illegal bio-chemical field as well.¶ The AQAP has demonstrated the capability to devise imaginative and ingenuous plans to carry out attacks in the heartlands of the US and western Europe, and some were even put into operation, but detected almost at the last minute.¶ In the past, numerous jihadi attacks have originated from Yemen, including suicide bombing of the US Navy warship USS Cole in Aden harbour in 2010, the attack on the French tanker Limburg, the failed attack on another US Navy warship The Sullivans in 2002, besides the attempted assassination of the Saudi anti-terrorist chief Prince Mohammad bin Nayef.¶ There was also the more bizarre case of an African passenger of Yemeni origin with plastic explosives sewn into his underwear who boarded an American commercial flight flying from Amsterdam and Detroit but failed to¶ set off the explosive when over American airspace. ¶ But fanciful or not, the US for one is certainly taking seriously the capabilities of the AQAP as a potential threat. American military aid and intelligence activities in Yemen, including strikes by American aircraft and drones, have been ramped up, and there are reports that a new American airbase for this purpose is under construction in a yet unspecified country in West Asia.¶ Threats to India’s national security can build up in any quarter, from any region of the world. India should have no doubts that it is very much on the AQAP’s target list, through local proxies like the LeT in Pakistan, including possible “ricin bomb” operations. So even as Mr Hazare wrestles with the threat of corruption to ensure good governance, India must take due note of other threats as well and exercise the requisite caution.

#### Causes Indo-Pak nuclear war

Juan C Zarate 11, senior adviser at the Center for Strategic and International Studies, visiting lecturer at Harvard University, Feb 20 2011, “An alarming South Asia powder keg,” http://www.washingtonpost.com/wp-dyn/content/article/2011/02/18/AR2011021805662.html

Significant terrorist attacks in India, against Parliament in 2001 and in Mumbai in 2008, brought India and Pakistan to the brink of war. The countries remain deeply distrustful of each other. Another major strike against Indian targets in today's tinderbox environment could lead to a broader, more devastating conflict.¶ The United States should be directing political and diplomatic capital to prevent such a conflagration. The meeting between Indian and Pakistani officials in Bhutan this month - their first high-level sit-down since last summer - set the stage for restarting serious talks on the thorny issue of Kashmir.¶ Washington has only so much time. Indian officials are increasingly dissatisfied with Pakistan's attempts to constrain Lashkar-i-Taiba and remain convinced that Pakistani intelligence supports the group. An Indian intelligence report concluded last year that Pakistan's Inter-Services Intelligence Directorate was involved in the 2008 Mumbai attacks, and late last year the Indian government raised security levels in anticipation of strikes. India is unlikely to show restraint in the event of another attack.¶ Lashkar-i-Taiba may also feel emboldened since the assassination in early January of a moderate Punjabi governor muted Pakistani moderates and underscored the weakness of the government in Islamabad. The group does not want peace talks to resume, so it might act to derail progress. Elements of the group may see conflict with India as in their interest, especially after months of unrest in Kashmir. And the Pakistani government may not be able to control the monster it created.¶ A war in South Asia would be disastrous not just for the United States. In addition to the human devastation, it would destroy efforts to bring stability to the region and to disrupt terrorist havens in western Pakistan. Many of the 140,000 Pakistani troops fighting militants in the west would be redeployed east to battle Indian ground forces. This would effectively convert tribal areas bordering Afghanistan into a playing field for militants. Worse, the Pakistani government might be induced to make common cause with Lashkar-i-Taiba, launching a proxy fight against India. Such a war would also fuel even more destructive violent extremism within Pakistan.¶ In the worst-case scenario, an attack could lead to a nuclear war between India and Pakistan. India's superior conventional forces threaten Pakistan, and Islamabad could resort to nuclear weapons were a serious conflict to erupt. Indeed, The Post reported that Pakistan's nuclear weapons and capabilities are set to surpass those of India.

#### Extinction

Greg Chaffin 11, Research Assistant at Foreign Policy in Focus, July 8, 2011, “Reorienting U.S. Security Strategy in South Asia,” online: http://www.fpif.org/articles/reorienting\_us\_security\_strategy\_in\_south\_asia

A nuclear conflict in the subcontinent would have disastrous effects on the world as a whole. In a January 2010 paper published in Scientific American, climatology professors Alan Robock and Owen Brian Toon forecast the global repercussions of a regional nuclear war. Their results are strikingly similar to those of studies conducted in 1980 that conclude that a nuclear war between the United States and the Soviet Union would result in a catastrophic and prolonged nuclear winter, which could very well place the survival of the human race in jeopardy. In their study, Robock and Toon use computer models to simulate the effect of a nuclear exchange between India and Pakistan in which each were to use roughly half their existing arsenals (50 apiece). Since Indian and Pakistani nuclear devices are strategic rather than tactical, the likely targets would be major population centers. Owing to the population densities of urban centers in both nations, the number of direct casualties could climb as high as 20 million. ¶ The fallout of such an exchange would not merely be limited to the immediate area. First, the detonation of a large number of nuclear devices would propel as much as seven million metric tons of ash, soot, smoke, and debris as high as the lower stratosphere. Owing to their small size (less than a tenth of a micron) and a lack of precipitation at this altitude, ash particles would remain aloft for as long as a decade, during which time the world would remain perpetually overcast. Furthermore, these particles would soak up heat from the sun, generating intense heat in the upper atmosphere that would severely damage the earth’s ozone layer. The inability of sunlight to penetrate through the smoke and dust would lead to global cooling by as much as 2.3 degrees Fahrenheit. This shift in global temperature would lead to more drought, worldwide food shortages, and widespread political upheaval.

#### Third is Arms Control

#### Yemen instability undercuts the effectiveness of Middle East arms control measures---has global ripple effects

Dr. Ahmed Saif 12 is Executive Director of the Sheba Centre for Strategic Studies (SCSS), Sana’a, Yemen and Associate Dean at the Yemen College of Middle Eastern Studies, Professor of Politics at Sana’a University and Member of the editorial board of the Journal of Strategic Studies, Bahrain Centre for Strategic Studies, and Lars Berger is a Lecturer in Politics and Contemporary History of the Middle East at the University of Salford/ Manchester, United Kingdom, and Maurice Döring holds an MA in Political Science, International Law and Philosophy from the University of Bonn, and Ahmed Al-Wahishi is Executive Secretary of the Yemeni International Affairs Center (YIAC), Chief Representative of the League of Arab States Mission, May 2012, "Yemen and the Middle East Conference: The Challenge of Failing States and Transnational Terrorism," Policy Brief for the Middle East Conference on a WMD/DVs Free Zone, No. 7, May 2012, usir.salford.ac.uk/22952/1/Yemen\_and\_the\_Middle\_East\_Conference.pdf

Yemen’s ongoing domestic crisis has profound regional and global implications. This is due to the country’s unique combination of a geostrategically sensitive location, the stubborn weakness of state institutions, linkages with transnational terrorism, a prominent role in the regional weapons market, and, crucially, the suspected existence and use of nerve gas. These inter- related challenges might constitute a serious impediment to the short-term success and long-term sustainability of the Middle East Conference (MEC). This gathering on the establishment of a regional zone free of weapons of mass destruction (WMD) and their delivery vehicles (DVs) was mandated by the 2010 Review Conference of the Nuclear Non-Proliferation Treaty (NPT). In this context, Yemen’s ongoing domestic crisis thus requires urgent attention by policy-makers in the region and beyond.¶ The Importance of Yemen in the Context of the Middle East Conference¶ While in a geographical and political sense Yemen is far from being a central actor in the envisioned MEC, its political future could easily shape the gathering on several levels. First, the Middle East Conference aims at establishing a WMD/DVs Free Zone. On the one hand, Yemen is a party to all three legal documents banning weapons of mass destruction: the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention (BTWC), and the Chemical Weapons Convention (CWC). In addition, Sana’a has embraced the Gulf Cooperation Council’s (GCC) call for a Gulf WMD Free Zone, independent of Israeli nuclear policy. On the other hand, when it comes to the problématique of WMD and proliferation, Yemen might store chemical weapons, depending on whether rumors about the use of nerve gas against anti- government protesters in early 2011 turn out to be true. In addition, Yemen imported various WMD-capable aircraft and missiles and probably still operates most of them (see Table No. 1). In the aircraft realm, Yemeni decision-makers from the North, the South, and the unified country alike have mostly received Soviet/Russian fighter jets and bombers. 1¶ The current level of instability and the threat of further deterioration could thus spoil any serious arms control effort in Yemen. This is particularly troublesome since the country, given its history and affiliation with the Arab League, will have to be part of far-reaching regional disarmament initiatives. The prospect of an Arab state with an uncontrolled chemical arsenal is likely to affect Israeli and Iranian calculations with regard to the MEC. Both states are suspicious of the Arab League and tensions between Iran and Saudi Arabia, which is particularly influential in Yemen, have recently worsened. ¶ Second, with a long history as one of the region’s eminent weapons markets, Yemen has the potential to serve as a major gateway for illicit weapons, both conventional and unconventional, entering the Arab peninsula and other parts of the Arab East. If the situation escalates, states with an interest in such technology might, for instance, try to obtain missiles and their spare parts or attempt to gain access to sensitive material from the country’s suspected chemical warheads. This could contribute to the proliferation of delivery systems as well as WMD thereby undermining the MEC. In 2011, protesters seized an army base in Sana’a, while Al-Qaeda in the Arab Peninsula (AQAP) has, on a frequent basis, been able to temporarily control several cities and launch deadly assaults on military bases in the southern province of Abyan. Such developments could offer AQAP the chance to use existing dual-use laboratories or even to build their own facilities capable of producing biological and chemical material in remote areas under their control.¶ Third, Yemen has the potential to play a more prominent role in the ongoing tensions between Saudi Arabia and Iran. Riyadh has a long history of attempts to shape the course of political events in Yemen with which it shares a 1,800 km-long border. Saudi Arabia’s different reactions to domestic calls for change in Bahrain and Syria have made clear that it is viewing the ‘Arab Spring’ primarily through the lens of its long-running conflict with Iran. From a Saudi point of view, instability in Yemen opens up the specter of increased Iranian influence at a time when Tehran’s foothold in the Arab world’s northern tier comes under strain in the context of the popular uprising against the Assad regime in Syria.¶ Fourth, a number of narrowly foiled terrorist attacks on U.S. targets and the 2009 Fort Hood shooting in Texas have shifted global attention towards Yemen’s status as the home to Al-Qaeda in the Arab Peninsula. Continuing instability in Yemen allows AQAP to regroup and pose a direct threat to the security of Saudi Arabia and other countries on the Arab peninsula. It also puts AQAP into a position to intensify its support for the ‘home-grown’ attempted terrorist attacks the United States has witnessed over the last couple of years. In short, Yemen’s instability has the potential to allow transnational actors to undermine the security arrangements which the region’s state actors might contemplate as part of the envisioned MEC.

#### Arms control is key to prevent extinction

Harold Müller 2k, Director of the Peace Research Institute-Frankfurt and Professor of International Relations at Goethe University, “Compliance Politics: A Critical Analysis of Multilateral Arms Control Treaty Enforcement”, The Nonproliferation Review, 7(2), Summer 2000

In this author's view,3 at least four distinct missions continue to make arms control, disarmament, and nonproliferation agreements useful, even indispensable parts of a stable and reliable world security structure: • As long as the risk of great power rivalry and competition exists—and it exists today—constructing barriers against a degeneration of this competition into major violence remains a pivotal task of global security policy. Things may be more complicated than during the bipolar age since asymmetries loom larger and more than one pair of competing major powers may exist. With overlapping rivalries among these powers, arms races are likely to be interconnected, and the stability of any one pair of rivals might be affected negatively by developments in other dyads. Because of this greater risk of instability, the increased political complexity of the post-bipolar world calls for more rather than less arms control. For these competitive relationships, stability or stabilization remains a key goal, and effectively verified agreements can contribute much to establish such stability. • Arms control also has a role to play in securing regional stability. At the regional level, arms control agreements can create balances of forces that reassure regional powers that their basic security is certain, and help build confidence in the basically non-aggressive policies of neighbors. Over time, a web of interlocking agreements may even create enough of a sense of security and confidence to overcome past confrontations and enable transitions towards more cooperative relationships. • At the global level, arms limitation or prohibition agreements, notably in the field of weapons of mass destruction, are needed to ban existential dangers for global stability, ecological safety, and maybe the very survival of human life on earth. In an age of increasing interdependence and ensuing complex networks that support the satisfaction of basic needs, international cooperation is needed to secure the smooth working of these networks. Arms control can create underlying conditions of security and stability that reduce distrust and enable countries to commit themselves to far-reaching cooperation in other sectors without perceiving undesirable risks to their national security. Global agreements also affect regional balances and help, if successful, to reduce the chances that regional conflicts will escalate. Under opportune circumstances, the normative frameworks that they enshrine may engender a feeling of community and shared security interests that help reduce the general level of conflict and assist in ushering in new relations of global cooperation.

#### Middle East arms control solves US-Russia disputes over missile defense---key to relations

Michael Elleman 12, senior fellow for regional security cooperation at the International Institute for Strategic Studies, May 2012, “Banning Long-Range Missiles in the Middle East: A First Step for Regional Arms Control,” http://www.armscontrol.org/act/2012\_05/Banning\_Long-Range\_Missiles\_In\_the\_Middle\_East\_A\_First\_Step\_For\_Regional\_Arms\_Control

The international community, perhaps led by China, Russia, the United States, and key member states of the European Union, should seek to persuade countries in the Middle East to negotiate and agree to a verifiable regime that prohibits the possession or flight testing of intermediate-range and intercontinental ballistic missiles. As outlined above, a combination of incentive packages and diplomatic pressure almost certainly will be required, but the precise nature of the inducements will not become clear until the key parties from the Middle East begin negotiations and define their objectives and concerns.¶ Russia and the United States could begin by offering to create jointly the foundations of a regional monitoring authority whose initial purpose would be to house data on missile and space launches from the region. At first, the database would consist of information gathered by Russian and U.S. sensors and might later be augmented by voluntary submissions to the monitoring authority from countries within the region. The transparency created by the monitoring authority could be used to build a minimal level of trust, from which negotiations on the basic parameters of a ban on long-range missiles could begin.¶ In addition to the diplomatic benefits of contributing to the successful conclusion of a sensitive negotiation, Russia and the United States could gain security benefits from participating. A verifiable ban on long-range missiles would remove most or all of the basis for the planned deployment of the later phases of the U.S.-NATO missile defense system in Europe. U.S.-Russian disagreements over European missile defense currently are an irritant to U.S.-Russian relations and, in particular, are a major obstacle to further arms reductions.

#### US-Russia relations solve nuke war

Allison 11 (Graham, 10/30, Director of the Belfer Center for Science and International Affairs at Harvard’s Kennedy School of Government, “10 reasons why Russia still matters,” http://dyn.politico.com/printstory.cfm?uuid=161EF282-72F9-4D48-8B9C-C5B3396CA0E6)

That central point is that Russia matters a great deal to a U.S. government seeking to defend and advance its national interests. Prime Minister Vladimir Putin’s decision to return next year as president makes it all the more critical for Washington to manage its relationship with Russia through coherent, realistic policies. No one denies that Russia is a dangerous, difficult, often disappointing state to do business with. We should not overlook its many human rights and legal failures. Nonetheless, Russia is a player whose choices affect our vital interests in nuclear security and energy. It is key to supplying 100,000 U.S. troops fighting in Afghanistan and preventing Iran from acquiring nuclear weapons. Ten realities require U.S. policymakers to advance our nation’s interests by engaging and working with Moscow. First, Russia remains the only nation that can erase the United States from the map in 30 minutes. As every president since John F. Kennedy has recognized, Russia’s cooperation is critical to averting nuclear war. Second, Russia is our most consequential partner in preventing nuclear terrorism. Through a combination of more than $11 billion in U.S. aid, provided through the Nunn-Lugar [CTR] Cooperative Threat Reduction program, and impressive Russian professionalism, two decades after the collapse of the “evil empire,” not one nuclear weapon has been found loose. Third, Russia plays an essential role in preventing the proliferation of nuclear weapons and missile-delivery systems. As Washington seeks to stop Iran’s drive toward nuclear weapons, Russian choices to sell or withhold sensitive technologies are the difference between failure and the possibility of success. Fourth, Russian support in sharing intelligence and cooperating in operations remains essential to the U.S. war to destroy Al Qaeda and combat other transnational terrorist groups. Fifth, Russia provides a vital supply line to 100,000 U.S. troops fighting in Afghanistan. As U.S. relations with Pakistan have deteriorated, the Russian lifeline has grown ever more important and now accounts for half all daily deliveries. Sixth, Russia is the world’s largest oil producer and second largest gas producer. Over the past decade, Russia has added more oil and gas exports to world energy markets than any other nation. Most major energy transport routes from Eurasia start in Russia or cross its nine time zones. As citizens of a country that imports two of every three of the 20 million barrels of oil that fuel U.S. cars daily, Americans feel Russia’s impact at our gas pumps. Seventh, Moscow is an important player in today’s international system. It is no accident that Russia is one of the five veto-wielding, permanent members of the U.N. Security Council, as well as a member of the G-8 and G-20. A Moscow more closely aligned with U.S. goals would be significant in the balance of power to shape an environment in which China can emerge as a global power without overturning the existing order. Eighth, Russia is the largest country on Earth by land area, abutting China on the East, Poland in the West and the United States across the Arctic. This territory provides transit corridors for supplies to global markets whose stability is vital to the U.S. economy. Ninth, Russia’s brainpower is reflected in the fact that it has won more Nobel Prizes for science than all of Asia, places first in most math competitions and dominates the world chess masters list. The only way U.S. astronauts can now travel to and from the International Space Station is to hitch a ride on Russian rockets. The co-founder of the most advanced digital company in the world, Google, is Russian-born Sergei Brin. Tenth, Russia’s potential as a spoiler is difficult to exaggerate. Consider what a Russian president intent on frustrating U.S. international objectives could do — from stopping the supply flow to Afghanistan to selling S-300 air defense missiles to Tehran to joining China in preventing U.N. Security Council resolutions.

### Advantage 2 is Preventive War

#### Justifying US targeted killings with an expansive interpretation of “imminence” will spill over to erode legal restraints on all violence and legitimize preventive war

Craig Martin 11, Associate Professor of Law at Washburn University School of Law, “Going Medieval: Targeted Killing, Self-Defence, and the Jus Ad Bellum Regime,” Ch 8 in TARGETED KILLINGS: LAW & MORALITY IN AN ASYMMETRICAL WORLD, p. 223, available at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1956141

IV. The potential impact of the targeted killing policy on international law

The United States has been engaging in this practice of using drone-mounted missile systems to kill targeted individuals since at least 2002.98 An increasing number of countries have employed different methods of targeted killing that constitute a use of force under jus ad bellum.99 The evidence suggests that the United States intends to continue and indeed expand the program, and there is a growing body of scholarly literature that either defends the policy’s legality, or advocates adjustment in international law to permit such action. There is, therefore, a real prospect that the practice could become more widespread, and that customary international law could begin to shift to reflect the principles implicit in the U.S. justification and in accordance with the rationales developed to support it.¶ Some of the implications of such an adjustment in the jus ad bellum regime are obvious from the foregoing analysis. As discussed, there would be a rejection of the narrow principle of self-defense in favor of something much closer to the Grotian concept of defensive war, encompassing punitive measures in response to past attacks and preventative uses of force to halt the development of future threats. The current conditions for a legitimate use of force in self-defense, namely the occurrence or imminence of an armed attack, necessity, and proportionality, would be significantly diluted or abandoned. Not only the doctrine of self-defense, but other aspects of the collective security system would be relaxed as well. Harkening back to Grotian notions of law enforcement constituting a just cause for war, the adjusted jus ad bellum regime would potentially permit the unilateral use of force against and within states for the purpose of attacking NSAs as such, in effect to enforce international law in jurisdictions that were incapable of doing so themselves.100 This would not only further undermine the concept of self-defense, but would undermine the exclusive jurisdiction that the U.N. Security Council currently has to authorize the use of force for purposes of “law enforcement” under Chapter VII of the Charter. Thus, both of the exceptions to the Article 2(4) prohibition on the use of force would be expanded.¶ In addition, however, the targeted killing policy threatens to create other holes in the jus ad bellum regime. This less obvious injury would arise from changes that would be similarly required of the IHL regime, and the resulting modifications to the fundamental relationship between the two regimes. These changes could lead to a complete severance of the remaining connection between the two regimes. Indeed, Ken Anderson, a scholar who has testified more than once on this subject before the U.S. Congress,101 has advocated just such a position, suggesting that the United States should assert that its use of force against other states in the process of targeted killings, while justified by the right to self-defense, does not rise to such a level that it would trigger the existence of an international armed conflict or the operation of IHL principles.102 If customary international law evolved along such lines, reverting to gradations in the types of use of force the change would destroy the unity of the system comprised of the jus ad bellum and IHL regimes, and there would be legal “black holes” in which states could use force without being subject to the limitations and conditions imposed by the IHL regime.¶ The structure of Harold Koh’s two-pronged justification similarly implies a severance of this relationship between jus ad bellum and IHL, albeit in a different and even more troubling way. His policy justification consists of two apparently independent and alternative arguments—that the United States is in an armed conflict with Al Qaeda and associated groups; and that the actions are justified as an exercise of self-defense. The suggestion seems to be that the United States is entitled on either basis to use armed force not just against the individuals targeted, but also against states in which the terrorist members are located. In other words, the first prong of the argument is that the use of force against another sovereign state, for the purposes of targeting Al Qaeda members, is justified by the existence of an armed conflict with Al Qaeda. If this is indeed what is intended by the policy justification, it represents an extraordinary move, not just because it purports to create a new category of armed conflict (that is, a “transnational” armed conflict without geographic limitation),103 but because it also suggests that there need be no jus ad bellum justification at all for a use of force against another state. Rather, the implication of Koh’s rationale is that the existence of an armed conflict under IHL can by itself provide grounds for exemption from the prohibition against the threat or use of force under the jus ad bellum regime.¶ This interpretation of the justifications cannot be pressed too far on the basis of the language of Mr. Koh’s speech alone, which he hastened to explain at the time was not a legal opinion.104 The two justifications could be explained as being supplementary rather than independent and alternative in nature. But the conduct of the United States in the prosecution of the policy would appear to confirm that it is based on these two independent justifications.105 The strikes against groups and states unrelated to the 9/11 attacks could be explained in part by the novel idea that force can be used against NSAs as such, wherever they may be situated. But even assuming some sort of strict liability for states in which guilty NSAs are found, that explanation still does not entirely account for the failure to tie the use of force against the different groups to specific armed attacks launched by each such group. This suggests that the United States is also relying quite independently on the argument that it is engaged in an armed conflict with all of these groups, and that the existence of such an armed conflict provides an independent justification for the use of force against the states in which the groups may be operating.¶ While the initial use of force in jus ad bellum terms is currently understood to bring into existence an international armed conflict and trigger the operation of IHL, the changes suggested by the policy would turn this on its head, by permitting the alleged existence of a “transnational” armed conflict to justify the initial use of force against third states. Whereas the two regimes currently operate as two components of an overall legal system relating to war, with one regime governing the use of force and the other the conduct of hostilities in the resulting armed conflict, the move attempted by the U.S. policy would terminate these independent but inter-related roles within a single system, and expand the role and scope of IHL to essentially replace aspects of the jus ad bellum regime. This would not only radically erode the jus ad bellum regime’s control over the state use of force, but it could potentially undermine the core idea that war, or in more modern terms the use of force and armed conflict, constitutes a legal state that triggers the operation of special laws that govern the various aspects of the phenomenon. There is a risk of return to a pre-Grotian perspective in which “war” was simply a term used to describe certain kinds of organized violence, rather than constituting a legal institution characterized by a coherent system of laws designed to govern and constrain all aspects of its operation.¶ There is a tendency in the U.S. approach to the so-called “global war on terror” to cherry-pick principles of the laws of war and to apply them in ways and in circumstances that are inconsistent with the very criteria within that legal system that determine when and how it is to operate. This reflects a certain disdain for the idea that the laws of war constitute an internally coherent system of law.106 In short, the advocated changes to the jus ad bellum regime and to the relationship between it and the IHL regime, and thus to the laws of war system as a whole,107 would constitute marked departures from the trajectory the system has been on during its development over the past century, and would be a repudiation of deliberate decisions that were made in creating the U.N. system after the Second World War.108¶ The premise of my argument is not that any return to past principles is inherently regressive. A rejection of recent innovations in favor of certain past practices might be attractive to some in the face of new transnational threats. The argument here is not even to deny the idea that the international law system may have to adapt to respond to the transnational terrorist threat. The point, rather, is that the kinds of changes to the international law system that are implicit in the targeted killing policy, and which are advocated by its supporters, would serve to radically reduce the limitations and constraints on the use of force by states against states. The modern principles that are being abandoned were created for the purpose of limiting the use of force and thus reducing the incidence of armed conflict among nations. The rejection of those ideas and a return to older concepts relating to the law of war would restore aspects of a system in which war was a legitimate tool of statecraft, and international armed conflict was thus far more frequent and widespread.109¶ The entire debate on targeted killing is so narrowly focused on the particular problems posed by transnational terrorist threats, and how to manipulate the legal limitations that tend to frustrate some of the desired policy choices, that there is insufficient reflection on the broader context, and the consequences that proposed changes to the legal constraints would have on the wider legal system of which they are a part. It may serve the immediate requirements of the American government, in order to legitimize the killing of AQAP members in Yemen, to expand the concept of self-defense, and to suggest that states can use force on the basis of a putative “transnational” armed conflict with NSAs. The problem is that the jus ad bellum regime applies to all state use of force, and it is not being adjusted in some tailored way to deal with terrorism alone. If the doctrine of self-defense is expanded to include preventative and punitive elements, it will be so expanded for all jus ad bellum purposes. The expanded doctrine of self-defense will not only justify the use of force to kill individual terrorists alleged to be plotting future attacks, but to strike the military facilities of states suspected of preparing for future aggression. If the threshold for use of force against states “harboring” NSAs is significantly reduced, the gap between state responsibility and the criteria for use of force will be reduced for all purposes. If the relationship between jus ad bellum and IHL is severed or altered, so as to create justifications for the use of force that are entirely independent of the jus ad bellum regime, then states will be entitled to use force against other states under the pretext of self-proclaimed armed conflict with NSAs generally.¶ We may think about each of these innovations as being related specifically to operations against terrorist groups that have been responsible for heinous attacks, and applied to states that have proven uniquely unwilling or unable to take the actions necessary to deal with the terrorists operating within their territory. But no clear criteria or qualifications are in fact tied to the modifications that are being advanced by the targeted killing policy. Relaxing the current legal constraints on the use of force and introducing new but poorly defined standards, will open up opportunities for states to use force against other states for reasons that have nothing to do with anti-terrorist objectives. Along the lines that Jeremy Waldron argues in chapter 4 in this volume,110 more careful thought ought to be given to the general norms that we are at risk of developing in the interest of justifying the very specific targeted killing policy. Ultimately, war between nations is a far greater threat, and is a potential source of so much more human suffering than the danger posed by transnational terrorism. This is not to trivialize the risks that terrorism represents, particularly in an age when Al Qaeda and others have sought nuclear weapons. But we must be careful not to undermine the system designed to constrain the use of force and reduce the incidence of international armed conflict, in order to address a threat that is much less serious in the grand scheme of things.

#### Specifically, executive discretion over the legitimacy of targets will eviscerate legal restrictions on self-defense

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

5. Setting Troubling International Precedents ¶ Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice. ¶ Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder. ¶ Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack." ¶ The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. ¶ It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. ¶ This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an ill- defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

#### Now is key---US targeted killing is driving a global shift in strategic doctrines---results in nuclear war

Kerstin Fisk 13, visiting assistant professor in the Department of Political Science at Loyola Marymount University, PhD in Political Science from Claremont Graduate University, and Jennifer M. Ramos, Assistant Professor of Political Science at Loyola Marymount University, PhD in Political Science from UC Davis, April 15 2013, “Actions Speak Louder Than Words: Preventive Self-Defense as a Cascading Norm,” International Studies Perspectives, http://onlinelibrary.wiley.com.turing.library.northwestern.edu/doi/10.1111/insp.12013/full

Preventive self-defense entails waging a war or an attack by choice, in order to prevent a suspected enemy from changing the status quo in an unfavorable direction. Prevention is acting in anticipation of a suspected latent threat that might fully emerge someday. One might rightfully point out that preventive strikes are nothing new—the Iraq War is simply a more recent example in a long history of the preventive use of force. The strategic theorist Colin Gray (2007:27), for example, argues that “far from being a rare and awful crime against an historical norm, preventive war is, and has always been, so common, that its occurrence seems remarkable only to those who do not know their history.” Prevention may be common throughout history, but this does not change the fact that it became increasingly difficult to justify after World War II, as the international community developed a core set of normative principles to guide state behavior, including war as a last resort. The threshold for war was set high, imposing a stringent standard for states acting in self-defense. Gray concedes that there has been a “slow and erratic, but nevertheless genuine, growth of a global norm that regards the resort to war as an extraordinary and even desperate measure” and that the Iraq war set a “dangerous precedent” (44). Although our cases do not provide a definitive answer for whether a preventive self-defense norm is diffusing, they do provide some initial evidence that states are re-orienting their military and strategic doctrines toward offense. In addition, these states have all either acquired or developed unmanned aerial vehicles for the purposes of reconnaissance, surveillance, and/or precision targeting.¶ Thus, the results of our plausibility probe provide some evidence that the global norm regarding the use of force as a last resort is waning, and that a preventive self-defense norm is emerging and cascading following the example set by the United States. At the same time, there is variation among our cases in the extent to which they apply the strategy of self-defense. China, for example, has limited their adaption of this strategy to targeted killings, while Russia has declared their strategy to include the possibility of a preventive nuclear war. Yet, the preventive self-defense strategy is not just for powerful actors. Lesser powers may choose to adopt it as well, though perhaps only implementing the strategy against actors with equal or lesser power. Research in this vein would compliment our analyses herein.¶ With the proliferation of technology in a globalized world, it seems only a matter of time before countries that do not have drone technology are in the minority. While preventive self-defense strategies and drones are not inherently linked, current rhetoric and practice do tie them together. Though it is likely far into the future, it is all the more important to consider the final stage of norm evolution—internalization—for this particular norm. While scholars tend to think of norms as “good,” this one is not so clear-cut. If the preventive self-defense norm is taken for granted, integrated into practice without further consideration, it inherently changes the functioning of international relations. And unmanned aerial vehicles, by reducing the costs of war, make claims of preventive self-defense more palatable to the public. Yet a global norm of preventive self-defense is likely to be destabilizing, leading to more war in the international system, not less. It clearly violates notions of just war principles—jus ad bellum. The United States has set a dangerous precedent, and by continuing its preventive strike policy it continues to provide other states with the justification to do the same.

#### The impact is an endless, global series of preventive wars---those go nuclear

Ariel Colonomos 13, Director of Research at the French National Centre for Scientific Research, Ph.D. in political science from the Institut d'Etudes Politiques de Paris, “The Gamble of War: Is it Possible to Justify Preventive War?” p 72-75, google books

John Yoo holds that the American interventions in Afghanistan or Iraq fulfilled the criteria of necessity and proportionality. To support this argument (which was contested on the invasion of Iraq), he contends that technological change has a direct impact on the calculation of proportionality and the definition of what constitutes an emergency. The proliferation of WMDs, the networking potential of the United States’ enemies, involving also transnational movements, required the adoption of an anticipatory mode of use of force. This is a disturbing line of reasoning. On the one hand—and this is the case with many of the propositions advanced by these intellectuals—it sweeps away the contemporary model of international law, which is based on a cautious (though, it should also be said, ambiguous and hence fragile) interpretation of self-defense. On the other hand, the transition from the empirical to the normative is very abrupt here, with the argument that law depends on the “reality” specific to a particular moment of history. Insofar as WMDs are actually within the reach of a large number of the United States’ enemies today (the USSR and China are no longer the only threats), the world would, in this view, be constantly on tenterhooks at the possibility of a series of preventive wars. These would be triggered by provocations or hasty, contradictory declarations on the part of movements whose strategy is, at times, to draw Westerners—and particularly the American global policeman—into endless wars. This greatly increases instability. During the Cold War, the triggering of a nuclear clash depended on interactions between a limited number of states. Today, nuclear weapons—previously regarded by some as a factor of stability, particularly because of the supposed rationality of those who possessed them—have become grounds for war. More generally there is the whole question of WMDs. The players involved are more numerous, and there is great distrust, both on account of the lack of rationality attributed by the United States to its new enemies and of their greater number and dispersal.

#### Robust norms restricting the use of force empirically prevent conflict escalation among great powers

John Vasquez 9, Thomas B. Mackie Scholar of International Relations and Professor of Political Science at the University of Illinois at Urbana-Champaign, PhD in Poli Sci from Syracuse University, “Peace,” Chapter 8 in The War Puzzle Revisited, p 298-299, google books

Wallensteen’s examination of the characteristics of particularist periods provides significant additional evidence that the steps-to-war analysis is on the right track. Realist practices are associated with war, and peaceful systems are associated with an emphasis on other practices. Peaceful systems are exemplified by the use of practices like buffer states, compensation, and concerts of power that bring major states together to form a network of institutions that provide governance for the system. The creation of rules of the game that can handle certain kinds of issues – territorial and ideological questions – and/or keep them off the agenda seems to be a crucial variable in producing peace.¶ Additional evidence on the import of rules and norms is provided in a series of studies by Kegley and Raymond (1982, 1984, 1986, 1990) that are operationally more precise than Wallensteen’s (1984) analysis. Kegley and Raymond provide evidence that when states accept norms, the incidence of war and military confrontation is reduced. They find that peace is associated with periods in which alliance norms are considered binding and the unilateral abrogation of commitments and treaties illegitimate. The rules imposed by the global political culture in these periods result in fewer militarized disputes and wars between major states. In addition, the wars that occur are kept at lower levels of severity, magnitude, and duration (i.e. they are limited wars).¶ Kegley and Raymond attempt to measure the extent to which global cultural norms restrain major states by looking at whether international law and commentary on it sees treaties and alliances as binding. They note that there have been two traditions in international law – pacta sunt servanda, which maintains that agreements are binding, and clausa rebus sic stantibus, which says that treaties are signed “as matters stand” and that any change in circumstances since the treaty was signed permits a party to withdraw unilaterally. One of the advantages the Kegley-Raymond studies have over Wallensteen (1984) is that they are able to develop reliable measures of the extent to which in any given half-decade that tradition in international law emphasizes the rebus or pacta sunt servanda tradition. This indicator is important not only because it focuses in on the question of unilateral actions, but because it can serve as an indicator of how well the peace system is working. The pacta sunt servanda tradition implies a more constraining political system and robust institutional context which should provide an alternative to war.¶ Kegley and Raymond (1982: 586) find that in half-decades (from 1820 to 1914) when treaties are considered non-binding (rebus), wars between major states occur in every half-decade (100 percent), but when treaties are considered binding (pacta sunt servanda), wars between major states occur in only 50 percent of the half-decades. The Cramer’s V for this relationship is .66. When the sample is expanded to include all states in the central system, Cramer’s V is 0.44, indicating that global norms have more impact on preventing war between major states. Nevertheless, among central system states between 1820 and 1939, war occurred in 93 percent of the half-decades where the rebus tradition dominated and in only 60 percent of the half-decades where the pacta sunt sevanda tradition dominated.¶ In a subsequent analysis of militarized disputes from 1820 to 1914, Kegley and Raymond (1984: 207-11) find that there is a negative relationship between binding norms and the frequency and scope of disputes short of war. In periods when the global culture accepts the pacta sunt servanda tradition as the norm, the number of military disputes goes down and the number of major states involved in a dispute decreases. Although the relationship is of moderate strength, it is not eliminated by other variables, namely alliance flexibility. As Kegley and Raymond (1984: 213) point out, this means “that in periods when the opportunistic renunciation of commitments” is condoned, militarized disputes are more likely to occur and to spread. The finding that norms can reduce the frequency and scope of disputes is significant evidence that rules can permit actors to successfully control and manage disputes so that they are not contagious and they do not escalate to war. These findings are consistent with Wallensteen’s (1984) and suggest that one of the ways rules help prevent war is by reducing, limiting, and managing disputes short of war.

#### And, a model of preventative war justifies Chinese attacks on US missile defense

Stephen Walt 4, Robert and Renee Belfer Professor of International Affairs at Harvard, PhD in Political Science from UC Berkeley, October 1 2004, “The Strategic Environment,” Panel Discussion at “Preemptive Use of Force: A Reassessment,” Conference held by the Fletcher Forum on International Affairs, <http://www.brookings.edu/views/papers/daalder/daalder_fletcher.pdf>

Finally, as Ivo has already noted, there is this precedent problem. By declaring that preventive war is an effective policy option for us, we make it easier for others to see it as an effective policy option for them. Why can’t India attack Pakistan before it develops more nuclear weapons? Why can’t Turkey attack Iraqi Kurdistan to prevent the emergence of an independent state there? Why was it wrong for Serbia to take preventive action against the Kosovars, given that there was a guerilla army attacking Serbs in Kosovo, and given that the Serbs could see a long term threat to their national security if the Kosovar-Albanians got more and more politically organized and tried to secede? Why couldn’t a stronger China decide that America’s national missile defense program was a direct threat to their nuclear deterrent capability, and therefore decide to order a preventive commando strike against American radar sites in Alaska? Now this sounds wildly far-fetched, of course, but imagine the situation being reversed. Imagine if another country threatened our second strike capability, wouldn’t we have looked for some way to prevent that from happening? Of course we would. So again, we’re creating a precedent here.

#### Causes full-scale nuclear war

John W. Lewis 12, William Haas Professor of Chinese Politics, emeritus, at Stanford University, PhD from UCLA, and Xue Litai, research scholar at the Project on Peace and Cooperation in the Asian-Pacific Region at Stanford University’s Center for International Security and Cooperation, “Making China’s nuclear war plan,” Bulletin of the Atomic Scientists September/October 2012 vol. 68 no. 5 45-65, http://bos.sagepub.com/content/68/5/45.full

If the CMC authorizes a missile base to launch preemptive conventional attacks on an enemy, however, the enemy and its allies could not immediately distinguish whether the missiles fired were conventional or nuclear. From their perspective, the enemy forces could justifiably launch on warning and retaliate against all the command-and-control systems and missile assets of the Chinese missile launch base and even the overall command-and-control system of the central Second Artillery headquarters. In the worst case, a self-defensive first strike by Chinese conventional missiles could end in the retaliatory destruction of many Chinese nuclear missiles and their related command-and-control systems. That disastrous outcome would force the much smaller surviving and highly vulnerable Chinese nuclear missile units to fire their remaining missiles against the enemy’s homeland. In this quite foreseeable action-reaction cycle, escalation to nuclear war could become accelerated and unavoidable. This means that the double policies could unexpectedly cause, rather than deter, a nuclear exchange.

#### Credible external oversight is key to solve---the alternative is an anything-goes standard

Omar S. Bashir 12, is a Ph.D. candidate in the Department of Politics at Princeton University and a graduate of the Department of Aeronautics and Astronautics at MIT, September 24th, 2012, "Who Watches the Drones?" Foreign Affairs,www.foreignaffairs.com/articles/138141/omar-s-bashir/who-watches-the-drones

Further, the U.S. counterterrorism chief John Brennan has noted that the administration is "establishing precedents that other nations may follow." But, for now, other countries have no reason to believe that the United States carries out its own targeted killing operations responsibly. Without a credible oversight program, those negative perceptions of U.S. behavior will fill the vacuum, and an anything-goes standard might be the result. U.S. denunciations of other countries' programs could come to ring hollow. ¶ If the United States did adopt an oversight system, those denunciations would carry more weight. So, too, would U.S. pressure on other states to adopt similar systems: just as suspicions grow when countries refuse nuclear inspection, foreign governments that turned down invitations to apply a proven system of oversight to their own drone campaigns would reveal their disregard for humanitarian concerns.

### Solvency

#### The plan establishes legal norms and ensures compliance with the laws of war --- resolves expansive interpretation of imminence

Jonathan Hafetz 13, Associate Prof of Law at Seton Hall University Law School, former Senior Staff Attorney at the ACLU, served on legal teams in multiple Supreme Court cases regarding national security, “Reviewing Drones,” 3/8/2013, http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes.¶ Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large.¶ For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings.¶ Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat.¶ Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge.¶ Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.¶ Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed.

#### “Cause of action” creates a makes officials think twice about the worst drone strikes --- drawbacks of judicial review don’t apply

Stephen I. Vladeck 13, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, Feb 27 2013, “DRONES AND THE WAR ON TERROR: WHEN CAN THE U.S.TARGET ALLEGED AMERICAN TERRORISTS OVERSEAS?” Hearing Before the House Committee on the Judiciary, http://www.lawfareblog.com/wp-content/uploads/2013/02/Vladeck-02272013.pdf

At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I believe that virtually all of these concerns could be mitigated. ¶ For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. With respect to adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief, it’s difficult to see any pure Article III problem with such a suit for retrospective relief.¶ As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what the Supreme Court’s 1985 decision in Tennessee v. Garner20 contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, it demonstrates that judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances—albeit not always ideally—the government’s interest in secrecy with the detainee’s ability to contest the evidence against him.21 Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures,22 so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. And although the Guantánamo procedures have been developed by courts on an ad hoc basis (a process that has itself been criticized by some jurists), 23 Congress might also look to provisions it enacted in 1996 in creating the little-known Alien Terrorist Removal Court, especially 8 U.S.C. § 1534,24 as a model for such proceedings. ¶ More to the point, it should also follow that courts would be far more able as a practical matter to review the relevant questions in these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight—removed from the pressures of the moment and with the benefit of the dispassionate distance that judicial review provides. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc.¶ In addition to the substantive questions, it will also be much easier for courts to review the government’s own internal procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go a long way toward proving the lawfulness vel non of an individual strike.¶ As I mentioned before, there would still be a host of legal doctrines that would likely get in the way of such suits. Just to name a few, there is the present (albeit, in my view, unjustified) hostility to judicially inferred causes of actions under Bivens; the state secrets privilege;and sovereign and official immunity doctrines. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that immunity is constitutionally grounded),25 each of these concerns can be overcome by statute—as at least some of them arguably have been in the context of the express damages actions provided for under FISA. 26 So long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and immunity doctrines; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many—if not most—of these cases, these legal issues would be vitiated. Moreover, any concerns about exposing to liability government officers who acted in good faith and within the scope of their employment can be ameliorated by following the model of the Westfall Act, and substituting the United States as the proper defendant in any suit arising out of such an operation.27¶ Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists.¶ Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. Some might also object to this proposal as being unnecessary—that, given existing criminal laws and executive orders, there is already a sufficiently clear prohibition on unlawful strikes to render any such damages regime unnecessarily superfluous. ¶ At least as to this last objection, it bears emphasizing that the existing laws depend entirely upon the beneficence of the Executive Branch, since they assume both that the government will (1) willfully disclose details of unlawful operations rather than cover them up; and (2) prosecute its own in cases in which they cross the line. Given both prior practice and unconfirmed contemporary reports of targeted killing operations that appear to raise serious legality issues, such as “signature strikes,” it doesn’t seem too much of a stretch to doubt that these remedies will prove sufficient.¶ In addition, there are two enormous upsides to damages actions that, in my mind, make them a least-worst solution—even if they are deeply, fundamentally flawed:¶ First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability—and, as importantly, precedent—such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution may even compel at least some form of judicial process. 28 Compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to balance all of the relevant private, government, and legal interests at stake in such cases.¶ \* \* \*¶ In his concurrence in the Supreme Court’s famous decision in the Steel Seizure case, Justice Frankfurter suggested that “The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.”¶ 29 It seems to me, Mr. Chairman, that targeted killing operations by the Executive Branch present the legislature with two realistic choices: Congress could accept with minimal scrutiny the Executive Branch’s claims that these operations are carried out lawfully and with every relevant procedural safeguard to maximize their accuracy—and thereby open the door to the “unchecked disregard” of which Justice Frankfurter warned. Or Congress could require the government to defend those assertions in individual cases before a neutral magistrate invested with the independence guaranteed by the Constitution’s salary and tenure protections. So long as the government’s interests in secrecy are adequately protected in such proceedings, and so long as these operations really are consistent with the Constitution and laws of the United States, what does the government have to hide?

#### Ex post review creates a credible signal of compliance that restrains future executives

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

While some experts have argued for court oversight of drone strikes before they're carried out, Brooks sides with those who say that would be unwieldy and unworkable.¶ Brooks says however an administration that knows its strikes could face court review after the fact -- with possible damages assessed -- would be more responsible and careful about who it strikes and why.¶ "If Congress were to create a statutory cause of action for damages for those who had been killed in abusive or mistaken drone strikes, you would have a court that would review such strikes after the fact. [That would] create a pretty good mechanism that would frankly keep the executive branch as honest as we hope it is already and as we hope it will continue to be into administrations to come," Brooks said.¶ "It would be one of the approaches that would go a very long way toward reassuring both U.S. citizens and the world more generally that our policies are in compliance with rule of law norms."

#### Only judicial oversight can credibly verify compliance with the laws of war

Avery Plaw 7, Associate Prof of Political Science at the University of Massachusetts at Dartmouth, PhD in Political Science from McGill University, “Terminating Terror: The Legality, Ethics and Effectiveness of Targeting Terrorists,” Theoria: A Journal of Social and Political Theory, No. 114, War and Terror (December 2007), pp. 1-27

To summarize, the general policy of targeting terrorists appears to be defensible in principle in terms of legality, morality and effectiveness. However, some specific targetings have been indefensible and should be prevented from recurring. Critics focus on the indefensible cases and insist that these are best prevented by condemning the general policy. States which target terrorists and their defenders have insisted that self-defense provides a blanket justification for targeting operations. The result has been a stalemate over terrorist targeting harmful to both the prosecution of the war on terror and the credibility of international law. Yet neither advocates nor critics of targeting appear to have a viable strategy for resolving the impasse. A final issue which urgently demands attention, therefore, is whether there are any plausible prospects for a coherent and principled political compromise over the issue of targeting terrorists.¶ Conclusion: the Possibility of Principled Compromise ¶ This final section offers a brief case that there is room for a principled compromise between critics and advocates of targeting terrorists. The argument is by example—a short illustration of one promising possibility. It will not satisfy everyone, but I suggest that it has the potential to resolve the most compelling concerns on both sides.¶ The most telling issues raised by critics of targeting fall into three categories: (1) the imperative need to establish that targets are combatants; (2) the need in attacking combatants to respect the established laws of war; and (3) the overwhelming imperative to avoid civilian casualties. The first issue seems to demand an authoritative judicial determination that could only be answered by a competent court. The second issue requires the openly avowed and consistent implementation of targeting according to standards accepted in international law—a requirement whose fulfillment would best be assured through judicial oversight. The third issue calls for independent evaluation of operations to assure that standards of civilian protection are robustly upheld, a role that could be effectively performed by a court.

## 2AC

### T

#### We meet---plan restricts Presidential authority to construe the legal limits on TK---assassination ban proves

Jonathan Ulrich 5, associate in the International Arbitration Group of White & Case, LLP, JD from the University of Virginia School of Law, “NOTE: The Gloves Were Never On: Defining the President's Authority to Order Targeted Killing in the War Against Terrorism,” 45 Va. J. Int'l L. 1029, lexis

The discretionary authority to construe the limits of the assassination ban remains in the hands of the president. He holds the power, moreover, to amend or revoke the Executive Order, and may do so without publicly disclosing that he has done so; since the Order addresses intelligence activities, any modifications may be classified information. n24 The placement of the prohibition within an executive order, therefore, effectively "guarantees that the authority to order assassination lies with the president alone." n25 Congress has similar authority to revise or repeal the Order - though its failure to do so, when coupled with the three unsuccessful attempts to legislate a ban, may be read as implicit authority for the president to retain targeted killing as a [\*1035] policy option. n26 Indeed, in recent years, there have been some efforts in Congress to lift the ban entirely. n27

#### We meet---we prohibit TKs without judicial review

#### Restrictions mean limitations

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

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

#### We restrict the war power to assert sovereign immunity AND cause of action is a restriction

Edward Keynes 10, Professor of Political Science at The Pennsylvania State University and has been visiting professor at the universities of Cologne, Kiel, and Marburg. A University of Wisconsin Ph.D., he has been a Fulbright and an Alexander von Humboldt fellow, “Undeclared War: Twilight Zone of Constitutional Power”, Google Books, p. 119-120

Despite numerous cases challenging the President’s authority to initiate and conduct the Vietnam War, the Federal courts exhibited extreme caution in entering this twilight zone of constitutional power. The federal judiciary’s reluctance to decide war-powers controversies reveals a respect for the constitutional separation of powers, an appreciation of the respective constitutional functions of Congress and the President in external affairs, and a sense of judicial self-restraint. Although most Federal courts exercised self-restraint, several courts scaled such procedural barriers as jurisdiction, standing to sue, sovereign immunity, and the political question to address the scope of congressional and presidential power to initiate war and military hostilities without a declaration of war. The latter decisions reveal an appreciation of the constitutional equilibrium upon which the separation of powers and the rule of law rest. Despite judicial caution, several Federal courts entered the political thicket in order to restore the constitutional balance between Congress and the President. Toward the end of the war in Indochina, judicial concern for the rule of law recommended intervention rather than self-restraint.

#### So is ex post

ECHR 91,European Court of Human Rights, Decision in Ezelin v. France, 26 April 1991, http://www.bailii.org/eu/cases/ECHR/1991/29.html

The main question in issue concerns Article 11 (art. 11), which provides:¶ "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.¶ 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."¶ Notwithstanding its autonomous role and particular sphere of application, Article 11 (art. 11) must, in the present case, also be considered in the light of Article 10 (art. 10) (see the Young, James and Webster judgment of 13 August 1981, Series A no. 44, p. 23, § 57). The protection of personal opinions, secured by Article 10 (art. 10), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (art. 11).¶ A. Whether there was an interference with the exercise of the freedom of peaceful assembly¶ In the Government’s submission, Mr Ezelin had not suffered any interference with the exercise of his freedom of peaceful assembly and freedom of expression: he had been able to take part in the procession of 12 February 1983 unhindered and to express his convictions publicly, in his professional capacity and as he wished; he was reprimanded only after the event and on account of personal conduct deemed to be inconsistent with the obligations of his profession.¶ The Court does not accept this submission. The term "restrictions" in paragraph 2 of Article 11 (art. 11-2) - and of Article 10 (art. 10-2) - cannot be interpreted as not including measures - such as punitive measures - taken not before or during but after a meeting (cf. in particular, as regards Article 10 (art. 10), the Handyside judgment of 7 December 1976, Series A no. 24, p. 21, § 43, and the Müller and Others judgment of 24 May 1988, Series A no. 133, p. 19, § 28).

#### Counter-interp---authority means legality---cause of action clarifies permissible scope---that’s 1AC Vladeck

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### Counter-interp---war powers authority is OVERALL power over war-making---we meet

Manget 91 Fred F, Assistant General Counsel with the CIA, "Presidential War Powers", 1991, media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf

The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. " 3 ; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything required to wage war successfully. 3 H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means . "39 ¶ Thus, the Executive Branch's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.

#### Prefer it

#### Ground---legality is key to advantages against the exec counterplan---total ban affs lose to agent counterplans and reform counterplans

#### Topic education---most nuanced and discussed mechs involve reforms, not bans---reading them on the aff is key to most in-depth debate

#### Core of the topic---they ignore discretionary authority the exec creates by interpreting statute

William G. Howell 11, Sydney Stein Professor in American Politics at the University of Chicago, PhD in political science from Stanford University, “The Future of the War Presidency: the Case of the War Powers Consultation Act,” in The Presidency in the Twenty-first Century, Aug 1 2011, ed. Charles Dunn, google books

But a basic point remains: over the nation’s history, presidents have managed to secure a measure of influence over the doings of government that cannot be found either in a strict reading of the Constitution or in the expressed authority that Congress has delegated. This discretionary influence of presidential power encompasses a major pillar of recent scholarship on the modern presidency. Article II of the Constitution is notoriously vague. As a practical matter, Congress cannot write statutes with enough clarity or detail to keep presidents from reading into them at least some discretionary authority. And for their part, the courts have established as a basic principle of jurisprudence deference to administrative (and by extension presidential) expertise.17 It is little wonder, then, that through ambiguity presidents have managed to radically transform their office, placing it at the very epicenter of U.S. foreign policy.¶ By way of example, consider the mileage that President Bush derived from the 2001 Authorization for the Use of Military Force (AUMF). According to that law, the president was authorized to use all necessary and appropriate force against those nations, organizations, or persons he determined had planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or those that had harbored such organizations, or persons. President Bush cited this language to justify actions ranging from military deployments in Iraq, to the warrantless wiretapping of U.S. citizens to the indefinite detainment of enemy combatants at Guantanamo Bay, to the adoption of “enhanced interrogation techniques,” to the seizure of funds held by charities suspected of supporting terrorist activities. As the Iraq and Afghanistan wars and the war on terror proceeded, the adjoining branches of government looked upon such interpretations with increasing skepticism. But President Bush held steadfast to an expansive reading of the law and the seemingly limitless authority it conferred upon his office. As the U.S. Department of Justice put it, the AUMF “does not lend itself to a narrow reading.” Quite to the contrary: “The AUMF places the President’s authority at its zenith under Youngston.”18

#### Reasonability---competing interps cause a race to the bottom to arbitrarily exclude the aff

### Solvency

#### Multiple incentives to comply

Richard H. Pildes 12, Sudler Family Professor of Constitutional Law at NYU School of Law and Co-Director of the NYU Center on Law and Security, April 2012, “Law and the President,” NYU School of Law Public Law & Legal Theory Research Paper Series, Working Paper No. 12-13, http://ssrn.com/abstract=2012024

But as Levinson’s work helps to show, even on its own terms, Posner and Vermeule’s approach offers an incomplete account of the role of law. Levinson’s work, for example, is devoted to showing why constitutional law will be followed, even by disappointed political majorities, for purely instrumental reasons, even if those majorities do not experience any internal sense of duty to obey. He identifies at least six rational-choice mechanisms that will lead rational actors to adhere to constitutional law decisions of the Supreme Court: coordination, reputation, repeat-play, reciprocity, asset- specific investment, and positive political feedback mechanisms.76 No obvious reason exists to explain why all or some of these mechanisms would fail to lead presidents similarly to calculate that compliance with the law is usually important to a range of important presidential objectives. At the very least, for example, the executive branch is an enormous organization, and for internal organizational efficacy, as well as effective cooperation with other parts of the government, law serves an essential coordination function that presidents and their advisors typically have an interest in respecting. There is a reason executive branch departments are staffed with hundreds of lawyers: while Posner and Vermeule might cynically speculate that the reason is to figure out how to circumvent the law artfully, the truth, surely, is that law enables these institutions to function effectively, both internally and in conjunction with other institutions, and that lawyers are there to facilitate that role. In contrast to Posner and Vermeule, who argue that law does not constrain, and who then search for substitute constraints, scholars like Levinson establish that rational-choice theory helps explain why law does constrain. Indeed, as Posner and Vermeule surely know, there is a significant literature within the rational-choice framework that explains why powerful political actors would agree to accept and sustain legal constraints on their power, including the institution of judicial review.77¶ That Posner and Vermeule miss the role of legal compliance as a powerful signal, perhaps the most powerful signal, in maintaining a President’s critical credibility as a well-motivated user of discretionary power is all the more surprising in light of the central role executive self-binding constraints play in their theory. After asserting that “one of the greatest constraints on [presidential] aggrandizement” is “the president’s own interest in maintaining his credibility” (p. 133), they define their project as seeking to discover the “social-scientific microfoundations” (p. 123) of presidential credibility: the ways in which presidents establish and maintain credibility. One of the most crucial and effective mechanisms, in their view, is executive self-binding, “whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors” (p. 137). As they also put it, “a well-motivated president can distinguish himself from an ill-motivated president by binding himself to a policy position that an ill-motivated president would reject” (p. 135). ¶ By complying with these constraints, presidents signal their good faith and accrue more trust to take further action. Most importantly from within Posner and Vermeule’s theory, these constraints, many self-generated through executive self-binding, substitute for the constraints of law. Law does not, or cannot, or should not constrain presidents, in their view, but rational-actor presidents recognize that complying with constraints is in their own self-interest; presidents therefore substitute or accept other constraints.¶ Thus, Posner and Vermeule recognize the importance of “enabling constraints”78 in effective mobilization and maintenance of political power; that is, they recognize that what appear to be short-term constraints on the immediate preferences of actors like presidents might actually enable longterm marshaling of effective presidential power. Yet they somehow miss that law, too, can work as an enabling constraint; when it comes to law, Posner and Vermeule seem to see nothing but constraint. Indeed, this failing runs even deeper. For if presidents must signal submission to various constraints to maintain and enhance their credibility — as Posner and Vermeule insist they must — Posner and Vermeule miss the fact that the single most powerful signal of that willingness to be constrained, particularly in American political culture, is probably the President’s willingness to comply with law. ¶ In theoretical terms, then, Posner and Vermeule emerge as inconsistent or incomplete consequentialists. Even if law does not bind presidents purely for normative reasons, presidents will have powerful incentives to comply with law — even more powerful than the incentives Posner and Vermeule rightly recognize presidents will have to comply with other constraints on their otherwise naked power. To the extent that Posner and Vermeule mean to acknowledge this point but argue that it means presidents are not “really” complying with the law and are only bowing to these other incentives, they are drawing a semantic distinction that seems of limited pragmatic significance, as the next Part shows.

#### Under federal civil procedure, the victims can be represented by their next friend or relatives, and the gov would provide lawyers

Federal Rules of Civil Procedure ’13 – Current Rules of Civil Procedure in Federal Courts

http://law.widener.edu/civpro/Rulex17.htm

Rule 17. Plaintiff and Defendants; Capacity; Public Officers (a) Real party in interest. (1) Designation in General. An action must be prosecuted in the name of the real party in interest. The following may sue in their names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another’s benefit; and (G) a party authorized by statute. (2) Action in the Name of the United States for Another’s Use or Benefit. When a federal statute so provides, an action for another’s use or benefit must be brought in the name of the United States. (3) Joinder of the Real Party in Interest. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it has been originally commenced by the real party in interest. (b) Capacity to Sue or be Sued. Capacity to sue or be sued is determined as follows: (1) for an individual who is not acting in a representative capacity, by the law of the individual’s domicile; (2) for a corporation, by the law under which it was organized; and (3) for all other parties, by the law of the state where the court is located, except that: (A) a partnership or other unincorporated association with no such capacity under that state’s law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and (B) 28 U.S.C. §754 and §959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in the United States court. (c) Minor or Incompetent Person. (1) With a Representative. The following representatives may sue or defend on behalf of a minor or in incompetent person: (A) a general guardian; (B) a committee: (C) a conservator; or (D) a like fiduciary. (2) Without a Representative. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem – or issue another appropriate order – to protect a minor or incompetent person who is unrepresented in an action. (d) Public Officer’s Title and Name. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer’s name be added.

####  Their argument is empirically disproven---multiple suits have been brought but they were DISMISSED because the exec said there was no legal standing---the plan solves this

Joshua Hersch 12, July 18th, 2012, "Drone Wars: Civil Liberties Groups Sue CIA, Pentagon Over Targeted Killings ," www.huffingtonpost.com/2012/07/18/drone-wars-aclu-cia-lawsuit\_n\_1681508.html

The ACLU and the Center for Constitutional Rights both have long track records of attempting to use the courts to force the White House to address the practice of targeted killings across the world, to little avail. In 2010, the two groups sued the government, on behalf of Awlaki's father to prevent his assassination. A judge later threw out the case, ruling that Awlaki's father did not have standing to sue, and asserting that the courts may not have the capacity to assess the decision to place someone on a classified kill list.¶The Obama administration has successfully blocked previous efforts by courts to review documents related to the drone assassination program under the state secrets privilege, which permits the executive branch to prevent the review of certain information that could harm national security. The administration declined to acknowledge the existence of the drone program until Obama defended it during a video chat with the public on Google+ earlier this year.

#### Ex post review would prevent a shift to signature strikes

Paul Taylor 13, Senior Fellow at the Center for Policy & Research, JD from Seton Hall Law School, Mar 23 2013, “Former DOD Lawyer Frowns on Drone Court,” http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/

Lastly, there is the concern of creating perverse incentives: whether a person’s name or identity is known has never been a factor in determining the legality of targeting an otherwise-lawful military target. But by creating a separate legal regime for known targets, we could create a disincentive to collect information about a target. We do not want a military or intelligence agency that keeps itself intentionally uninformed. Nor do we want to halt a military operation in progress simply because one of the targets is recognized late. Conducting the review ex post would not eliminate these issues, but it would substantially mitigate them. The military (or CIA, if it keeps its program), would not fear an interruption of its operations, and could even have an incentive to collect more information in order to later please a court that has plenty of time to look back at the past operations and question whether an individual was in fact targeted. ¶ Not mentioned in Mr. Johnson’s comments, but related to his concern regarding perverse incentives, is another concern. The Executive, or some agency within it, may attempt to evade the jurisdiction of the court by claiming that it did not “specifically target” the individual, but was targeting under general constitutional authorities “someone” that appeared to be an imminent threat to the US–and now the case is moot. No court could enforce its jurisdiction before it knows that the individual is targeted, but it can enforce its jurisdiction after the targeting is brought to completion. In an ex post review, if the claim is made that the killing was not “targeted,” and thus that no review is necessary, the court will be able to employ its power to determine its own jurisdiction to enquire into the process leading to the killing, which in this type of review would be half the job.

### Counterplan

#### Links to politics – makes Obama a lightning rod

Phillip Cooper 97, Prof of Public Administration @ Portland State, Nov 97, “Power tools for an effective and responsible presidency” Administration and Society, Vol. 29, p. Proquest

Interestingly enough, the effort to avoid opposition from Congress or agencies can have the effect of turning the White House itself into a lightning rod. When an administrative agency takes action under its statutory authority and responsibility, its opponents generally focus their conflicts as limited disputes aimed at the agency involved. Where the White House employs an executive order, for example, to shift critical elements of decision making from the agencies to the executive office of the president, the nature of conflict changes and the focus shifts to 1600 Pennsylvania Avenue or at least to the executive office buildings The saga of the OTRA battle with Congress under regulatory review orders and the murky status of the Quayle Commission working in concert with OIRA provides a dramatic case in point.

#### Counterplan either links or doesn’t solve because it doesn’t clarify key legal questions

Sarah Knuckey 10-1, is Director of the Project on Extrajudicial Executions at New York University School of Law, and a Special Advisor to the UN Special Rapporteur on extrajudicial executions, October 1st, 2013, "Transparency on Targeted Killings: Promises Made, but Little Progress," justsecurity.org/2013/10/01/transparency-targeted-killings-promises-made-progress/

Some interpreted these efforts and the President’s speech to mark the beginning of improved transparency. But despite transparency promises and expectations, many of the same, core concerns regarding undue secrecy remain. The President’s speech, the Policy Guidance, and Holder’s letter – because of textual ambiguities within each, and combined with events since – have largely failed to address these longstanding concerns, and in some important respects aggravated them.¶ Continuing Secrecy on Core Issues¶ Key areas in which transparency has not yet been forthcoming include: ¶ Who can be killed, where, and on what basis. Demands for legal and policy information on who and when the US believes it can kill have long been at the center of calls for more transparency. Senior US officials, before 2013, delivered important speeches outlining the government’s views on the applicable legal frameworks for targeting. But the speeches lacked detail, and left crucial legal questions unanswered. Legal concepts key to understanding the scope of US targeting – like “imminence,” “associated forces,” and “directly participating in hostilities” – remain unclear (see this and this). The relevant legal memos have still not been published, even in redacted form. In addition, although President Obama’s speech and the published Policy Guidance set out strict rules for the use of force – stricter, in numerous respects, than the laws of war – they are not legally binding, and we do not know when they began to apply, or when the strict policy limits on killing may be relaxed (and if we will ever be told when they are). And, crucially, we don’t know where the new guidelines actually apply (original assumptions by many outside government that they applied in Pakistan were later called into question). Since Obama’s May 2013 speech, confusion about who can be targeted has at times increased (e.g. a “senior American official” stated in August that a security threat had “expanded the scope” of who could be targeted in Yemen).¶ Basic program facts, overall casualties, and statistical strike information. The President admitted in his May speech that some civilian casualties have occurred. But the government refuses to release even basic statistical information about the numbers of strikes or of those killed, or to disclose its own civilian casualty estimates, or strike locations.¶ Specific strikes. The US continues to say nothing at all, officially, about the facts of most strikes. When questioned about specific strikes since May 2013, senior officials have generally continued simply to decline to comment, refusing even to acknowledge whether the US was involved. Given that the US publicly acknowledged in 2012 that it uses force in Yemen, it is not clear why the US continues to refuse to provide details on, at least, Yemen strikes. During the July-August 2013 surge in Yemen strikes, public information (limited as it was) came largely from news reports quoting anonymous US and Yemeni officials. Adding to confusion, the accounts in different outlets at times appeared contradictory (compare NYT, NBC, and ABC). Reports of civilian casualties called into question the government’s “near-certainty” standard, but were left unaddressed by officials. And although President Obama stated that the declassified information in Holder’s letter was to “facilitate transparency,” the letter does not explain why US citizens Samir Khan, Abdulrahman al-Awlaki, and Jude Kenen Mohammed were killed, saying only that they were “not specifically targeted.”¶ Civilian harm – investigations, acknowledgment, redress. There has been no public information on any government efforts this year to acknowledge civilian harm and provide redress. I have previously listed just some of the strikes that raise particular concerns, none of which have been publicly acknowledged by the government; nor have the findings of any government investigations been released. And despite assurances about post-strike investigations, I am not aware of US officials seeking testimony from alleged victims, their lawyers, or from NGOs or journalists who have investigated specific strikes.¶ Transfer to DOD. Despite expectations in May 2013 that Administration efforts to promote transparency would include moving the program from the CIA to DOD, one of the last officials to publicly address this said that it may not happen “for years.”¶ The US government’s public statements and limited disclosures to date have been welcome steps towards transparency. But they fall far short of what is necessary, and important core questions remain unanswered.

#### Other countries won’t believe us---external verification key

Philip Alston 11, John Norton Pomeroy Professor of Law at the NYU School of Law, former UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “The CIA and Targeted Killings Beyond Borders,” 2011, 2 Harv. Nat'l Sec. J. 283, lexis

Before moving to consider the Obama administration's approach to these issues, it is important to underscore the fact that we are talking about two different levels of accountability. The first is that national procedures must meet certain standards of transparency and accountability in order to meet existing international obligations. The second is that the national procedures must themselves be sufficiently transparent to international bodies as to permit the latter to make their own assessment of the extent to which the state concerned is in compliance with its obligations. In other words, even in situations in which states argue that they put in place highly impartial and reliable accountability mechanisms, the international community cannot be expected to take such assurances on the basis of faith rather than of convincing information. Assurances offered by other states accused of transgressing international standards would not be accepted by the United States in the absence of sufficient information upon the basis of which some form of verification is feasible. Since the 1980s, the phrase "trust but verify" n104 has been something of a mantra in the arms control field, but it is equally applicable in relation to IHL and IHRL. The United States has consistently demanded of other states that they demonstrate to the international community the extent of their compliance with international standards. A great many examples could be cited, not only from the annual State Department reports on the human rights practices of other states, but also from a range of statements by the President and the Secretary of State in relation to countries like Egypt, Libya, and Syria in the context of the Arab Spring of 2011.

#### It’s a rubber stamp

Ilya Somin 13, Professor of Law at George Mason University, “Hearing on ‘Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing’: Testimony before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights”, April 23, http://www.law.gmu.edu/assets/files/faculty/Somin\_DroneWarfare\_April2013.pdf

But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lower- level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad.

#### Not credible---external oversight key

Jack Goldsmith 13, Henry L. Shattuck Professor at Harvard Law School, May 1 2013, “How Obama Undermined the War on Terror,” <http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism>

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

### Court Clog DA

#### Debt cases make clog inevitable

Bob Sullivan 13, NBC News, "Courts clogged by debt cases, 'rubber stamp' rulings, advocacy group says", June 5, www.nbcnews.com/technology/courts-clogged-debt-cases-rubber-stamp-rulings-advocacy-group-says-6C10213392

In Rochester, N.Y., city court is a busy place – for debt collectors.¶ Plaintiff’s lawyers seeking judgments against alleged debtors consume 89 percent of the court docket -- 7,148 of the 8,032 lawsuits heard in city court during 2011 involved debt collection, a remarkable number.¶ But not unique. In Buffalo, 76 percent of cases involved debt collection. In the Capital District near Albany, 77 percent did. Even in Nassau County, just outside New York City, where nearly 20,000 civil cases were filed, almost 9,000 involved debt.¶ “Debt collectors are flooding the courts, overrunning the courts,” said Susan Shin, staff attorney at an advocacy group, the New Economy Project, based in New York. The group is issuing a scathing report on what it calls abuse of civil courts on Thursday. “There are courts that are basically doing almost nothing else.”¶ It's a growing problem, say consumer advocates around the country: courts that seem to behave like assembly lines, clogged with debt cases that sometimes consume an entire day’s legal action. The New Economy Project report is among the first to quantify the issue.¶ "I think people should be shocked that in some places almost 9 out of 10 cases are these debt collectors trying to collect on debts," said Shin.¶ The debt collectors blame the volume on the huge number of cases that have arisen since the recession and the subsequent tepid recovery.¶ It's not just the volume that concerns Shin, however. The study found something missing from the majority of these cases: the defense. Nearly half the debt cases were settled by "default judgment,” meaning the defendant was a no-show. Often, courts simply accept the debt collectors' suggested remedy, giving them the ability to garnish the consumers' wages or to access their bank accounts.¶ Brian Pindell says he was one of them. He didn’t know a debt collection company had sued him and won two judgments against him in court back in 2007, until he was denied aid in the weeks after Superstorm Sandy. The Rockaway, Queens, resident applied for a $4,500 Small Business Administration loan to replace damaged computer equipment for his web design company in December. The judgments doomed his application, he says.¶ "I had no idea what those cases were. I was never served (with legal papers)," says Pindell. "In fact, I still don't know what the debt is."¶ Flooding courts¶ Similar debt cases are overwhelming U.S. courts, says the consumer advocacy group, formerly called the Neighborhood Economic Development Advocacy Project.

#### No impact to court clog---Court can just expand capacity

Jeffrey Kahn 10, Assistant Professor of Law, SMU Dedman School of Law, "ARTICLE: ZOYA'S STANDING PROBLEM, OR, WHEN SHOULD THE CONSTITUTION FOLLOW THE FLAG?", March, Michigan Law Review, 108 Mich. L. Rev. 673, Lexis

1. The Problem of Court Clog¶ The first concern is the easiest to set to rest. Whenever a proposal to expand access to courts and tribunals is made, the first criticism is often a practical one: the "the oft-expressed fear that a "host of parties' will descend upon it and render its dockets "clogged' and "unworkable.'" n208 It is clearly the prospect of such litigation that has worried the Supreme Court when confronted with extraterritorial claims in the past. n209¶ The argument is practically self-refuting. The answer to the threat of court clog is not to create an arbitrary device to exclude plaintiffs with legitimate claims. The answer is to expand the capacity of courts. In any event, it is hard to see how the criticism has any traction: whether the motion to dismiss is for lack of standing or for some other reason, the motion will be submitted and must be decided. A fact-intensive inquiry into the substantiality of connections does not lend itself to quick disposition. n210

#### Demonstrating legality is key to avoid foreign lawsuits

Philip Alston 11, John Norton Pomeroy Professor of Law at the NYU School of Law, former UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “The CIA and Targeted Killings Beyond Borders,” 2011, 2 Harv. Nat'l Sec. J. 283, lexis

A more pragmatic reason is that judicial action against CIA personnel is certain to increase in the years ahead as the agency becomes more actively engaged at an operational level in targeted killings. The United States would be better placed to counter such actions if it could demonstrate that it is acting in compliance with the applicable international law.¶ Recent years have seen high-profile prosecutions in several countries in which the CIA has been operating. As noted above, Raymond Davis, a CIA official widely reported to have been involved in drone-based targeted killing operations, was accused in 2011 of two murders in Lahore. The United States indicated that diplomatic and other relations between the two countries would suffer greatly unless he was released. Although the local court system had insisted on proceeding to trial, blood money (diyya) was paid to the families of the two deceased and the case was closed, amid [\*440] allegations of coercion and bribery. n599 In 2007 courts in both Germany and Italy opened prosecutions against CIA agents. In Italy, an Egyptian cleric named Abu Omar was kidnapped on the streets of Milan, rendered to Egypt, and tortured and interrogated. Italian prosecutors charged 22 CIA officials. n600 In Germany, a Lebanese-born German national named Khaled el-Masri was seized in Macedonia and rendered to a CIA prison in Afghanistan where he was interrogated and tortured. Prosecutors issued arrest warrants for 13 CIA officers alleged to have been responsible. In both the German and Italian cases, United States diplomatic cables reveal strong and determined high-level lobbying by U.S. officials who warned their counterparts of extremely serious repercussions if the prosecutions went forward. In the German case, they were abandoned, n601 and in the Italian case the courts went ahead and convicted the CIA officers in absentia, but the Italian Government, responding to representations by the U.S. Secretary of Defense to the Italian Prime Minister, refrained from taking the steps necessary to pursue the convictions internationally. n602

#### Turn --- court involvement crushes INTERNATIONAL COOPERATION over environmental issues

Laurence H. Tribe 10, the Carl M. Loeb University Professor, Harvard Law School; Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>

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.

#### Environmental collapse can’t cause extinction---nuke war outweighs---magnitude and probability

David Schweickart 10 is Professor at Loyola University Chicago. He holds a Ph.D. in Mathematics (University of Virginia), and a Ph.D. in Philosophy (Ohio State University). “Is Sustainable Capitalism Possible?” Procedia Social and Behavioral Sciences 41 (2010) 6739–6752

It is not true either that the various ecological crises we are facing will bring about “the end of the world.” Consider the projections of the Stern Review, the recently released report commissioned by the British Government. If nothing is done, we risk “major disruption to economic and social activity, later in this century and the next, on a scale similar to those associated with the great wars and economic depression of the first half of the 20th century.”

This is serious. Some sixty million people died in World War Two. The Stern Review estimates as many as 200 million people could be permanently displaced by rising sea level and drought. But this is not “the end of the world.” Even if the effects are far worse, resulting in billions of deaths—a highly unlikely scenario—there would still be lots of us left. If three-quarters of the present population perished, that would still leave us with 1.6 billion people—the population of the planet in 1900.

I say this not to minimize the potentially horrific impact of relentless environmental destruction, but to caution against exaggeration. We are not talking about thermonuclear war—which could have extinguished us as a species. (It still might.) And we shouldn’t lose sight of the fact that millions of people on the planet right now, caught up in savage civil wars or terrorized by U.S. bombers (which dropped some 100,000 lbs. of explosives on a Baghdad neighborhood during one ten-day period in January 2008—the amount the fascists used to level the Basque town of Guernica during the Spanish Civil War), are faced with conditions more terrible than anyone here is likely to face in his or her lifetime due to environmental degradation.

#### No environment impact

Ben Ridder 8, Phd School of Geography and Environmental Studies, University of Tasmania, “Questioning the ecosystem services argument for biodiversity conservation” Biodiversity and conservation yr:2008 vol:17 iss:4 pg:781

**\*ES = environmental services**

The low resilience assumption

Advocates of the conservation of biodiversity tend not to acknowledge the distinction between resilient and sensitive ES. This ‘low resilience assumption’ gives rise to, and is reinforced by the almost ubiquitous claim within the conservation literature that ES depend on biodiversity.

An extreme example of this claim is made by the Ehrlichs in Extinction. They state that “all [ecosystem services] will be threatened if the rate of extinctions continues to increase” then observe that attempts to artificially replicate natural processes “are no more than partially successful in most cases. Nature nearly always does it better. When society sacrifices natural services for some other gain… it must pay the costs of substitution” (Ehrlich and Ehrlich 1982, pp. 95–96). This assertion—that the only alternative to protecting every species is a world in which all ES have been substituted by artificial alternatives—is an extreme example of the ‘low resilience assumption’. Paul Ehrlich revisits this flawed logic in 1997 i nhis response (with four co-authors) to doubts expressed by Mark Sagoff regarding economic arguments for species conservation (Ehrlich et al. 1997, p. 101).

The claim that ES depend on biodiversity is also notably present in the controversial Issues in Ecology paper on biodiversity and ecosystem functioning (Naeem et al. 1999) that sparked the debate mentioned in the introduction. This appears to reflect a general tendency among authors in this field (e.g., Hector et al. 2001; Lawler et al. 2002; Lyons et al. 2005). Although such authors may not actually articulate the low resilience assumption, presenting such claims in the absence of any clarification indicates its influence.

That the low resilience assumption is largely false is apparent in the number of examples of species extinctions that have not brought about catastrophic ecosystem collapse and decline in ES, and in the generally limited ecosystem influence of species on the cusp of extinction. These issues have been raised by numerous authors, although given the absence of systematic attempts to verify propositions of this sort, the evidence assembled is usually anecdotal and we are forced to trust that an unbiased account of the situation has been presented. Fortunately a number of highly respected people have discussed this topic, not least being the prominent conservation biologist David Ehrenfeld. In 1978 he described the ‘conservation dilemma’, which “arises on the increasingly frequent occasions when we encounter a threatened part of Nature but can find no rational reason for keeping it” (Ehrenfeld 1981, p. 177). He continued with the following observation:

Have there been permanent and significant ‘resource’ effects of the extinction, in the wild, of John Bartram’s great discovery, the beautiful tree Franklinia alatamaha, which had almost vanished from the earth when Bartram first set eyes upon it? Or a thousand species of tiny beetles that we never knew existed before or after their probable extermination? Can we even be certain than the eastern forests of the United States suffer the loss of their passenger pigeons and chestnuts in some tangible way that affects their vitality or permanence, their value to us? (p. 192)

Later, at the first conference on biodiversity, Ehrenfeld (1988) reflected that most species “do not seem to have any conventional value at all” and that the rarest species are “the ones least likely to be missed… by no stretch of the imagination can we make them out to be vital cogs in the ecological machine” (p. 215). The appearance of comments within the environmental literature that are consistent with Ehrenfeld’s—and from authors whose academic standing is also worthy of respect—is uncommon but not unheard of (e.g., Tudge 1989; Ghilarov 1996; Sagoff 1997; Slobodkin 2001; Western 2001).

The low resilience assumption is also undermined by the overwhelming tendency for the protection of specific endangered species to be justified by moral or aesthetic arguments, or a basic appeal to the necessity of conserving biodiversity, rather than by emphasising the actual ES these species provide or might be able to provide humanity. Often the only services that can be promoted in this regard relate to the ‘scientific’ or ‘cultural’ value of conserving a particular species, and the tourism revenue that might be associated with its continued existence. The preservation of such services is of an entirely different order compared with the collapse of human civilization predicted by the more pessimistic environmental authors**.**

The popularity of the low resilience assumption is in part explained by the increased rhetorical force of arguments that highlight connections between the conservation of biodiversity, human survival and economic profit. However, it needs to be acknowledged by those who employ this approach that a number of negative implications are associated with any use of economic arguments to justify the conservation of biodiversity.

### TPA DA

#### U.S. leadership’s not key to multilateral trade

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

Despite weaker U.S. power and leadership, the global trade regime has remained resilient – particularly when compared to the 1930s. This suggests another significant factor – the stronger institutional environment that existed after 2008. There were very few multilateral economic institutions of relevance during the Great Depression.96 No multilateral trade regime existed, and international financial structures like the Bank of International Settlements remained nascent. The last major effort during the depression to rewrite the global rules – the 1933 London Monetary and Economic Conference – ended in acrimony.97 Newly-inaugurated president Franklin D. Roosevelt unilaterally took the United States off the gold standard, signaling an end to any attempt at multilateral cooperation.

In contrast, the current institutional environment is much thicker, with status quo policies focused on promoting greater economic openness. A panoply of pre-existing informal and formal regimes were able to supply needed services during a time of global economic crisis. At a minimum, institutions like the G-20 functioned as useful focal points for the major economies to coordinate policy responses. These structures also served to blunt domestic pressures to act in a more unilateral manner. International institutions like the Bank of International Settlements further provided crucial expertise to rewrite the global rules of the game. Even if the Doha round petered out, the WTO’s Dispute Settlement mechanism remained in place to coordinate and adjudicate monitoring and enforcement. Furthermore, the status quo preference for each element of these regimes was to promote greater cross-border exchange within the rule of law. It is easier for international institutions to reinforce existing global economic norms than to devise new ones. Even if these structures were operating on “autopilot,” they had already been pointed in the right direction.

#### No collapse of trade or wars from protectionism

Fordham 12—professor of political science at Binghamton University (Ben, International Economic Institutions and Great Power Peace, 8/12/12, http://gt2030.com/2012/08/15/international-economic-institutions-and-great-power-peace/)

I enjoyed Jack Levy’s comments on how the world would have looked to people writing in 1912. As part of my current research, I’ve been spending a lot of time thinking about the three decades before World War I. As Levy pointed out, this last period of great power peace has some interesting parallels with the present one. Like today, the international economy had become increasingly integrated. For good reason, some even refer to this period as the “first age of globalization.” The period also saw the emergence of several new great powers, including Japan, Germany, and the United States. Like emerging powers today, each of these states sought to carve out its own world role and to find, as the German Foreign Secretary put it, a “place in the sun.” Like Levy, I don’t think these parallels we are doomed to repeat the catastrophe of 1914. I want to highlight the different institutional rules governing the international economic system today. The dangers discussed in the NIC report are real, but there is reason for hope when it comes to avoiding great power war. The rules of the game governing the “first age of globalization” encouraged great powers to pursue foreign policies that made political and military conflict more likely. Declining transportation costs, not more liberal trade policies, drove economic integration. There was no web of international agreements discouraging states from pursuing protectionist trade policies. As Patrick McDonald‘s recent book, The Invisible Hand of Peace, explains nicely, protectionism went hand-in-hand with aggressive foreign policies. Many of the great powers, including the emerging United States, sought to shut foreign competitors out of their home markets even as they sought to expand their own overseas trade and investment. Even though markets and investment opportunities in less developed areas of the world were small, great power policy makers found these areas attractive because they would not export manufactured products. As one American policy maker put it in 1899, they preferred “trade with people who can send you things you ant and cannot produce, and take from you in return things they want and cannot produce; in other words, a trade largely between different zones, and largely with less advanced peoples….” Great powers scrambled to obtain privileged access to these areas through formal or informal imperial control. This zero-sum competition added a political and military component to economic rivalry. Increasing globalization made this dangerous situation worse, not better, in spite of the fact that it also increased the likely cost of a great power war. In large part because of the international economic institutions constructed after World War II, present day great powers do not face a world in which protectionism and political efforts to secure exclusive market access are the norm. Emerging as well as longstanding powers can now obtain greater benefits from peaceful participation in the international economic system than they could through the predatory foreign policies that were common in the late 19th and early 20th centuries. They do not need a large military force to secure their place in the sun. Economic competition among the great powers continues, but it is not tied to imperialism and military rivalry in the way it was in 1914.

#### Obama not spending PC on fast track---and minimum wage and immigration pound

Colleen McCain Nelson 2-14, February 14th, 2014, "Obama Praises Democrats, Skips ‘Fast Track’ ," blogs.wsj.com/washwire/2014/02/14/obama-praises-democrats-on-debt-ceiling-fight/

Even as Democratic opposition to the measure has begun to build, White House officials have said that Mr. Obama would continue to press for what’s formally known as trade promotion authority, which would prevent trade agreements with foreign partners from being amended during the congressional approval process. But when the president stood before Ms. Pelosi and other House Democrats Friday, he didn’t ask them to support the legislation.¶ Instead, Mr. Obama offered a short to-do list for Congress, urging lawmakers to raise the minimum wage and overhaul immigration laws.¶ White House Press Secretary Jay Carney said Friday that the president’s position on fast-track legislation had not changed, noting that “this has been an issue that has never been easy for either party.”¶ In his remarks Friday, Mr. Obama praised lawmakers for passing a debt-limit measure, saying that the days of Congress holding the government hostage in an attempt to extract policy concessions had ended. He pointed to the debt-ceiling legislation, which was passed this week with primarily Democratic support, as a step in the right direction, adding, “We can get a whole lot more done if we’ve got Congress working with us.”¶ Mr. Obama also highlighted the latest Affordable Care Act enrollment numbers, which showed 3.3 million people had signed up for health coverage through January, predicting that his signature law would prove to be a success, despite a troubled rollout.¶ “I just want to say thank you for all of you hanging in there tough on an issue that I think 10 years from now, five years from now, we’re going to look back and say this was a monumental achievement that could not have happened had it not been for this caucus,” the president said.¶ Earlier in Cambridge, Vice President Joe Biden told Democrats they need to push aggressively on an agenda that he said the American public already embraces.

#### Won’t pass---election politics

Jonathan Weisman 2/15/14, politics writer @ the New York Times, and Mark Landler, “Trade Pact With Asia Faces Tough Hurdle: Midterm Politics,” Factiva

WASHINGTON -- President Obama's ambitious trade agenda appeared to fall further victim to election-year politics on Capitol Hill on Friday when Vice President Joseph R. Biden Jr., in a closed-door retreat with House Democrats, said he understood why they would not grant Mr. Obama the crucial authority he needs to conclude large trade deals with Asia and Europe. Mr. Biden's comments most immediately called into question the Trans-Pacific Partnership, a regional pact among 12 nations that would be one of the world's biggest trade agreements. It is a central element of Mr. Obama's strategic shift toward Asia, and the White House had hoped to complete it last year. Responding to a question at the policy retreat for House Democratic leaders in Cambridge, Md., Mr. Biden said he understood that legislation for expedited consideration in Congress for free-trade agreements, known as fast-track authority, was not coming up for a vote now, according to several people who were in the meeting. TD Winning that authority is viewed as necessary for Mr. Obama to extract politically difficult concessions from Japan, Singapore and other Pacific Rim countries. The Trans-Pacific Partnership aims to reduce tariffs on a vast array of goods and services and to harmonize regulations. It would affect 40 percent of America's exports and imports. For Mr. Obama, the trade deal would also lend economic substance to a policy on Asia that is otherwise largely about shifting some military forces to the region as a counterweight to a rising China. But with Democrats facing a difficult midterm election in nine months, Mr. Biden appeared sensitive to their more parochial concerns, including the pressures they face from organized labor. He took a hard line against the largest American trading partners in the Pacific and told the Democrats, for example, that he had warned the Japanese on a recent trip to Tokyo that the pact could not go forward if the American auto industry continued to have only 1 percent market penetration in Japan. Many Democrats typically oppose trade deals, along with their allies in unions and environmental and consumer groups, because they do not want to encourage free-trade agreements that they say would siphon off manufacturing jobs in the United States and create pollution. White House officials insisted that Mr. Obama was not ceding the battle, either to win fast-track authority or to pass the broader trade deals. The European trade deal, the Trans-Atlantic Trade and Investment Partnership, is also affected by fast-track authority, which is viewed as essential to passing any agreements, and it is one area on which the president and Republicans agree. ''While the vice president said he understands where some members of the House and Senate are coming from,'' said a senior administration official, ''he made a clear case for the administration's trade priorities, including the Trans-Pacific Partnership negotiations.'' The pact, Mr. Biden said, would allow the United States to respond to the growing economic muscle of China, which he said was affecting the economic calculations of its neighbors. When the vice president was finished, one House member responded, ''Thanks for your explanation of geopolitical priorities,'' according to another member who was in the room, and who like other lawmakers spoke on condition of anonymity because the meeting was closed. Mr. Biden replied, ''But I also get local political priorities.'' At another point, the vice president glanced at the House minority leader, Representative Nancy Pelosi of California, and in a specific reference to trade promotion authority, said, ''Nancy, I know it's not coming up now,'' according to a person in the room. Last month, the Senate majority leader, Harry Reid of Nevada, said he had no plans to schedule a vote on trade promotion authority. On Wednesday, Ms. Pelosi told reporters that giving Mr. Obama that authority was ''out of the question.'' Economists say that with the United States on the mend and the international trading system still open, the volume of global trade would most likely increase, even if these trade deals were never completed. ''But it would make U.S. trade policy dead in the water, probably for the rest of the Obama administration,'' said I.M. Destler, an expert on global trade at the University of Maryland. Mr. Obama, who spoke to Democrats after Mr. Biden, did not mention trade in his brief remarks and instead focused on issues on which the Democrats are generally united, like raising the federal minimum wage and overhauling the nation's immigration laws. Some analysts credited the administration for working hard to promote the trade deals. Last year the White House moved Michael B. Froman, a top-ranking international economic official, to be the United States trade representative. Mr. Obama plans to travel to Japan, South Korea, Malaysia, and the Philippines next month for a trip that will focus heavily on trade. ''If the Democrats on the Hill seem to be reluctant to embrace the deal, and they do, the only question is whether the White House is willing to use the tools at their disposal to change some minds,'' said David Rothkopf, who worked on trade issues in the Clinton administration. Trade has long divided Democrats, pitting their business-friendly moderate wing against key allies in organized labor. And in the midterm elections, when key Democratic voting blocs tend to stay home, the party badly needs the unions to get out the vote in November.

#### CIA shift thumps

Jordain Carney 1/16, Defense Correspondent for National Journal, “Congress Restricts Push to Transfer Drone Program From CIA to Pentagon,” http://www.nationaljournal.com/defense/congress-restricts-push-to-transfer-drone-program-from-cia-to-pentagon-20140116

Lawmakers are using the omnibus spending bill to restrict President Obama's attempt to transfer control of the U.S. drone program to the Pentagon—marking one of the more direct attempts by Congress to interfere in how the administration handles covert operations.¶ The provision restricts the administration from using any funding to move drones or the authority to carry out drone strikes from the CIA—which currently has oversight—to the Defense Department. The provision was included in a classified addition to the bill by members of the Appropriations Committee in both chambers, officials told The Washington Post.¶ Specifics on the restrictions are currently unknown, but a person familiar with the bill said they are more complex than simply withholding money.¶ The move comes as the administration is trying to transition the CIA back to its more traditional intelligence-gathering mission. But some members of Congress have doubts about the Pentagon's ability to oversee the country's drone program effectively and accurately.

#### Not spending PC on TPA

Kimberley A. Strassel 2/6, columnist @ WSJ, “How Politics May Sink Trade Deals,” http://online.wsj.com/news/articles/SB10001424052702303496804579367084197445494?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702303496804579367084197445494.html

Yet the iron rule of Washington is that TPA votes only succeed via ferocious and sustained White House lobbying. President George W. Bush spent two years speechifying, mobilizing, horse-trading, and unleashing his assembled business and administrative host on Congress to get TPA. "You couldn't walk down the hall to the bathroom without bumping into a Bush cabinet member or staffer demanding to talk about trade," reminisces one current GOP staffer. "And if you didn't, they'd follow you in." With all this, the House vote in July 2002 to pass TPA was 215-212.¶ Hurricane Obama has ambitions but not about trade. He is aiming to win the midterm election, and that means keeping the left flank happy. Union heavyweights have vowed a grass-roots assault on the trade deals, with enviros in tow. Mr. Obama only wants a trade victory if he doesn't have to commit political capital and upset his base. Since he'd have to do both to win TPA, he's doing little. Congressional pro-traders report no real trade push from the White House. They say Mr. Obama has so far limited himself to working this, ahem, behind the scenes. Not to worry, he keeps telling them. He's making a few calls.¶ One call that apparently hasn't gone out is to Typhoon Harry Reid, who has already announced that Mr. Obama's call for TPA is dead. The Senate Majority leader has a priority that far outranks job-creating trade deals, and it is called staying Majority Leader. He spends 99.999989% of his time protecting his vulnerable members from tough situations, and the thought of TPA makes his few nerve endings go numb.

#### No talks---Japan undermines deal

Global Post 2-20, February 20th, 2014, "Japan grilled by TPP countries for hours over its sensitive goods," www.globalpost.com/dispatch/news/kyodo-news-international/140220/japan-grilled-tpp-countries-hours-over-its-sensitive-g

Japan underwent almost six hours of intense questioning by other countries involved in talks for the Trans-Pacific Partnership free trade accord over its refusal to open up its market for its sensitive farm products at a meeting of TPP negotiators in Singapore this week.¶ The Japanese position on its five sensitive farm product categories -- rice, wheat, beef and pork, dairy products and sugar -- dominated the discussions in the market access working group meeting that took place for about three hours each on Wednesday and Thursday.¶ The market access group meeting is part of a five-day meeting through Friday of TPP chief negotiators and other negotiators involved in various working groups to prepare for a ministerial meeting that begins here on Saturday.¶ All the other TPP members bombarded Japan with questions on whether it will open up access to its market for those goods, a negotiation source said.¶ However, Japan's negotiator stood firm about protecting those goods, insisting the position is already enshrined in the Japanese Diet's resolution, according to the source.¶ The Japanese negotiator would not even consider any form of "phasing out" period that could enable the market for those goods to be opened up under a more gradual and longer time frame, the source said.¶ Although the Japanese position on its sensitive farm products has been a sticking point in TPP negotiations since Japan joined the 11 other countries at the negotiating table last year, the source said he believed this was the first time Japan had clearly declared its position on the five sensitive agricultural products.¶ Japan's position raised the concern of other TPP members that it could further delay the conclusion of the negotiation. The TPP nations already failed to reach their goal of wrapping up the talks by the end of last year.¶ "How can it be possible?" the source said. "The TPP is meant to be a high-quality, comprehensive deal with no exclusions," the source said.¶ The source said the negotiators also discussed options to enable them to bypass the stumbling block posed by Japan, so as to conclude the talks as soon as possible. However he declined to disclose what the options were at that stage.¶ On the other hand, Canada, which also has politically sensitive goods such as dairy and beef, said during the meeting that it was willing to have further discussions on opening up its market for its sensitive goods.¶ Besides Japan, other countries involved in the TPP negotiations are the United States, Singapore, Australia, New Zealand, Malaysia, Brunei, Peru, Chile, Canada, Mexico and Vietnam

## 1AR

### Solvency

#### ACLU is bringing the lawsuits now --- cause of action is key to prevent dismissal

Ryan Reilly 13, Justice Department reporter for the Huffington Post, “ACLU Drones Lawsuit Slams Obama For Asserting Right To Kill Americans Without Oversight,” 6/11, http://www.huffingtonpost.com/2013/06/11/aclu-drones-obama\_n\_3423419.html

WASHINGTON -- Two civil liberties organizations suing the U.S. government for killing three Americans in drone strikes slammed the Obama administration Tuesday for trying to cut federal courts out of the debate. The government argued in a court filing last week that drone strikes against American citizens were constitutional, in part, because President Barack Obama said they are. "Two years after the fact, the president declassified what the entire world knew to be true -- that the government killed three American citizens, including a 16-year-old boy," the Center for Constitutional Rights and the American Civil Liberties Union said in a joint statement. "Now, the government continues to insist that the courts have no role in evaluating the legality of its actions. But the executive branch cannot simply declare the killings lawful and attempt to close the book on that basis. A federal judge, not executive officials examining their own conduct, must determine the constitutionality of the government's actions." The ACLU and the Center for Constitutional Rights has sued the government on behalf of the estates of three American citizens killed in drone strikes. The suit alleges the killings violated the constitutional rights to due process of the slain Americans. One American killed by a drone, Anwar al Awlaki, was specifically targeted by the U.S. government. Awlaki's 16-year-old son and another American, Samir Khan, were killed in strikes that didn't specifically target them.

#### It IS justiciable and doesn’t violate PQD

Paul Taylor 13, is a Senior Fellow, Center for Policy & Research. Focus on national security policy, international relations, targeted killings, and drone operations. March 23rd, 2013, “Former DOD Lawyer Frowns on Drone Court,” http://centerforpolicyandresearch.com/2013/03/23/former-dod-lawyer-frowns-on-drone-court/

Johnson also raised a very significant separation of powers concern. While the President’s duties and powers are not well enumerated in the Constitution, one thing is made clear: the President is the Commander in Chief of the Armed Forces. According to Johnson, the President therefore cannot abdicate his responsibilities as Commander in Chief to another branch of the government, nor can Congress remove those powers to itself or the Judiciary. While this is not an entirely settled question of law (note the War Powers Act and Congress’ power of the purse strings), it can be easily avoided by conducting the review ex post. After all, ex post review of the execution of nearly any of the President’s powers is fully within the authorities of the Judicial Branch. Johnson also notes that any requirement for ex ante review of a national security issue will require an exception for exigent circumstances. Johnson asks, “is it therefore worth it?” Without coming to a conclusion on this question, ex post review would obviate the concern. No exigent circumstances can occur after the the [sic] deed is done.

#### Congressional cause of action independently deters abuse regardless of lawsuits---AND lawsuits won’t be dismissed---plan overcomes state secrets and other barriers

Stephen I. Vladeck 14, Prof of Law and Associate Dean for Scholarship, American University Washington College of Law, “Targeted Killing and Judicial Review ,”

Once one accepts that neutral magistrates are competent to resolve certain issues in suits challenging targeted killings, the focus should shift to how such oversight can best be designed to maximize both the government’s interests in secrecy and expediency and the individual rights of the putative targets. I offered my critiques of Judge Gonzales’s proposal above. Although I have expressed my own views on this subject before,69 the following briefly lays out some of the key elements I consider necessary to any such regime. ¶ As noted above,70 such review is best provided after the fact, rather than ex ante, in a similar manner as the wrongful death actions recognized by virtually every jurisdiction.71 After-the-fact review avoids the serious logistical, prudential, and potentially constitutional concerns that ex ante review would raise because it does not stop the government from acting at its own discretion, and it allows for more comprehensive consideration of the issues “removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely.”72¶ Such review should be predicated on an express cause of action created by Congress. In designing such a remedy, Congress can borrow from the model created by FISA, which has provided since its inception that “[a]n aggrieved person, other than [one who is properly subject to surveillance under FISA], who has been subjected to an electronic surveillance . . . shall have a cause of action against any person who committed such violation.”73 An express cause of action would clarify Congress’s intent that such suits should be allowed to go forward, and it would also support arguments against otherwise available common law privileges and immunities. ¶ Further to that end, because review would be after the fact, such an action should be for damages, and, unlike FISA, should therefore contain an express waiver of the United States’ sovereign immunity to ensure that money damages will actually be available in such cases74—not so much to make the victim’s heirs whole, but to provide a meaningful deterrent for future government officers. Thus, although many will disagree with this particular aspect of my proposal, I suspect that such a cause of action could serve its purpose even if it only provided for nominal damages, insofar as such nominal damages still establish forward-looking principles of liability.75¶ Although no special jurisdictional provisions should be necessary (e.g., FISA does not require civil suits under FISA to be brought before the FISC),76 Congress could confer exclusive jurisdiction over such suits upon the U.S. District Court for the District of Columbia.77 This jurisdictional exclusivity would ensure that such cases were brought before federal judges with substantial and sustained experience handling high-profile (and often highly sensitive) national security cases. ¶ Borrowing from the model of the Federal Tort Claims Act (“FTCA”),78 as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 (“Westfall Act”), 79 Congress can immunize potential officer-defendants by substituting the United States as the defendant on any claims arising under this cause of action in which the officer-defendant was acting within the scope of his employment.80 As is the case under the Westfall Act, such a move would also necessarily moot application of official immunity doctrines because it would confer absolute immunity upon the officer-defendants,81 and the United States may not invoke official immunity as a party. As under the Westfall Act, substitution would reinforce the idea that the goal is not to punish individual officers, but to establish the liability of the federal government writ large. ¶ As under the FTCA, Congress could bar jury trials in such cases, requiring instead that all factual and legal determinations be made by the presiding judge.82

///**MARKED///**

 Again, such a move would help to ensure that these suits could be heard expeditiously and with due regard for the government’s secrecy concerns. ¶ On that note, with regard to secrecy, Congress could look to both FISA83 and the provisions of the 1996 immigration laws establishing the Alien Terrorist Removal Court (“ATRC”)84 as models for how to allow for judicial proceedings that are both adversarial and largely secret. In this respect, both FISA and the ATRC contemplate litigation between the government and security-cleared counsel without regard to the state secrets privilege, which Congress could otherwise abrogate.85

#### Signature strikes are a defining feature of US targeted killing policy

Michael Carbone 12, master's student at Johns Hopkins University's School for Advanced International Studies, “US Covert Targeted Killing Policy in Pakistan,” 10/30/12, http://www.wanderlust.im/goodies/2012/11/Michael-Carbone-US-Covert-Targeted-Killing-Policy-in-Pakistan.pdf

As the Bush Administration described in a 2004 Defense Science Board review for the Secreetary of Defense, countries whose citizens express dislike for the US Government often do so because they dislike the US policies implemented in those countries—that is, “they do not hate us for our values, but because of our policies” [4, 46]. One set of policies that is particularly unpopular in Pakistan is the US covert1 drone2 program [23, 26]. By focusing on some of the policies that currently define “targeted killing” by drone—“signature strikes”, “double taps”, and unique interpretations of the definition of militants and the laws of war by the Obama Administration—I will examine the discrepancies between local and US perceptions of the program [23, 26]. Through analyzing these policies we can better understand the backlash they have in Pakistan and some of the ways they may be counterproductive for the US’s strategic goals in the region.

### TPA DA

#### Global trade expanding now despite stall in global talks---proves TPA not necessary for interdependence

Miller 11 (John W., WSJ, “Trade Keeps Growing, Despite Stalled Global Talks,” <http://online.wsj.com/article/SB10001424052748703833204576113750354401530.html>)

Global trade has doubled and bilateral pacts have sprung up since the stalled Doha round began. While countries say they haven't given up on the decade-long world trade negotiations, the hurdles to a deal, already substantial, have increased recently.

A report issued at last week's World Economic Forum in Davos, Switzerland, warned that Doha, named for the Qatari capital where the talks began, would perish if not completed this year.

"It's time for heads of government to do more than simply repeat the rhetoric," said the report's author, Peter Sutherland, director of the World Trade Organization at the time of its founding in 1995.

Others echoed his warning. After all, the Uruguay Round, the second-longest, took a mere eight years, from 1986 to 1994."If we don't get the deal done this year it is hard to see how the Doha process can have any further credibility," U.K. Prime Minister David Cameron said in a speech Friday in Davos.

To be sure, some of the dire talk may be intended to create momentum where none exists. Global trade deals routinely stretch on for more than a decade. No major country every truly gives up on a deal because to do so would be to signal that the global trading system—and the era of globalization—may have reached its limit.

Trade ministers from key countries, gathering in Davos over the weekend, said they would keep trying and would meet in July with an eye toward finishing the round by December. "There is a window available to conclude the deal this year," said Indian commerce and industry minister Anand Sharma.

But beneath the optimistic rhetoric, some officials heaped even more demands on the negotiations. "We have to have a very balanced and ambitious package that's not currently on the table," said U.S. Trade Representative Ron Kirk. Developing countries needed to concede more on services, he said. European Union Trade Commissioner Karel De Gucht said that limits on state subsidies should be added to the deal—a direct swipe at China.

Messrs. De Gucht and Kirk's complaints underscore one reason why the talks have stalled. The Doha round, launched in a spirit of international cooperation following the Sept. 11 attacks, had a simple premise: Rich countries would cut farm subsidies and tariffs; in exchange, emerging economies would open their markets for services and industrial goods. Poor countries interpreted that to mean they would have to do nothing but reap the benefits—a stance that rich countries find impractical and a political loser. In addition, some countries considered poor when the talks began—China and India—now are the world's fastest-growing large economies. The rich countries want a lot more out of them in terms of trade and investment liberalization.

So far, the concessions offered by developing nations are considered so minimal, they haven't attracted the support of business and farm lobbies in the U.S. and Europe. Without their support, governments in the U.S. and Europe won't sign on to a deal.

A month after Doha was initiated in November 2001, China joined the World Trade Organization, just as a decade of record growth in global trade was unfolding. Total global annual exports doubled to $13 trillion in 2010 from $6.5 trillion in 2001. China's exports have grown to $1.4 trillion a year from $266 billion. All without Doha.

The trade growth isn't all thanks to China. Other factors include lower shipping costs and the rise of global supply chains. Bilateral and regional free-trade agreements also have made a difference—since 2001, more than 100 have been initiated.

#### No impact to trade and doesn’t turn any of the case --- answers Drezner and interdependence

Katherine Barbieri 13, Associate Professor of Political Science at the University of South Carolina, Ph.D. in Political Science from Binghamton University, “Economic Interdependence: A Path to Peace or Source of Interstate Conflict?” Chapter 10 in Conflict, War, and Peace: An Introduction to Scientific Research, google books

How does interdependence affect war, the most intense form of conflict? Table 2 gives the empirical results. The rarity of wars makes any analysis of their causes quite difficult, for variations in interdependence will seldom result in the occurrence of war. As in the case of MIDs, the log-likelihood ratio tests for each model suggest that the inclusion of the various measures of interdependence and the control variables improves our understanding of the factors affecting the occurrence of war over that obtained from the null model. However, the individual interdependence variables, alone, are not statistically significant. This is not the case with contiguity and relative capabilities, which are both statistically significant. Again, we see that contiguous dyads are more conflict-prone and that dyads composed of states with unequal power are more pacific than those with highly equal power. Surprisingly, no evidence is provided to support the commonly held proposition that democratic states are less likely to engage in wars with other democratic states.¶ The evidence from the pre-WWII period provides support for those arguing that economic factors have little, if any, influence on affecting leaders’ decisions to engage in war, but many of the control variables are also statistically insignificant. These results should be interpreted with caution, since the sample does not contain a sufficient number wars to allow us to capture great variations across different types of relationships. Many observations of war are excluded from the sample by virtue of not having the corresponding explanatory measures. A variable would have to have an extremely strong influence on conflict—as does contiguity—to find significant results. ¶ 7. Conclusions This study provides little empirical support for the liberal proposition that trade provides a path to interstate peace. Even after controlling for the influence of contiguity, joint democracy, alliance ties, and relative capabilities, the evidence suggests that in most instances trade fails to deter conflict. Instead, extensive economic interdependence increases the likelihood that dyads engage in militarized dispute; however, it appears to have little influence on the incidence of war. The greatest hope for peace appears to arise from symmetrical trading relationships. However, the dampening effect of symmetry is offset by the expansion of interstate linkages. That is, extensive economic linkages, be they symmetrical or asymmetrical, appear to pose the greatest hindrance to peace through trade.

#### Accesses all their warrants

Greg Miller 1/15, Staff Writer covering Intelligence for the Washington Post, “Lawmakers seek to stymie plan to shift control of drone campaign from CIA to Pentagon,” http://www.washingtonpost.com/world/national-security/lawmakers-seek-to-stymie-plan-to-shift-control-of-drone-campaign-from-cia-to-pentagon/2014/01/15/c0096b18-7e0e-11e3-9556-4a4bf7bcbd84\_story.html

Congress has moved to block President Obama’s plan to shift control of the U.S. drone campaign from the CIA to the Defense Department, inserting a secret provision in the massive government spending bill introduced this week that would preserve the spy agency’s role in lethal counterterrorism operations, U.S. officials said.¶ The measure, included in a classified annex to the $1.1 trillion federal budget plan, would restrict the use of any funding to transfer unmanned aircraft or the authority to carry out drone strikes from the CIA to the Pentagon, officials said.¶ The provision represents an unusually direct intervention by lawmakers into the way covert operations are run, impeding an administration plan aimed at returning the CIA’s focus to traditional intelligence gathering and possibly bringing more transparency to drone strikes.

#### Won’t pass---midterms---not enough Dem votes

Economist 2-22, February 22nd, 2014, "Taking aim at imports," www.economist.com/news/united-states/21596939-protectionists-congress-could-scupper-crucial-free-trade-deals-taking-aim-imports

Opponents of free trade have fixed on the idea that letting the White House negotiate behind closed doors is somehow undemocratic and that more transparency is required. The executive office responsible for trade negotiations has held more than 1,150 meetings on Capitol Hill on the Asia deal alone, but this is apparently insufficient.¶ A similar argument has developed to oppose the deal at the other end of the political spectrum. In addition to those few Republicans who oppose more free trade for protectionist reasons there is a larger group that likes trade deals in theory but not in practice, since negotiating them involves handing power to a president who cannot be trusted. The Republican letter opposing the granting of such authority regrets that “recent presidents have seized Congress’s constitutional trade authority” and asks for it to be returned.¶ It is hard to oppose greater transparency without sounding sinister, but too much will make it hard for America to do a good deal. “I don’t know anyone who, when buying a car or a house, walks in with their best price written on their forehead,” says someone involved in negotiating the Asian deal.¶ Both sides in Congress now seem to prefer inaction to moving ahead. The office of John Boehner, the House Speaker, has suggested he will need the support of 50 Democrats to ensure passage. That seems impossible for now, which probably suits him well: attending a signing ceremony with Mr Obama in the Rose Garden is not high on his list of priorities before the mid-terms. This suits Democrats, who would rather not pick a fight with the unions before the elections. Yet even when that hurdle is past, it is not clear that the political maths on which approval for free trade turns will have changed.

#### Won’t pass and doesn’t solve anything---PC fails and Dems are defecting

Robert L. Borosage 2-19, president at the Institute for America's Future, February 19th, 2014, "Fast Track to Nowhere: America's Failed Trade Policy," www.huffingtonpost.com/robert-l-borosage/fast-track-to-nowhere-ame\_b\_4819706.html

The Obama administration continues to push a fast track to nowhere. U.S. Trade Representative Michael B. Froman now has launched charm offensive, meeting with legislators, consumer, union and environmental groups to try to defuse growing opposition to fast track trade authority.¶ Fat chance. Senate Majority leader Harry Reid says he has no intention of bringing fast track up on the Senate floor (at least before the election). House Speaker John Boehner couldn't even round up a Democratic co-sponsor for the bill. Democratic leader Nancy Pelosi has voiced her opposition.¶ Froman's strategy now is to try to move the negotiations over the twelve nation Trans-Pacific Partnership (TPP) towards completion, using the treaty to convince legislators to pass fast track. Administration officials are reportedly hoping that they can mobilize enough Wall Street and corporate America muscle to cobble together sufficient votes in a lame duck session after the elections to move forward.¶ Froman is a competent advocate, unflappable in the face of criticism, willing to mix it up with his opponents. But the debate quickly disintegrates into hoary old, dishonest tropes. Froman claims the treaty will expand exports and jobs, while saying little about imports or the jobs lost to them. He says America can't be protectionist, as if that were an option. He claims this treaty is unlike all others because it will include enforceable provisions on labor rights and environmental protections. (Can anyone imagine enforcing labor rights in Mississippi, much less Da Nang?) He dismisses concerns that corporations are extending their grant to sue nations for damages to projected profits for consumer and environmental regulations. He argues that if we don't act rapidly, the Pacific nations will be seduced to join China's economic order, despite centuries- old enmities and fears.¶ All this seems like dancing on the rubble. The inescapable reality is that the U.S. has pursued a globalization strategy that is a calamitous failure. This isn't the time to pursue more, better, bigger trade accords. This is a time for a fundamental reassessment.

**///MARKED///**

This isn't a radical conclusion. Consider three perspectives:¶ The leading global economic powers -- the G-20 -- gathered in Pittsburgh after the global financial collapse in 2009 and concluded, as Republican Federal Reserve Chair Ben Bernanke argued, that the enormous global trade imbalances contributed directly to the global financial crisis. All agreed -- including China and Germany -- that both surplus nations and deficit nations had to move to more balanced trade and financial flows in the future.¶ President Obama has sensibly called America's extreme inequality -- and the decline of its once proud middle class -- the "defining challenge of our time." He says this inequality has built up over three decades and attributes it to two major causes -- technology and globalization. Inescapably, at the center of America's globalization strategy are its corporate defined trade and strong dollar policies.¶ If this is too fancy, just apply the common sense of a traditional Yankee trader. From 2000, the U.S. has racked up an utterly unprecedented $7 trillion in trade deficits in goods and services. This has disemboweled manufacturing in the U.S., as U.S. corporations took advantage of trade and tax policies to ship good jobs abroad. Despite falling oil imports due to the natural gas-fracking revolution, the U.S. is still running a trade deficit of over $1 billion a day. And our trade deficit with China has reached new and previously unimaginable levels, including a growing trade deficit in advanced technology products.¶ Thus, it is imperative that the U.S. stop pushing down its fast tracks and instead undertake a comprehensive review of its globalization strategy, particularly its trade, tax and currency policies. Rather than trying desperately to sell another round of treaties with dubious promises, evanescent benefits, and exaggerated claims, the administration should be launching a root to branch evaluation necessary to define a very different direction for the country.¶ The president, stymied by obstructionist Republicans in almost all of his policies, has said that America can't wait, and that he has "a pen, a phone" and a pulpit to force independent action. Nothing is more imperative than to use that pen and phone to convene a national commission on America's global economic strategy. Convene the best representatives of global corporations, banks, unions, consumers and environmentalists who understand that we can't continue down the same road and drive a review. Legislators might sensibly set up a joint special committee of Congress to parallel the president's initiative.¶ This would wrench us out of the old dishonest debate about "free trade and protectionism" and generate a rich new discussion about America's strategy.¶ How do we move to more but balanced trade? How do we limit the ability of global corporations to avoid taxes by shipping jobs and reporting profits abroad? How do we take on currency manipulators like China or mercantilist traders like Germany? Should we sustain the muscle bound dollar that bankers and multinationals like or a fit dollar that exporters prefer? What is our global trade trajectory in a time of catastrophic climate change?¶ Instead, the administration is pursuing trade negotiations in an outmoded and failed mold, behind closed doors with corporations at the table. We know that this model has failed us miserably over the last decades. President Obama was elected in the wake of the global collapse with the promise to develop a new foundation for growth. Isn't it time to stop pursuing a fast track when the train is already off the rails? Isn't it long past time to take another look and think anew?