## NU MV 1AC – GSU Octas

### 1AC – Accountability Advantage

#### CONTENTION 1: ACCOUNTABILITY

#### Accountability mechanisms that constrain the executive prevent drone overuse in Pakistan and Yemen---drones are key to stability but overuse is counterproductive

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[s] 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.

#### In particular, current broad definitions of imminent threat guarantee blowback and collateral damage

Amos N. Guiora 12, Prof of Law at S.J. Quinney College of Law, University of Utah, Fall 2012, “Targeted Killing: When Proportionality Gets All Out of Proportion,” Case Western Reserve Journal of International Law, Vol 45 Issues 1 & 2, http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.13.Article.Guiora.pdf

Morality in armed conflict is not a mere mantra: it imposes significant demands on the nation state that must adhere to limits and considerations beyond simply killing “the other side.” For better or worse, drone warfare of today will become the norm of tomorrow. Multiply the number of attacks conducted regularly in the present and you have the operational reality of future warfare. It is important to recall that drone policy is effective on two distinct levels: it takes the fight to terrorists directly involved, either in past or future attacks, and serves as a powerful deterrent for those considering involvement in terrorist activity.53 However, its importance and effectiveness must not hinder critical conversation, particularly with respect to defining imminence and legitimate target. The overly broad definition, “flexible” in the Obama Administration’s words,54 raises profound concerns regarding how imminence is applied. That concern is concrete for the practical import of Brennan’s phrasing is a dramatic broadening of the definition of legitimate target. It is also important to recall that operators—military, CIA or private contractors—are responsible for implementing executive branch guidelines and directives.55 For that very reason, the approach articulated by Brennan on behalf of the administration is troubling.¶ This approach, while theoretically appealing, fails on a number of levels. First, it undermines and does a profound injustice to the military and security personnel tasked with operationalizing defense of the state, particularly commanders and officers. When senior leadership deliberately obfuscates policy to create wiggle room and plausible deniability, junior commanders (those at the tip of the spear, in essence) have no framework to guide their operational choices.56 The results can be disastrous, as the example of Abu Ghraib shows all too well.57 Second, it gravely endangers the civilian population. What is done in the collective American name poses danger both to our safety, because of the possibility of blow-back attacks in response to a drone attack that caused significant collateral damage, and to our values, because the policy is loosely articulated and problematically implemented.58 Third, the approach completely undermines our commitment to law and morality that defines a nation predicated on the rule of law. If everyone who constitutes “them” is automatically a legitimate target, then careful analysis of threats, imminence, proportionality, credibility, reliability, and other factors become meaningless. Self-defense becomes a mantra that justifies all action, regardless of method or procedure.¶ Accordingly, the increasing reliance on modern technology must raise a warning flag. Drone warfare is conducted using modern technology with the explicit assumption that the technology of the future is more sophisticated, more complex, and more lethal. Its sophistication and complexity, however, must not be viewed as a holy grail. While armed conflict involves the killing of individuals, the relevant questions must remain who, why, how, and when. Seductive methods must not lead us to reflexively conclude that we can charge ahead. Indeed, the more sophisticated the mechanism, the more questions we must ask. Capability cannot substitute for process and technology cannot substitute for analysis.¶ V. Conclusion¶ The state’s right to engage in pre-emptive self-defense must be subject to powerful restraints and conditions. A measured, cautious approach to targeted killing reflects the understanding that the state has the absolute, but not unlimited, right and obligation to protect its civilian population.¶ Targeted killing is a legal, legitimate, and effective form of active self-defense provided that it is conducted in accordance with international law, morality, and a narrow definition of legitimate target. Self-defense, according to international law, is subject to limits; otherwise, administration officials would not press for flexibility in defining imminent. The call for a flexible conception of imminence is a deeply troubling manifestation of a “slippery slope;” it opens the door to operational counterterrorism not conducted in accordance with international law or principles of morality. Therefore, analyzing the reliability of intelligence, assessing the threat posed, and determining whether the identified target is a legitimate target facilitates lawful, moral, and effective targeted killing.¶ Expansiveness and flexibility are at odds with a measured approach to targeted killing precisely because they eliminate our sense of what is proportional, in the broadest sense of the term. Flexibility with regard to imminence and threat-perception means that the identification of legitimate targets, the true essence of moral operational counterterrorism, becomes looser and less precise. In turn, broader notions of legitimate target and the right of self-defense introduce greater flexibility with regard to collateral damage—resulting in a wider understanding of who constitutes collateral damage and how much collateral damage is justified in the course of targeting a particular threat. Flexibility and the absence of criteria, process, and procedure result in notions of proportionality—which would normally guide decision making and operations— that are out of proportion. In the high-stakes world of operational counterterrorism, there is no room for imprecision and casual definitions; the risks, to innocent civilians on both sides and to our fundamental values, are just too high.

#### Scenario 1: Yemen

#### Unaccountable drone strikes strengthen AQAP and destabilize Yemen

Jacqueline Manning 12, Senior Editor of International Affairs Review, December 9 2012, “Free to Kill: How a Lack of Accountability in America’s Drone Campaign Threatens U.S. Efforts in Yemen,” http://www.iar-gwu.org/node/450

Earlier this year White House counter-terrorism advisor, John Brennan, named al-Qaeda in the Arabian Peninsula (AQAP) in Yemen the greatest threat to the U.S. Since 2009, the Obama administration has carried out an estimated 28 drone strikes and 13 air strikes targeting AQAP in Yemen, while the Yemeni Government has carried out 17 strikes, and another five strikes cannot be definitively attributed to either state . There is an ongoing debate over the effectiveness of targeted killings by drone strikes in the fight against al-Qaeda. However, what is clear is that the secrecy and unaccountability with which these drone strike are being carried out are undermining U.S. efforts in Yemen.¶ The drone campaign in Yemen is widely criticized by human rights activists, the local population and even the United Nations for its resulting civilian casualties. It is also credited with fostering animosity towards the U.S. and swaying public sentiment in Yemen in favor of AQAP. The long-term effects, as detailed by a 2012 report by the Center for Civilians in Conflict, seem to be particularly devastating. The resulting loss of life, disability, or loss of property of a bread-winner can have long-term impacts, not just on an individual, but on an entire family of dependents.¶ The effectiveness of drone technology in killing al-Qaeda militants, however, cannot be denied. Targeted killings by drone strikes have eliminated several key AQAP members such as Anwar al-Awlaki, Samir Khan, Abdul Mun’im Salim al Fatahani, and Fahd al-Quso . Advocates of the counterterrorism strategy point out that it is much less costly in terms of human lives and money than other military operations.¶ While there are strong arguments on both sides of the drone debate, both proponents and critics of targeted killings of AQAP operatives by drones agree that transparency and accountability are needed.¶ Authorizing the CIA to carry out signature strikes is of particular concern. In signature strikes, instead of targeting individual Al Qaeda leaders, the CIA targets locations without knowing the precise identity of the individuals targeted as long as the locations are linked to a “signature” or pattern of behavior by Al Qaeda officials observed over time. This arbitrary method of targeting often results in avoidable human casualties.¶ Secrecy surrounding the campaign often means that victims and families of victims receive no acknowledgement of their losses, much less compensation. There are also huge disparities in the reported number of deaths. In addition, according to The New York Times, Obama administration officials define “militants” as “all military-age males in a strike zone...unless there is explicit intelligence posthumously proving them innocent” This definition leads to a lack of accountability for those casualties and inflames anti-American sentiment.¶ In a report submitted to the UN Human Rights Council, Ben Emmerson, special rapporteur on the promotion and protection of human rights while countering terrorism, asserted that, "Human rights abuses have all too often contributed to the grievances which cause people to make the wrong choices and to resort to terrorism….human rights compliant counter-terrorism measures help to prevent the recruitment of individuals to acts of terrorism." There is now statistical evidence that supports this claim. A 2010 opinion poll conducted by the New America Foundation in the Federally Administered Tribal Areas (FATA) of Pakistan, where U.S. drone strikes have been carried out on a much larger scale, shows an overwhelming opposition to U.S. drone strikes coupled with a majority support for suicide attacks on U.S. forces under some circumstances.¶ It is clear that the drone debate is not simply a matter of morality and human rights; it is also a matter of ineffective tactics. At a minimum the U.S. must implement a policy of transparency and accountability in the use of drones. Signature strikes take unacceptable risks with innocent lives. Targets must be identified more responsibly, and risks of civilian casualties should be minimized. When civilian casualties do occur, the United States must not only acknowledge them, but also pay amends to families of the victims.

#### AQAP will attack Israel

NCAFP 10 National Committee on American Foreign Policy, “Global Terrorism: The U.S. Challenge and Response” September 27, http://ncafp.org/cms/wp-content/uploads/2011/08/Global-Terrorism-Report-Bklt.pdf

A participant, alluding to the overarching terrorist agenda of eliminating the Great Satan, asked where history is reflected in that objective. A presenter answered by describing the mission of Al Qaeda in the Arabian Peninsula—Al Qaeda in Yemen. The video that the group released when it was formed in 2009 was titled “In Defense of Jerusalem” or “In Search of Jerusalem.” In his judgment, the terrorists believe that Israel is an offshoot of the United States and that the United States is an extension of Israel. Consequently the elimination of one mandates the elimination of the other. He added that Al Qaeda in the Arabian Peninsula (AQAP) maintains that terrorist attacks against U.S. forces will ignite an extensive jihad and in that process will circle back to Jerusalem. Accordingly the presenter thinks that it is likely that AQAP will target Israel directly.

#### Triggers the Samson option and extinction

Dennis Ray Morgan 9, Hankuk University of Foreign Studies, Futures, Vol. 41 Issue 10, December, pp. 683-693

Years later, in 1982, at the height of the Cold War, Jonathon Schell, in a very stark and horrific portrait, depicted sweeping, bleak global scenarios of total nuclear destruction. Schell’s work, The Fate of the Earth [8] represents one of the gravest warnings to humankind ever given. The possibility of complete annihilation of humankind is not out of the question as long as these death bombs exist as symbols of national power. As Schell relates, the power of destruction is now not just thousands of times as that of Hiroshima and Nagasaki; now it stands at more than one and a half million times as powerful, more than fifty times enough to wipe out all of human civilization and much of the rest of life along with it [8]. In Crucial Questions about the Future, Allen Tough cites that Schell’s monumental work, which ‘‘eradicated the ignorance and denial in many of us,’’ was confirmed by ‘‘subsequent scientific work on nuclear winter and other possible effects: humans really could be completely devastated. Our human species really could become extinct.’’ [9]. Tough estimated the chance of human self-destruction due to nuclear war as one in ten. He comments that few daredevils or high rollers would take such a risk with so much at stake, and yet ‘‘human civilization is remarkably casual about its high risk of dying out completely if it continues on its present path for another 40 years’’ [9]. What a precarious foundation of power the world rests upon. The basis of much of the military power in the developed world is nuclear. It is the reigning symbol of global power, the basis, – albeit, unspoken or else barely whispered – by which powerful countries subtly assert aggressive intentions and ambitions for hegemony, though masked by ‘‘diplomacy’’ and ‘‘negotiations,’’ and yet this basis is not as stable as most believe it to be. In a remarkable website on nuclear war, Carol Moore asks the question ‘‘Is Nuclear War Inevitable??’’ [10].4 In Section 1, Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian ‘‘dead hand’’ system, ‘‘where regional nuclear commanders would be given full powers should Moscow be destroyed,’’ it is likely that any attack would be blamed on the United States’’ [10]. Israeli leaders and Zionist supporters have,

likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal ‘‘Samson option’’ against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even ‘‘anti-Semitic’’ European cities [10]. In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or ‘‘lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the ‘‘use them or lose them’’ strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to ‘‘win’’ the war. In otherwords, once Pandora’s Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, ‘‘everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek selfdetermination, some of those groups will look for any means to fight their oppressors’’ [10]. In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely thatmany, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter.

#### Your war defense is old

Michael Singh 11, Washington Institute director, 9/22, “What has really changed in the Middle East?”, http://shadow.foreignpolicy.com/posts/2011/09/22/what\_has\_really\_changed\_in\_the\_middle\_east

Third, and most troubling, the Middle East is likely to be a more dangerous and volatile region in the future. For the past several decades, a relatively stable regional order has prevailed, centered around Arab-Israeli peace treaties and close ties between the United States and the major Arab states and Turkey. The region was not conflict-free by any means, and Iran, Iraq, and various transnational groups sought to challenge the status quo, albeit largely unsuccessfully. Now, however, the United States appears less able or willing to exercise influence in the region, and the leaders and regimes who guarded over the regional order are gone or under pressure. Sensing either the need or opportunity to act autonomously, states like Turkey, Saudi Arabia, and Iran are increasingly bold, and all are well-armed and aspire to regional leadership. Egypt, once stabilized, may join this group. While interstate conflict is not inevitable by any means, the risk of it has increased and the potential brakes on it have deteriorated. Looming over all of this is Iran's quest for a nuclear weapon, which would shift any contest for regional primacy into overdrive.

#### Scenario 2: Pakistan

#### Overuse of drones in Pakistan empowers militants and destabilizes the government

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The escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

#### Pakistan instability causes loose nukes and conflict with India

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PhD in public and international affairs from Princeton, Apr 27 2005, “Dealing with the Collapse of a Nuclear-Armed State: The Cases of North Korea and Pakistan,” http://www.princeton.edu/~ppns/papers/ohanlon.pdf

Were Pakistan to collapse, it is unclear what the United States and like-minded states would or should do. As with North Korea, it is highly unlikely that “surgical strikes” to destroy the nuclear weapons could be conducted before extremists could make a grab at them. The United States probably would not know their location – at a minimum, scores of sites controlled by Special Forces or elite Army units would be presumed candidates – and no Pakistani government would likely help external forces with targeting information. The chances of learning the locations would probably be greater than in the North Korean case, given the greater openness of Pakistani society and its ties with the outside world; but U.S.-Pakistani military cooperation, cut off for a decade in the 1990s, is still quite modest, and the likelihood that Washington would be provided such information or otherwise obtain it should be considered small.¶ If a surgical strike, series of surgical strikes, or commando-style raids were not possible, the only option would be to try to restore order before the weapons could be taken by extremists and transferred to terrorists. The United States and other outside powers might, for example, respond to a request by the Pakistani government to help restore order. Given the embarrassment associated with requesting such outside help, the Pakistani government might delay asking until quite late, thus complicating an already challenging operation. If the international community could act fast enough, it might help defeat an insurrection. Another option would be to protect Pakistan’s borders, therefore making it harder to sneak nuclear weapons out of the country, while only providing technical support to the Pakistani armed forces as they tried to quell the insurrection. Given the enormous stakes, the United States would literally have to do anything it could to prevent nuclear weapons from getting into the wrong hands.¶ India would, of course, have a strong incentive to ensure the security of Pakistan’s nuclear weapons. It also would have the advantage of proximity; it could undoubtedly mount a large response within a week, but its role would be complicated to say the least. In the case of a dissolved Pakistani state, India likely would not hesitate to intervene; however, in the more probable scenario in which Pakistan were fraying but not yet collapsed, India’s intervention could unify Pakistan’s factions against the invader, even leading to the deliberate use of Pakistani weapons against India. In such a scenario, with Pakistan’s territorial integrity and sovereignty on the line and its weapons put into a “use or lose” state by the approach of the Indian Army, nuclear dangers have long been considered to run very high.

#### 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

The greatest threat to regional security (although curiously not at the top of most lists of U.S. regional concerns) is the possibility that increased India-Pakistan tension will erupt into all-out war that could quickly escalate into a nuclear exchange. Indeed, in just the past two decades, the two neighbors have come perilously close to war on several occasions. India and Pakistan remain the most likely belligerents in the world to engage in nuclear war. ¶ Due to an Indian preponderance of conventional forces, Pakistan would have a strong incentive to use its nuclear arsenal very early on before a routing of its military installations and weaker conventional forces. In the event of conflict, Pakistan’s only chance of survival would be the early use of its nuclear arsenal to inflict unacceptable damage to Indian military and (much more likely) civilian targets. By raising the stakes to unacceptable levels, Pakistan would hope that India would step away from the brink. However, it is equally likely that India would respond in kind, with escalation ensuing. Neither state possesses tactical nuclear weapons, but both possess scores of city-sized bombs like those used on Hiroshima and Nagasaki. ¶ Furthermore, as more damage was inflicted (or as the result of a decapitating strike), command and control elements would be disabled, leaving individual commanders to respond in an environment increasingly clouded by the fog of war and decreasing the likelihood that either government (what would be left of them) would be able to guarantee that their forces would follow a negotiated settlement or phased reduction in hostilities. As a result any such conflict would likely continue to escalate until one side incurred an unacceptable or wholly debilitating level of injury or exhausted its nuclear arsenal. ¶ 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.

### 1AC – Norms Advantage

#### CONTENTION 2: NORMS

#### Failure to adopt rules for US drones sets a dangerous international precedent----magnifies every impact by causing global instability

Kristen Roberts 13, news editor for National Journal, master's in security studies from Georgetown University, master's degree in journalism from Columbia University, March 21st, 2013, "When the Whole World Has Drones," National Journal, www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321

To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order.¶ Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan.¶ This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself **that would at minimum** create a globally relevant standard **for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation.**

#### And it makes great power war inevitable by tempting leaders to use drones too often---causes escalation as traditional checks don’t apply

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

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

#### These conflicts go nuclear --- wrecks global stability

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A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them.

#### Now is key to shape international norms and only the US can lead---lack of rules undermines all other norms on violence

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While drone advocates such as Max Boot argue that other countries are unlikely to follow any precedents about drone use established by America, power has an undeniable effect in establishing which norms are respected or enforced. America used its power in the international system after World War 2 to embed norms about human rights and liberal political organization, not only in allies, but in former adversaries and the international system as a whole. Likewise, the literature on rule-oriented constructivism presents a powerful case that norms have set precedents on the appropriate war-fighting and deterrence policies when using weapons of mass destruction and the practices of colonialism and human intervention. Therefore, drones advocates must consider the possible **unintended consequences of lending legitimacy to the** unrestricted use of drones. However, with the Obama administration only now beginning to formulate rules about using drones and seemingly uninterested in restraining its current practices, the US may miss an opportunity to entrench international norms about drone operations.¶ If countries begin to follow the precedent set by the US, there is also the risk of weakening pre-existing international norms about the use of violence. In the summer 2000 issue of International Security, Ward Thomas warned that, while the long-standing norm against assassination has always been less applicable to terrorist groups, the targeting of terrorists is, “likely to undermine the norm as a whole and erode the barriers to the use of assassination in other circumstances.” Such an occurrence would represent a deleterious unintended consequence to an already inhumane international system, justifying greater scrutiny of the drone program.¶ Realism cautions scholars not to expect ethical behaviour in international politics. Yet, the widespread use of drones by recent administrations with little accountability and the lack of any normative framework about their deployment on the battlefield could come to be seen as a serious strategic error and moral failing. If the Obama administration was nervous about leaving an amorphous drone policy to a possible Romney Presidency, then surely China or Russia possessing such a program would be terrifying.

#### Japan is considering drones, but there’s an ongoing debate—the government must overcome pacifism

AFP 13, AFP, Channel News Asia, Japan eyeing Marines, drones in long-term defence plan, 7/26/13, <http://www.channelnewsasia.com/news/asiapacific/japan-eyeing-marines/757108.html>

TOKYO, Japan: Japan needs amphibious units and surveillance drones to protect its outlying islands, the defence ministry said Friday, as possibly-armed Chinese coastguards plied the waters near a disputed archipelago.¶ In a paper that had been widely reported on Thursday, the ministry said it was necessary to boost the strength and range of forces that could be used to protect Japan's far-flung territories.¶ "To deploy units quickly in response to a situation, it is important... to have an amphibious function that is similar to US Marines," capable of conducting landing operations on remote islands, it said.¶ The interim report, which was approved by a high-level defence meeting on Friday, also advocates the introduction of a drone reconnaissance fleet that could be used to monitor distant islands.¶ The report will be reflected in Japan's long-term defence outline that is expected to be published towards the end of this year.¶ The paper also stresses "the need to boost a comprehensive capability of containment" as part of anti-ballistic missile measures against North Korea.¶ The phraseology reflects an on-going debate among politicians about the need to re-interpret aspects of the pacifist country's military stance, defence officials told reporters, and steered clear of any mention of "first strike".¶ "We are not talking about pre-emptive attack. That's not good," a defence official said.

#### Absent a more credible restraint on targeted killings, Japan will be unwilling to cooperate with US operations

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

#### Credible restraint is key—it increases the willingness of allies to join security cooperation arrangements and allows the US to develop norms

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Aside from enabling accountability at home, the oversight system could also help with foreign publics and governments. The United States has taken expensive steps in order to avoid perceptions of recklessness abroad: for instance, Georgetown professor David Koplow argues that the Pentagon's recent investments in less-destructive weaponry reflect, in part, a growing emphasis on global perceptions. Washington should thus worry that more than half of respondents in 17 of 20 countries disapprove of U.S. drone strikes, according to a Pew Global survey. An independent oversight program is not going to change minds in Lahore or Karachi, where opposition to drones seems to be driven more by the perceived violation of sovereignty than by indiscriminate killing (there are indications that opposition to drones is actually lower in regions where drone strikes are clustered). Still, because the drone is a salient symbol of American recklessness, oversight might reduce public opposition to U.S. policy in Europe and elsewhere. That would make it easier for foreign leaders to overcome domestic opposition to security cooperation with the United States.¶ 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.

#### Greater security cooperation will allow the US to export drones to Pacific allies—will solidify a quadrilateral alliance, expand ISR, and deter China and North Korea

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The Pentagon’s biggest, most high-tech spy drone aircraft — one of the hottest items on the international arms market — is the key to a burgeoning robotic alliance among the United States, Japan, South Korea and Australia.¶ The RQ-4 Global Hawk, a $215 million, airliner-size Unmanned Aerial Vehicle (UAV) built by Northrop Grumman, could help this four-nation coalition monitor both China, as it increasingly flexes its military muscles, and North Korea, as it develops ever more sophisticated nuclear weapons.¶ If, and when, Canberra, Tokyo and Seoul acquire their Global Hawks — all three sales negotiations are still at an early stage — they could all share intelligence with Washington and vice versa. For all would be using the same hardware and software system. The resulting network could monitor millions of square miles of land and sea around the clock and in real time.¶ [2]The U.S. Defense Security Cooperation Agency, which oversees arms transfers, clearly sees this shared system as an asset. “The proposed sale of the RQ-4,” the agency stated [3] when the South Korean deal was announced in December, “will maintain adequate intelligence, surveillance and reconnaissance capabilities and will ensure the alliance is able to monitor and deter regional threats.”¶ American and British forces in southern Afghanistan are pioneering this collaborative model, in which several nations operate their own, essentially identical drones but share the resulting intelligence. U.S. and British airmen now operate a pooled force of missile- and bomb-equipped MQ-9 Reaper drones, which are smaller than the unarmed Global Hawks.¶ But this robotic alliance is not taking place in a vacuum. China, for one, is working on its own robotic spy fleet, which could give Beijing some of the same capabilities that the Americans, Australians, Japanese and South Koreans could soon possess.¶ The big difference: China is going it alone.¶ Robot back-story¶ The Global Hawk has its roots in the mid-1990s. The Pentagon was encouraged after its experience with early Reaper models during the intervention in Bosnia. So the Defense Department began developing a bigger unmanned drone, capable of flying higher and longer, and with a heavier payload of sensors and radios.¶ [4]The Defense Advanced Research Projects Agency, the military’s high-risk science wing, commissioned two new UAV designs. Total cost: $400 million to develop and test-fly several prototypes of each model within three years’ time.¶ The new drones included one type that is optimized for altitude and another that would fly lower but also include radar-evading stealth elements. The latter effort was eventually canceled. Meanwhile, San Diego-based aerospace firm, Teledyne Ryan, snagged the contract for the high-flying model, which it dubbed the Global Hawk.¶ This new drone could be fitted with cameras, radar and electronic eavesdropping equipment. Capable of flights lasting up to 35 hours at an altitude of up to 65,000 feet, the drone automatically follows global positioning systems waypoints, but stays in touch with operators on the ground [5] via radio data links. The 48-foot-long, straight-winged robot with the bulbous nose takes off and lands automatically. Traditional, manned spy planes are limited by the endurance of the pilot to flights lasting at most 12 hours or so. A Global Hawk, by contrast, can fly until it runs out of fuel ‑ a key advantage in intelligence-gathering.¶ The Global Hawk first flew at Edwards Air Force Base in California in February 1998. The next year, Northrop Grumman acquired Teledyne Ryan and, with it, the Global Hawk program.¶ Despite crashes, problems with the onboard sensors and huge cost increases, the Global Hawk initiative endured. The huge drones appeared over Afghanistan starting in 2001 and in Iraq beginning in 2003. They have also been used to map disaster zones, including earthquake-ravaged Haiti in early 2011 and Japan following the devastating tsunami in March the same year.¶ The Navy decided to buy its own drones, as did Germany and NATO.¶ Today the Pentagon possesses roughly 25 Global Hawks — around 20 in the Air Force and the balance in the Navy. This fleet is slated to expand to more than 100 by the late 2020s.¶ There are now at least five different versions of the Global Hawk in U.S. service, each with a slightly different airframe and sensor configuration. One model, the Air Force’s “Block 30” Global Hawk, has been the center of a long-running controversy. In February 2011 the Defense Department cut in half its order for the Block 30 and directed the saving towards fixing what it claimed were deficiencies in the UAV’s sensors [6]. A year later the Pentagon announced it would retire all of the dozen or so Block 30s to save money.¶ But Congress, fearful of an intelligence shortfall, prevented the retirements and added $105 million to maintain the drones for at least a year. “In supporting the operational requirements of the combatant commands,” legislators wrote, “the secretary of the Air Force shall maintain the operational capability of each RQ-4 Block 30 Global Hawk.”¶ Pacific expansion¶ The recent interest from Australia, Japan and South Korea is a major endorsement of the UAV — and reflects increasing tensions in the region over China’s rapid military modernization and the continuing development of nuclear weapons by North Korea. On Feb. 12, Pyongyang conducted an underground test of an estimated 20-kiloton nuclear device ‑ its third nuclear test since 2006.¶ [7]“Both South Korea and Japan are in need of strong reconnaissance capabilities with respect to their neighbors,” James Simpson, an expert in Asian military affairs with the New Pacific Institute in San Francisco, told Reuters via email. U.S. forces based in South Korea and Japan can now monitor Beijing and Pyongyang’s military activities on behalf of Seoul and Tokyo. But the U.S. and South Korea have agreed to turn over most day-to-day military functions on the Korean Peninsula to Seoul by 2015.¶ “South Korea,” Simpson explained, “needs to build its capabilities prior to this transition.” Japan is also seeking to bolster its ability to monitor North Korea’s nuclear and ballistic missile programs, Philip Finnegan, director of corporate analysis at Teal Group, a Virginia-based consultancy, told Reuters via email.¶ Japan is equally worried about encroachment by Chinese forces. Flush with new weapons, Beijing has demonstrated increasing assertiveness in its claims on the Japanese-controlled Senkaku Islands (known to the Chinese as the Daioyus), deploying patrol ships, planes and, yes, small drones, to probe Tokyo’s defenses in the area. On Jan. 30 a Chinese warship allegedly locked onto a Japanese naval vessel [8] with its weapons-guidance radar — a provocative move that was apparently deliberate.]¶ “This is their primary focus in the sale [of Global Hawks],” Simpson wrote in another email, in reference to the Japanese. “Japan needs a long-range, loiter-capable reconnaissance platform to keep watch over the disputed Senkaku/Daioyu Islands.” Simpson added that the Global Hawk’s contributions to the tsunami relief efforts helped firm up the government’s interest in the drone.¶ Australia is seeking to obtain the Global Hawk to patrol the country’s vast ocean approaches. “It’s about the Indian Ocean and securing our sea lanes,” Andrew Davies, an analyst with the Canberra-based Australian Strategic Policy Institute, said, discussing Australia’s stated intention to purchase seven of the U.S. Navy version. Davies, speaking on Radio Australia, cited “growing competition between the navies of China, India and the U.S.” in the Indian Ocean as the rationale for the planned drone acquisition.¶ Drone alliance¶ U.S. forces would benefit greatly from any Australian, South Korean or Japanese acquisition of the Global Hawk. Seoul’s proposed Global Hawk purchase, for one, “will further U.S. national security interests not only by strengthening the [Republic of Korea]’s capabilities, but also by allowing us to refocus our assets in the region and together monitor and deter regional threat,” Major Cathy Wilkinson, a Pentagon spokesperson, told Reuters via email.

#### Senkaku war’s likely in the short-term, and goes nuclear

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The recent activation of Chinese weapons radars aimed at Japanese military platforms around the Senkaku/Diaoyu Islands is the latest in a series of incidents in which China has asserted its power and authority at the expense of its neighbours.¶ The radars cue supersonic missile systems and give those on the receiving end only a split second to respond. With Japanese law empowering local military commanders with increased discretion to respond (thanks to North Korea’s earlier provocations), such incidents could easily escalate. In an era of well-established UN-related adjudication bodies like the International Court of Justice (ICJ), how has it come to this? These incidents disconcertingly echo past events. ¶ In the early years of the 20th century, most pundits considered a major war between the great powers a remote possibility. Several incidents prior to 1914 were handled locally or successfully defused by diplomats from countries with alliances that appeared to guarantee the peace. After all, never before had the world been so interconnected — thanks to advanced communications technology and burgeoning trade. But alliance ties and perceived national interests meant that once a major war was triggered there was little hope of avoiding the conflict. Germany’s dissatisfaction with the constraints under which it operated arguably was a principal cause of war in 1914. Similarly, Japan’s dissatisfaction helped trigger massive conflict a generation later. ¶ A century on, many of the same observations can be made in East Asia. China’s rise is coupled with a disturbing surge in jingoism across East and Southeast Asia. China resents the territorial resolution of World War II, in which the United States handed responsibility for the Senkaku/Diaoyu islands to Japan while large chunks of the South China Sea were claimed and occupied by countries that emerged in Southeast Asia’s post-colonial order. Oil and gas reserves are attractive reasons for China to assert itself, but challenging the US place in East Asian waters is the main objective. China resents American ‘re-balancing ‘as an attempt at ‘containment’, even though US dependence on Chinese trade and finance makes that notion implausible. China is pushing the boundaries of the accepted post-Second World War order championed by the United States and embodied by the UN. ¶ China’s rapid rise and long-held grievances mean its powerbrokers are reluctant to use institutions like the ICJ. But China’s assertiveness is driving regional states closer into the arms of the United States. Intimidation and assertive maritime acts have been carried out, ostensibly by elements not linked to China’s armed forces. China’s white-painted Chinese Maritime Services and Fisheries Law Enforcement Command vessels operating in the South China Sea and around the Senkaku/Diaoyu islands have evoked strong reactions. ¶ But Japan’s recent allegation that China used active radars is a significant escalation. Assuming it happened, this latest move could trigger a stronger reaction from Japan. China looks increasingly as if it is not prepared to abide by UN-related conventions. International law has been established mostly by powers China sees as having exploited it during its ‘century of humiliation’. Yet arguably, it is in the defence of these international institutions that the peaceful rise of China is most likely to be assured. China’s refusal to submit to such mechanisms as the ICJ increases the prospect of conflict. ¶ For the moment, Japan’s conservative prime minister will need to exercise great skill and restraint in managing domestic fear and resentment over China’s assertiveness and the military’s hair-trigger defence powers. A near-term escalation cannot be ruled out. After all, Japan recognises that China is not yet ready to inflict a major military defeat on Japan without resorting to nuclear weapons and without triggering a damaging response from the United States. And Japan does not want to enter into such a conflict without strong US support, at least akin to the discreet support given to Britain in the Falklands War in 1982. Consequently, Japan may see an escalation sooner rather than later as being in its interests, particularly if China appears the aggressor. ¶ China’s domestic environment has nurtured jingoism. The Chinese state has built up the public’s appetite for vengeance against Japan by manipulating films and history textbooks. On the other hand, Chinese authorities recognise that the peaceful rise advocated by Deng Xiaoping is not yet complete (militarily at least). In the meantime it is prudent to exercise some restraint to avoid an overwhelming and catastrophic response. If the 1914–18 war taught us anything, it is that the outcome of wars is rarely as proponents conceived at the outset.

#### Korean war goes nuclear---risk of miscalc is high and this time is different

Steven Metz 13, Chairman of the Regional Strategy and Planning Department and Research Professor of National Security Affairs at the Strategic Studies Institute, 3/13/13, “Strategic Horizons: Thinking the Unthinkable on a Second Korean War,” http://www.worldpoliticsreview.com/articles/12786/strategic-horizons-thinking-the-unthinkable-on-a-second-korean-war

Today, North Korea is the most dangerous country on earth and the greatest threat to U.S. security. For years, the bizarre regime in Pyongyang has issued an unending stream of claims that a U.S. and South Korean invasion is imminent, while declaring that it will defeat this offensive just as -- according to official propaganda -- it overcame the unprovoked American attack in 1950. Often the press releases from the official North Korean news agency are absurdly funny, and American policymakers tend to ignore them as a result. Continuing to do so, though, could be dangerous as events and rhetoric turn even more ominous. ¶ In response to North Korea's Feb. 12 nuclear test, the U.N. Security Council recently tightened existing sanctions against Pyongyang. Even China, North Korea's long-standing benefactor and protector, went along. Convulsed by anger, Pyongyang then threatened a pre-emptive nuclear strike against the United States and South Korea, abrogated the 1953 armistice that ended the Korean War and cut off the North-South hotline installed in 1971 to help avoid an escalation of tensions between the two neighbors. A spokesman for the North Korean Foreign Ministry asserted that a second Korean War is unavoidable. He might be right; for the first time, an official statement from the North Korean government may prove true. ¶ No American leader wants another war in Korea. The problem is that the North Koreans make so many threatening and bizarre official statements and sustain such a high level of military readiness that American policymakers might fail to recognize the signs of impending attack. After all, every recent U.S. war began with miscalculation; American policymakers misunderstood the intent of their opponents, who in turn underestimated American determination. The conflict with North Korea could repeat this pattern. ¶ Since the regime of Kim Jong Un has continued its predecessors’ tradition of responding hysterically to every action and statement it doesn't like, it's hard to assess exactly what might push Pyongyang over the edge and cause it to lash out. It could be something that the United States considers modest and reasonable, or it could be some sort of internal power struggle within the North Korean regime invisible to the outside world. While we cannot know whether the recent round of threats from Pyongyang is serious or simply more of the same old lathering, it would be prudent to think the unthinkable and reason through what a war instigated by a fearful and delusional North Korean regime might mean for U.S. security. ¶ The second Korean War could begin with missile strikes against South Korean, Japanese or U.S. targets, or with a combination of missile strikes and a major conventional invasion of the South -- something North Korea has prepared for many decades. Early attacks might include nuclear weapons, but even if they didn't, the United States would probably move quickly to destroy any existing North Korean nuclear weapons and ballistic missiles. ¶ The war itself would be extremely costly and probably long. North Korea is the most militarized society on earth. Its armed forces are backward but huge. It's hard to tell whether the North Korean people, having been fed a steady diet of propaganda based on adulation of the Kim regime, would resist U.S. and South Korean forces that entered the North or be thankful for relief from their brutally parasitic rulers. As the conflict in Iraq showed, the United States and its allies should prepare for widespread, protracted resistance even while hoping it doesn't occur. Extended guerrilla operations and insurgency could potentially last for years following the defeat of North Korea's conventional military. North Korea would need massive relief, as would South Korea and Japan if Pyongyang used nuclear weapons. Stabilizing North Korea and developing an effective and peaceful regime would require a lengthy occupation, whether U.S.-dominated or with the United States as a major contributor. ¶ The second Korean War would force military mobilization in the United States. This would initially involve the military's existing reserve component, but it would probably ultimately require a major expansion of the U.S. military and hence a draft. The military's training infrastructure and the defense industrial base would have to grow. This would be a body blow to efforts to cut government spending in the United States and postpone serious deficit reduction for some time, even if Washington increased taxes to help fund the war. Moreover, a second Korean conflict would shock the global economy and potentially have destabilizing effects outside Northeast Asia. ¶ Eventually, though, the United States and its allies would defeat the North Korean military. At that point it would be impossible for the United States to simply re-establish the status quo ante bellum as it did after the first Korean War. The Kim regime is too unpredictable, desperate and dangerous to tolerate. Hence regime change and a permanent ending to the threat from North Korea would have to be America's strategic objective. ¶ China would pose the most pressing and serious challenge to such a transformation of North Korea. After all, Beijing's intervention saved North Korean dictator Kim Il Sung after he invaded South Korea in the 1950s, and Chinese assistance has kept the subsequent members of the Kim family dictatorship in power. Since the second Korean War would invariably begin like the first one -- with North Korean aggression -- hopefully China has matured enough as a great power to allow the world to remove its dangerous allies this time. If the war began with out-of-the-blue North Korean missile strikes, China could conceivably even contribute to a multinational operation to remove the Kim regime. ¶ Still, China would vehemently oppose a long-term U.S. military presence in North Korea or a unified Korea allied with the United States. One way around this might be a grand bargain leaving a unified but neutral Korea. However appealing this might be, Korea might hesitate to adopt neutrality as it sits just across the Yalu River from a China that tends to claim all territory that it controlled at any point in its history. ¶ If the aftermath of the second Korean War is not handled adroitly, the result could easily be heightened hostility between the United States and China, perhaps even a new cold war. After all, history shows that deep economic connections do not automatically prevent nations from hostility and war -- in 1914 Germany was heavily involved in the Russian economy and had extensive trade and financial ties with France and Great Britain. It is not inconceivable then, that after the second Korean War, U.S.-China relations would be antagonistic and hostile at the same time that the two continued mutual trade and investment. Stranger things have happened in statecraft.

US-Japan ISR cooperation key to USAF effectiveness

Schanz 13--Marc V., senior editor of Air Force Magazine, January 2013, ISR After Afghanistan, [www.airforce-magazine.com/MagazineArchive/.../0113ISR.pdf](http://www.airforce-magazine.com/MagazineArchive/.../0113ISR.pdf)

Another area of interest is how to improve operations from standoff distances, such as from U-2s flying outside the range of ground-based surface-to-air missiles and other threats.

Collaboration will play a huge role as the US draws down from Central Asia and redistributes its force structure. The ability to leverage the ISR data that allies collect and share will prove valuable.

“Effective alliances and partnerships are a force multiplier in a region as vast as the Asia-Pacific region,” Donley said, noting cooperation activities with Aus- tralia and Japan are vital to maintaining USAF global vigilance.

Collapse of Air Force ISR kills hegemony—unleashes global conflict

Thompson 13--Loren B., PhD, March, Intelligence, Surveillance, and Reconnaissance, Lexington Institute, [www.lexingtoninstitute.org/library/resources/documents/Defense/AirDominance-ISR.pdf](http://www.lexingtoninstitute.org/library/resources/documents/Defense/AirDominance-ISR.pdf)

The United States has enjoyed global air dominance for many decades. No U.S. soldier on the ground has been killed by hostile aircraft since the Korean War, and no U.S. pilot in the air has been killed by hostile aircraft since the Vietnam War.1 U.S. air dominance has been preserved by pouring vast amounts of money into technology and training, far surpassing the efforts of other nations. The scale of this funding was driven by an awareness of how crucial air dominance was to other facets of warfighting, plus the fear that a few mis-steps might result in America losing its edge in the air.¶ However, since the Cold War ended, modernization efforts in the Air Force and Navy -- the main providers of U.S. air dominance -- have lagged. Plans to replace Air Force bombers, tankers and reconnaissance aircraft were canceled or delayed, while programs to recapitalize tactical air fleets in both services were repeatedly restructured. In addition, efforts to develop next- generation intelligence, navigation, communication, missile-warning and weather satellites have fallen far behind schedule. As a result, the joint inventory of fixed-wing aircraft and orbital systems enabling air dominance has aged considerably. Unmanned aircraft are an exception to this trend, but their utility in contested airspace is unproven.¶ While modernization of airborne and orbital assets was lagging, the global threat environment changed. China emerged as the world's second-largest economy, pursuing regional security objectives with increasing vigor. Rogue states of varying stripe developed weapons of mass destruction and the means to deliver them. Non-state actors with extreme agendas were empowered by the proliferation of new military tools and techniques. And the focus of global security shifted from technologies in which only a few countries could play, such as long-range ballistic missiles, to technologies in which many players could develop deep expertise.¶ If recent trends persist, the United States will gradually lose its claim to global air dominance. That claim is already being challenged in the Western Pacific, where a scattered and aging U.S. air fleet is faced with growing Chinese investment in new aircraft and air defenses. When China's increasing military might is combined with its intrinsic geographical advantages in the region, the possibility arises that America may cease to be the dominant air power in what has become the industrial heartland of the new global economy.2 Similar outcomes could occur in other regions, because with recent advances in surface-to-air missiles, multi-spectral sensors, tactical networks and other military systems, it is no longer necessary to match every aspect of U.S. air power in order to defeat it.¶ With all that in mind, the Lexington Institute embarked on a year-long inquiry into the requirements for maintaining U.S. global air dominance. The inquiry focused on the four core components of air dominance: intelligence, surveillance & reconnaissance; air superiority; long- range strike; and mobility. In each area, the inquiry sought to understand the current force structure and modernization programs being funded, and then identify gaps in future capabilities that need to be addressed. It also examined alternative approaches to satisfying operational requirements, and explored how those alternatives might be implemented in varying fiscal circumstances. A series of working groups and studies were conducted in support of the final report, to be issued in Spring of 2013.¶ The present study is about intelligence, surveillance and reconnaissance -- typically referred to among air-power practitioners as "ISR." Timely, precise insights into enemy actions and intentions have always been valuable in warfare, but with the coming of the information revolution they have assumed overriding importance because there are now so many options for collecting, analyzing and exploiting relevant data. Air power provides a unique perspective on modern warfare, because there are some features of military activity that can only be captured from above. Airborne ISR also generates information essential to the deterrence of aggression, the enforcement of arms-control treaties, and the prevention of nuclear proliferation. In a world of rapidly changing technology and diverse threats, constant vigilance is a necessary cost of preserving the peace, and providing that vigilance is an overarching mission of the nation's air forces.

**Hegemony prevents extinction**

**Barnett 11** (Thomas P.M., Former Senior Strategic Researcher and Professor in the Warfare Analysis & Research Department, Center for Naval Warfare Studies, U.S. Naval War College American military geostrategist and Chief Analyst at Wikistrat., worked as the Assistant for Strategic Futures in the Office of Force Transformation in the Department of Defense, “The New Rules: Leadership Fatigue Puts U.S., and Globalization, at Crossroads,” March 7 <http://www.worldpoliticsreview.com/articles/8099/the-new-rules-leadership-fatigue-puts-u-s-and-globalization-at-crossroads>)

Events in Libya are a further reminder for Americans that we **stand at a crossroads in our continuing evolution as the world's sole full-service superpower**. Unfortunately, we are increasingly seeking change without cost, and shirking from risk because we are tired of the responsibility. We don't know who we are anymore, and our president is a big part of that problem. Instead of leading us, he explains to us. Barack Obama would have us believe that he is practicing strategic patience. But many experts and ordinary citizens alike have concluded that he is actually beset by strategic incoherence -- in effect, a man overmatched by the job. It is worth first examining the larger picture: We live in a time of arguably **the greatest structural change in the global order yet endured**, with this historical moment's most amazing feature being its relative and absolute **lack of mass violence**. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our stunningly successful stewardship of global order since World War II. Let me be more blunt: As the **guardian of globalization**, the U.S. military has been the **greatest force for peace the world has ever known**. Had America been removed from the global dynamics that governed the 20th century, the **mass murder never would have ended**. Indeed, it's entirely conceivable **there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation.**  But the world did not keep sliding down that **path of perpetual war**. Instead, America stepped up and changed everything by **ushering in our now-perpetual great-power peace**. We introduced the **international liberal trade order known as globalization** and played loyal Leviathan over its spread. What resulted was the collapse of empires, **an explosion of democracy**, the **persistent spread of human rights**, the liberation of women, **the doubling of life expectancy**, a roughly **10-fold increase in adjusted global GDP** and a **profound and persistent reduction in** battle deaths from **state-based conflicts.** That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. The last great period of global structural change was the first half of the 20th century, a period that saw a death toll of about 100 million across two world wars. That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude, these calculations suggest a 90 percent absolute drop and a 99 percent relative drop in deaths due to war. We are clearly headed for a world order characterized by multipolarity, something the American-birthed system was designed to both encourage and accommodate. But given how things turned out the last time we collectively faced such a fluid structure, we would do well to keep U.S. power, in all of its forms, deeply embedded in the geometry to come. To continue the historical survey, after salvaging Western Europe from its half-century of civil war, the U.S. emerged as the progenitor of a new, far more just form of globalization -- one based on actual free trade rather than colonialism. America then successfully replicated globalization further in East Asia over the second half of the 20th century, setting the stage for the Pacific Century now unfolding.

### 1AC – 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, in secure legal proceedings, brought against the United States by those unlawfully injured by targeted killing operations, their heirs, or their estates.

### 1AC – Solvency

#### CONTENTION 3: SOLVENCY

#### The plan establishes legal norms and ensures compliance with the laws of war

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 deterrent effect that makes officials think twice about drones---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.

#### Obama would comply with the court

Stephen I. Vladeck 9, 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, 3-1-2009, “The Long War, the Federal Courts, and the Necessity / Legality Paradox,” http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=facsch\_bkrev

Moreover, even if one believes that suspensions are unreviewable, there is a critical difference between the Suspension Clause and the issue here: at least with regard to the former, there is a colorable claim that the Constitution itself ousts the courts from reviewing whether there is a “Case[ ] of Rebellion or Invasion [where] the public Safety may require” suspension––and even then, only for the duration of the suspension.179 In contrast, Jackson’s argument sounds purely in pragmatism—courts should not review whether military necessity exists because such review will lead either to the courts affirming an unlawful policy, or to the potential that the political branches will simply ignore a judicial decision invalidating such a policy.180 Like Jackson before him, Wittes seems to believe that the threat to liberty posed by judicial deference in that situation pales in comparison to the threat posed by judicial review. ¶ The problem is that such a belief is based on a series of assumptions that Wittes does not attempt to prove. First, he assumes that the executive branch would ignore a judicial decision invalidating action that might be justified by military necessity.181 While Jackson may arguably have had credible reason to fear such conduct (given his experience with both the Gold Clause Cases182 and the “switch in time”),183 a lot has changed in the past six-and-a-half decades, to the point where I, at least, cannot imagine a contemporary President possessing the political capital to squarely refuse to comply with a Supreme Court decision. But perhaps I am naïve.184

# 2AC

### Norms

#### Norm setting is effective---US can make the difference on drones

Micah Zenko 13, CFR Douglas Dillon Fellow in the Center for Preventive Action, PhD in Political Science from Brandeis University, “Reforming U.S. Drone Strike Policies,” CFR Special Report 65, January 2013

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.¶ In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies.

#### Plan key to intel sharing

Gabor Rona 13, Lecturer in Law at Columbia Law School, International Legal Director of Human Rights First, “The pro-rule of law argument against a 'drone court,'” 2/27/13, http://thehill.com/blogs/congress-blog/judicial/285041-the-pro-rule-of-law-argument-against-a-drone-court

But a “drone court” would be worse than ineffective: it would harm national security. Throughout the “war on terror,” policies that offend international law, including the broad scope of the government's claimed authority to kill, have inhibited allies from sharing essential intelligence with the United States and damaged the country’s reputation as a beacon on human rights. A secret court would only reinforce the perception that the United States concocts its own secret rules while insisting that other countries follow the international public ones.¶ Pre-targeting judicial intervention is also probably unconstitutional because the U.S. constitution empowers courts to hear "cases and controversies," but not to render "advisory opinions." Adjudication of an act to take place in the future would seem to violate this restriction.¶ So if a drone court isn’t the answer, what is?¶ Congress should require the executive to disclose the targeting standards it’s adopted so as to expose its rationale to scrutiny. The leaking of a single document — a “white paper” laying out the administration’s legal case for killing U.S. citizens — has triggered unprecedented criticism and pushback from Congress and the media. Scrutiny begets scrutiny and can lead to meaningful reform. That’s surely one of the reasons the White House has refused to release most information about the targeted killing program.¶ Congress should also ensure that victims of unlawful targeting — or their survivors — have the right to claim compensation, creating a deterrent to government abuse. That right already exists in theory but time and again courts have prohibited such cases from moving forward, buying without question the government’s claim that allowing them would threaten national security. Congress should limit the executive’s ability to hide unlawful killings behind this claim.

#### Abe’s visit highlights that a purely political relationship is fragile

Sheng 13, Zhou Yong, Huanqiu China Newspaper, “Japan-U.S. Relations Could Get Bumpy”, 3/9, http://www.thedailybeast.com/newsweek/2010/07/16/a-fragile-alliance.html

Japanese Prime Minister Shinzo Abe’s diplomatic war with the U.S. finally ended in late February. There are gains and losses [for Japan] as seen from Abe’s trip. The gains mostly include an overstatement of the Japan-U.S. alliance and Japan’s affiliation with the Trans-Pacific Partnership, making the Japanese people feel Japan is accomplishing something. The losses primarily center on the problem of the Diaoyu Islands, on which the U.S. kept silent, failing to fulfill Japan’s expectations.¶ First of all, following his talks with President Obama, Abe said: “I think I can declare with confidence that the trust and the bond in our alliance is back.” This statement shows that Abe pretty much expects he can manage U.S.-Japan relations more effectively than the former Democratic Party; however, **this euphemistic sentiment actually embodies Abe’s deep distrust.** The meeting did not fully accomplish Japan’s strategic objectives. As the media criticized, Abe’s U.S. visit was like a “one-day tour” this time. It did not herald a new upsurge in Japan-U.S. relations as Japan had expected. The U.S. media generally kept reporting on the meeting low-key. It follows that the Obama administration’s policies are definitely not what Abe expected them to be. The U.S. is unwilling to be hijacked by Japan: Instead, it sticks up for its own interests and has the power to influence Japan’s policy trends.¶ The U.S. had worries and doubts about the Democratic Party of Japan because it feared that Japan might break away from the U.S. and turn toward Asia. The Liberal Democratic Party’s return to political power decreased the U.S.’ worries on the issue. Nevertheless, Abe deliberately built a high-profile atmosphere surrounding his U.S. visit. Prior to the visit, he showed his loyalty to the U.S. by blasting China, decreasing U.S. worries — particularly about Japan’s potential to turn its focus back to Asia. The U.S. even felt relieved by Abe's visit. This is one of the surest effects his visit generated.¶ Second, worried that Abe might frantically veer to the right, the U.S. made a conscious effort to suppress him during the meeting. Assuming Japan exercises the option of constitutional amendment, it will veer out of control and eventually pose a threat to the U.S. Japan's re-explanation of its constitution would result in the expansion of armaments and war preparations once again. Once Japan achieves powerful army strength, its next goal is probably to ask the U.S. to withdraw troops from Japan, which is why Obama does not fully support Abe’s considerations. Therefore, based on the general orientation of Japanese demands, we can see that there will be a serious rift in the U.S.-Japan alliance. Contrary to Abe's statement, the U.S. and Japan **do not have a firm and very active political relationship.** Abe merely needs this kind of exaggeration to prove his diplomatic accomplishments.

### 2AC Projection DA

#### Plan solves kick-out

Micah Zenko 13, CFR Douglas Dillon Fellow in the Center for Preventive Action, PhD in Political Science from Brandeis University, “Reforming U.S. Drone Strike Policies,” CFR Special Report 65, January 2013

The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 ¶ This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets.¶ According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

# Off-Case

## T

### 2AC T – Restrictions = Prohibition

#### We meet---we prohibit the President’s ability to act without judicial review

John C. Eastman 6, Prof of Law at Chapman University, PhD in Government from the Claremont Graduate University, served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration, “Be Very Wary of Restricting President's Power,” Feb 21 2006, http://www.claremont.org/publications/pubid.467/pub\_detail.asp]

Prof. Epstein challenges the president's claim of inherent power by noting that the word "power" does not appear in the Commander in Chief clause, but the word "command," fairly implied in the noun "Commander," is a more-than-adequate substitute for "power." Was it really necessary for the drafters of the Constitution to say that the president shall have the power to command? Moreover, Prof. Epstein ignores completely the first clause of Article II -- the Vesting clause, which provides quite clearly that "The executive Power shall be vested in a President." The relevant inquiry is whether those who ratified the Constitution understood these powers to include interception of enemy communications in time of war without the permission of a judge, and on this there is really no doubt; they clearly did, which means that Congress cannot restrict the president's authority by mere statute.¶ Prof. Epstein's own description of the Commander in Chief clause recognizes this. One of the "critical functions" performed by the clause, he notes, is that "Congress cannot circumvent the president's position as commander in chief by assigning any of his responsibilities to anyone else." Yet FISA does precisely that, assigning to the FISA court a core command authority, namely, the ability to authorize interception of enemy communications. This authority has been exercised by every wartime president since George Washington.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### Authority is what the president may do not what the president can do – their def has no intent to define

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.

#### Prefer it

#### 1. Aff ground---only process-based affs can beat the executive CP and ex ante review is illegal

Bloomberg 13, Bloomberg Editorial Board, Feb 18 2013, “Why a ‘Drone Court’ Won’t Work,” http://www.bloomberg.com/news/2013-02-18/why-a-drone-court-won-t-work.html

As for the balance of powers, that is where we dive into constitutional hot water. Constitutional scholars agree that the president is sworn to use his “defensive power” to protect the U.S. and its citizens from any serious threat, and nothing in the Constitution gives Congress or the judiciary a right to stay his hand. It also presents a slippery slope: If a judge can call off a drone strike, can he also nix a raid such as the one that killed Osama bin Laden? If the other branches want to scrutinize the president’s national security decisions in this way, they can only do so retrospectively.

#### Restrictions can happen after the fact

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).

## CP

### 2AC Executive CP (Top Shelf)

#### Legitimacy DA---Judicial process key

Steven Clark 12, former Staff Sergeant in the US Army, BA in Poli Sci and Government from Campbell University, “Targeted Killings: Justified Acts of War or Too Much Power for One Government?” Global Security Studies, Summer 2012, Volume 3, Issue 3, http://globalsecuritystudies.com/Clark%20Targeted.pdf

Although Eric Holder was right when he distinguished between judicial process and due process, there is more than legality to this question. If the United States continues to ignore judicial oversight, this could also cause a loss of credibility and create a legitimacy problem. To prevent this, the United States needs to include judicial oversight while still maintaining national security and not revealing specific intelligence to the public. This could be done with a special court, similar to the Foreign Intelligence Surveillance Court. 79 A court like this would also be able to act quickly in situations requiring immediate action

#### Exec fiat is a voter---avoids the core topic question by fiating away Obama’s behavior in the squo---no comparative lit means the neg wins every debate

Victor Hansen 12, Professor of Law, New England Law, New England Law Review, Vol. 46, pp. 27-36, 2011, “Predator Drone Attacks”, February 22, 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009313>, PDF

Any checks on the President’s use of drone attacks must come domestically. In the domestic arena the two options are either the courts or Congress. As discussed above, the courts are institutionally unsuited and incapable of providing appropriate oversight. Congress is the branch with the constitutional authority, historical precedent, and institutional capacity to exercise meaningful and effective oversight of the President’s actions.

#### Internal fixes aren’t credible

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.

#### CP is 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 ar e 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.

### AT: Transparency Plank

#### Memos won’t be perceived as credible---only courts are key

Glenn Greenwald 13, J.D. from NYU, award-winning journalist, February 5th, 2013, "Chilling legal memo from Obama DOJ justifies assassination of US citizens," The Guardian, www.theguardian.com/commentisfree/2013/feb/05/obama-kill-list-doj-memo

This memo is not a judicial opinion. It was not written by anyone independent of the president. To the contrary, it was written by life-long partisan lackeys: lawyers whose careerist interests depend upon staying in the good graces of Obama and the Democrats, almost certainly Marty Lederman and David Barron. Treating this document as though it confers any authority on Obama is like treating the statements of one's lawyer as a judicial finding or jury verdict.¶ Indeed, recall the primary excuse used to shield Bush officials from prosecution for their crimes of torture and illegal eavesdropping: namely, they got Bush-appointed lawyers in the DOJ to say that their conduct was legal, and therefore, it should be treated as such. This tactic - getting partisan lawyers and underlings of the president to say that the president's conduct is legal - was appropriately treated with scorn when invoked by Bush officials to justify their radical programs. As Digby wrote about Bush officials who pointed to the OLC memos it got its lawyers to issue about torture and eavesdropping, such a practice amounts to:¶ "validating the idea that obscure Justice Department officials can be granted the authority to essentially immunize officials at all levels of the government, from the president down to the lowest field officer, by issuing a secret memo. This is a very important new development in western jurisprudence and one that surely requires more study and consideration. If Richard Nixon and Ronald Reagan had known about this, they could have saved themselves a lot of trouble."¶ Life-long Democratic Party lawyers are not going to oppose the terrorism policies of the president who appointed them. A president can always find underlings and political appointees to endorse whatever he wants to do. That's all this memo is: the by-product of obsequious lawyers telling their Party's leader that he is (of course) free to do exactly that which he wants to do, in exactly the same way that Bush got John Yoo to tell him that torture was not torture, and that even it if were, it was legal.¶ That's why courts, not the president's partisan lawyers, should be making these determinations. But when the ACLU tried to obtain a judicial determination as to whether Obama is actually authorized to assassinate US citizens, the Obama DOJ went to extreme lengths to block the court from ruling on that question. They didn't want independent judges to determine the law. They wanted their own lawyers to do so.¶ That's all this memo is: Obama-loyal appointees telling their leader that he has the authority to do what he wants. But in the warped world of US politics, this - secret memos from partisan lackeys - has replaced judicial review as the means to determine the legality of the president's conduct.

#### Links to politics---transparency causes political infighting

Jeh Charles Johnson 13, civil, criminal trial lawyer, and General Counsel of the Department of Defense from 2009 to 2012 during the first Obama Administration, graduate of Morehouse College and Columbia Law School, served as Assistant United States Attorney in the Southern District of New York from 1989-1991, 3/18, “A “Drone Court”: Some Pros and Cons,” <http://www.lawfareblog.com/2013/03/jeh-johnson-speech-on-a-drone-court-some-pros-and-cons/>

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

## DA

### 2AC Iran DA

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

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

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

#### Syria outweighs the link

David Rothkoph 13, CEO and editor at large of Foreign Policy, 8/3, “The Gamble”, www.foreignpolicy.com/articles/2013/08/31/the\_gamble?page=full

Obama has reversed decades of precedent regarding the nature of presidential war powers -and whether you prefer this change in the balance of power or not, **as a matter of quantifiable fact** he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship.¶ The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider that John Boehner was instantly more clear about setting the timing for any potential action against Syria with his statement that Congress will not reconvene before its scheduled September 9 return to Washington than anyone in the administration has been thus far.¶ Perhaps more importantly, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors **lack the ability to act quickly** and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -for better or worse -to **dial back the imperial presidency** than anything his predecessors or Congress have done for decades.¶ 5. America's international standing will likely suffer.¶ As a consequence of all of the above, even if the president "wins" and persuades Congress to support his extremely limited action in Syria, the perception of America as a nimble, forceful actor on the world stage and that its president is a man whose word carries great weight is **likely to be diminished**. Again, like the shift or hate it, **foreign leaders can do the math.** Not only is post-Iraq, post-Afghanistan America less inclined to get involved anywhere, but when it comes to the use of U.S. military force (our one indisputable source of superpower strength) **we just became a whole lot less likely to act** or, in any event, act quickly. Again, good or bad, that is a stance that is likely to **figure into the calculus of those who once feared provoking the United States**.¶ A final consequence of this is that it seems ever more certain that Obama's foreign policy will be framed as so anti-interventionist and **focused on disengagement from world affairs** that **it will have major political consequences in 2016**. The dialectic has swung from the interventionism of Bush to the leaning away of Obama. Now, the question will be whether a centrist synthesis will emerge that restores the idea that the United States can have a muscular foreign policy that remains prudent, capable of action, and respects international laws and norms. Almost certainly, that is what President Obama would argue he seeks. But I suspect that others, including possibly his former secretary of state may well seek to define a different approach. Indeed, we may well see the divisions within the Democratic Party on national security emerge as key fault lines in the Clinton vs. Biden primary battles of 2016. And just imagine Clinton vs. Rand Paul in the general election.

#### Stronger statutory checks on prez war powers increase the foreign perception of US resolve by providing credibility behind threats

Matthew C. Waxman 8/25, Professor of Law, Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 2013, PDF

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

### AT: Iran Scenario

#### Negotiations will collapse now because of the flexible threat of U.S. use of force and the lack of a norm against targeted killings

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"Americans are untrustworthy and illogical. They are not honest in their dealings."

So said Iran's Supreme Leader Ayatollah Ali Khamenei at a ceremony in July following the presidential election of the moderate reformist candidate Hassan Rouhani.

Western analysts from across the spectrum took note of Rouhani's sweeping victory this past June, almost universally describing it as a promising opening for detente, unprecedented in the sordid history between the US and Iran.

“This is a moment of tremendous opportunity for Washington,” writes Suzanne Maloney, a senior fellow with the Saban Center for Middle East Policy at the Brookings Institute. The National Iranian American Council dubbed it “a major potential opportunity to reinvigorate diplomatic efforts to resolve the standoff over Iran's nuclear program.”

There are a multitude of outstanding issues and grievances beyond the nuclear matter that have great potential to spoil this window for peaceful reconciliation. But the greatest spoiler of all lies in the fact that Ayatollah Khamenei, who holds ultimate control no matter who is president, is convinced Washington is out to overthrow his government.

Worse still, he has good reason to believe it.

Regime change?

Khamenei “believes that the US government is bent on regime change in Iran”, explains Iranian journalist and political dissident Akbar Ganji in the latest issue of Foreign Affairs, “whether through internal collapse, democratic revolution, economic pressure, or military invasion".

The US “say[s] that they are not after a regime change,” Khamenei said in a speech to Iranian judiciary officials in late June. “However, they clearly show the opposite in their statements and actions.”

To many, this may seem like extreme paranoia, if not dishonest regime propaganda meant to sow hatred against the West. But the Supreme Leader's hunch is not so divorced from reality.

The heart of Iran's national identity is born out of American-led regime change. Iran's current government, after all, came about in a popular revolution that overthrew the ruthless tyranny of Shah Mohammad Reza Pahlavi, restored to power in 1953 following a coup secretly fomented by the US and Britain that toppled Iran's democratically-elected government.

Ever since the 1979 Iranian Revolution and the cutting off of diplomatic ties following the hostage crisis at the besieged US embassy, hostility and isolation have been the rule between Washington and Tehran.

And lest Americans think regime change is a retired foreign policy tool of a bygone Cold War era - when Washington overthrew governments in Nicaragua, Honduras, Guatemala, Congo, Dominican Republic, South Vietnam, Brazil, Chile, and Panama, among others - the last time the US seriously considered regime change in Iran was during the very recent administration of George W Bush.

David Crist, a former U.S. Marine and currently a senior historian for the Defense Department, writes in his 2012 book Twilight War: The Secret History of America's Thirty-Year Conflict with Iran, that high level Bush administration officials strongly advocated another covert effort to overthrow the Iranian regime.

Bush's failed covert plans

“In a January 2002 NSC briefing led by Donald Rumsfeld entitled ‘Global War on Terrorism: The Way Ahead,' the secretary stridently recommended supporting internal democratic opposition movements [in Iran],” Crist recounts. Rumsfeld expressed confidence that “Iranian opposition groups inside and outside would bring the government down.”

“Over the next few months,” Crist adds, “[Bush's National Security Advisor Condoleezza] Rice tried to shepherd the national security planning document through the government and get it in front of the president.” A Pentagon memo, backed by Vice President Dick Cheney, stated "OSD [Office of the Secretary of Defense] takes a strong position on regime change and sees very little value in continuing any engagement with Iran.”

Luckily, cooler heads prevailed as the administration prepared instead for regime change and military quagmire in Iraq, a moral, legal, and strategic fiasco that would ironically strengthen Iran's position in the broader Middle East.

In seeming contrast to the Bush administration's belligerent axis-of-evil diplomacy, Barack Obama came into office in 2009 declaring his willingness to negotiate with Iran without preconditions in order to peacefully settle the issue of its nuclear enrichment program.

Contrary to virtually all of the rhetoric coming out of Washington, the current consensus in the US intelligence community is that Iran has no active nuclear weapons program and has made no decision as to whether to pursue the bomb.

“Recent assessments by American spy agencies,” the New York Times reported last year, “are broadly consistent with a 2007 intelligence finding that concluded that Iran had abandoned its nuclear weapons program years earlier” and this “remains the consensus view of America's 16 intelligence agencies.”

More of the same

Instead of an honest give and take, Obama's so-called diplomacy with Iran has been “predicated on intimidation, illegal threats of military action, unilateral ‘crippling' sanctions, sabotage, and extrajudicial killings of Iran's brightest minds,” writes Reza Nasri at PBS Frontline's Tehran Bureau. The latter policy refers to Israeli covert actions to assassinate civilian Iranian nuclear scientists, a policy Obama may not have helped carry out but did nothing to stop.

### AT: Iran Prolif

#### No impact to Iranian prolif---they’ll be cautious and moderate

Kenneth Waltz 12, senior research scholar @ Saltzman, Poly Sci Prof @ Columbia, September/October 2012, “Iran and the Bomb – Waltz Replies,” Foreign Affairs, Vol. 91, No. 5, p. 157-162

In arguing that a nuclear-armed Iran would represent an unacceptable threat to the United States and its allies, Colin Kahl rejects my contention that states tend to become more cautious once they obtain nuclear weapons and claims that I minimize the potential threat of an emboldened Islamic Republic. He accuses me of misreading history and suggests that I overestimate the stability produced by nuclear deterrence. In fact, it is Kahl who misunderstands the historical record and who fails to grasp the ramifications of nuclear deterrence.¶ In Kahl's view, new nuclear states do not necessarily behave as status quo powers and can instead be highly revisionist. Seeking a precedent, he highlights the fact that the Soviet Union encouraged North Korea to launch a potentially risky invasion of South Korea in 1950, shortly after the Soviets had tested their first nuclear bomb. But Kahl neglects to explain the context of that decision. Some time before, U.S. Secretary of State Dean Acheson had publicly identified the United States' security commitments in Asia; defending South Korea was not among them. The United States had also signaled its lack of interest in protecting the South Koreans by declining to arm them with enough weapons to repel a Soviet-backed invasion by the North. The Soviet Union therefore had good reason to assume that the United States would not respond if the North Koreans attacked. In light of these facts, it is difficult to see Stalin's encouragement of the invasion as an example of bold, revisionist behavior. Contrary to Kahl's claims, the beginning of the Korean War hardly supplies evidence of Soviet nuclear adventurism, and therefore it should not be understood as a cautionary tale when considering the potential impact that possessing a nuclear arsenal would have on Iranian behavior.¶ Kahl seems to accept that nuclear weapons create stability -- or a form of stability, at least. But he notes -- as do most scholars of nuclear matters, myself included -- that nuclear stability permits lower-level violence. Taking advantage of the protection that their atomic arsenals provide, nuclear-armed states can feel freer to make minor incursions, deploy terrorism, and engage in generally annoying behavior. But the question is how significant these disruptive behaviors are compared with the peace and stability that nuclear weapons produce.¶ Kahl points to the example of Pakistan, whose nuclear weapons have probably increased its willingness to wage a low-intensity fight against India, which makes the subcontinent more prone to crises. As Kahl correctly argues, Pakistan's increased appetite for risk probably played a role in precipitating the so-called Kargil War between India and Pakistan in 1999. But the Kargil War was the fourth war fought by the two countries, and it paled in comparison to the three wars they fought before they both developed nuclear weapons. In fact, the Kargil conflict was a war only according to social scientists, who oddly define "war" as any conflict that results in 1,000 or more battlefield deaths. By historical standards, that casualty rate constitutes little more than a skirmish. Far from proving that new nuclear states are not swayed by the logic of deterrence, the Kargil War supports the proposition that nuclear weapons prevent minor conflicts from becoming major wars. Indeed, nuclear weapons are the only peace-promoting weapons that the world has ever known, and there is no reason to believe that things would be different if Iran acquired such arms.¶ Kahl also frets that a nuclear-armed Iran would step up its support for terrorist groups. Terrorism is tragic for those whose lives it destroys and unnerving for countries that suffer from it. But the number of annual fatalities from international terrorism is vanishingly small compared with the casualties wrought by major wars. Of course, like Kahl, I would not welcome increased Iranian support for Hezbollah or an increased supply of more potent Iranian arms to Palestinian militants. And I, too, hope for a peaceful resolution of the Israeli-Palestinian conflict and the disputes between Israel and its neighbors. But the last several decades have not offered much reason to believe those goals can be easily attained, and I would rather see the possibility of major war reduced through nuclear stability, even if the price is an increase in disruptive activities and low-level conflict.¶ Just a few months ago in these pages, Kahl eloquently expressed his opposition to a proposed preventive strike on suspected Iranian nuclear facilities, warning that it could spark a regional war ("Not Time to Attack Iran," March/April 2012). I agree. But Kahl and I differ on what the United States can achieve in its showdown with the Islamic Republic. Kahl appears to believe that it is possible for the United States to forgo risky military action and still prevent Iran from obtaining nuclear weapons through a combination of sanctions and diplomacy. I strongly doubt that. Short of using military force, it is difficult to imagine how Iran could be prevented from acquiring nuclear weapons if it is determined to do so. That outcome would produce a lamentable possible increase in terrorism and lower-level conflict. But the many benefits of regional stability would far outweigh the costs.

### 2AC Shutdown DA

#### Won’t pass---no compromise

Ana Radelat 9-20, September 20th, 2013, "Budget showdown could put Connecticut House delegation in a tight spot," www.ctmirror.org/story/2013/09/20/budget-showdown-could-put-connecticut-house-delegation-tight-spot

Washington – It was easy for the members of Connecticut’s House delegation, all Democrats, to vote against a bill Thursday that would avert a government shutdown for a few months, but defund Obamacare.¶ But their next vote on the budget won’t be as easy.¶ That’s because the lawmakers may have to eventually decide whether to vote for a bill that leaves Obamacare alone, but continues the so-called "sequester" spending cuts that threaten the state's defense industry and nick many social programs.¶ “I think it’s going to be a very tough moment for us,” said Rep. Joe Courtney, D-2nd District. ¶ House Republicans Friday voted on a continuing resolution that would fund the government until Dec. 15, giving lawmakers more time to work on a budget. But the resolution would also defund the Affordable Care Act, and the Democratic–controlled Senate won’t have it.¶ Rep. Joe Courtney, D-2nd District, predicts "A very tough moment for us."¶ So unless Congress agrees on a way to keep funding it -- a prospect partisan fighting seems to have made impossible -- the federal government will have to shut down most of its operations Oct. 1. ¶ "Any House bill that defunds Obamacare is dead,” Senate Majority Leader Harry Reid, D-Nev., said at a press briefing Thursday.¶ That leaves Congress in gridlock, which more and more seems to be its normal state.¶ Since the Senate is expected to strip out the Affordable Care Act provision before it votes on the continuing resolution next week and sends it back to the House, the question becomes what comes next.¶ House Speaker John Boehner, R-Ohio, must decide whether to schedule a vote on that Senate bill -- or more likely a compromise that would include some spending cuts the Senate now opposes -- and hope a bipartisan group of House members, including some Connecticut lawmakers, votes for it. Or Boehner could reject the notion of any compromise with the Senate and allow the government to shut down.

#### Won’t pass and Obama rhetoric makes the impact inevitable

Damian Paletta 9/18, WSJ reporter, “White House Shifts Debt-Ceiling Tone, Warning of Fiasco,” http://blogs.wsj.com/washwire/2013/09/18/white-house-shifts-debt-ceiling-tone-warning-of-fiasco/

In 2011, then-Treasury Secretary Timothy Geithner repeatedly brushed off questions about whether Congress would raise the debt ceiling. He wasn’t worried, he would tell audiences. Congress would raise it sooner or later.¶ This time, the White House and its allies are openly telling people they are worried.¶ On Tuesday morning, Treasury Secretary Jacob Lew told an audience in Washington that Congress’s lack of urgency on fiscal problems was making him “nervous” and “anxious.”¶ Mr. Lew has warned that if Congress doesn’t raise the debt ceiling by mid-October, the government would soon run out of cash to pay all of its bills. The government faced the same deadline pressure in August 2011 and narrowly averted blowing through the deadline.¶ Back then, Treasury was (publicly) denying at every opportunity that Congress wouldn’t raise the debt ceiling. Now, not so much.¶ Their strategy has shifted: instead of saying the government won’t pay its bills, they are saying if the government doesn’t pay its bills it will be the Republicans’ fault. (Republicans disagree, and say the White House needs to negotiate).¶ David Plouffe, a former top White House official who remains a close adviser to President Barack Obama, doubled down on the political messaging Tuesday night.¶ “Odds of shutdown and default rising as House GOP cowers to Team Cruz,” he tweeted, referring to Sen. Ted Cruz (R., Texas), who is pushing Republicans to band together and force the government to cut the funding of Mr. Obama’s health-care law. “Tanking the economy preferable to standing up to delusion. SOS.”¶ The White House, by playing offense, faces some immediate risks. By talking up the prospects of a Washington fiscal crisis, it could spook investors and lead to all sorts of volatility. But it’s clear the White House has thrown out the 2011 playbook and are trying something new.

#### PC low and fails for fiscal fights

Greg Sargent 9-12, September 12th, 2013, "The Morning Plum: Senate conservatives stick the knife in House GOP leaders," Washington Post, factiva

All of this underscores a basic fact about this fall's fiscal fights: Far and away the dominant factor shaping how they play out will be the divisions among Republicans. There's a great deal of chatter (see Senator Bob Corker for one of the most absurd examples yet) to the effect that Obama's mishandling of Syria has diminished his standing on Capitol Hill and will weaken him in coming fights. But those battles at bottom will be about whether the Republican Party can resolve its internal differences. Obama's "standing" with Republicans -- if it even could sink any lower -- is utterly irrelevant to that question.¶ The bottom line is that, when it comes to how aggressively to prosecute the war against Obamacare, internal GOP differences may be unbridgeable. Conservatives have adopted a deliberate strategy of deceiving untold numbers of base voters into believing Obamacare will be stopped outside normal electoral channels. Central to maintaining this fantasy is the idea that any Republican leader who breaks with this sacred mission can only be doing so because he or she is too weak and cowardly to endure the slings and arrows that persevering against the law must entail. GOP leaders, having themselves spent years feeding the base all sorts of lies and distortions about the law, are now desperately trying to inject a does of reality into the debate by pointing out that the defund-Obamacare crusade is, in political and practical terms alike, insane. But it may be too late. The time for injecting reality into the debate has long since passed.

#### Obama won’t push

Jack Goldsmith 13, Henry L. Shattuck Professor at Harvard Law School, Feb 13 2013, “The President’s SOTU Pledge to Work With Congress and Be Transparent on National Security Issues,” www.lawfareblog.com/2013/02/the-presidents-sotu-pledge-to-work-with-congress-and-be-transparent-on-national-security-issues/

As for a broader and sturdier congressional framework for the administration’s growing forms of secret war (not just targeted killing, but special forces activities around the globe, cyber attacks, modern forms of covert action, etc.) along the lines that I proposed last week, I also don’t think much will happen. Friends and acquaintances in and around the Obama administration told me they would cherish such a new statutory framework, but argued that Congress is too political, and executive-congressional relations too poisonous, for anything like this to happen. There is some truth in this charge, although I sense that Congress is preparing to work more constructively on these issues. But even in the face of a very political and generally unsupportive Congress, Presidents tend to get what they want in national security when they make the case publicly and relentlessly. (Compare the Bush administration’s successful push for FISA reform in the summer of 2008, when the President’s approval ratings were below 30%, and Democrats controlled both houses of Congress; or FDR’s push in late 1940 and early 1941 – against popular and congressional opposition – to secure enactment of Lend-Lease legislation to help to British fend off the Nazis; or the recent FISA renewal legislation.) And of course the administration can never succeed if it doesn’t try hard. Not fighting the fight for national security legal reform is just another way of saying that the matter is not important enough to the administration to warrant a fight. The administration’s failure to date to make a sustained push before Congress on these issues reveals a preference for reliance on ever-more-tenuous old authorities and secret executive branch interpretations in areas ranging from drones to cyber, and an implicit judgment that the political and legal advantages that would flow from a national debate and refreshed and clarified authorities are simply not worth the effort. The administration might be right in this judgment, at least for itself in the short run. But the President has now pledged something different in his SOTU address. We will see if he follows through this time. Count me as skeptical, but hopeful that I am wrong.

#### Plan’s bipartisan---Congress looking for TK limitations

AP 13, "Congress looks to limit drone strikes", February 5, www.cbsnews.com/8301-250\_162-57567793/congress-looks-to-limit-drone-strikes/

Uncomfortable with the Obama administration's use of deadly drones, a growing number in Congress is looking to limit America's authority to kill suspected terrorists, even U.S. citizens. The Democratic-led outcry was emboldened by the revelation in a newly surfaced Justice Department memo that shows drones can strike against a wider range of threats, with less evidence, than previously believed.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists, is expected to be a top topic of debate when the Senate Intelligence Committee grills John Brennan, the White House's pick for CIA chief, at a hearing Thursday.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.¶ It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons, D-Del., said in a recent interview.¶ Rep. Steny Hoyer of Maryland, the No. 2 Democrat in the House, said Tuesday that "it deserves a serious look at how we make the decisions in government to take out, kill, eliminate, whatever word you want to use, not just American citizens but other citizens as well."¶ Hoyer added: "We ought to carefully review our policies as a country."¶ The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said Tuesday, and Chairman Robert Menendez, D-N.J., and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations. And earlier this week, a group of 11 Democratic and Republican senators urged President Barack Obama to release a classified Justice Department legal opinion justifying when U.S. counterterror missions, including drone strikes, can be used to kill American citizens abroad.

#### No PC -- divided Dems backlashing – laundry list

Bloomberg 9/17 -- Mike Dorning and Kathleen Hunter, 2013, Obama Rifts with Allies on Summers-Syria Limit Debt Dealing, www.bloomberg.com/news/2013-09-17/obama-s-summers-syria-rifts-with-allies-limit-room-on-debt-

The backlash President Barack Obama faced from Democrats on both Syria and the prospect of Lawrence Summers leading the Federal Reserve underscore intraparty rifts that threaten to limit his room to strike budget and debt deals.¶ “There’s a large and growing portion of the Democratic Party that’s not in a compromising mood,” said William Galston, a former domestic policy adviser to President Bill Clinton.¶ Summers, one of Obama’s top economic advisers during the first two years of his presidency, withdrew from consideration for Fed chairman after a campaign against him led by Democratic senators who criticized his role in deregulating the financial industry during the 1990s.¶ That came just days after the Senate postponed deliberation on a request by Obama to authorize U.S. force in Syria, amid opposition from Democratic and Republican lawmakers wary of a new military action in the Middle East.¶ The two controversies raised “central issues” that divide Democrats at a time when the president needs unity to confront Republicans, Galston said. “The White House better make sure it and congressional Democrats are on the same page” as lawmakers face deadlines on government spending and raising the debt limit, he said.¶ Party Divisions¶ Senator Richard Durbin of Illinois, the chamber’s second-ranking Democrat, said today that Democrats are united with Obama on the need for a “clean” debt-ceiling increase. The anti-Summers movement reflected “strong feelings that many of us have” about making the Fed more responsive on issues such as income inequality, he said.¶ Republican leaders are dealing with their own divisions. House Speaker John Boehner, an Ohio Republican, had to pull back a vote last week on a plan to avoid a partial government shutdown in October after it became clear it couldn’t win enough support from members of his own party.¶ Congress and the Obama administration are facing fiscal decisions that include funding the government by Sept. 30 to avoid a federal shutdown and raising the nation’s $16.7 trillion debt ceiling. Boehner said in July that his party wouldn’t increase the borrowing limit “without real cuts in spending” that would further reduce the deficit. The administration insists it won’t negotiate on the debt ceiling.¶ Building Dissent¶ For Obama, the dissent on the left was already brewing before the Syria and Summers debates.¶ Congressional Democrats and union leaders accused him of being too eager to compromise with Republican demands to cut entitlement spending after he released a budget proposal that called for lower annual Social Security cost-of-living adjustments.¶ Some early Obama supporters also were disappointed that the president, who has relied on drone strikes to kill suspected terrorists and failed to close the detention center at Guantanamo Bay, Cuba, hadn’t moved far enough from George W. Bush’s policies on civil liberties and national security. The complaints grew louder after the disclosure of National Security Agency surveillance practices this year.¶ Obama, who earlier this year watched his gun-control legislation fail in the Senate partly because of defections by Democrats from Republican-leaning states, also is limited in his capacity to enlist public support to win over lawmakers.

### AT: Econ Impact

#### No impact to shutdown and it’ll only be short

Andrew Taylor 9-22, September 22nd, 2013, "Here's the truth: The government doesn't shut down," abclocal.go.com/wpvi/story?section=news/politics&id=9257247

Here's the truth about a government "shutdown." The government doesn't shut down.¶ So the world won't end if a dysfunctional Washington can't find a way to pass a funding bill before the new budget year begins on Oct. 1.¶ Social Security checks will still go out. Troops will remain at their posts. Doctors and hospitals will get their Medicare and Medicaid reimbursements. In fact, virtually every essential government agency, like the FBI, the Border Patrol and the Coast Guard, will remain open. Furloughed federal workers probably would get paid, eventually. Transportation Security Administration officers would continue to man airport checkpoints.¶ While the Treasury Department probably would make interest payments

to bondholders to prevent a catastrophic default on the debt, it wouldn't be able to make other payments on time, which would mean delays in Social Security benefits and in paychecks for federal workers and troops in the field.¶ Americans would feel the pain.¶ To prevent a "shutdown," Congress must pass a temporary spending bill before Oct. 1. To prevent a default, it must raise the $16.7 trillion cap on government borrowing.¶ Averting a shutdown is supposed to be easy. There hasn't been one since the 1995-96 battle in which President Bill Clinton bested Newt Gingrich and his band of budget-slashing conservatives. This time, the conservatives want to hold government-funding hostage in order to derail the implementation of President Barack Obama's law to make people buy health insurance. GOP leaders want to avoid a shutdown and are trying to finesse a solution.¶ Raising the debt limit is typically more difficult, but it has always been done because the possible consequences of default are so dire: upheaval in financial markets, a spike in U.S. borrowing costs and a host of delayed payments to both individual Americans and businesses. Under current estimates, the "X date" by which the government can't meet all of its payments would come in the latter half of October or early November. So Congress needs to act by mid-October to be safe.¶ In the separate case of a shutdown, fewer than half of the 2.1 million federal workers subject to it would be forced off the job if the Obama administration follows the rules followed by previous Presidents Ronald Reagan, George H.W. Bush and Clinton. That's not counting about 500,000 Postal Service employees or 1.4 million uniformed military personnel who would be exempt.¶ The rules for who works and who doesn't date back to the early 1980s and haven't been significantly modified since. The Obama administration re-issued the guidance on Wednesday.¶ The air traffic control system, food inspection, Medicare, veterans' health care and many other essential government programs would run as usual. The Social Security Administration would not only send out benefits but would continue to take applications. The Postal Service, which is self-funded, would keep delivering the mail. The Federal Emergency Management Agency could continue to respond to disasters at the height of hurricane season.¶ The Washington Monument would be closed. But it's been closed anyway since an earthquake in 2011.¶ Museums along the National Mall would close, too. National parks would be closed to visitors, a loss often emphasized in shutdown discussions.¶ The Capitol would remain open, however. Congress is deemed essential, despite its abysmal poll ratings.¶ From a practical perspective, shutdowns usually aren't that big a deal. They happened every year when Jimmy Carter was president, averaging 11 days each. During President Reagan's two terms, there were six shutdowns, typically just one or two days apiece. Deals got cut. Everybody moved on.¶ In 1995-96, however, shutdowns morphed into political warfare, to the dismay of Republicans who thought they could use them to drag Clinton to the negotiating table on a balanced budget plan.¶ Republicans took a big political hit, but most Americans suffered relatively minor inconveniences like closed parks and delays in processing passport applications. Some 2,400 workers cleaning up toxic waste sites were sent home, and there were short delays in processing veterans' claims.¶ Under a precedent-setting memorandum by Reagan budget chief David Stockman, federal workers are exempted from furloughs if their jobs are national security-related or if they perform essential activities that "protect life and property."¶ In 1995, that meant 571,000 Defense Department civilian employees, some 69 percent, remained at post, while 258,000 other Pentagon workers were furloughed. Eighty-five percent of Veterans Administration employees went to work as did 70 percent of Transportation Department workers. The Transportation Security Administration didn't exist back then, but agency officials have given assurances that TSA officers will screen airline passengers, though administrative workers will stay home.¶ Then there's Social Security. Current beneficiaries need not worry; their payments wouldn't be affected. And given the most recent precedent from the Clinton administration, those eligible to apply for benefits would be able to do so. During the first shutdown in 1995, the Social Security Administration initially furloughed 93 percent of its workers and stopped enrolling new beneficiaries. But it reversed course in the second shutdown and kept 50,000 additional workers on the job.¶ A funding lapse, or shutdown, involves the authority to spend new money. A default involves the ability to pay obligations already incurred.

#### AQAP rise collapses the economy

Nathaniel Sheppard 11, correspondent for the Chicago Tribune and NYT, June 7 2011, “Why pint-sized Yemen has become a world player,” http://www.alarabiya.net/articles/2011/06/07/152204.html

That Yemen could fall into the abyss is of great geopolitical significance that has put the bean-size nation at center stage. About 11 percent of the world’s seaborne petroleum passes through the Gulf of Aden en route to the Suez Canal, regional refineries and points west. ¶ It is not the largest shipment by far but enough that disruptions in transit could spook world markets and set off a new spiral of inflation as the world tries to recover from four years of economic distress.¶ Yemen occupies the southwestern and southern end of the Arabian Peninsula. It is bordered by Saudi Arabia to the north, the Red Sea to the west and Oman to the east. ¶ West bound oil must transit the Gulf of Aden and Bab el Mandab, a narrow strait that passes between Yemen and Djibouti then past the pirates’ paradise, Somalia before reaching open water. It is one of seven strategic world oil shipping chokepoints. ¶ Moreover, the area may contain significant untapped oil reserves, more reason for US concern since Saudi reserves may be diminishing and America is doing little to wean itself from fossil fuel.¶ Should Yemen polity fall apart, the country would be up for grabs. One of the grabbing hands would be that of Al Qaeda in the Arabian P

eninsula, one of the most notorious of Al Qaeda offshoots. Even before Osama Bin Laden was killed and his body dumped into the sea at the beginning of May, the Al Qaeda leader and best known symbol of world terror had lost control of Yemen’s Al Qaeda warriors. They marched to their own drum.¶ Able to operate freely in this poorest of poor, barely managed country with rugged, unforgiving terrain, Yemen’s Al Qaeda has been able to mount several attacks on the US from here. First there was the suicide bombing of the naval destroyer USS Cole while it refueled at the Yemeni port of Aden. Seventeen seamen were killed¶ Subsequent attacks launched from here included the failed Christmas Day bomb plot in 2009 and the parcel bomb plot of 2010, which also failed. ¶ In 2009, Nasir Al Wuhayshi, an Al Qaeda commander who trained under Bin Laden in Afghanistan and served as his secretary, announced the consolidation of Al Qaeda forces in the region as Al Qaeda in the Arabian Peninsula, under his command.¶ The US went after Al Qaeda elements in the region that same year but in lawless Somalia with disastrous consequences.¶ Commander Wuhayshi pledged to take jihad from the Arabian Peninsula to Israel, striking at Muslim leaders he decreed “criminal tyrants,” along the way, such as the Saudi royal, family, Yemen’s President Ali Abdullah Saleh and recently deposed Egyptian President Hosni Mubarak. ¶ Once in Israel he would “liberate” Gaza and Muslim holy sites such as Haram Ash-Sharif, known by Jews as Temple Mount, the holiest of sites in the Old City of Jerusalem. It was here that God chose the Divine Presence to rest; from which the world we know expanded; and that God gathered the dust to make man.¶ US Navy SEALs would love to meet Mr. Wuhayshi to discuss diabolical ambitions for any serious attempt to carry out his apocalyptic quest most certainly would plunge the world into war of world proportions. His agenda and the passion and persistence with which he and his followers pursue it are a reason for stepped up US engagement in Yemen.¶ Before the current uptick in violence as disparate forces seek to send President Saleh packing for good, the long reigning strongman had begun to cooperate with the US counter terrorism efforts in the region, obliging with a series of air strikes and ground assaults on suspected Al Qaeda targets in Yemen. That cooperation may now be in tatters and Mr. Wuhayshi stands to gain ground.¶ The US’ waltz with the strongman was not by choice. While Mr. Saleh’s cooperation was probably more to save his utterly corrupt regime, he was viewed by the US as the lesser of evils in Yemen. The attitude toward President Saleh was the same as toward Panamanian strongman Gen. Manuel Noriega, another US criminal client: “He may be an SOB but he’s our SOB.’’ ¶ With a bigger footprint and wider control in Yemen in the absence of a strong central authority, outright land grabs and possible alliances with Somalia warlords, it would be as if Al Qaeda had found its Holy Grail, a potential for disrupting the flow of oil to the west, and what it views as the devil incarnate, the US. ¶ Ships transiting the area already find the waters treacherous. Now it stands to get worse. They are frequently targeted by pirates from Somalia who kill or demand large ransoms if they are able to successfully board cargo-carrying vessels. Oil tankers are like crown jewels.¶ International forces, including the US, have treated the Somali pirates like flies at a picnic, swatting them away unscathed most of the time and sometimes killing them, but not enough times to make their confederates think about new careers. ¶ Hijacking or blowing up oil tankers and messing with the oil that powers the world is a different matter altogether. There is too much at stake to leave it to Yemen to handle its own affairs but overt meddling from the West would be unwelcome in the region.¶ No Western or Asian oil dependent nation would relish the idea of invading a Muslim nation at a time of such tensions with Muslims. The US is particularly reluctant, having already done so twice in Iraq and Afghanistan.¶ Oil is oil however. While it might not matter to Muslim fundamentalists who want to turn the hands of time back to the 17th century, oil dependent nations would not sit by idly while an already fractured world economy worsened. The situation would get ugly.¶ Thus the tail wags the dog, the pint-sized nation that offers so little has forced the powerful behemoths to consider so much, like their limited options for doing anything about frightening events unfolding before their eyes.

# 2AR

### T

#### Cause of action and removing sovereign immunity are restrictions on Presidential war powers

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.

## CP

### No Solvo

#### Transparency without reform doesn’t solve precedent---investigating wrongful deaths is key

Naureen Shah 13, August 17th, 2013, "Obama has not delivered on May's promise of transparency on drones," The Guardian, www.theguardian.com/commentisfree/2013/aug/17/obama-promise-transparency-drone-killing

Even more damning is that, in the absence of any commitment to investigating credible allegations of unlawful deaths, the United States appears indifferent to the question of who is actually dying in drone strikes. President Obama admitted in May that four US citizens had been killed, three of whom – including 16-year-old Abdulrahman Aal-Awlaki – he admitted were not intended targets. But the president did not define the identities of the more than 4,000 other people killed, or specifically address reports that a significant number of the dead – in assessments varying between 400 and nearly 1,000, according to the Bureau of Investigative Journalism – were civilians.¶ When the president acknowledges four deaths of US citizens, but not 4,000 deaths of non-Americans, he signals to the world a callous and discriminatory disregard for human life. Perhaps only a fraction of these 4,000 deaths were unlawful. But acknowledging and investigating these deaths is a matter of dignity and justice – for the survivors of strikes, their communities and their countrymen.¶ When deaths are found to be unlawful, victims' families and survivors have a right to reparation. Refusing to investigate deaths is a matter of disrespect both for international law and for the public's right to know the full truth.¶ Many critics, before President Obama's May address, feared that foreign governments would follow the US to lead and conduct secret drone strikes without regard for international law. They should still be concerned about the precedent the US government is setting: refusing to investigate or be held accountable for wrongful deaths.¶ The risk now is not just that the late May reforms on drone strikes were half-measures, but that they were calibrated to merely reassure the public, defuse criticism, and avert longer, harder scrutiny of whether the government's actions are lawful and right. A token dose of transparency may remove the sting of government secrecy, but it does not cure the disease.

#### Whatever the administration says, not perceived as credible

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.

### CP Links to DA

#### Links to DA

Kenneth Anderson 13, Professor of International Law at American University, 5/24/13, “You Are an Operational Commander of AQAP Reading the White House Fact Sheet,” http://www.lawfareblog.com/2013/05/you-are-an-operational-commander-of-aqap-reading-the-white-house-fact-sheet/

Imagine for a moment that you are an operational commander in al Qaeda or one of its associated forces – Al Qaeda in the Arabian Peninsula, for example. You are working on ways to attack the United States, its allies, or interests; perhaps you are working with AQAP’s key bomb-maker, the same who came up with the Detroit Christmas bomber’s underwear bomb and the xerox printer cartridge bomb. Imagine that he has managed to come up with a way to implant explosives in a person’s body, and you are working on a way to deploy this operationally. You know that you are a possible, indeed likely, target of a drone strike. But you have just read President Obama’s speech carefully, and you have also just read the White House Fact Sheet. What would your rational course of action be, given your aims? Readers are invited to state what their course of action would be if they were the AQAP commander in this scenario. ¶ I don’t want to suggest that the transparency of standards contained in the Fact Sheet is necessarily a mistake. (Although I incline at first blush to agree with Kevin Jon Heller at Opinio Juris that setting so high a standard was a substantive mistake, in part because it is so far from the actual law of war requirements and because it is unlikely that attacks of the kind that this and future administrations will carry out could meet such a standard each and every time, even allowing for reasonable mistakes about “near certainty.”) I have been calling for greater transparency about targeting processes and criteria, certainly. But it should be pointed out that (as this thought experiment presumably reveals) transparency about standards such as these involves a not-inconsiderable tradeoff. ¶ The public presumably has greater confidence that there is a morally and legally defensible policy in place, on the one hand, because a standard has been publicly stated and it is a high one. But the terrorist leader has equally greater confidence of what conditions will ensure that he is not targeted, on the other. Is the tradeoff worth it? Is it the right one? People can debate that, but it seems clear there is a tradeoff. ¶ Yet it should be pointed out that this tradeoff is illustrates a key difference between parties at war and a society at peace. In conditions of peace – that is to say, within a settled society with a legitimate domestic legal order – the rule of law calls for clear and transparent rules and standards, as a matter of justice as well as stability and predictability. Unfettered discretion on the part of legal authority is essentially arbitrary and contrary to the rule of law; even apart from justice, it is often socially inefficient because it raises the transaction costs of having to anticipate and prepare for contingencies. In war, however, uncertainty, unpredictability, and unclarity are often key and desirable characteristics. They are strategically valuable to one side, because it forces the other side to absorb the costs of preparing for uncertain contingencies. It is often one of the chief advantages of being on offense in war.¶ The tradeoff made by the Fact Sheet radically decreases the uncertainties and contingencies faced by the other side, however. It gives a path to avoid precisely the outcome that our side seeks to deliver. And it does so by inviting further illegality under the laws of war, such as using children as human shields, and effectively rewards strategies of illegal shielding. Or so a critic of this kind of transparency might argue. Is the tradeoff in public transparency worth it? Readers are invited to comment.

## S

### Plan Key to Intel

#### Illegal strikes prevent US-EU intel sharing

Anthony Dworkin 13, is a senior policy fellow at the European Council on Foreign Relations, July 2013, "Drones and Targeted Killing: Defining a European Position," European Council on Foreign Relations, ecfr.eu/page/-/ECFR84\_DRONES\_BRIEF.pdf

US drone strike practices also complicate intelligence cooperation between EU member states and the US, because of the risk that information handed over by Europeans will be used as the basis for lethal strikes that might be considered illegal in the source countries. In December 2012, the British High Court dismissed a case brought by a young Pakistani man whose father was killed by a drone strike, seeking to establish whether information provided by British intelligence services was used by the CIA’s drone programme; the case is currently under appeal. 9 The German government came under strong domestic criticism after a US drone strike killed a German citizen of Turkish descent in Pakistan in October 2010 amid claims that the German police had provided US intelligence agencies with information about his movements. 10 A federal prosecutor is investigating the legality of the killing, and in the meantime the German government has instituted a policy of not passing information to the US that could be used for targeted killing outside battlefield conditions, but activists argue that it is impossible to know whether any piece of information might form part of a mosaic used in targeting decisions. 11 In Denmark, a public controversy has blown up over claims by a Danish citizen, Morten Storm, that he acted as a Western agent inside Yemeni jihadist circles and helped the CIA track the radical cleric Anwar al-Awlaki, who was killed by a drone strike in September 2011, with the knowledge of Danish intelligence services.

## Accnt

### Plan Link Turns

#### Plan’s accountability mech is vital to prevent ending of US drone program

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

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

#### Courts key to intelligent use---game theory proves

Tiberiu Dragu 13, Assistant Prof in the Dept of Politics at NYU, PhD in Poli Sci from Stanford University, and Oliver Board, associate in the Corporate Department of Wachtell, Lipton, Rosen & Katz, former Assistant Prof of Economics at the University of Pittsburgh, D.Phil. in Economics from the University of Oxford, J.D. from NYU School of Law, “On Judicial Review in a Separation of Powers System,” June 3 2013, https://files.nyu.edu/tcd224/public/papers/judicial.pdf

Our analysis has relevance for existing debates on the scope of judicial review in the context of terrorism prevention. The polemic whether drone strikes and other counterterrorism policies should be subjected to judicial oversight is framed as a tradeoff between the legal accountability benefits of judicial oversight and the public policy harms of reviewing expert counterterrorism policy by non-expert judges. But starting the debate on these terms already assumes that (non-expert) judicial review can only have a negative effect on (expert) governmental policy. As such, it glosses over the prior question of what is the effect of legal review on the information available for counterterrorism policy-making. To answer this question one needs to assess the counterfactual of how informed counterterrorism policy decisions are in the absence of judicial review as compared to the scenario in which a court can review the legality of those policies. Our game-theoretical analysis provides this counterfactual analysis, an otherwise difficult task to effect, and thus contributes to the current debates regarding the appropriateness of judicial review in the context of terrorism prevention. It suggests that judicial checks can lead to more informed counterterrorism policy-making if one considers the internal structure of the executive and the electoral incentives of the president, conditions which we discuss in more detail below.¶ First, the argument that judicial review of drone strikes, and counterterrorism policy more generally, has a detrimental effect on expert policy-making overlooks the internal ecology of the executive branch. When asserting the superior expertise of the executive branch, scholars and commentators treat the executive as a unitary actor, or perhaps consider its internal structure to be incidental to the expertise rationale for limiting judicial review. However, as the description of the drone policy suggests, there is a separation between expertise and policy-making: the president (and his closest advisers) decides on counterterrorism policy, while lower-level bureaucrats provide the expertise and intelligence to make informed decisions. This separation of expertise from policy-making is not unique to counterterrorism. Rather this is a general fact of modern-day government, and scholars of bureaucratic politics, going back to Max Weber, have attempted to unravel its myriad implications for democratic governance (Rourke 1976; Wilson 1991).¶ Second, the president, like all elected representatives, is a politician making choices under the pressure of re-election and public opinion, and such incentives are going to shape his counterterrorism choices. When it comes to the electoral incentives of public officials, scholars have noted that the political costs of not reacting aggressively enough in matters of terrorism prevention and national security are going to be higher than the costs of overreaction (Cole 2008; Fox and Stephenson 2011; Ignatieff 2004; Richardson 2006; Swire 2004). This observation implies that the president and other elected officials have an electoral bias to engage in counterterrorism policies that are more aggressive than what would be necessary on the basis of available information regarding the terrorist threat.36 Inside accounts of the decision-making process within executive branch (Goldsmith 2007), empirical analyses (Merolla and Zechmeister 2009), and newspaper reports,37 they all document such electoral incentives to appear tough on terrorism. The former Vice-President Dick Cheney forcefully depicts this electoral bias in his articulation of the so-called one percent doctrine, which states that if there was even a one percent chance of terrorists getting a weapon of mass destruction, then the executive must act as if it were a certainty (Suskind 2007). In Cheney's view, “it is not about analysis; it's about our response... making suspicion, not evidence, the new threshold for action."38 The run-up to the invasion in Iraq provides a stark illustration of the one percent doctrine in action, the conflict between intelligence officials and policy-makers, and the issue of politicized expertise in the context of national security (Pillar 2011).¶ Our results suggest that (non-expert) judicial review has the potential to induce more informed counterterrorism decisions when the president makes security policy under the veil of public expectations to respond forcefully to terrorist threats. Courts are not immune to public opinion, of course, but precisely because judges are not elected, they are more insulated from public opinion than elected officials. This implies that, all else equal, the courts are less likely to prefer counterterrorism measures that respond to public expectations to be tough on terrorism. Under these conditions,39 our theory suggests a mechanism by which counterterrorism policy-making with judicial oversight can be superior to counterterrorism policy-making without it, even if courts are relatively ill-equipped to review executive decisions. Judicial review can serve as a commitment device to better align the preferences of policymakers with their experts, with the effect of inducing more information for counterterrorism decisions. This observation is missing from current public and scholarly discussions about the role of judicial review in the context of drone strikes and other counterterrorism policies. As such, our analysis has policy implications for ongoing debates on how to design the institutional structure of liberal governments when the social objective is terrorism prevention.

### AT: Solves Terror – Too Slow

#### Doesn’t solve terrorism

John Arquilla 13, professor of defense analysis at U.S. Naval Postgraduate School, 6/3, “Drones Are Too Slow to Kill Terrorists,” Foreign Policy

Sadly, political acumen all too often makes for poor strategy -- as it surely does in this case. In the matter of drones, the problem is that the instrument itself -- an unmanned but armed aircraft -- has very serious operational and ethical constraints. During the past decade, over 400 drone attacks have taken place -- the vast majority on President Obama's watch, most of them striking on sovereign Pakistani territory. This is simply too slow a tempo, allowing enemy networks plenty of time to absorb whatever losses are inflicted and to recover from them. The problematic aerial offensive also comes at the serious cost of creating both outrage and instability in the countries where innocents are sometimes killed in drone attacks -- particularly in places targeted for "signature strikes," where those in the crosshairs simply fit a suspicious profile. The focus on "high-value targets" is closely related to the dependence on the use of drones, as the air attacks generally aim at hitting al Qaeda leaders. But this, too, is a case of going down a rabbit hole. For in a network -- a loose-jointed, very flat organizational form -- everybody is No. 3. Even the loss of No. 1, Osama bin Laden, has had little overall effect on al Qaeda, which has been able to return to Iraq, join the fight in Syria, keep up operations in Yemen and Somalia, and expand to Libya, Mali, and Nigeria -- among other places. Former Secretary of Defense Leon Panetta was fond of saying that al Qaeda was "on the verge of strategic defeat." Hardly. As the State Department's Country Reports on Terrorism, released late last week, points out, al Qaeda remains a serious threat, mostly due to its "decentralized, dispersed structure." Another pillar of President Obama's strategy, the call to address the grievances that give rise to terrorism, is a real head-scratcher, too. If all the people around the world who were subject to chronic poverty, misrule, and sheer, unrelenting injustice were to turn to terrorism, there would be more terrorists than ordinary citizens in any global census. The fact of the matter is that most who suffer do so without resort to the murder of innocents as a means of expressing their outrage. And the sources of grievances are so deeply rooted in specific cultures and their historical paths of development that to "address" them, as the president wishes, would call for nothing short of creating the kind of "new world order" that Bush the Elder envisioned and briefly thought might be possible some 20 years ago. The idea was DOA. It's still dead. Further, the notion of mending grievances, to my mind the most troubling aspect of the Obama strategy, was advanced in the speech at the National Defense University without reference at all to the possibility that American actions in the world might possibly be a real source of grievance. For example, the invasion of Iraq in 2003 remains a highly questionable use of force, and images from the conflict there have no doubt proved valuable recruiting tools for al Qaeda. And the president's rather obtuse insistence that the war in Iraq has ended can only inflame the wound and deepen the sense of grievance, given the continuing, rising level of violence plaguing that very sad land. For all the flawed thinking reflected in President Obama's speech and the strategy it described, he made one powerful point: Our fundamental goal must be to "dismantle terrorist networks." However, his insight was watered down by a seeming lack of urgency in pursuing this goal and an apparent willingness to scale down our efforts in the war on terror while relying more on allies. Truly, allies are good to have, and they should be cultivated and motivated. But not with the idea that this somehow allows the United States to do less. For it will take all the best efforts of a global counterterrorism coalition operating in high gear to disrupt and destroy the rising dark networks spawned by al Qaeda. And it should be realized that time is on the terrorists' side. The longer they stay on their feet and fighting, the closer they come to acquiring true weapons of mass destruction. Radiological, chemical, or biological attack capabilities in the hands of a dispersed network would upend any notion of world order, because a network is simply not susceptible to the kind of retaliatory punitive threats that nations are. The prospect of mutual assured destruction may keep the thousands of Russian and American nuclear warheads safely locked away forever, but an al Qaeda network with just a few nukes would enjoy enormous coercive power over the world's nations. The irony of the situation is that President Obama has identified the right goal -- focusing on enemy networks -- but he has chosen almost all **the wrong means** by which to seek their disruption. Drones are too slow-acting, strategically, and create their own "drag" in the form of outrage at collateral damage. Targeting enemy leaders is highly unlikely to defeat networks whose cells operate with high degrees of autonomy. And the effort to identify and ameliorate grievances is inherently quixotic and, in fact, undercut by the damage caused by some of our own policies (like the invasion of Iraq).