# 1AC – KY Octas

### 1AC – Executive Overreach

#### CONTENTION 1: OVERREACH

#### *Scenario A: Targeted Strikes*

#### US policy creates a borderless global war---the lack of statutory limits triggers unnecessary attacks

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University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

Recent statements by administration officials suggest that while, as a matter of law, the United States continues to press a broad definition of the enemy force, its actions, as a matter of policy, are more restrained. Specifically, it focuses its targeted-killing operations on those who pose a "significant threat" n57 and only as a matter of last resort. In the words of John Brennan, the United States does not seek to kill every al Qaeda member, but instead focuses its efforts on "disrupting ... plans and ... plots before they come to fruition," n58 and limits lethal strikes to situations in which it is the "only recourse" against the threat. n59 Brennan cites operational leaders, [\*1186] operatives in the midst of training for an attack, and persons who possess unique operational skills that are being leveraged for an attack. n60 But no binding limits have yet been articulated, and it is not clear that they exist. n61 Are the examples of possible targets exclusive or merely illustrative? How far along does the attack planning need to be? Is mere agreement to plot or plan enough? In what situations is lethal targeting considered the "only recourse"?¶ Of note, recent reporting suggests that the United States has launched at least one drone strike near Sana'a, the capital of Yemen, in a region readily accessible to law enforcement officials, thereby casting doubt on official assertions that lethal targeting is used as a measure of last resort, when capture is not feasible. n62 Moreover, "signature strikes" reportedly were approved for use in Yemen in 2012, allowing the targeting of individuals or groups based on their pattern of activities without knowing the specific targets' identities or roles in the organization - a practice that seems to belie a policy of individualized assessments of "significant threat." n63

#### Congressional inaction has made this a defining policy doctrine---expansive executive authority triggers overreach

Maxwell 12 - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

In the wake of the attacks by al Qaeda on September 11, 2001, an analogous phenomenon of feeling safe has occurred in a recent U.S. national security policy: America’s explicit use of targeted killings to eliminate terrorists, under the legal doctrines of self-defense and the law of war. Legal scholars define targeted killing as the use of lethal force by a state4 or its agents with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.5 In layman’s terms, targeted killing is used by the United States to eliminate individuals it views as a threat.6 Targeted killings, for better or for worse, have become “a defining doctrine of American strategic policy.”7 Although many U.S. Presidents have reserved the right to use targeted killings in unique circumstances, making this option a formal part of American foreign policy incurs risks that, unless adroitly controlled and defined in concert with Congress, could drive our practices in the use of force in a direction that is not wise for the long-term health of the rule of law. This article traces the history of targeted killing from a U.S. perspective. It next explains how terrorism has traditionally been handled as a domestic law enforcement action within the United States and why this departure in policy to handle terrorists like al Qaeda under the law of war—that is, declaring war against a terrorist organization—is novel. While this policy is not an ill-conceived course of action given the global nature of al Qaeda, there are practical limitations on how this war against terrorism can be conducted under the orders of the President. Within the authority to target individuals who are terrorists, there are two facets of Presidential power that the United States must grapple with: first, how narrow and tailored the President’s authority should be when ordering a targeted killing under the rubric of self-defense; and second, whether the President must adhere to concepts within the law of war, specifically the targeting of individuals who do not don a uniform. The gatekeeper of these Presidential powers and the prevention of their overreach is Congress. The Constitution demands nothing less, but thus far, Congress’s silence is deafening.

#### That lowers the threshold for use for US policymakers

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

But the advantages of drones are as overstated and misunderstood as the problems they pose — and in some ways, their very perceived advantages cause new problems. Drone technologies temptingly lower or disguise the costs of lethal force, but their availability can blind us to the potentially dangerous longer - term costs and consequences of our strategic choices. Armed drones lower the perceived costs of using lethal force in at least three ways. First, drones reduce the dollar cost of using lethal force inside foreign countries. 13 Most drones are economical compared with the available alternatives. 14 Manned aircraft, for instance, are quite expensive: 15 Lockheed Martin's F - 22 fighter jets cost about $150 million each; F - 35s are $90 million; and F - 16s are $55 million. But the 2011 price of a Reaper drone was approximately $28.4 million, while Predator drones cost only about $5 million to make. 16 As with so many things, putting a dollar figure on drones is difficult; it depends what costs are counted, and what time frame is used. Nevertheless, drones continue to be perceived as cheaper by government decision - makers. Second, relying on drone strikes rather than alternative means reduces the domestic political costs of using lethal force. Sending manned aircraft or special operations forces after a suspected terrorist places the lives of U.S. personnel at risk, and full - scale invasions and occupations endanger even more American lives. In contrast, using armed drones eliminates all short - term risks to the lives of U.S. personnel involved in the operations. Third, by reducing accidental civilian casualties, 17 precision drone technologies reduce the perceived moral and reputational costs of using lethal force. The US government is extraordinarily concerned about avoiding unnecessary civilian casualties, and rightly so. There are moral and legal reasons for this concern, and there are also pragmatic reasons: civilian casualties cause pain and resentment within local populations and host - country governments and alienate the international community It is of course not a bad thing to possess military technologies that are cost little, protect American lives and enable us to minimize civilian casualties. When new technologies appear to reduce the costs of using lethal force, however, the threshold for deciding to use lethal force correspondingly drops, and officials will be tempted to use lethal force with greater frequency and less wisdom.¶ Over the last decade, we have seen US drone strikes evolve from a tool used in extremely limited circumstances to go after specifically identified high - ranking al Qaeda officials to a tool relied on in an increasing number of countries to go after an eternally lengthening list of putative bad actors, with increasingly tenuous links to grave or imminent threats to the United States. Some of these suspected terrorists have been identified by name and specifically targeted, while others are increasingly targeted on the basis of suspicious behavior patterns. Increasingly, drones strikes have targeted militants who are lower and lower down the terrorist food chain, 18 rather than terrorist masterminds. 19 Although drone strikes are believed to have killed more than 3,000 people since 2004, 20 analysis by the New America Foundation and more recently by a the McClatchy newspaper s suggests that only a small fraction of the dead appear to have been so - called "high - value targets." 21 What’s more, drone strikes have spread ever further from "hot" battlefields, migrating from Pakistan to Yemen to Somalia (and perhaps to Mali 22 and the Philippines as well). 23

#### That makes great power war inevitable---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

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

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.

#### *Scenario B – Detention*

**Lack of limits on the executive detention make overreach inevitable--- radicalizes foreign populations---codification is critical to set the precedent**

Matthew C **Waxman 9**, Professor of Law; Faculty Chair, Roger Hertog Program on Law and National Security, Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 59-61

Besides posing risks to liberty, administrative detention can also be counterproductive from the security standpoint. Again, the substantive criteria of detention law may help mitigate the risk. Historically, detention policies— especially those viewed as overbroad by the communities in which they were implemented— have sometimes proven ill-suited to combating terrorism and radicalization of individuals or communities. The British government learned painfully that internment of suspected Northern Ireland terrorists was viewed among some communities as a form of collective punishment that fueled violent nationalism and helped dry up the supply of community informants. 54 And in Iraq and Afghanistan, though the circumstances are exceptional because combat still rages there, detention has played an important role in neutralizing threats to coalition forces, but it has also contributed to anticoalition radicalization, especially when it is perceived as being used indiscriminately.¶ One role that well-crafted definitional criteria can play is in **mitigat**ing an **executive’s propensity to overuse the power to detain.** Observers from both the right and the left worry correctly that in the face of terrorist threats the executive is likely to push detention powers to or even past their outer bounds in order to prevent catastrophe as well as to head off any political backlash for having failed to take sufficient action. 56 Such **overbroad use of detention risks** further **radicalizing** and **alienating communities** from which terrorists are **likely to emerge** or whose **assistance is vital** in identifying or penetrating extremist groups. Moreover, several important studies of counterterrorism strategy have emphasized the need to target coercive policies, including **military** **and** **law enforcement efforts**, **narrowly** precisely to avoid playing into al Qaeda propaganda efforts to **aggregate local grievances into a common global movement**. 57 These are fundamentally policy, not legal, problems, and they will require sound executive judgment no matter what the legal regime looks like. But once the role of detention is firmly situated in a broader counterterrorism strategy that seeks to balance the many competing policy priorities, a carefully drawn administrative **detention statute** can help **mitigate long-term strategic damage** from the propensity to **overreach in the short term**. ¶ The danger that administrative detention poses to liberty and security points against emphasizing deterrence or information gathering as its primary strategic purpose. Virtually any very dangerous terrorist or supporter of terrorism that the government could hope to deter through detention would be deterred already by the threat of criminal prosecution or military attack or would be sufficiently committed to violent extremism to render the marginal deterrent threat of administrative detention negligible. 58 As for information gathering, an administrative detention law premised on detaining individuals with valuable knowledge regardless of whether they have engaged in nefarious activities sets a precedent that is too easily abused or overused **at home or abroad.** Information gathering, including through lawful interrogation, will undoubtedly be a strong motive for almost any administrative detention scheme, and an individual’s knowledge of terrorist planning or operations could be a reason not to release the person if he or she has been validly detained on other grounds. 59 But using a person’s suspected knowledge alone as the basis for detention, completely delinking detention from the individual’s voluntary and purposeful actions, cuts even deeper into traditional civil liberties principles and safeguards than most other reasons for administrative detention. 60 A detention law that allows incarceration based on knowledge could also perversely deter individuals with important information from coming forward voluntarily to the government.

**Current detention wrecks** **US rule of law legitimization**

David **Welsh 11**, J.D. from the University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf

The Global War on Terror 1 has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. 2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it **has** also **damaged America’s image** both at home and **abroad**. 3 **Throughout the world**, there is a **growing consensus** that **America has “a lack of credibility as a** fair and just **world leader**.” 4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle **can only be won through legitimizing** the **rule of law** and **undermining** the use of **terror as a means** of political influence. 5 ¶ Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of **the most damaging has been the detention**, treatment, and trial (or in many cases the lack thereof) **of suspected terrorists**. While many scholars have raised constitutional questions about the legality of U.S. detention procedures, 6 this article offers a psychological perspective of legitimacy in the context of detention.

**Plan’s key to legitimize the rule of law---uncertainty risks global instability**

Robert **Knowles 9**, Acting Assistant Professor, New York University School of Law, Spring, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis

**The hegemonic model** also **reduces the need for executive branch flexibility**, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system **depends on the ability of the U.S. to govern effectively**. Effective governance **depends on**, among other things, **predictability**. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 **Stable** interpretation of the **law** **bolsters the stability of the system** because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424¶ The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429¶ In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. **Instead, the danger is that American rule-breaking will set a pattern** of rule-breaking **for the world, leading to instability**. n431 America's military predominance enables it to set the rules of the game. **When the U.S. breaks its own rules, it loses legitimacy**.

#### Democratic liberalism is backsliding now---the US model of an unrestrained executive causes collapse

Larry **Diamond 9**, Professor of Political Science and Sociology @ Stanford, “The Impact of the Global Financial Crisis on Democracy”, Presented to the SAIS-CGD Conference on New Ideas in Development after the Financial Crisis, Conference Paper that can be found on his Vita

Concern about the future of democracy is further warranted by the gathering signs of a **democratic recession**, even before the onset of the global economic recession. During the past decade, the global expansion of democracy has essentially leveled off and hit an equilibrium While freedom (political rights and civil liberties) continued to expand throughout the post-Cold War era, that progress also halted in 2006, and 2007 and 2008 were the worst consecutive years for freedom since the end of the Cold War, with the number of countries declining in freedom greatly outstripping the number that improved. Two-thirds of all the breakdowns of democracy since the third wave began in 1974 have occurred in the last nine years, and in a number of strategically important states like Russia, Nigeria, Venezuela, Pakistan and Thailand. Many of these countries have not really returned to democracy. And **a number of countries linger in a twilight zone between democracy and authoritarianism**. While normative support for democracy has grown around the world, it remains in many countries, tentative and uneven, or is even eroding under the weight of growing public cynicism about corruption and the self-interested behavior of parties and politicians. Only about half of the public, on average, in Africa and Asia meets a rigorous, multidimensional test of support for democracy. Levels of distrust for political institutions—particularly political parties and legislatures, and politicians in general—are very high in Eastern Europe and Latin America, and in parts of Asia. In many countries, 30-50 percent of the public or more is willing to consider some authoritarian alternative to democracy, such as military or one-man rule. And where governance is bad or elections are rigged and the public cannot rotate leaders out of power, skepticism and defection from democracy grow. Of the roughly 80 new democracies that have emerged during the third wave and are still standing, probably **close to three-quarters are insecure and could run some risk of reversal during adverse** global and domestic **circumstances**. Less at risk—and probably mostly consolidated—are the more established developing country democracies (India, Costa Rica, Botswana, Mauritius), and the more liberal democracies of this group: the ten postcommunist states that have been admitted to the EU; Korea and Taiwan; Chile, Uruguay, Panama, Brazil, probably Argentina; a number of liberal island states in the Caribbean and Pacific. This leaves about 50 democracies and near democracies—including such big and strategically important states as Turkey, Ukraine, Indonesia, the Philippines, South Africa, certainly Pakistan and Bangladesh, and possibly even Mexico—where **the survival of constitutional rule cannot be taken for granted.** In some of these countries, like South Africa, the demise of democracy would probably come, if it happened, not as a result of a blatant overthrow of the current system, **but rather via a gradual executive strangling of** political **pluralism and freedom**, or a steady decline in state capacity and political order due to rising criminal and ethnic violence. Such circumstances would also swallow whatever hopes exist for the emergence of genuine democracy in countries like Iraq and Afghanistan and for the effective restoration of democracy in countries like Thailand and Nepal.

#### US detention policy is key---it has justified democratic backsliding globally

CJA 4 The Center for Justice and Accountability, Amici Curiae in support of petitioners in Al Odah et al. v USA, "Brief of the Center for Justice and Accountability, the International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," 3-10, Lexis

While much of the world is moving to adopt the institutions necessary to secure individual rights, many still regularly abuse these rights. One of the hallmarks of tyranny is the lack of a strong and independent judiciary. Not surprisingly, where countries make the sad transition to tyranny, one of the first victims is the judiciary. Many of the rulers that go down that road justify their actions on the basis of national security and the fight against terrorism, and, disturbingly, many claim to be modeling their actions on the United States. Again, a few examples illustrate this trend. In Peru, one of former President Alberto Fujimori’s first acts in seizing control was to assume direct executive control of the judiciary, claiming that it was justified by the threat of domestic terrorism. He then imprisoned thousands, refusing the right of the judiciary to intervene. International Commission of Jurists, Attacks on Justice 2000-Peru, August 13, 2001, available at ttp://www.icj.org/news.php3?id\_article=2587&lang=en (last visited Jan. 8, 2004). In Zimbabwe, President Mugabe’s rise to dictatorship has been punctuated by threats of violence to and the co-opting of the judiciary. He now enjoys virtually total control over Zimbabweans' individual rights and the entire political system. R.W. Johnson, Mugabe’s Agents in Plot to Kill Opposition Chief, Sunday Times (London), June 10, 2001; International Commission of Jurists, Attacks on Justice 2002— Zimbabwe, August 27, 2002, available at http://www.icj.org/news.php3?id\_article=2695〈=en (last visited Jan. 8, 2004). While Peru and Zimbabwe represent an extreme, the independence of the judiciary is under assault in less brazen ways in a variety of countries today. A highly troubling aspect of this trend is the fact that in many of these instances those perpetuating the assaults on the judiciary have pointed to the United States’ model to justify their actions. Indeed, many have specifically referenced the United States’ actions in detaining persons in Guantánamo Bay. For example, Rais Yatim, Malaysia's "de facto law minister" explicitly relied on the detentions at Guantánamo to justify Malaysia's detention of more than 70 suspected Islamic militants for over two years. Rais stated that Malyasia's detentions were "just like the process in Guantánamo," adding, "I put the equation with Guantánamo just to make it graphic to you that this is not simply a Malaysian style of doing things." Sean Yoong, "Malaysia Slams Criticism of Security Law Allowing Detention Without Trial," Associated Press, September 9, 2003 (available from Westlaw at 9/9/03 APWIRES 09 :34:00). Similarly, when responding to a United States Government human rights report that listed rights violations in Namibia, Namibia's Information Permanent Secretary Mocks Shivute cited the Guantánamo Bay detentions, claiming that "the US government was the worst human rights violator in the world." BBC Monitoring, March 8, 2002, available at 2002 WL 15938703. Nor is this disturbing trend limited to these specific examples. At a recent conference held at the Carter Center in Atlanta, President Carter, specifically citing the Guantánamo Bay detentions, noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already." Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "Every dictator in the world is using what the United States has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in indefinite detention in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — helps create a free license for tyranny in Africa. It helps justify Egypt's move to detain human rights campaigners as threats to national security and does the same for similar measures by the governments of Ivory Coast, Cameroon and Burkina Faso." Available at http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat e=20030121123259. In our uni-polar world, the United States obviously sets an important example on these issues. As reflected in the foundational documents of the United Nations and many other such agreements, the international community has consistently affirmed the value of an independent judiciary to the defense of universally recognized human rights. In the crucible of actual practice within nations, many have looked to the United States model when developing independent judiciaries with the ability to check executive power in the defense of individual rights. Yet others have justified abuses by reference to the conduct of the United States. Far more influential than the words of Montesquieu and Madison are the actions of the United States. This case starkly presents the question of which model this Court will set for the world.

**Democratic backsliding causes great power war**

Azar **Gat 11**, the Ezer Weizman Professor of National Security at Tel Aviv University, 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, the decline of major great power war has deepened further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’, where countries that have so far failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars among themselves, as well as with developed countries.¶ While the trend is very real, one wonders if the near disappearance of armed conﬂict within the developed world is likely to **remain as stark** as it has been since the collapse of communism. The post-Cold War moment may turn out to be a **ﬂeeting** one. The probability of major wars within the developed world remains low—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. But the deep sense of change prevailing since 1989 has been based on the far more radical notion that the triumph of capitalism also spelled the irresistible ultimate victory of democracy; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. This notion, however, is **fast eroding** with the return of capitalist non-democratic great powers that have been absent from the international system since 1945. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist China, whose massive growth represents the greatest change in the global balance of power. Russia, too, is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character.¶ Authoritarian capitalism may be **more viable than people tend to assume**. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan, particularly the former, were as efﬁcient economically as, and if anything more successful militarily than, their democratic counterparts. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the new non-democratic powers are both large and capitalist. China in particular is the largest player in the international system in terms of population and is showing spectacular economic growth that within a generation or two is likely to make it a true non-democratic superpower.¶ Although the return of capitalist non-democratic great powers does not necessarily imply open conﬂict or war, it might indicate that the democratic hegemony since the Soviet Union’s collapse could be **short-lived** and that **a universal ‘democratic peace’ may still be far off**. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, as China grows in power, it is likely to become more assertive, ﬂex its muscles, and behave like a superpower, even if it does not become particularly aggressive. The democratic and non-democratic powers may coexist more or less peacefully, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. But there is also the prospect of more antagonistic relations, accentuated ideological rivalry, **potential and actual conﬂict,** intensiﬁed arms races, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

### 1AC – Allied Coop

#### CONTENTION 2: Allied Coop

**European allies will insist on a policy that limits operations to declared zones of conflict with criminal prosecutions elsewhere---failure to codify US policy risks executive overreach**

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

The debate has largely devolved into an either-or dichotomy, even while security and practical considerations demand more nuanced practices. Thus, the **U**nited **S**tates, supported by a vocal group of scholars, including Professors Jack Goldsmith, Curtis Bradley, and Robert Chesney, has long asserted that it is at war with al Qaeda and associated groups. Therefore, it can legitimately detain without charge - and kill - al Qaeda members and their associates **wherever they are** found, subject of course to additional law-of-war, constitutional, and sovereignty constraints. n9 Conversely, European [\*1170] allies, supported by an equally vocal group of scholars and human rights advocates, assert that the **U**nited **S**tates is engaged in a conflict with al Qaeda only in specified regions, and that the United States' authority to employ law-of-war detention and lethal force extends only to **those particular zones**. n10 In all other places, al Qaeda and its associates should be subject to [\*1171] law enforcement measures, as governed by international human rights law and the domestic laws of the relevant states. n11 Recent statements by **U**nited **S**tates officials suggest an attempt to mediate between these two extremes, at least for purposes of targeted killing, and **as a matter of policy, not law**. While continuing to assert a global conflict with al Qaeda, official statements have limited the defense of out-of-conflict zone targeting operations to high-level leaders and others who pose a "significant" threat. n12 In the words of President Obama's then-Assistant for Homeland Security and Counterterrorism, John O. Brennan, the United States does not seek to "eliminate every single member of al-Qaida in the world," but instead conducts targeted strikes to mitigate "actual[,] ongoing threats." n13 That said, the **U**nited **S**tates continues to suggest that it can, as a matter of law, "take action" against anyone who is "part of" al Qaeda or associated forces - a very broad category of persons - **without any explicit geographic limits.** n14 The stakes are high. If the United States were permitted to launch a drone strike against an alleged al Qaeda operative in Yemen, why not in London - so long as the United States had the United Kingdom's consent and was confident that collateral damage to nearby civilians would be minimal (thereby addressing sovereignty and proportionality concerns)? There are many reasons why such a scenario is unlikely, but the **U**nited [\*1172] **S**tates has yet to assert **any limiting principle** that would, as a matter of law, prohibit such actions. And in fact, the United States did rely on the laws of war to detain a U.S. citizen picked up in a Chicago airport for almost four years. n15 Even if one accepts the idea that the United States now exercises its asserted authority with appropriate restraint, what is to prevent **Russia**, for example, from asserting that it is engaged in an armed conflict with Chechens and that it can target or detain, without charge, an alleged member of a Chechen rebel group wherever he or she is found, including possibly in the United States? Conversely, it cannot be the case - as the extreme version of the territorially restricted view of the conflict suggests - that an enemy with whom a state is at war can merely cross a territorial boundary in order to plan or plot, free from the threat of being captured or killed. In the London example, law enforcement can and should respond effectively to the threat. n16 But there also will be instances in which the enemy escapes to an effective safe haven because the host state is unable or unwilling to respond to the threat (think Yemen and Somalia in the current conflict), capture operations are infeasible because of conditions on the ground (think parts of Yemen and Somalia again), or criminal prosecution is not possible, at least in the short run. This Article proposes a way forward - offering a new legal framework for thinking about the geography of the conflict in a way that better mediates the multifaceted liberty, security, and foreign policy interests at stake. It argues that the jus ad bellum questions about the geographic borders of the conflict that have dominated much of the literature are the wrong questions to focus on. Rather, it focuses on jus in bello questions about the conduct of hostilities. This Article assumes that the conflict extends to **wherever the enemy threat is found**, but argues for **more stringent rules of conduct outside zones of active hostilities**. Specifically, it proposes a series of substantive and procedural rules designed to limit the use of lethal targeting [\*1173] and detention outside zones of active hostilities - subjecting their use to an **individualized threat finding**, a **least-harmful-means test**, and **meaningful procedural safeguards**. n17 The Article does not claim that existing law, which is uncertain and contested, dictates this approach. (Nor does it preclude this approach.) Rather, the Article explicitly recognizes that the set of current rules, developed mostly in response to state-on-state conflicts in a world without drones, fails to address adequately the complicated security and liberty issues presented by conflicts between a state and mobile non-state actors in a world where technological advances allow the state to track and attack the enemy wherever he is found. New rules are needed. Drawing on evolving state practice, underlying principles of the law of war, and prudential policy considerations, the Article proposes a set of such rules for conflicts between states and transnational non-state actors - rules designed both to promote the state's security and legitimacy and to protect against the erosion of individual liberty and the rule of law. The Article proceeds in four parts. Part I describes how the legal framework under which the United States is currently operating has generated legitimate concerns about the creep of war. This Part outlines how the U.S. approach over the past several years has led to a polarized debate between opposing visions of a territorially broad and territorially restricted conflict, and how both sides of the debate have failed to [\*1174] acknowledge the legitimate substantive concerns of the other. Part II explains why a territorially broad conflict can and should distinguish between zones of active hostilities and elsewhere, thus laying out the broad framework under which the Article's proposal rests. Part III details the proposed zone approach. It distinguishes zones of active hostilities from both peacetime and lawless zones, and outlines the enhanced substantive and procedural standards that ought to apply in the latter two zones. Specifically, Part III argues that outside zones of active hostilities, law-of-war detention and use of force should be employed **only in exceptional situations,** subject to an individualized threat finding, least-harmful-means test, and meaningful procedural safeguards. n18 This Part also describes how such an approach maps onto the conflict with al Qaeda, and is, at least in several key ways, **consistent with the approach** **already taken** by the **U**nited **S**tates as a matter of policy. Finally, Part IV explains how such an approach ought to apply not just to the current conflict with al Qaeda but to other conflicts with transnational non-state actors in the future, as well as self-defense actions that take place outside the scope of armed conflict. It concludes by making several recommendations as to how this approach should be incorporated into U.S. and, ultimately, international law. The Article is United States-focused, and is so for a reason. To be sure, other states, most notably Israel, have engaged in armed conflicts with non-state actors that are dispersed across several states or territories. n19 But the **U**nited **S**tates is the first state to self-consciously declare itself at war with a non-state terrorist organization that **potentially spans the globe**. Its **actions and asserted authorities** in response to this threat **establish a reference point** for state practice that will **likely be mimicked by others** and inform the development of **c**ustomary **i**nternational **l**aw.

**Alignment with allies brings detention policy into compliance with laws--- makes criminal prosecutions effective outside zones of conflict**

**Hathaway 13**, Gerard C. and Bernice Latrobe Smith Professor of International Law

Yale Law School); Samuel Adelsberg (J.D. candidate at Yale Law School); Spencer Amdur (J.D. candidate at Yale Law School); Freya Pitts (J.D. candidate at Yale Law School); Philip Levitz (J.D. from Yale Law School); and Sirine Shebaya (J.D. from Yale Law School), “The Power To Detain: Detention of Terrorism Suspects After 9/11”, The Yale Journal of International Law, Vol. 38, 2013.

There is clear evidence that other countries **recognize** and respond to **the difference in legitimacy** **between civilian and military courts** and that they are, indeed, more **willing to cooperate with U.S.** **counterterrorism efforts** when terrorism suspects are tried in the **c**riminal **j**ustice **s**ystem. Increased international cooperation is therefore another advantage of criminal prosecution.¶ Many key U.S. allies have been unwilling to cooperate in cases involving **l**aw-**o**f-**w**ar detention or prosecution but have cooperated in criminal [\*166] prosecutions. In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court. n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the **U**nited **K**ingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the **E**uropean **C**ourt of **H**uman **R**ights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. **federal criminal justice system** and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus **hinder extradition** and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence.¶ Finally, the **c**riminal **j**ustice **s**ystem is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the United States, and subsequently to detain those who are convicted. n258 This greater variety of offenses - military commissions can only [\*167] punish an increasingly narrow set of traditional offenses against the laws of war n259 - offers prosecutors important flexibility. For instance, it might be very difficult to prove al-Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp or participated in a specific terrorist act, federal prosecutors may convict under various statutes tailored to more specific criminal behavior. n260 In addition, military commissions can no longer hear prosecutions for material support committed before 2006. n261 Due in part to the established track record of the federal courts, the federal criminal justice system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are **powerful incentives for defendants to cooperate**, and often lead to **valuable intelligence-gathering**, producing more intelligence over the course of prosecution. n262

**That solves safe havens and extradition to the US court system**

David S. Kris 11 – Former Assistant Attorney General for National Security at the U.S. Department of Justice, Law Enforcement as a Counterterrorism Tool, Assistant Attorney General for National Security at the U.S. Department of Justice, from March 2009 to March 2011, Journal of Security Law & Policy, Vol5:1. 2011, http://jnslp.com//wp-content/uploads/2011/06/01\_David-Kris.pdf

Finally, the **c**riminal **j**ustice **s**ystem may help us **obtain important cooperation from other countries**. That **cooperation may be necessary** if we want to detain suspected terrorists¶ or otherwise accomplish our national¶security objectives. Our federal courts are well-respected internationally.¶ They are well-established, formal legal mechanisms that allow the transfer of terrorism suspects to the United States¶ for trial in federal court, and for¶ the provision of information to assist¶ in law enforcement investigations –¶ i.e., extradition and mutual legal assistance treaties (MLATs). **Our allies around the world are comfortable with these mechanisms**, as well as with more informal procedures that are often used to provide assistance to the United States in law enforcement matters, whether relating to terrorism or¶ other types of cases. Such cooperation can be critical to the success of a prosecution, and in some cases can be **the only way in which we will gain** **custody of a suspected terrorist** who has broken our laws.¶ 184¶ In contrast, many of our **key** **allies around the world** are **not willing to cooperate** with or support our efforts to hold suspected terrorists in **law of war detention** or to **prosecute them in military commissions**. While we hope that over time they will grow more supportive of these legal¶ mechanisms, at present many countries would not extradite individuals to the United States for military commission proceedings or law of war¶ detention. Indeed, some of our extradition treaties explicitly forbid extradition to the United States where the person will be tried in a forum other than a criminal court. For example, our treaties with Germany¶ (Article 13)¶ 185¶ and with Sweden (Article V(3))¶ 186¶ expressly forbid extradition¶ when the defendant will be tried in¶ an “extraordinary” court, and the¶ understanding of the Indian government pursuant to its treaty with the¶ United States is that extradition is available only for proceedings under the¶ ordinary criminal laws of the requesting state.¶ 187¶ More generally, the¶ doctrine of dual criminality – under which extradition is available only for¶ offenses made criminal in both countries – and the relatively common¶ exclusion of extradition for military offenses not also punishable in civilian¶ court may also limit extradition outside the criminal justice system.¶ 188¶ Apart¶ from extradition, even where we already have the terrorist in custody, many countries will not provide testimony, other information, or assistance in support of law of war detention or a military prosecution, either as a matter¶ of national public policy or under other provisions of some of our MLATs.¶ 189¶ These concerns are not hypothetical. During the last Administration,¶ the United States was obliged to give¶ assurances against the use of military¶ commissions in order to obtain extradition of several terrorism suspects to¶ the United States.¶ 190¶ There are a number of terror suspects currently in foreign custody who **likely would not be extradited** to the United States by¶ foreign nations if they faced military tribunals.¶ 191¶ In some of these cases, it might be necessary for the foreign nation **to release these suspects** if they cannot be extradited because they do¶ not face charges pending in the¶ foreign nation.

**Obama overreach triggers end of allied intel cooperation and dooms NATO**

Tom **Parker 12**, Former Policy Dir. for Terrorism, Counterterrorism and H. Rts. at Amnesty International, U.S. Tactics Threaten NATO, September 17, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>

A growing chasm in operational practice is opening up between the **U**nited **S**tates and its allies in NATO. This rift is **putting the Atlantic alliance at risk**. Yet no one in Washington seems to be paying attention. The escalating use of **u**nmanned **a**erial **v**ehicle**s** to **strike terrorist suspects** in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, **coupled** with the continued use of military commissions and **indefinite** **detention**, is driving a wedge between the **U**nited **S**tates and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now **forced to pay attention by their own courts**, which will **restrict cooperation in the future**.As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a **very different set of constraints than their U.S. counterparts**. The **E**uropean **C**ourt of **H**uman **R**ights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that **intel**ligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now **raises serious criminal liability issues** for the Europeans. The **U**nited **S**tates conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But **not one other member of NATO shares this legal analysis**, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic **intel**ligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an **obstacle to intelligence sharing**. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place **more** and more **constraints on working with U.S. forces**. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and **it may just be the Atlantic alliance**.

**Effective intel sharing is key to NATO effectiveness and Special Ops**

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\*Note: SOF = Special Operation Forces

NATO’s essential purpose is to safeguard the freedom and security of all its members via political and military means in accordance with the North Atlantic Treaty and the principles of the United Nations Charter.3 “There is a common perspective among a variety of defense and security establishments around the world that the nature of the current and future security environment we face presents complex and irregular challenges that are not readily apparent and are difficult to anticipate.”4 SOF is being singled out and recognized as a key component of the North Atlantic Treaty Organization (NATO) alliance in the fight against contemporary and future threats, because SOF is “ideally suited to [the] ambiguous and dynamic irregular environment” facing NATO.5¶ SOF has traditionally been considered a national asset. NATO had no history of utilizing SOF in the Alliance when NATO nations first assumed responsibility for the conflicts in the Balkans. However the lessons learned during those conflicts were not applied due to a lack of a central NATO SOF entity until the NATO Riga summit of 2006. On December 22, 2006, Admiral William McRaven was appointed Director of the NATO SOF Coordination Center (NSCC) and ordered to start the transformation process. Three years later, on March 1, 2010, the NATO SOF Headquarters (NSHQ) was formally established as a three-star headquarters within the Alliance in Mons, Belgium.6¶ According to its mission statement, the purpose of NSHQ is twofold. First, it must optimize the employment of SOF by the Alliance. NSHQ further describes this as “the intention to make the employment of SOF as perfect, efficient, and effective as possible, so as to deliver to the Alliance a highly agile Special Operations capability across the range of military operations.”7 Second, it must provide a command capability when so directed by Supreme Allied Commander Europe (SACEUR). NSHQ further describes this as “the ability to deploy a robust C4I capability and enablers for the support and employment of SOF in NATO operations.”8 To be able to carry out successful special operations in support of the current and future operating environments, the Alliance needs adequate interoperability, command and control, and intelligence structures. ¶ Even **amongst the closest** **allies**, **challenges in intelligence sharing remain**. During the early years of Operation Iraqi Freedom, British operators were denied access to intelligence fused by the U.S. that the British had gathered themselves. The issue became so contentious that it had to be raised by British and Australian Prime Ministers with the U.S. President to be resolved.9 Having realized that intelligence sharing is always a compromise between the need to share and the need to protect (even with the best-designed organizations, much less a large, multinational, bureaucratic organization), the NSHQ has developed an innovative approach to solving its intelligence deficiencies. It has created its own organic intelligence collection, analysis, and exploitation capability. It has also acquired its own equipment and created a robust NATO SOF training facility and training program to supplement intelligence flow to NATO SOF forces.!¶ B. BACKGROUND ¶ Special operations often test the limits of both equipment and personnel. This extremity introduces a significant degree of uncertainty or “fog of war.” Success in special operations dictates that the **uncertainty** associated with the enemy, weather, and terrain **must be minimized** through access to **best available intelligence**.10 Most special operations conducted nationally benefit from access to the best national intelligence available. However, because of classification issues, special operations by international coalitions often lack access to the best available intelligence. This absence increases the likelihood of operational failure and further risks the personal safety of the operators. ¶ NATO (and many of the individual member states) foresees a future threat environment shaped by unconventional threats such as transnational crime, terrorist attacks, and the proliferation of **w**eapons of **m**ass **d**estruction.11 There are so many similarities in threats projected by the NATO member states and by official NATO strategy it is easy to conclude that a common enemy exists: transnational problems require transnational solutions. The complexities in the international order and the “significant challenges to the intelligence system [that] arise in targeting groups such as al-Qaeda due to their networked and volatile structure”12 make multinational intelligence sharing requisite. There is much to gain from multinational cooperation. The expected continued decline in military budgets and limited SOF human resources make burden-sharing and proper division of labor even more appropriate. ¶ C. PURPOSE AND SCOPE ¶ Intelligence is a decisive factor, sometimes **the decisive factor**, in special operations. As such, the NSHQ’s ultimate success will rely on its ability to solve some of the perennial problems related to intelligence sharing within coalitions. The newly established NSHQ in Mons, Belgium serves as an excellent testing ground to analyze SOF intelligence sharing issues within a coalition. NSHQ is attempting to streamline and optimize the intelligence available to NATO SOF units.

#### NATO prevents global nuclear war

Brzezinski 9 (Zbigniew, former U.S. National Security Adviser, Sept/Oct 2009, “An Agenda for NATO,” Foreign Affairs, 88.5, Ebsco)

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

**NATO creates global security hubs that prevents Gulf of Guinea attacks**

Frederick **Kempe 12**, President and CEO of the Atlantic Council, "How NATO can revitalize its role", May 16, blogs.reuters.com/thinking-global/2012/05/16/how-nato-can-revitalize-its-role/

However, beneath the third agenda item – partnerships – lies a potential revolution in how the world’s most important security alliance may operate globally in the future beside other regional organizations – and at the request of the United Nations. At a time of euro zone crisis, U.S. political polarization and global uncertainty, it provides a possible road map for “enlarging the West” and its community of common values and purpose. “NATO is now a hub for a global network of security partners which have served alongside NATO forces in Afghanistan, Libya and Kosovo,” Obama and Rasmussen agreed.¶ As America’s willingness and capability to act unilaterally declines, any U.S. president will find himself increasingly drawn to NATO as an even more vital tool for foreign and defense policy – against a host of global threats ranging from Syrian upheavals and **North Korean nuclear** weapons to cyber attacks and piracy. The problem, however, is that NATO members more often than not won’t be located where they are most needed. Or due to lack of political will or inadequate military muscle, many NATO members may not have the capability to intervene. That means **regional partners will be increasingly necessary** to provide both the credibility and resources for the most likely future operations.¶ Although many experts, including then-Secretary of Defense Robert Gates, opposed NATO’s 2011 intervention in Libya, the operation’s ultimate success provides something of a model for this sort of future. NATO operated alongside key regional and European non-alliance partners within NATO structures – with the blessing of the Arab League and the United Nations Security Council. The alliance – and by extension the United States – achieved its objectives with no allied casualties, minor collateral damage and limited U.S. engagement. The war lasted seven months and cost the alliance just $1.2 billion, the equivalent of one week of operations in Afghanistan.¶ Such situations never repeat themselves precisely. Should NATO ultimately be involved in Syria, for example, regional engagement would likely be far greater. In a North Korean scenario, it is hard to imagine any response that wouldn’t be coordinated with America’s Asia-Pacific allies and China. Regarding maritime security, the NATO countries involved and local partners would shift given the threat, whether off the Gulf of Guinea or the Straits of Hormuz. What’s clear is that for the model of NATO at the hub of a global security network, the alliance will need to become more flexible and adaptable – and to build a broader and deeper array of global partnerships.¶ The expected discussions of NATO leaders this weekend about how best to wind down their decade-long Afghan military operation and about how to maintain sufficient defense capabilities, despite growing budget cuts, risk leaving the impression of an alliance in retrenchment or decline. That’s hardly an inspiring or helpful message for a U.S. president heading home to Chicago at the beginning of his re-election campaign.¶ By contrast, NATO’s efforts to broaden and deepen cooperation with capable partner nations can be rolled out as a pro-active, forward-looking initiative that has NATO going on offense for a new era. So that no one misses his notion of NATO at the core of a global security network, President Obama and his allies will stage an unprecedented summit meeting with 13 partner nations – from South Korea, Japan, New Zealand and Australia in Asia-Pacific to Jordan, Morocco, Qatar and the United Arab Emirates in the Middle East and North Africa. Also present will be five European states that aren’t members of the alliance but routinely contribute to alliance activities – Austria, Finland, Sweden and Switzerland.¶ What they’ll be trying to do is give teeth to an agenda for NATO that I first saw discussed in detail by former National Security Adviser Zbigniew Brzezinski in a major Foreign Affairs article in October 2009. He argued against those who wished to expand NATO into a global alliance of democracies. He said that would dilute the crucial importance of the U.S.-European connection, which still accounts for half of the world’s economy, and that none of the world’s rising powers would be likely to accept membership in a global NATO. An ideologically defined democratic alliance would needlessly draw institutional lines between the U.S. and, for example, China.¶ “NATO, however, has the experience, the institutions, and the means to eventually become the hub of a globe-spanning web of various regional cooperative-security undertakings among states with the growing power to act,” he wrote. “In pursuing that strategic mission, NATO would not only be preserving transatlantic political unity; it would also be responding to the twenty-first century’s novel and increasingly urgent security agenda.”

#### Piracy in the Gulf kills global trade

**ICG 12** International Crisis Group, "The Gulf of Guinea: The New Danger Zone", December 12, www.crisisgroup.org/en/regions/africa/central-africa/195-the-gulf-of-guinea-the-new-danger-zone.aspx

Within a decade, **the Gulf of Guinea has become** one of **the most dangerous maritime area**s **in the world**. Maritime insecurity is a major regional problem that is compromising the development of this strategic economic area and **threatening maritime trade** in the short term and the stability of coastal states in the long term. Initially taken by surprise, the region’s governments are now aware of the problem and the UN is organising a summit meeting on the issue. In order to avoid violent transnational crime destabilising the maritime economy and coastal states, as it has done on the East African coast, these states must fill the security vacuum in their territorial waters and provide a collective response to this danger. Gulf of Guinea countries must press for dynamic cooperation between the Economic Community of Central African States (ECCAS) and the Economic Community of West African States (ECOWAS), take the initiative in promoting security and adopt a new approach based on improving not only security but also economic governance.¶ The recent discovery of offshore hydrocarbon deposits has increased the geostrategic importance of the Gulf of Guinea. After long neglecting their maritime zones, Gulf of Guinea states are now aware of their weakness. On the international front, renewed Western interest in the region is accompanied by similar interest from emerging nations. In this context, the rise in maritime crime has increased collective concern in a region where, for decades, the problems of sovereignty and territorial control have only been posed on dry land.

**Nuclear war**

Michael J. **Panzner 8**, faculty at the New York Institute of Finance, 25-year veteran of the global stock, bond, and currency markets who has worked in New York and London for HSBC, Soros Funds, ABN Amro, Dresdner Bank, and JPMorgan Chase, Financial Armageddon: Protect Your Future from Economic Collapse, Revised and Updated Edition, p. 136-138

Continuing calls for curbs on the flow of finance and trade will inspire the United States and other nations to spew forth **protectionist legislation** like the notorious Smoot-Hawley bill. Introduced at the start of the Great Depression, it triggered a series of tit-for-tat economic responses, which many commentators believe helped turn a serious economic downturn into a **prolonged** and **devastating global disaster**, But if history is any guide, those lessons will have been long forgotten during the next collapse. Eventually, fed by a mood of desperation and growing public anger, restrictions on trade, finance, investment, and immigration will almost certainly intensify. ¶ Authorities and ordinary citizens will likely scrutinize the cross-border movement of Americans and outsiders alike, and lawmakers may even call for a general crackdown on nonessential travel. Meanwhile, many nations will make transporting or sending funds to other countries exceedingly difficult. As desperate officials try to limit the fallout from decades of ill-conceived, corrupt, and reckless policies, they will introduce controls on foreign exchange, foreign individuals and companies seeking to acquire certain American infrastructure assets, or trying to buy property and other assets on the (heap thanks to a rapidly depreciating dollar, will be stymied by limits on investment by noncitizens. Those efforts will cause spasms to ripple across economies and markets, disrupting global payment, settlement, and clearing mechanisms. All of this will, of course, continue to undermine business confidence and consumer spending.¶ In a world of lockouts and lockdowns, any link that transmits systemic financial pressures across markets through arbitrage or portfolio-based risk management, or that allows diseases to be easily spread from one country to the next by tourists and wildlife, or that otherwise facilitates unwelcome exchanges of any kind will be viewed with suspicion and dealt with accordingly.¶ The rise in isolationism and protectionism will bring about ever more heated arguments and **dangerous confrontations** over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to **full-scale military encounters,** often with minimal provocation.¶ In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, **terrorist groups** will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level.¶ Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more healed sense of urgency. China will likely assume an increasingly **belligerent posture** toward **Taiwan**, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientist at the University of Chicago, have even speculated that an "intense confrontation" between the United States and China is "inevitable" at some point.¶ More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles soaked in blood. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. **Terrorists** employing **biological or nuclear weapons** will vie with conventional forces using jets, cruise missiles, and bunker-busting bombs to cause widespread destruction. Many will interpret stepped-up conflicts between Muslims and Western societies as the beginnings of a **new world war**.

### 1AC – Plan

#### The United States Federal Government should restrict the President's war making authority by limiting targeted killing and detention without charge to zones of active hostilities by statutory codification of executive branch review policy for those practices; and in addition, by limiting targeted killing and detention without charge outside zones of active hostilities to reviewable operations guided by an individualized threat requirement, a least-harmful-means test, a feasibility test for criminal prosecution, procedural safeguards, and by statutory codification of executive branch review policy for those practices.

### 1AC – Solvency

#### CONTENTION 3: SOLVENCY

**Failure to codify existing policy into law risks spreading executive targeted killings and indefinite detention---plan’s key**

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 161 U. Pa. L. Rev. 1165, Lexis

Fifth, and critically, while the **U**nited **S**tates might be confident that it will exercise its authorities responsibly, it **cannot assure that other states will** follow suit. What is to prevent Russia, for example, from asserting that [\*1233] it is engaged in an armed conflict with Chechen rebels, and can, consistent with the law of war, **kill** **or** **detain** any person **anywhere** in the world which it deems to be a "functional member" of that rebel group? Or **Turkey** from doing so with respect to alleged "functional members" of **Kurdish rebel groups?** If such a theory ultimately resulted in the targeted killing or detaining without charge of an American citizen, the United States would have few principled grounds for objecting.¶ Capitalizing on **the** strategic **benefits of restraint**, the **U**nited **S**tates should **codify into law** what is **already**, in many key respects, **national policy**. As a first step, the President should sign an Executive order requiring that out-of-battlefield target and capture operations be based on individualized threat assessments and subject to a least-harmful-means test, clearly articulating the standards and procedures that would apply. As a next step, Congress should mandate the creation of a review system, as described in detail in this Article. In doing so, **the U**nited **S**tates will **set an important example**, one that **can become a building block upon which to develop an international consensus** as to **the rules that apply to detention** and **targeted killings** **outside the conflict zone**.

**Drone prolif is inevitable but US action creates credibility necessary to build strong norms against reckless use---preserves basing access and precedent**

Micah **Zenko 13**, Douglas Dillon fellow in the Center for Preventive Action @ C.F.R., Council Special Report No. 65, January, 2013, Reforming U.S. Drone Strike Policies, Douglas Dillon fellow in the Center for Preventive Action at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf

The second major risk is that of proliferation. Over the next decade, the U.S. near-monopoly on drone strikes will erode as more countries develop and hone this capability. The advantages and effectiveness of drones in attacking hard-to-reach and time-sensitive targets are compelling many countries to indigenously develop or explore purchasing unmanned aerial systems. In this uncharted territory, U.S. policy provides a **powerful precedent** for other states and nonstate actors that will increasingly deploy drones with potentially dangerous ramifications. Reforming its practices could allow the **U**nited **S**tates to regain moral authority in dealings with other states and **credibly engage** with the international community to shape norms for responsible drone use.¶ The current trajectory of U.S. drone strike policies is unsustainable. **Without reform from within**, drones risk **becom**ing an unregulated, unaccountable vehicle for states to deploy lethal force with impunity. Consequently, the **U**nited **S**tates should more fully explain and reform aspects of its policies on drone strikes in nonbattlefield settings by ending the controversial practice of “signature strikes”; limiting targeted killings to leaders of transnational terrorist organizations and individuals with direct involvement in past or ongoing plots against the United States and its allies; and clarifying rules of the road for drone strikes in nonbattlefield settings. Given that **the U**nited **S**tates is currently the only country—other than the United Kingdom in the traditional battlefield of Afghanistan and perhaps Israel—to use drones to attack the sovereign territory of another country, it has a **unique opportunity** and responsibility to engage relevant international actors and **shape development of a normative framework for acceptable use of drones.** ¶ Although reforming U.S. drone strike policies will be difficult and will require sustained high-level attention to balance transparency with the need to protect sensitive intelligence sources and methods, it would serve U.S. national interests by ¶ - allowing policymakers and diplomats to paint a more accurate portrayal of drones to counter the myths and misperceptions that currently remain unaddressed due to secrecy concerns;¶ - placing the use of drones as a counterterrorism tactic on a more **legitimate and defensible footing with domestic and international audiences**;¶ - increasing the likelihood that the United States will sustain the international tolerance and cooperation **required to carry out future drone strikes**, such as **intelligence support** and **host-state basing rights**;¶ - **exerting a normative influence on the policies** and actions **of other states**; and¶ - providing current and future U.S. administrations with the **requisite political leverage** to **shape and promote responsible use of drones** by other states and nonstate actors.¶ As Obama administration officials have warned about the proliferation of drones, “If we want other nations to use these technologies responsibly, we must use them responsibly.”4

**A flexible zone of conflict regime enhances legitimacy, solves criminal justice prosecution outside zones and preserves the use of emergency measures as a last resort against imminent threats**

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University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

As these cases recognize, the existence of war like conditions in one part of the world **should not** lead to a relaxation of the substantive and procedural standards embodied in peacetime rules elsewhere. In some areas, intense fighting can create conditions that often make it impracticable, if not impossible, to apply ordinary peacetime rules. Such situations justify resort to more expedient wartime rules. By contrast, in areas where ordinary institutions are functioning, domestic police are effectively maintaining law and order, and communication and transportation networks are undisturbed, the exigent circumstances **justifying the reliance on law-of-war tools are typically** **absent**. n88 In those areas, the peacetime standards - which themselves reflect a careful balancing of liberty and security interests - serve the important functions of **minimizing error and abuse** and **enhancing the legitimacy** of the state's actions. These standards should be respected **absent exigent circumstances that justify an exception** Second, the notion of a global conflict clashes with the legitimate and reasonable expectations of persons residing in a peacetime zone. These expectations matter. The corollary - **the requirement of fair notice - is perhaps the primary factor that distinguishes a law-abiding government from a lawless dictatorship**. Its importance is emphasized time and time again in both U.S. constitutional law and international law doctrines. It sets boundaries on substantive rights, n89 is key to choice of law questions, n90 and is the core of procedural-rights protections in both domestic and international law. n91¶ Legal scholars, policymakers, and state actors are embroiled in a heated debate about whether the conflict with al Qaeda is concentrated within specific geographic boundaries or extends to wherever al Qaeda members and associated forces may go. The United States' **expansive view of** the **conflict**, coupled with its broad definition of the enemy, has led to a legitimate concern about the **creep of war**. Conversely, the European and human rights view, which confines the conflict to a limited geographic region, ignores the potentially global nature of the threat and unduly constrains the state's ability to respond. Neither the law of international armed conflict (governing conflicts between states) nor the law of noninternational armed conflict (traditionally understood to govern intrastate conflicts) provides the answers that are so desperately needed.¶ The zone approach proposed by this Article **fills the** international **law gap**, effectively mediating the multifaceted liberty and security interests at stake. It recognizes the broad sweep of the conflict, but distinguishes between zones of active hostilities and other areas in determining which rules apply. Specifically, it offers a set of standards that would both **limit and legitimize** the use of out-of-battlefield targeted killings and law of war-based detentions, subjecting their use to an individualized threat assessment, a least-harmful-means test, and significant procedural safeguards. This [\*1234] approach **confines** the use of out-of-battlefield targeted killings and detention without charge **to extraordinary situations** in which the security of the state so demands. It thus limits the use of force as a first resort, protects against the unnecessary erosion of peacetime norms and institutions, and safeguards individual liberty. At the same time, the zone approach ensures that the state can effectively respond to grave threats to its security, wherever those threats are based.¶ The **U**nited **S**tates has already adopted a number of policies that distinguish between zones of active hostilities and elsewhere, implicitly recognizing the importance of this distinction. By adopting the proposed framework **as a matter of law**, the United States can begin to **set the standards** and build an **international consensus** as to the rules that ought to apply, not only to this conflict, but **to future conflicts**. The likely reputational, security, and foreign policy gains make acceptance of this framework a worthy endeavor.

**Declaration of the territorial limits of detention and targeted strikes triggers US restraint and solves safe havens**

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This Article suggests a more nuanced, albeit still imperfect, approach: If the fighting is sufficiently widespread throughout the state, then the zone of active hostilities extends to the state's borders. If, however, hostilities are concentrated only in certain regions within a state, then the zone will be geographically limited to those administrative areas or provinces in which there is actual fighting, a significant possibility of fighting, or preparation for fighting. This test is fact-intensive and will depend on both the conditions on the ground and preexisting state and administrative boundaries. It remains somewhat arbitrary, of course, to link the zone of hostilities to nation-state boundaries or administrative regions within a state when neither the state itself nor the region is a party to the conflict and when the non-state party lacks explicit ties to the state or region at issue. This proposed framework inevitably will incorporate some areas into the zone of active hostilities in which the key triggering factors - sustained, overt hostilities - are not present. But such boundaries, **even if** **overinclusive or artificial**, provide **the most accurate means available of identifying the zone of active hostilities**, at least over the short term. Over the long term, it would be preferable for the belligerent state to declare particular areas to be within the zone of active hostilities, either through an official pronouncement by the state party to the conflict or via a resolution by the Security Council or a regional security body. **A public declaration would provide explicit notice** as to the existence and **parameters of the zone of active hostilities, thereby reducing uncertainty as to which legal rules apply**. Such declarations would allow for public debate and **diplomatic pressure** in the event of disagreement. Furthermore, the belligerent states could **then define the zone with greater nuance**, which would better [\*1209] reflect the actual fighting than would preexisting state or administrative boundaries. n138 Some likely will object that such an official designation would recreate the same **safe havens** that this proposal seeks to avoid. But a **critical difference** exists between a territorially restricted framework that effectively **prohibits** reliance on law-of-war tools outside of specific zones of active hostilities and a **zone approach** that merely imposes **heightened procedural and substantive standards on the use of such tools**. **Under the zone approach, the non-state enemy is not free from attack or capture**; rather, the belligerent state simply must **take greater care to ensure that the target meets** the **enhanced criteria** described in Section III.B. B. Setting the Standards **L**aw-**o**f-**w**ar detention and lethal targeting outside a zone of active hostilities should be limited, not categorically prohibited. It should be focused on those threats that are **clearly tied to the zone of** active **hostilities** and other significant and ongoing threats that **cannot be adequately addressed through other means**. Moreover, a heightened quantum of **info**rmation and other procedural requirements should apply, given the possibility and **current practice of ex ante deliberation and review**. Pursuant to these guiding principles, this Section proposes the adoption of an individualized threat requirement, a least-harmful-means test, and meaningful procedural safeguards for lethal targeting and law-of-war detention that take place outside zones of active hostilities.

**Failure to codify limits sets precedent for strikes and the erosion of rule of law ---Congress key**

**Maxwell 12** - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

Once a state demonstrates membership in an organized armed group, the members can be presumed to be a continuous danger. **Because this danger is worldwide**, the state can now act in areas **outside** the traditional **zones of conflict**. It is the individual’s conduct over time—**regardless of location**— that gives him the status. Once the status attaches, the member of the organized armed group can be targeted. ¶ Enter Congress ¶ The weakness of this theory is that **it is not codified in U.S. law**; it is merely the extrapolation of international theorists and organizations. The **only entity under the Constitution** that can frame and settle Presidential power regarding the enforcement of international norms is **Congress**. As the check on executive power, Congress must amend the AUMF to **give the executive a statutory roadmap that articulates when force is appropriate** and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, **statutory clarification** will **give other states a roadmap** for the contours of what constitutes anticipatory self-defense and the **proper conduct of the military** under the law of war.¶ Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74¶ The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order **targeted killing without congressional limits** means the President can manipulate force in the name of national security without **tethering it to** the law advanced by international **norms**. The potential consequence of such **unilateral executive action** is that it gives other states, such as **North Korea** and **Iran**, the **customary precedent to do the same**. Targeted killing **might be required in certain circumstances**, but if the guidelines are debated and understood, the decision can be executed **with** the full faith of the people’s representative, **Congress**. When the decision is made **without Congress**, the result might make the United States feel safer, but the process **eschews** what gives a state its greatest safety: the **rule of law**.

**Declaring territorial limits to conflict zones solves executive overreach and safe havens**

Laurie **Blank 10**, Director, International Humanitarian Law Clinic, Emory University School of Law, GEORGIA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, VOLUME 39 2010 NUMBER 1, “DEFINING THE BATTLEFIELD IN CONTEMPORARY CONFLICT AND COUNTERTERRORISM: UNDERSTANDING THE PARAMETERS OF THE ZONE OF COMBAT”, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1677965

Notwithstanding the complicated nature of the conflict between the U.S. and al Qaeda and affiliated terrorist groups, and the resulting confusion in trying to define the space where that conflict is taking place, **identifying the parameters of the zone of combat is a critical task**. At the same time that many debate whether a state can even be engaged in an armed conflict with a terrorist group, a critically important question with ramifications for generations to come, the U.S. has declared that it indeed is in such an armed conflict and is operating accordingly. Analyzing how we can understand the parameters of the zone of combat and assessing relevant factors for doing so must become part of the debate and discussion surrounding the appropriate response to and manner of combating terrorism.¶ This Article demonstrates that traditional conceptions of belligerency and neutrality are not designed to address the complex spatial and temporal nature of terrorist attacks and states responses. Nor can human rights law or domestic criminal law, which are both legal regimes of general applicability, offer a useful means for defining where a state can conduct military operations against terrorist groups. LOAC, in contrast, provides a framework not only for when it applies, but where and for how long. By using this framework and analogizing relevant factors and considerations to the conflict with al Qaeda, we can identify factors that can help define the zone of combat.¶ First, some terrorist attacks and activities fall closer to the traditional conception of hostilities as understood within LOAC. Areas where these types of attacks occur naturally have a **stronger link to a battlefield**. In addition, when such attacks or activities occur regularly or over a defined time period, we can more clearly define the temporal parameters of the zone of combat as well.¶ Second, in declaring that it is “at war with terrorists,” a state may envision the whole world as a battlefield. But the state’s actual conduct in response to the threat posed offers a more accurate lens through which to view the battlefield. Areas where the state uses military force, particularly multiple facets of military power, on a regular or recurring basis, should **fall within the zone** of combat. In contrast, those areas where the state chooses diplomatic or **law enforcement measures**, or relies on such efforts by another state, **do not demonstrate** the characteristics of the battlefield. This same analysis holds true for the temporal parameters as well. Applying this type of analysis in a simplistic manner does indeed leave room for abuse by states that might overuse military power merely to try to squeeze otherwise nonbattlefield areas within the zone of combat. While this is certainly a consideration, government response is only one factor to take into account in assessing the parameters of the zone of combat and both the **nature of the international community** and the **great expense**, both human and material, of applying military might where not necessary will likely **weigh against any** such **abuse**.¶ The third factor—territory—requires the most creative application. Terrorist groups do not use or connect to territory in the same manner as either states or non-state actors seeking to gain power or independence. Conflicts against terrorist groups, as a result, do not follow the boundaries on¶ a map or the dictates of state sovereignty or international legal niceties. But territory can be a contributing factor to a paradigm defining **the zone** of combat nonetheless. Looking at territory from a new angle, we can see that terrorists use certain areas for **safe havens** and **training camps** and identify certain areas as prime targets for repeated attacks. Those territorial areas must therefore have a stronger connection to the zone of combat than others, both geographically and temporally, because the way terrorists use particular areas will naturally change over time.¶ Besides these factors drawn from the law of armed conflict, we can look to judicial interpretations and policy considerations as well. Taken as a whole, these analytical tools form a first step in the critical task of identifying where and when a state can conduct operations within an armed conflict framework, a necessary companion to the ongoing debate about whether a state can conduct operations within such a framework.

# 2AC

## Overreach

### AT: Demo = War

#### Global democratic transitions are inevitable---the only way for the US to bolster democracies is constitutionalism---prevents war

Fareed Zakaria 97, PhD Poli Sci @ Harvard, Managing Editor of Foreign Affairs, 1997, Lexis

Of course cultures vary, and different societies will require different frameworks of government. This is not a plea for the wholesale adoption of the American way but rather for a more variegated conception of liberal democracy, one that emphasizes both parts of that phrase. Before new policies can be adopted, there lies an intellectual task of recovering the constitutional liberal tradition, central to the Western experience and to the development of good government throughout the world. Political progress in Western history has been the result of a growing recognition over the centuries that, as the Declaration of Independence puts it, human beings have "certain inalienable rights" and that "it is to secure these rights that governments are instituted." If a democracy does not preserve liberty and law, that it is a democracy is a small consolation. LIBERALIZING FOREIGN POLICY A proper appreciation of constitutional liberalism has a variety of implications for American foreign policy. First, it suggests a certain humility. While it is easy to impose elections on a country, it is more difficult to push constitutional liberalism on a society. The process of genuine liberalization and democratization is gradual and long-term, in which an election is only one step. Without appropriate preparation, it might even be a false step. Recognizing this, governments and nongovernmental organizations are increasingly promoting a wide array of measures designed to bolster constitutional liberalism in developing countries. The National Endowment for Democracy promotes free markets, independent labor movements, and political parties. The U.S. Agency for International Development funds independent judiciaries. In the end, however, elections trump everything. If a country holds elections, Washington and the world will tolerate a great deal from the resulting government, as they have with Yeltsin, Akayev, and Menem. In an age of images and symbols, elections are easy to capture on film. (How do you televise the rule of law?) But there is life after elections, especially for the people who live there. Conversely, the absence of free and fair elections should be viewed as one flaw, not the definition of tyranny. Elections are an important virtue of governance, but they are not the only virtue. Governments should be judged by yardsticks related to constitutional liberalism as well. Economic, civil, and religious liberties are at the core of human autonomy and dignity. If a government with limited democracy steadily expands these freedoms, it should not be branded a dictatorship. Despite the limited political choice they offer, countries like Singapore, Malaysia, and Thailand provide a better environment for the life, liberty, and happiness of their citizens than do either dictatorships like Iraq and Libya or illiberal democracies like Slovakia or Ghana. And the pressures of global capitalism can push the process of liberalization forward. Markets and morals can work together. Even China, which remains a deeply repressive regime, has given its citizens more autonomy and economic liberty than they have had in generations. Much more needs to change before China can even be called a liberalizing autocracy, but that should not mask the fact that much has changed. Finally, we need to revive constitutionalism. One effect of the overemphasis on pure democracy is that little effort is given to creating imaginative constitutions for transitional countries. Constitutionalism, as it was understood by its greatest eighteenth century exponents, such as Montesquieu and Madison, is a complicated system of checks and balances designed to prevent the accumulation of power and the abuse of office. This is done not by simply writing up a list of rights but by constructing a system in which government will not violate those rights. Various groups must be included and empowered because, as Madison explained, "ambition must be made to counteract ambition." Constitutions were also meant to tame the passions of the public, creating not simply democratic but also deliberative government. Unfortunately, the rich variety of unelected bodies, indirect voting, federal arrangements, and checks and balances that characterized so many of the formal and informal constitutions of Europe are now regarded with suspicion. What could be called the Weimar syndrome -- named after interwar Germany's beautifully constructed constitution, which failed to avert fascism -- has made people regard constitutions as simply paperwork that cannot make much difference. (As if any political system in Germany would have easily weathered military defeat, social revolution, the Great Depression, and hyperinflation.) Procedures that inhibit direct democracy are seen as inauthentic, muzzling the voice of the people. Today around the world we see variations on the same majoritarian theme. But the trouble with these winner-take-all systems is that, in most democratizing countries, the winner really does take all. DEMOCRACY'S DISCONTENTS We live in a democratic age. Through much of human history the danger to an individual's life, liberty and happiness came from the absolutism of monarchies, the dogma of churches, the terror of dictatorships, and the iron grip of totalitarianism. Dictators and a few straggling totalitarian regimes still persist, but increasingly they are anachronisms in a world of global markets, information, and media. There are no longer respectable alternatives to democracy; it is part of the fashionable attire of modernity. Thus the problems of governance in the 21st century will likely be **problems within democracy**. This makes them more difficult to handle, wrapped as they are in the mantle of legitimacy. Illiberal democracies gain legitimacy, and thus strength, from the fact that they are reasonably democratic. Conversely, the greatest danger that illiberal democracy poses -- other than to its own people -- is that it will discredit liberal democracy itself, casting a shadow on democratic governance. This would not be unprecedented. Every wave of democracy has been followed by setbacks in which the system was seen as inadequate and new alternatives were sought by ambitious leaders and restless masses. The last such period of disenchantment, in Europe during the interwar years, was seized upon by demagogues, many of whom were initially popular and even elected. Today, in the face of a spreading virus of illiberalism, the most useful role that the international community, and most importantly the United States, can play is -- instead of searching for new lands to democratize and new places to hold elections -- to consolidate democracy where it has taken root and to encourage the gradual development of constitutional liberalism across the globe. Democracy without constitutional liberalism is not simply inadequate, but dangerous, bringing with it the erosion of liberty, the abuse of power, ethnic divisions, and even war. Eighty years ago, Woodrow Wilson took America into the twentieth century with a challenge, to make the world safe for democracy. As we approach the next century, our task is to make democracy safe for the world.

### AT: DPT Wrong

Democracy solves great power war – more likely to negotiate, and when they do fight they choose easy targets

Tarzi 7

Shah, Professor of Economic Affairs @ Bradley, Democratic Peace, Illiberal Democracy and Conflict Behavior, International Journal on World Peace, vol 24

Bueno de Mequita, Morrow, Siverson, and Smith are among the few who have sought to overcome the conceptual dilemmas noted above. Specifically they have provided insights on the link between institutions and foreign policy choices with reference to international disputes and conflicts. They find that democratic leaders, when faced with a choice, are more likely to shift greater resources to war efforts than leaders of the autocratic governments because political survival of the elected democratic regime demands successful policy performance, especially as the winning coalition grows. Thus, democratic regimes tend to have a military edge over autocratic regimes in war because of the extra efforts required. Also, "democratic leaders only choose to fight when they are confident of victory. Otherwise they prefer to negotiate." (22) Bueno de Mequita and his colleagues conclude, Democrats make relatively unattractive targets because domestic reselection pressures cause leaders to mobilize resources for the war effort. This makes it harder for other states to target them for aggression. In addition to trying harder than autocrats, democrats are more selective in their choice of targets. Defeat typically leads to domestic replacement for democrats, so they only initiate war when they expect to win. These two factors lead to the interaction between polities that is often termed the democratic peace. Autocrats need a slight expected advantage over other autocratic adversaries in devoting additional resources to the war effort. In order to initiate war, democrats need overwhelming odds of victory, but that does not mean they are passive. Because democrats use their resources for the war effort rather than reserve them to reward backers, they are generally able, given their selection criteria for fighting, to overwhelm autocracies, which results in short and relatively less costly wars. Yet, democracies find it hard to overwhelm other democracies because they also try hard. In general, democracies make unattractive targets, particularly for other democracies. Hence, **democratic states rarely attack one another**. (23)

### AT: Deterrence

#### Moore votes aff

John Moore 4 chaired law prof, UVA. Frm first Chairman of the Board of the US Institute of Peace and as the Counselor on Int Law to the Dept. of State, Beyond the Democratic Peace, 44 Va. J. Int'l L. 341, Lexis

If major interstate war is predominantly a product of a synergy between a potential nondemocratic aggressor and an absence of effective deterrence, what is the role of the many traditional "causes" of war? Past, and many contemporary, theories of war have focused on the role of specific disputes between nations, ethnic and religious differences, arms races, poverty and social injustice, competition for resources, incidents and accidents, greed, fear, perceptions of "honor," and many other factors. Such factors may well play a role in motivating aggression or generating fear and manipulating public opinion. The reality, however, is that whie some of these factors may have more potential to contribute to war than others, there may well be an infinite set of motivating factors, or human wants, motivating aggression. It is not the independent existence of such motivating factors for war but rather the circumstances permitting or encouraging high-risk decisions leading to war that is the key to more effectively controlling armed conflict. And the same may also be true of democide. The early focus in the Rwanda slaughter on "ethnic conflict," as though Hutus and Tutsis had begun to slaughter each other through spontaneous combustion, distracted our attention from the reality that a nondemocratic Hutu regime had carefully planned and orchestrated a genocide against Rwandan Tutsis as well as its Hutu opponents. 158 Certainly if we were able to press a button and end poverty, racism, religious intolerance, injustice, and endless disputes, we would want to do so. Indeed, democratic governments must remain committed to policies that will produce a better world by all measures of human progress. The broader achievement of democracy and the rule of law will itself assist in this progress. No one, however, has yet been able to demonstrate the kind of robust correlation with any of these "traditional" causes of war that is reflected in the "democratic peace." Further, given the difficulties in overcoming many of these social problems, an approach to war exclusively dependent on their solution may doom us to war for generations to come. [\*394] A useful framework for thinking about the war puzzle is provided in the Kenneth Waltz classic Man, the State and War, 159 first published in 1954 for the Institute of War and Peace Studies, in which he notes that previous thinkers about the causes of war have tended to assign responsibility at one of the three levels of individual psychology, the nature of the state, or the nature of the international system. This tripartite level of analysis has subsequently been widely copied in the study of international relations. We might summarize my analysis in this classical construct by suggesting that the most critical variables are the second and third levels, or "images," of analysis. Government structures, at the second level, seem to play a central role in levels of aggressiveness in high-risk behavior leading to major war. In this, the "democratic peace" is an essential insight. The third level of analysis, the international system, or totality of external incentives influencing the decision to go to war, is also critical when government structures do not restrain such high-risk behavior on their own. Indeed, nondemocratic systems may not only fail to constrain inappropriate aggressive behavior, they may even massively enable it by placing the resources of the state at the disposal of a ruthless regime elite. It is not that the first level of analysis, the individual, is unimportant - I have already argued that it is important in elite perceptions about the permissibility and feasibility of force and resultant necessary levels of deterrence. It is, instead, that the second level of analysis, government structures, may be a powerful proxy for settings bringing to power those who are disposed to aggressive military adventures and in creating incentive structures predisposed to high-risk behavior. We might also want to keep open the possibility that a war/peace model focused on democracy and deterrence might be further usefully refined by adding psychological profiles of particular leaders as we assess the likelihood of aggression and levels of necessary deterrence. Nondemocracies' leaders can have different perceptions of the necessity or usefulness of force and, as Marcus Aurelius should remind us, not all absolute leaders are Caligulas or Neros. Further, the history of ancient Egypt reminds us that not all Pharaohs were disposed to make war on their neighbors. Despite the importance of individual leaders, however, the key to war avoidance is understanding that major international war is critically an interaction, or synergy, of certain characteristics at levels two and three - specifically an absence of [\*395] democracy and an absence of effective deterrence. Yet another way to conceptualize the importance of democracy and deterrence in war avoidance is to note that each in its own way internalizes the costs to decision elites of engaging in high-risk aggressive behavior. Democracy internalizes these costs in a variety of ways including displeasure of the electorate at having war imposed upon it by its own government. And deterrence either prevents achievement of the objective altogether or imposes punishing costs making the gamble not worth the risk. 160 III. Testing the Hypothesis Hypotheses, or paradigms, are useful if they reflect the real world better than previously held paradigms. In the complex world of foreign affairs and the war puzzle, perfection is unlikely. No general construct will fit all cases even in the restricted category of "major interstate war;" there are simply too many variables. We should insist, however, on testing against the real world and on results that suggest enhanced usefulness over other constructs. In testing the hypothesis, we can test it for consistency with major wars. That is, in looking, for example, at the principal interstate wars in the twentieth century, did they present both a nondemocratic aggressor and an absence of effective deterrence? 161 And although it, by itself, does not prove causation, we might also want to test the hypothesis against settings of potential wars that did not occur. That is, in non-war settings, was there an absence of at least one element of the synergy? We might also ask questions about the effect of changes on the international system in either element of the synergy. That is, what, in general, happens when a totalitarian state makes a transition to stable democracy or vice versa? And what, in general, happens when levels of deterrence are dramatically increased or decreased?

### AT: Destroys Environment

Democracy solves environment – accountability, information flow and markets.

Li, Prof of poli sci at Penn State, and Reuveny, prof of public and environmental affairs @ Indiana U 07

(Quan and Rafael, “The Effects of Liberalism on the Terrestrial Environment” http://cmp.sagepub.com/cgi/content/abstract/24/3/219)

Moving to the view that democracy reduces the level of environmental degradation, one set of considerations focuses on the institutional qualities of democracy. The responsiveness argument is that democracies are more responsive to the environmental needs of the public than are autocracies due to their very nature of taking public interests into account (Kotov and Nikitina, 1995). It is also argued that democracies comply with environmental agreements well, since they respect, and respond to, the rule of law (Weiss and Jacobsen, 1999). The freedom of information channel is offered by Schultz and Crockett (1990) and Payne (1995). They theorize that political rights and greater freedom for information ﬂows help2 to promote the cause of environmental groups, raise public awareness of problems and potential solutions, and encourage environmental legislation to curtail environmental degradation. Democracies also tend to have market economies, which further promotes the ﬂow of information as economic efﬁciency and proﬁts requires full information. Hence, unlike the above argument, this channel expects that proﬁt-maximizing markets will promote environmental quality (Berger, 1994).

#### No impact to the environment and no solvency

Holly Doremus 2k Professor of Law at UC Davis, "The Rhetoric and Reality of Nature Protection: Toward a New Discourse," Winter 2000 Washington & Lee Law Review 57 Wash & Lee L. Rev. 11, lexis

Reluctant to concede such losses, tellers of the ecological horror story highlight how close a catastrophe might be, and how little we know about what actions might trigger one. But the apocalyptic vision is **less credible today than it seemed in the 1970s.** Although it is clear that the earth is experiencing a mass wave of extinctions, n213 the **complete elimination of life on earth seems unlikely.** n214 **Life is remarkably robust**. **Nor is human extinction probable** any time soon. Homo sapiens is **adaptable to nearly any environment**. Even if the world of the future includes far fewer species, it likely will hold people. n215 One response to this credibility problem tones the story down a bit, arguing not that humans will go extinct but that ecological disruption will bring economies, and consequently civilizations, to their knees. n216 But this too may be **overstating the case**. Most ecosystem functions are **performed by multiple species**. This **functional redundancy** means that **a high proportion of species can be lost without precipitating a collapse**. n217 Another response drops the horrific ending and returns to a more measured discourse of the many material benefits nature provides humanity. Even these more plausible tales, though, suffer from an important limitation. They call for nature protection only at a high level of generality. For example, human-induced increases in atmospheric carbon dioxide levels may cause rapid changes in global temperatures in the near future, with drastic consequences for sea levels, weather patterns, and ecosystem services. n218 Similarly, the loss of large numbers of species undoubtedly reduces the genetic library from which we might in the future draw useful resources. n219 But it is difficult to translate these insights into convincing arguments against any one of the small local decisions that contribute to the problems of global warming or biodiversity loss. n220 It is easy to argue that **the** material **impact of any individual decision to increase** carbon **emissions slightly or to destroy a small amount of habitat will be small.** It is difficult to identify the specific straw that will break the camel's back. Furthermore, **no unilateral action at the local or even national level can solve these global problems**. Local decisionmakers may feel paralyzed by the scope of the problems, or may conclude that any sacrifices they might make will go unrewarded if others do not restrain their actions. In sum, at the local level at which most decisions affecting nature are made, the material discourse provides little reason to save nature. Short of the ultimate catastrophe, the material benefits of destructive decisions frequently will exceed their identifiable material costs. n221

### AT: Primacy

#### Authoritarianism leads to inevitable recurring transition crises

Halperin 5

Morton Halperin et al, Senior Vice President of the Center for American Progress and Director of the Open Society Policy Center, 2005, The Democracy Advantage, p. 50-51

Adaptability. Political Stability. An established mechanism for replacing leaders augments democracies’ political stability. The recognized legiti­macy of this succession process serves as a deterrent to those who would contemplate unconstitutional seizures of power. Periodic elections allow for the peaceful replacement of ineffectual leaders, limiting the damage they can do, mitigating the disastrous effects of their unchallenged policy assumptions and preventing the institu­tional sclerosis endemic to governments that remain in power for prolonged periods or are beholden to special interests. By contrast, in authoritarian systems, the very narrowness of their claim on power carries with it the ever-present risk that leaders in these sys­tems will be deposed through unconstitutional means. As Mancur Olson noted, the stability of even durable autocrats is limited to a single lifetime. Even if a leader isn’t overthrown but dies or retires, the succession process must be reinvented every time. And the ab­sence of a legal mechanism for a transition practically guarantees unscrupulous behavior on the part of potential successors.

### AT: Trade

#### Democracies increase trade – confidence with rule of law.

Li, Prof of poli sci at Penn State, and Reuveny, prof of public and environmental affairs @ Indiana U 07

(Quan and Rafael, “The Effects of Liberalism on the Terrestrial Environment” http://cmp.sagepub.com/cgi/content/abstract/24/3/219)

If trade can be used as a tool of power, who will trade with whom? Grieco (1988), Gowa (1994), and Gowa and Mansﬁeld (1993), among others, expect that states will avoid trade with states they consider to be their actual or potential adversaries. In such situations, the concern for relative gains—who gains more from trade—may reduce trade ﬂows to trickles, as the side that gains less will worry that the side that gains more may translate the gain to military power. During the Cold War, for example, the U.S. regulated its trade with the Soviet bloc based on this logic. Since democracies are expected not to engage in wars against each other, they feel more secure in their bilateral trade and may be content with trade regardless of who gains more. Democracy, then, should promote trade (e.g., Russett & Oneal, 2001; Morrow, 1997; Snidal, 1991). Moreover, since democracy is associated with the rule of law and respect for property rights, agents will feel more secure to trade as the level of democracy rises, as it is more likely they will be able to enjoy the fruits of their investments (e.g., Olson, 1993; Clauge et al., 1996).

## Allies

#### Gulf of Guinea is distinct from their piracy D---more violent and new attacks destroy the global economy

Nelson 12 Rick "Ozzie", Director of the Homeland Security and CT Program at the CSIS, "An Emerging Threat? Piracy in the Gulf of Guinea", August 8, csis.org/publication/emerging-threat-piracy-gulf-guinea

A1: The Gulf of Guinea is, in many ways, a perfect incubator for piracy, providing both resources and safe haven. Surrounded by some of Africa’s most proficient oil producers, including Nigeria, Angola, Gabon, Ghana, and Equatorial Guinea, the Gulf is a major transit route for oil tankers on their way to international markets. These tankers have proven valuable prey for pirates. Unlike Somali pirates, who focus on the ransom of captured crew members, pirates in the Gulf of Guinea derive much of their income from the theft of oil. These pirates will frequently hijack a tanker, siphon the oil to another vessel, and later resell it on the local black market. In addition to the hijacking of cargo ships containing goods such as cocoa and minerals, this steady supply of tankers provides pirates in the Gulf a lucrative source of income.¶ In addition to serving as a source of revenue, the under-governed states surrounding the Gulf provide pirates ready safe haven from which to operate, both on land and at sea. Faced with widespread poverty, rampant corruption, and an inability to fully control their territory, many of these nations rank among the most dysfunctional in the world. As a result, criminal elements—including but not limited to pirates—have little difficulty establishing and maintaining on-shore bases where they can plan and launch operations. Further, given that many of the states surrounding the Gulf lack significant maritime capabilities, there are few local forces available to combat piracy at sea. Even when states such as Nigeria are able to implement maritime counter-piracy initiatives, many pirates simply move their operations to the waters of weaker states such as Benin. This easy access to sanctuary, as well as the steady flow of oil through the region, has allowed piracy to flourish in the Gulf.¶ Q2: What is the impact of this piracy?¶ A2: The international community has increasingly taken note of piracy in the Gulf of Guinea due to the growing threat this activity represents, not only to the lives of sailors, but to both the regional and global economy. Due to the fact that they derive their profits from the sale of oil and other goods rather than the ransoming of hostages, pirates in the Gulf of Guinea have proven to be significantly more violent than their Somali counterparts. Vessels are frequently sprayed with automatic weapons fire, and the murder of crew members is not uncommon. Recent events indicate that these pirates are even willing to attack vessels with security personnel aboard, evidenced by the recent killing of two Nigerian sailors guarding an oil barge. Given that pirates are now adopting heavier weapons and more sophisticated tactics, this violence is only likely to increase.¶ Beyond the bloodshed, the expansion of piracy in the Gulf of Guinea poses a dire threat to local economies, potentially undermining what little stability currently exists in the region. Oil revenue, which many countries in the region rely upon, is seriously threatened by pirate activity; 7 percent of Nigeria’s oil wealth is believed lost due to such criminality. Additionally, instability in the Gulf has sharply decreased revenue collected from trade; Benin, whose economy depends on taxing ships entering the port of Cotonou, has experienced a 70 percent decline in shipping activity due to piracy. Furthermore, as piracy drives up insurance premiums for international shipping companies, the price of imported goods in the region could spike, further imperiling local economies. If these local economies falter, development and stability in the region could quickly deteriorate.¶ However, the effects of piracy in the Gulf could well extend far beyond Africa, with potential ramifications for the larger global economy and the United States in particular. The estimated 3 million barrels of oil produced daily by the nations around the Gulf ultimately feed the North American and European markets. Nigeria alone is the fifth-largest supplier of oil to the United States and by 2015 could account for a quarter of U.S. oil consumption. However, given the rate at which attacks on oil tankers are increasing, the ability of these nations to reliably provide oil to the international market could be in question. Early 2012 saw a doubling in the number of attacks on oil tankers, with as many as eight hijackings in a month. If this dramatic trend continues, the flow of oil from the Gulf of Guinea to the United States and the West could slow considerably.¶ Q3: What steps are being taken to address this threat?¶ A3: Recognizing the burgeoning threat, a variety of international and local actors have begun efforts to address piracy in the Gulf of Guinea. The United States has supplied over $35 million to train and equip local forces to combat piracy, while the United Nations has called for a regional summit to coordinate a comprehensive counter-piracy strategy for the Gulf. Such a strategy will prove essential to addressing the challenges of piracy, given the ability of pirates to relocate quickly when counter-piracy pressure in one area becomes too great. Regional and international actors can look to the Strait of Malacca, where a number of nations coordinated joint counter-piracy operations and shared intelligence, for an example of successful cooperative efforts to curtail piracy. However, given the limited capacity of many regional actors, increased logistical, material, and intelligence support from international partners will be vital to these efforts. International and regional actors have an opportunity to address the growing threat of piracy in the Gulf of Guinea, but only if they act together.

## T

### 2AC T – Restrictions = Prohibition

#### We meet:

#### Plan’s TK restriction meets prohibition and is ex-ante

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

Of course, there are a number of possible ways to define the threat. For lethal targeting, I suggest two such categories: (1) those involved in the active planning or operationalization of specific, imminent, and externally focused attacks, regardless of their relative hierarchical position in the organization; and (2) operational leaders who present a significant, ongoing, and externally focused threat, even if they are not implicated in the planning of a specific, imminent attack. n141 The first definition is a conduct-based test that prohibits [\*1211] the use of lethal force absent a specific, imminent, and significant threat. The second definition encompasses those who pose a continuous and significant threat given their leadership roles within an organization. n142 Whether an individual meets this threat requirement depends on the individual's role within the organization, his capacity to operationalize an attack, and the degree to which the threat is externally focused. For example, an al Shabaab operational leader, whose attacks are focused on the internal conflict between al Shabaab and Somalia's Transnational Federal Government, would not qualify as a legitimate target in the separate conflict between the United States and al Qaeda, even if he had demonstrated associations with al Qaeda. He might, however, be a legitimate target if he were involved in the planning of externally focused attacks and had demonstrated the capacity and will to operationalize the attacks. n143¶ Such restrictions serve the important purpose of limiting state authority to target and kill to instances in which the individual poses an active, ongoing, and significant threat. The low-level foot soldier who is found thousands of miles from the hot conflict zone could not be targeted unless involved in the planning or preparation of a specific, imminent attack. Even mid-level operatives, such as the prototypical terrorist recruiter, would be off-limits, unless they were plotting, or recruiting for, a specific, imminent attack. n144 Such recruiters could, however, be prosecuted for providing material support to a terrorist organization. n145

#### Plan’s detention restriction meets prohibition

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

For detention, I suggest the same standards that apply to lethal targeting, as well as a third category of fighters whose actions are clearly linked to the zone of active hostilities. Under this standard, a low-level al Qaeda or Taliban foot soldier who is fleeing from or believed to be traveling in and out of the active conflict zone in Afghanistan could be subject to law-of-war detention. n147 However, once circumstances change, and the active conflict zone becomes a latent conflict zone, then this justification for law-of-war detention disappears. n148 Unless the detainee presents either a specific, imminent, and significant threat or the kind of ongoing, significant threat high-level leaders pose that would justify his continued detention, he would need to be either transferred to a third party government, released, or prosecuted - just as occurred with the detainees in U.S. custody in Iraq and is expected to eventually occur with respect to detainees in United States' custody in Afghanistan. n149

#### 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.”

## CP

### 2AC Executive CP (Top Shelf)

#### CP alienates allies

Schwarz 7 senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, (Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201)

The Administration insists that its plunge into torture, its lawless spying, and its lock-up of innocents have made the country safer. Beyond mere posturing, they provide little evidence to back up their claims. Executive unilateralism not only undermines the delicate balance of our Constitution, but also lessens our human liberties and hurts vital counterterrorism campaigns. How? Our reputation has always mattered. In 1607, Massachusetts governor John Winthrop warned his fellow colonists that because they were a "City on a Hill," "the eyes of all people are upon us."4 Thomas Jefferson began the Declaration of Independence by invoking the need for a "decent respect to the opinions of mankind:' In today's battle against stateless terrorists, who are undeterred by law, morality, or the mightiest military power on earth, our reputation matters greatly.¶ Despite its military edge, the United States cannot force needed aid and cooperation from allies. Indeed, our status as lone superpower means that only by persuading other nations and their citizens—that our values and interests align with theirs, and so merit support, can America maintain its influence in the world. Military might, even extended to the globe's corners, is not a sufficient condition for achieving America's safety or its democratic ideals at home. To be "dictatress of the world," warned John Quincy Adams in 1821, America "would be no longer the ruler of her own spirit." A national security policy loosed from the bounds of law, and conducted at the executive's discretion, will unfailingly lapse into hypocrisy and mendacity that alienate our allies and corrode the vitality of the world's oldest democracy.5

#### 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.

#### Perm do both---shields the link

#### 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.

#### Perm do the CP---plan text says USFG

#### Congress necessary to prevent Court evisceration of War Powers

Benjamin Wittes 8, Senior Fellow in Governance Studies at the Brookings Institution, co-founder and editor-in-chief of the Lawfare blog, member of the Hoover Institution’s Task Force on National Security Law, Law and the Long War: The Future of Justice in the Age of Terror, google books

What the Supreme Court has done is carve itself a seat at the table. It has intimated, without ever deciding, that a constitutional basis for its actions exists—in addition to the statutory bases on which it decided the cases—meaning that its authority over overseas detentions may be an inherent feature of judicial power, not a policy question on which the legislature and executive can work their will. Whether the votes exist on the court to go this extra step we will find out soon enough. But the specter of a vastly different judicial posture in this area now haunts the executive branch—one in which the justices assert an inherent authority to review executive detention and interrogation practices, divine rights to apply with that jurisdiction based on due process and vaguely worded international humanitarian law principles not clearly implemented in U.S. law, and allow their own power to follow the military’s anywhere in the world. Such a posture would constitute an earthquake in the relationships among all three branches of government, and the doctrinal seeds for it have all been planted. Whether they ultimately take root depends on factors extrinsic to the war on terror—particularly the future composition of a Supreme Court now closely divided on these questions. It will also pivot on the manner in which the political branches posture the legal foundations of the war in the future. Building a strong legislative architecture now may be the only way to avert a major expansion of judicial power over foreign policy and warfare.

**Only Congress can send a credible signal of durability**

Benjamin **Wittes 9**, senior fellow and research director in public law at the Brookings Institution, Stuart Taylor, an American journalist, graduated from Princeton University and Harvard Law School, Legislating the War on Terror: An Agenda for Reform, November 3, 2009, pg. 329-330

While President Obama’s policy makes a clean break with the Bush record, it actually does not effectively answer the question of how best to handle this group. Indeed, the new policy seems likely to fail on both a substantive and a procedural level. First, it goes too far by banning all coercion all the time. Second, the rule is unstable because it can so easily be changed **at the whim of the president**, whether Obama or, perhaps, a successor more like Bush. An administration down the road that wanted to resume waterboarding could rescind the current order and adopt legal positions like those of the prior administration. Unless the Obama administration and Congress hammer out rules that provide interrogators with clear guidance about what is and is not allowed and write those rules into statute, the United States risks vacillating under the vagaries of current law between overly permissive and overly restrictive guidance. The general goals of new legislation should be threefold: —To make it a crime beyond cavil to use interrogation methods considered by reasonable people to be torture. The torture statute already does that to some degree, but the fact that it arguably permitted techniques as severe as waterboarding suggests that it may require some tightening. The key here is that the statute should cover all techniques the use of which ought to prompt criminal prosecution. —To subject CIA interrogators in almost all cases to rules that, without relaxing current law’s ban on cruel, inhuman, and degrading treatment, permit relatively mild forms of coercion that are properly off limits to military interrogators. —To allow the president, subject to strict safeguards, to authorize use of harsher methods short of torture (as defined in the revised criminal statute) in true emergencies or on extraordinarily high-value captives such as KSM. **Only Congress** can **provide** the **democratic** **legitimacy** and the fine-tuning of criminal laws that can **deliver such a regime**. Only Congress can, for example, pass a new law making it clear that waterboarding— or any other technique of comparable severity— will henceforth be a federal crime. Only Congress can offer clear assurances to operatives in the field that there exists a safe harbor against prosecution for conduct ordered by higher-ups in a crisis in the genuine belief that an attack may be around the corner. **Only Congress**, in other words, can create a regime that plausibly turns away from the past without giving up what the United States **will need in the future**.

**CP Green Lights Aggression:**

**A) Inaction triggers it**

Ralph **Nader 12**, consumer advocate, lawyer, and author, Dec 1 2012, “Reining in Obama and His Drones,” http://www.truthdig.com/report/item/reining\_in\_obama\_and\_his\_drones\_20121201/

Critics point out how many times in the past that departments and agencies have put forth misleading or false intelligence, from the Vietnam War to the arguments for invading Iraq, or have missed what they should have predicted such as the fall of the Soviet Union. This legacy of errors and duplicity should restrain presidents who execute, by ordering drone operators to push buttons that target people thousands of miles away, based on **secret**, so-called **intelligence**.¶ Mr. Obama wants, in Mr. Fein’s view, to have “his secret and unaccountable predator drone assassinations to become permanent fixtures of the nation’s national security complex.” Were Obama to remember his constitutional law, such actions would have to be constitutionally **authorized by Congress** and **subject to judicial review.**¶With his Attorney General Eric Holder maintaining that there is sufficient due process entirely **inside the Executive** Branch and without Congressional oversight or judicial review, don’t bet on anything more than a more secret, violent, imperial presidency that shreds the Constitution’s separation of powers and checks and balances.¶ And don’t bet that other countries of similar invasive bent won’t remember this **green-light on illegal unilateralism** when they catch up with our drone capabilities.

**B) Locks in executive overreach by foreign powers**

Anthony **Maddaluno 13**, JD candidate @ Brooklyn Law School and BA in History from Rider University, Spring, “A Historical Legal Analysis of Presidential War Power in the Post 9/11 World,” http://maddalunatic.com/2013/05/01/a-historical-legal-analysis-of-presidential-war-power-in-the-post-911-world/

In the wake of President Barack Obama’s sweeping reelection a recently leaked “white paper” document outlining the administration’s candid position on the unequivocal right for the President to use Predator drones against US citizens without the advice and consent of Congress has reignited a storm of controversy in the ongoing debate about the scope of presidential war power. The use of unsanctioned drones **without the approval of Congress** is the latest stage in the increasing encroachment on fundamental constitutional rights of due process of law. Furthermore, the government’s justification for the ongoing use of unsanctioned drone strikes as articulated in documents such as the “white paper,” **reiterates the** same **legal arguments used** by the Bush administration **to** **justify** such unconstitutional practices such as **indefinite detention** with neither due process of law nor congressional suspension of habeas corpus as well as the infamous “enhanced interrogation” techniques. The increasingly **aggressive deployment of** the **armed forces** by both the Bush and now the Obama administration **illustrate** an **emerging** doctrine of **unitary executive power** within the elite inner circle of the executive branch. Although there is no formally defined doctrine of unitary executive power in a law dictionary, the doctrine of unitary executive power is increasingly **becoming** an **acceptable** aspect of constitutional law. For the purpose of clarification the following definition is employed: unitary executive- an executive official, most often a President or Prime Minister, invested with the plenary power to pursue a policy agenda that is completely independent both of **judicial** review and **legislative oversight**.

### AT: Zenko

#### CP locks in squo

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

The transparency related accountability reforms specified above have the ability to expose wrongdoing; however that’s not the only goal of accountability. Accountability is also designed to deter wrongdoing. By exposing governmental activity, transparency oriented reforms can influence the behavior of all future public officials—to convince them to live up to public expectations 527 The challenge associated with the reforms articulated above is a bias towards the status quo.528 Very few incentives exist for elected officials to exercise greater oversight over targeted killings and interest group advocacy is not as strong in matters of national security and foreign affairs as it is in domestic politics.529

#### Memos won’t be perceived as credible

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.

### Links to Ptix

#### Links to politics through bypassing debate

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

### 2AC Haphazard Restrictions Inevitable

#### Legal architecture of the WOT will collapse absent plan

Chesney 13 - Charles I. Francis Professor in Law @ Texas

BEYOND THE BATTLEFIELD, BEYOND AL QAEDA: THE DESTABILIZING LEGAL ARCHITECTURE OF COUNTERTERRORISM, Public Law and Legal Theory Research Paper No. 227, Robert M. Chesney, Also Michigan Law Review, Forthcoming in vol 112, Fall 2013.

By the end of the first post-9/11 decade, the legal architecture associated with the U.S. government’s use of military detention and lethal force in the counterterrorism setting had come to seem relatively stable, supported by a remarkable degree of crossbranch and cross-party consensus (manifested by legislation, judicial decisions, and consistency of policy across two very different presidential administrations). That stability is certain to collapse during the second post-9/11 decade, however, thanks to the rapid erosion of two factors that have played a critical role in generating the recent appearance of consensus: the existence of an undisputed armed conflict in Afghanistan as to which the law of armed conflict clearly applies, and the existence of a relatively-identifiable enemy in the form of the original al Qaeda organization. Several long-term trends contribute to the erosion of these stabilizing factors. Most obviously, the overt phase of the war in Afghanistan is ending. At the same time, the U.S. government for a host of reasons places ever more emphasis on what we might call the “shadow war” model (i.e., the use of low-visibility or even deniable means to capture, disrupt, or kill terrorism-related targets in an array of locations around the world). The original Al Qaeda organization, meanwhile, is undergoing an extraordinary process of simultaneous decimation, diffusion, and fragmentation, one upshot of which has been the proliferation of loosely-related regional groups that have varying degrees of connection to the remaining core al Qaeda leadership. These shifts in the strategic posture of both the United States and al Qaeda profoundly disrupt the stability of the current legal architecture upon which military detention and lethal force rest. Specifically, they make it far more difficult (though not impossible) to establish the relevance of the law of armed conflict to U.S. counterterrorism activities, and they raise exceedingly difficult questions regarding just whom these activities lawfully may be directed against. Critically, they also all but guarantee that a new wave of judicial intervention to consider just those questions will occur. Bearing that in mind, I conclude the paper by outlining steps that could be taken now to better align the legal architecture with the trends described above.

### AT: Prez Powers NB

#### Codification creates effective decision-making

#### A) Congress makes deterrence credible

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.

### 2AC Detention PIC

#### Exemptions wreck solvency---gov’t exploits loopholes

Jack Goldsmith 9, a professor at Harvard Law School and a member of the Hoover Institution Task Force on National Security and Law, assistant attorney general in the Bush administration, 5/31/09, “The Shell Game on Detainees and Interrogation,” <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html>

The cat-and-mouse game does not end there. As detentions at Bagram and traditional renditions have come under increasing legal and political scrutiny, the Bush and Obama administrations have relied more on other tactics. They have secured foreign intelligence services to do all the work -- capture, incarceration and interrogation -- for all but the highest-level detainees. And they have increasingly employed targeted killings, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process.¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.¶ The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.¶ It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses.¶ This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice.¶ The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, it shifts to others that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

#### CP fails---it increases bad drone strikes and crushes intel coop

Issacharoff et.al. 13 - Sudler Family Professor of Constitutional Law, N.Y.U. School of Law

NEW YORK UNIVERSITY SCHOOL OF LAW, PUBLIC LAW & LEGAL THEORY RESEARCH PAPER SERIES WORKING PAPER NO. 12-40, Targeted Warfare: Individuating Enemy Responsibility, Samuel Issacharoff and Richard H. Pildes, April 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2129860##

Non-criminal detention has been a fact of national security policy since Sept. 11, whether in Afghanistan, Iraq or Guantánamo. Defining who may (legally) and should (strategically) be detained is not easy. But if there are good reasons that not every captured fighter or terrorist can be put into the criminal justice system, the government will need some system of prolonged non-criminal detention. Any such system will have to be designed in ways that come to terms with the specter of endless detention. On the other hand, there must be some credible detention policies in place anytime military force is projected internationally. The absence of a secure and meaningful detention capability for captured enemy combatants creates a strong incentive not to capture and instead to neutralize the threat posed by enemy forces through lethal force:93¶ FOOTNOTE 93 BEGINS…¶ 93 See Chesney, supra note \_\_\_, at 573-74 (citing episodes of U.S. troops resorting to killing dangerous enemy combatants to serve as “a useful reminder of the subtle relationship between detention and the use of lethal force, not to mention a cautionary tale regarding the manner in which that relationship can transmit incentives when detention options are restricted in a combat setting”). See also Michael J. Frank, Trying Times: The Prosecution of Terrorists in the Central Criminal Court of Iraq, 18 FLA. J. INT’L L. 1, 83-85 (2006) (providing interviews regarding troop responses to leniency toward detainees by the Central Criminal Court of Iraq, which was established in 2003¶ FOOTNOTE 93 ENDS…¶Indeed, the most detailed account of internal Obama administration deliberations on this issue quotes leading military and counterterrorism officials, including the Vice Chairman of the Joint Chiefs of Staff, decrying the fact that the administration had no viable option or plan for capturing and detaining high-level terrorists. The inability to settle, for political reasons, on a legitimate place in which to detain suspects leads to the possibility that a bridge figure between Al Queda and Somali terrorists was killed, rather than captured – despite his enormous potential intelligence value – in part because of the lack of a viable detention option. One anonymous top Obama counterterrorism advisor is quoted as saying that the lack of a viable detention option, which then pushed options toward more lethal ones, was always on the back of everyone’s mind: “Anyone who says it wasn’t is not being straight.” As a result, “[t]he inability to detain terror suspects [created] perverse incentives that favored killing or releasing suspected terrorists over capturing them.”

#### Bringing US in line with other detention practices internationally restores US human rights leadership

Mark H Gitenstein 9, Retired American politician who served as the United States Ambassador to Romania, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 35-36

Second, perhaps the biggest U.S. deviation from the norm lies in the extraordinary manner in which the previous administration made U.S. counterterrorism rules, giving rise to the possibility of virtually unlimited executive authority with respect to detention, surveillance, and even torture. No other country, however permissive the authority that it grants its security services, comes even close. Bringing the United States into line with other democracies, in other words, will involve a strange combination of tightening rules, relaxing rules, and insisting on the conventional order in which rules get made. Reform on those fronts will help to restore the moral credibility of the United States with regard to human rights. U.S. alliances with each of the eight nations surveyed here will prove essential as the country continues to combat jihadist terrorism. To be sure, there will be many situations in which U.S. rules protect civil liberties more robustly than do those in other democracies, as well as some situations in which the unique U.S. counterterrorism effort— which operates throughout the world as a kind of hybrid encompassing military action, covert operations, and criminal justice procedures— requires powers that many countries do not need or claim for themselves. That’s okay. Democracies can take different approaches without being less democratic.

#### Human rights cred solves global war

William W. Burke-White 4, Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University, Spring 2004, Harvard Human Rights Journal, 17 Harv. Hum. Rts. J. 249, p. 279-280

This Article presents a strategic--as opposed to ideological or normative--argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post-Cold War period [\*250] indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and global security.¶ Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression. n2 If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

## DA

### 2AC Debt Ceiling DA

#### GOP makes default inevitable

Evan McMurry 10-6, Mediaite columnist, 10/6/13, “Behold the GOP’s Terrifying New Debt Ceiling Theory: Default is Inevitable,” http://www.mediaite.com/online/behold-the-gops-terrifying-new-debt-ceiling-theory-default-is-inevitable/

Behold the GOP’s Terrifying New Debt Ceiling Theory: Default is Inevitable¶ Before the fingerpointing over the government shutdown even had a chance to really get going, Representative Steve King (R-IA) found the real driver behind the coming battle over the debt ceiling: “The march of history got us here.” ¶ King is not the most articulate voice for the GOP’s anything legislative strategy, but in this case his penchant for tin-eared overstatement perfectly encapsulated the Republican Party’s new attitude toward breaching the debt ceiling: it’s out of their hands. ¶ “That seems to be the path that we’re on,” House Speaker John Boehner (R-OH) told George Stephanopoulos this morning, with a petulant shrug, as if he were in someone else’s taxi. ¶ Boehner’s passivity is stunning for a number of reasons, not the least of which is that he could single-handedly avoid default simply by bringing a vote to raise the debt ceiling. In fact, one person said this week he would do just that: John Boehner, who, according to congressional sources, has been quietly telling his caucus that he would raise the debt ceiling with Democratic votes before he would allow default. Some thought this information was leaked precisely to force Boehner off of this position—if he was heard admitting he wouldn’t kill the hostage, the hostage-taking gig was up. Thus you have the conflicted Boehner we saw this morning, both defiant and resigned, simultaneously daring Obama to call his bluff and acquiescent to the fact that he would take the blame when it happened. ¶ This strange new determinism—the idea that breaching the debt ceiling is dialectically and structurally necessitated—is simply the latest in a series of GOP attempts to avoid responsibility for the shutdown and looming debt crisis. Their previous attempts, mostly focused on ObamaCare, have been so lackluster that at least one poll says that the House is now back in play in 2014, the exact 1998-redux Boehner was trying to avoid. His next maneuver is to take away the GOP’s perception as catalysts, to make them seem only players in an historically inevitable showdown. ¶ Crucial to this narrative is a bit of historical revisionism. After all, we were here just two years ago, when the United States’ credit rating was downgraded as a result of the debt ceiling brinksmanship induced by the 2010 tea party class, the most blaring sign that the debt ceiling debate was unforced error of irrevocable magnitude. It reflected poorly on everyone, but especially on Republicans, who, prior to that moment, had been making steady gains against Obama’s popularity. The debt ceiling debacle slammed the breaks on that: the GOP’s reputation with voters plummeted and never regained, leading to a substandard performance across every metric in the 2012 election. ¶ That, at least, is the canonical version of the debt ceiling fight of 2011. A new view was trotted out by Rand Paul (R-KY) on Meet the Press this morning, in which the deficit hawk revised Standard & Poor’s judgment to be almost entirely a verdict on the United States’ debt itself. He’s not wrong: Standard & Poor’s did chide the deficit reduction plan for “falling short” of what the agency wanted for a post-recession debt stabilization. But S&P argued the fiscal compromise in large part underwhelmed due to the absence of added “revenue,” better known to us laypeople as taxes. As these were the days of hardline conservatives refusing even a 10:1 ratio of spending cuts to tax increases, it was clear that revenue, no matter what it was called, wasn’t on the table. Thus tea party intransigence was not a tangential aspect of S&P’s downgrade, but the primary wrench in the machine they wanted to see functioning. ¶ But under Paul’s reading, the debt ceiling brinksmanship of two years ago finally and thankfully threw the U.S.’s debt problems into relief, a problem notarized by the rating agency’s responses. This reading neatly flips the heroes and villains of that dispute: if S&P were turned onto the U.S.’s debt problem by the tea party’s fit over the debt ceiling, it makes the GOP into conscientious objectors rather unprecedentedly reckless legislators, people who spotted the fire rather than started it. ¶ Today’s Republicans clearly want this battle over the debt ceiling to be an extension of this imaginary version of the last one. “This fight was going to happen one way or the other,” Boehner told Stephanopoulos this morning, and if you buy the theory that breaching the debt limit is not an avoidable catastrophe irresponsibly induced by one party but another iteration of the GOP refusing to ratify more profligate spending, he’s right. John Boehner obviously doesn’t buy this theory, as, if reports are to be believed, he’s working furiously behind the scenes to avoid the exact scenario he’s decrying as inevitable on the Sunday shows. ¶ But the party he only fitfully controls very much believes this story of their own concoction, and that should gravely worry everybody. As of two weeks ago, breaching the debt ceiling was unthinkable. Today it’s the march of history.

#### 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.

#### All their link args are non-unique

NPR 9/21, “Have Obama's Troubles Weakened Him For Fall's Fiscal Fights?” http://www.ideastream.org/news/npr/224494760

President Obama has had a tough year. He failed to pass gun legislation. Plans for an immigration overhaul have stalled in the House. He barely escaped what would have been a humiliating rejection by Congress on his plan to strike Syria.¶ Just this week, his own Democrats forced Larry Summers, the president's first choice to head the Federal Reserve, to withdraw.¶ Former Clinton White House aide Bill Galston says all these issues have weakened the unity of the president's coalition.¶ "It's not a breach, but there has been some real tension there," he says, "and that's something that neither the president nor congressional Democrats can afford as the budget battle intensifies."¶ Obama is now facing showdowns with the Republicans over a potential government shutdown and a default on the nation's debt. On Friday, the House voted to fund government operations through mid-December, while also defunding the president's signature health care law — a position that's bound to fail in the Senate.¶ As these fiscal battles proceed, Republicans have been emboldened by the president's recent troubles, says former GOP leadership aide Ron Bonjean.

#### Shutdown crushes Obama’s agenda

Michael O'Brien 10/1, "Winners and losers of the government shutdown", 2013, nbcpolitics.nbcnews.com/\_news/2013/10/01/20763839-winners-and-losers-of-the-government-shutdown?lite

Obama¶ The fiscal fight is a double-edged sword for Obama.¶ Yes, the president won a short-term victory that revitalizes his pull within the Beltway after beating back Republicans and shifting blame primarily to them for a shutdown. But Obama is no less a symbol of Washington dysfunction than Ted Cruz or John Boehner.¶ It might be simplistic, but any president shares in some of the broader opinion toward D.C. just by the very nature of the job. Put another way: as president, Obama is the most visible political leader in the U.S., if not the world. If Americans are dissatisfied with Washington, Obama will have to shoulder some of that burden.¶ Obama's 2011 battles with Republicans over the debt ceiling saw his approval ratings sink to one of the lowest points of his presidency. There are signs this fight might be taking a similar toll: a CNN/ORC poll released Monday found that 53 percent of Americans disapprove of the way the president is handling his job, versus 44 percent who approve.¶ Moreover, after the time and political capital expended on this nasty political fight — and with midterm elections on the docket for 2014 — Obama's top second-term priorities, like comprehensive immigration reform, are on life support.

#### Obama will unilaterally resolve the crisis if Congress fails---game theory proves

IHT 10-4 – International Herald Tribune, 10/4/13 edition, “White House has options if impasse arises on debt ceiling,” p. lexis

As a result, economists and investors have quietly begun to explore the options the White House might have in the event Congress fails to act.

The most widely discussed strategy would be for President Barack Obama to invoke authority under the 14th Amendment and essentially order the federal government to keep borrowing, an option that was endorsed by former President Bill Clinton during an earlier debt standoff in 2011.

And in recent days, prominent Democrats like Senator Max Baucus, chairman of the Senate Finance Committee, and Representative Nancy Pelosi, the House minority leader, have urged the White House to seriously consider such a route, even if it might provoke a threat of impeachment from House Republicans and ultimately require the Supreme Court to rule on its legitimacy.

Other potential October surprises range from the logistically forbidding, like prioritizing payments, issuing i.o.u.'s or selling off gold and other assets, to more fanciful ideas, like minting a trillion-dollar platinum coin.

So far, administration officials have continued to insist that there is no plausible alternative to congressional action on the debt limit.

In December 2012, Jay Carney, the White House spokesman, flatly renounced the 14th Amendment option, saying: ''I can say that this administration does not believe that the 14th Amendment gives the president the power to ignore the debt ceiling - period.'' And on Wednesday, a senior administration lawyer said that remained the administration's view.

Still, some observers outside government in Washington and on Wall Street, citing an approach resembling game theory, suggest that the president's position is more tactical than fundamental, since raising the possibility of a way out for the White House like the constitutional gambit would take the heat off Republicans in Congress to act on their own before the Oct. 17 deadline.

''If a default is imminent, the option of raising the debt limit by executive fiat has to be on the table,'' said Greg Valliere, chief political strategist at Potomac Research. ''Desperate times require desperate measures.''

Some professional investors echoed his view, which is a reason Wall Street remains hopeful that the economic and financial disaster a government default could usher in will be avoided.

''At the end of the day if there is no action and the United States has a default looming, I think President Obama can issue an executive order authorizing the Treasury secretary to make payments,'' said David Kotok, chief investment officer of Cumberland Advisors in Sarasota, Florida, which has just over $2 billion under management. ''There's always been more flexibility in the hands of Treasury than they've acknowledged.''

According to some legal theorists, the president could essentially ignore the debt limit imposed by Congress, because the 14th Amendment states that the ''validity of the public debt of the United States, authorized by law,'' including debts like pensions and bounties to suppress insurrections, ''shall not be questioned.''

#### No impact to debt ceiling

Tom Raum 11, AP, “Record $14 trillion-plus debt weighs on Congress”, Jan 15, <http://www.mercurynews.com/news/ci_17108333?source=rss&nclick_check=1>

Democrats have use doomsday rhetoric about a looming government shutdown and comparing the U.S. plight to financial crises in Greece and Portugal. It's all a bit of a stretch. "We can't do as the Gingrich crowd did a few years ago, close the government," said Senate Majority Leader Harry Reid (D-Nev.), referring to government shutdowns in 1995 when Georgia Republican Newt Gingrich was House speaker. But those shutdowns had nothing to do with the debt limit. They were caused by failure of Congress to appropriate funds to keep federal agencies running. And there are many temporary ways around the debt limit. Hitting it does not automatically mean a default on existing debt. It only stops the government from new borrowing, forcing it to rely on other ways to finance its activities. In a 1995 debt-limit crisis, Treasury Secretary Robert Rubin borrowed $60 billion from federal pension funds to keep the government going. It wasn't popular, but it helped get the job done. A decade earlier, James Baker, President Ronald Reagan's treasury secretary, delayed payments to the Civil Service and Social Security trust funds and used other bookkeeping tricks to keep money in the federal till. Baker and Rubin "found money in pockets no one knew existed before," said former congressional budget analyst Stanley Collender. Collender, author of "Guide to the Federal Budget," cites a slew of other things the government can do to delay a crisis. They include leasing out government-owned properties, "the federal equivalent of renting out a room in your home," or slowing down payments to government contractors. Now partner-director of Qorvis Communications, a Washington consulting firm, Collender said such stopgap measures buy the White House time to resist GOP pressure for concessions. "My guess is they can go months after the debt ceiling is not raised and still be able to come up with the cash they need. But at some point, it will catch up," and raising the debt limit will become an imperative, he suggested.

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## Allies

### AT: Gulf of Guinea

#### Gulf of Guinea is distinct from their piracy D

Nelson 12 Rick "Ozzie", Director of the Homeland Security and CT Program at the CSIS, "An Emerging Threat? Piracy in the Gulf of Guinea", August 8, csis.org/publication/emerging-threat-piracy-gulf-guinea

A1: The Gulf of Guinea is, in many ways, a perfect incubator for piracy, providing both resources and safe haven. Surrounded by some of Africa’s most proficient oil producers, including Nigeria, Angola, Gabon, Ghana, and Equatorial Guinea, the Gulf is a major transit route for oil tankers on their way to international markets. These tankers have proven valuable prey for pirates. Unlike Somali pirates, who focus on the ransom of captured crew members, pirates in the Gulf of Guinea derive much of their income from the theft of oil. These pirates will frequently hijack a tanker, siphon the oil to another vessel, and later resell it on the local black market. In addition to the hijacking of cargo ships containing goods such as cocoa and minerals, this steady supply of tankers provides pirates in the Gulf a lucrative source of income.¶ In addition to serving as a source of revenue, the under-governed states surrounding the Gulf provide pirates ready safe haven from which to operate, both on land and at sea. Faced with widespread poverty, rampant corruption, and an inability to fully control their territory, many of these nations rank among the most dysfunctional in the world. As a result, criminal elements—including but not limited to pirates—have little difficulty establishing and maintaining on-shore bases where they can plan and launch operations. Further, given that many of the states surrounding the Gulf lack significant maritime capabilities, there are few local forces available to combat piracy at sea. Even when states such as Nigeria are able to implement maritime counter-piracy initiatives, many pirates simply move their operations to the waters of weaker states such as Benin. This easy access to sanctuary, as well as the steady flow of oil through the region, has allowed piracy to flourish in the Gulf.¶ Q2: What is the impact of this piracy?¶ A2: The international community has increasingly taken note of piracy in the Gulf of Guinea due to the growing threat this activity represents, not only to the lives of sailors, but to both the regional and global economy. Due to the fact that they derive their profits from the sale of oil and other goods rather than the ransoming of hostages, pirates in the Gulf of Guinea have proven to be significantly more violent than their Somali counterparts. Vessels are frequently sprayed with automatic weapons fire, and the murder of crew members is not uncommon. Recent events indicate that these pirates are even willing to attack vessels with security personnel aboard, evidenced by the recent killing of two Nigerian sailors guarding an oil barge. Given that pirates are now adopting heavier weapons and more sophisticated tactics, this violence is only likely to increase.¶ Beyond the bloodshed, the expansion of piracy in the Gulf of Guinea poses a dire threat to local economies, potentially undermining what little stability currently exists in the region. Oil revenue, which many countries in the region rely upon, is seriously threatened by pirate activity; 7 percent of Nigeria’s oil wealth is believed lost due to such criminality. Additionally, instability in the Gulf has sharply decreased revenue collected from trade; Benin, whose economy depends on taxing ships entering the port of Cotonou, has experienced a 70 percent decline in shipping activity due to piracy. Furthermore, as piracy drives up insurance premiums for international shipping companies, the price of imported goods in the region could spike, further imperiling local economies. If these local economies falter, development and stability in the region could quickly deteriorate.¶ However, the effects of piracy in the Gulf could well extend far beyond Africa, with potential ramifications for the larger global economy and the United States in particular. The estimated 3 million barrels of oil produced daily by the nations around the Gulf ultimately feed the North American and European markets. Nigeria alone is the fifth-largest supplier of oil to the United States and by 2015 could account for a quarter of U.S. oil consumption. However, given the rate at which attacks on oil tankers are increasing, the ability of these nations to reliably provide oil to the international market could be in question. Early 2012 saw a doubling in the number of attacks on oil tankers, with as many as eight hijackings in a month. If this dramatic trend continues, the flow of oil from the Gulf of Guinea to the United States and the West could slow considerably.¶ Q3: What steps are being taken to address this threat?¶ A3: Recognizing the burgeoning threat, a variety of international and local actors have begun efforts to address piracy in the Gulf of Guinea. The United States has supplied over $35 million to train and equip local forces to combat piracy, while the United Nations has called for a regional summit to coordinate a comprehensive counter-piracy strategy for the Gulf. Such a strategy will prove essential to addressing the challenges of piracy, given the ability of pirates to relocate quickly when counter-piracy pressure in one area becomes too great. Regional and international actors can look to the Strait of Malacca, where a number of nations coordinated joint counter-piracy operations and shared intelligence, for an example of successful cooperative efforts to curtail piracy. However, given the limited capacity of many regional actors, increased logistical, material, and intelligence support from international partners will be vital to these efforts. International and regional actors have an opportunity to address the growing threat of piracy in the Gulf of Guinea, but only if they act together.

## PIC

### AT: China War

#### Chinese leaders don’t want war

Goldstein 11—professor emeritus of IR, American U. PhD in pol sci from MIT. Former visiting professor emeritus at Yale (Sept 2011, Joshua, Think Again: War, http://www.foreignpolicy.com/articles/2011/08/15/think\_again\_war)

What about China, the most ballyhooed rising military threat of the current era? Beijing is indeed modernizing its armed forces, racking up double-digit rates of growth in military spending, now about $100 billion a year. That is second only to the United States, but it is a distant second: The Pentagon spends nearly $700 billion. Not only is China a very long way from being able to go toe-to-toe with the United States; it's not clear why it would want to. A military conflict (particularly with its biggest customer and debtor) would impede China's global trading posture and endanger its prosperity. Since Chairman Mao's death, China has been hands down the most peaceful great power of its time. For all the recent concern about a newly assertive Chinese navy in disputed international waters, China's military hasn't fired a single shot in battle in 25 years.¶ "A More Democratic World Will Be a More Peaceful One."¶ Not necessarily. The well-worn observation that real democracies almost never fight each other is historically correct, but it's also true that democracies have always been perfectly willing to fight non-democracies. In fact, democracy can heighten conflict by amplifying ethnic and nationalist forces, pushing leaders to appease belligerent sentiment in order to stay in power. Thomas Paine and Immanuel Kant both believed that selfish autocrats caused wars, whereas the common people, who bear the costs, would be loath to fight. But try telling that to the leaders of authoritarian China, who are struggling to hold in check, not inflame, a popular undercurrent of nationalism against Japanese and American historical enemies. Public opinion in tentatively democratic Egypt is far more hostile toward Israel than the authoritarian government of Hosni Mubarak ever was (though being hostile and actually going to war are quite different things).

### AT: China Economy

#### No impact to Chinese economy

Blackwill 9 – former associate dean of the Kennedy School of Government and Deputy Assistant to the President and Deputy National Security Advisor for Strategic Planning (Robert, RAND, “The Geopolitical Consequences of the World Economic Recession—A Caution”, http://www.rand.org/pubs/occasional\_papers/2009/RAND\_OP275.pdf)

Next, China. Again, five years from today. Did the recession undermine the grip of the Chinese Communist Party on the People’s Republic of China (PRC)? No. Again, as Lee Kuan Yew stressed in the same recent speech, “China has proven itself to be pragmatic, resilient and adaptive. The Chinese have survived severe crises—the Great Leap Forward and the Cultural Revolution—few societies have been so stricken. These are reasons not to be pessimistic.” Did the crisis make Washington more willing to succumb to the rise of Chinese power because of PRC holdings of U.S. Treasury Bonds? No. Did it alter China’s basic external direction and especially its efforts, stemming from its own strategic analysis, to undermine the U.S. alliance system in Asia? No. Did it cause the essence of Asian security to transform? No.

### AT: Relations/UN Rights

#### Disputes don’t disrupt cooperation and won’t cause war

Sieff 13—Asia and Middle East expert. Chief Global Analyst at The Globalist Research Center and Editor-at-Large at The Globalist. He has been chief news analyst for United Press International and is its former Managing Editor for International Affairs. He has received three Pulitzer Prize nominations for international reporting. (6/24/13, Martin, China, U.S. recognize need for strategic cooperation, <http://apdforum.com/en_GB/article/rmiap/articles/online/features/2013/06/24/china-us-cooperate>, note - [T] added to ‘his’)

China and the United States continue to recognize the need for strategic cooperation and have been working for the past year on improving efforts to work together.¶ Most recently, U.S. President Barack Obama hosted his Chinese counterpart, XiJinpingto discuss security issuesand establish a foundation for cooperative efforts to continue.¶ The preparations for their meeting have been growing over the past year. Even while the two governments traded mutual allegations over such issues as cyber-security and cyber-espionage, they were quietly advancing their strategic ties and cooperation.¶ Over the course of the past year, positive developments included:¶ • The visit to the United States and to the Pentagon of then-Vice President Xi Jinping and of China’s then-Defense Minister Liang Guanglie. Liang was the highest ranking Chinese defense official to visit the Pentagon in nearly a decade;¶ • Former Secretary of Defense Leon Panetta, Chairman of the Joint Chiefs Gen. Martin Dempsey and Pacific Command Commander Adm. Samuel J. Locklear all led delegations to China;¶ • The first-ever Chinese delegation participated as observers of the U.S.-Philippine Balikatan exercise;¶ • U.S. and Chinese naval forces carried out their first-ever joint counter-piracy exercise in the Gulf of Aden;¶ • The United States invited China to participate in RIMPAC, the Pacific’s largest multilateral Naval exercise;¶ • The United States concluded an agreement to co-host a Pacific Army Chiefs Conference with China for the first time.¶ Later this year, Chinese Defense Minister ChangWanquan plans to visit the Pentagon.¶ “We are pleased to see this progress,” U.S. Defense Secretary Chuck Hagel told participants at the annual Shangri-La Dialogue in Singapore. “It is important for both the United States and China to provide clarity and predictability about each other’s current and future strategic intentions.”¶ China, U.S. discuss arms control¶ Following Hagel’s speech, the sixth Sino-U.S. consultation on strategic security and multilateral arms control began in Beijing.¶ Chinese Assistant Foreign Minister Ma Zhaoxu and U.S. acting Undersecretary of State for Arms Control and International Security Rose Gottemoeller met to discuss building new types of relations between major nations, regional hot spots and multilateral arms control.¶ This careful commitment to improving transparency and communications on both sides is grounded in a fundamental strategic reality: “China and the United States remain critically interdependent in their economies and financial systems. [T]his is the underlying strategic reality behind the recognition of their leaders that continued engagement and understanding is essential,” financial analyst Martin Hutchinson told Asia Pacific Defense Forum [APDF].¶Leading Chinese strategists recognize the same basic reality.¶ Common interests outweigh differences

## Overreach

### Diamond

#### Global democracy solves extinction

**Diamond 95** Larry, Senior Fellow – Hoover Institution, Promoting Democracy in the 1990s, December, http://wwics.si.edu/subsites/ccpdc/pubs/di/1.htm

OTHER THREATS This hardly exhausts the lists of threats to our security and well-being in the coming years and decades. In the former Yugoslavia nationalist aggression tears at the stability of Europe and could easily spread. The flow of illegal drugs intensifies through increasingly powerful international crime syndicates that have made common cause with authoritarian regimes and have utterly corrupted the institutions of tenuous, democratic ones. **Nuclear, chemical, and biological weapons continue to proliferate. The very source of life on Earth, the global ecosystem, appears increasingly endangered.** Most of **these** new and unconventional **threats** to security **are associated with** or aggravated by the weakness or **absence of democracy, with its provisions for** legality**, accountability,** popular sovereignty, **and openness.** LESSONS OF THE TWENTIETH CENTURY The experience of this century offers important lessons. **Countries that govern themselves in a** **truly** **democratic fashion do not go to war with one another.** They do not aggress against their neighbors to aggrandize themselves or glorify their leaders. **Democratic governments do not ethnically "cleanse" their own populations,** and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. **They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable, open, and enduring trading partnerships.** In the long run **they offer better and more stable climates for investment. They are more environmentally responsible because they must answer to their own citizens,** who organize to protest the destruction of their environments. They are better bets to honor international treaties since they value legal obligations and because their openness makes it much more difficult to breach agreements in secret. Precisely because, within their own borders, they respect competition, civil liberties, property rights, and the rule of law, **democracies are the only reliable foundation** **on which a new world order** **of international security and prosperity** **can be built.**

### Solves War

#### Demo peace theory correct

Ward and Gleditsch 98

Michael D. Ward, Professor of Political Science, University of Washington, and Kristian S. Gleditsch, graduate research trainee in the Globalization and Democratization Program, at University of Colorado, Boulder, March 1998, The American Political Science Review

As Figure 1 details, democratization-whether in mild or strong degrees-is accompanied by reduction, not increase, in the risk of war. Though we do not present graphs of the converse, changes toward autocracy and reversals of democratization are accompanied by increased risks of war involvement. These risks are proportionally greater than the decline or benefits of further democratization. Thus, there is strong evidence that democratization has a monadic effect: It reduces the probability that a country will be involved in a war. Although the probability of war involvement does not decrease linearly, it does decrease monotonically, so that over the entire range of democracy minus autocracy values, there is a reduction of about 50%. During the democratic transition, at every point along the way as well as at the end points, there is an attendant reduction in the probability of a polity being at war. We also find that reversals toward greater levels of autocracy (not shown) not only increase the probability of war involvement. Apparently, it is more dangerous to be at a given level of democracy if that represents an increase in the level of authoritarianism than it is to be at the same level of democracy if that represents a decrease in the authoritarian character of the regime. Stated differently, reversals are riskier than progress.ll It has been argued that institutional constraints are theoretically important in translating the effect of democracy into foreign policy (Bueno de Mesquita, Siverson, and Woller 1992; Siverson 1995). If the idea of democracy is separated into its major components, then the degree of executive constraints empirically dominates the democracy and autocracy scales (Gleditsch and Ward 1997). Accordingly, we demonstrate that moving toward stronger executive constraints also yields a visible reduction in the risk of war.

It continues…

CONCLUSION Our results show that the process of democratization is accompanied by a decrease in the probability of a country being involved in a war, either as a target or as an initiator. These results were obtained with a more current (and corrected) database than was used in earlier work, and our analyses also focus more clearly on the process of transition. In comparison to studies that look only at the existence of change in authority characteristics, we examine the direction, magnitude, and smoothness of the transition process.

### AT: Legal Norms = War

#### Legal norms don’t cause wars

David Luban **10**, law prof at Georgetown, Beyond Traditional Concepts of Lawfare: Carl Schmitt and the Critique of Lawfare, 43 Case W. Res. J. Int'l L. 457

But international humanitarian law and criminal law are not the same thing as wars to end all war or humanitarian military interventions, so Schmitt's important moral warning against ultimate military self-righteousness does not really apply. n59 Nor does "bracketing" war by humanitarian constraints on war-fighting presuppose a vanished order of European public law. The fact is that in nine years of conventional war, the United States has significantly bracketed war-fighting, even against enemies who do not recognize duties of reciprocity. n60 This may frustrate current lawfare critics who complain that American soldiers in Afghanistan are being forced to put down their guns. Bracketing warfare is a decision--Schmitt might call it an existential decision--that rests in part on values that transcend the friend-enemy distinction. Liberal values are not alien extrusions into politics or evasions of politics; they are part of politics, and, as Stephen Holmes argued against Schmitt, liberalism has proven remarkably strong, not weak. n61 We could choose to abandon liberal humanitarianism, and that would be a political decision. It would simply be a bad one.

####  ‘Wars for humanity’ are an ahistorical myth

Benno Gerhard Teschke 11, IR prof at the University of Sussex, “Fatal attraction: a critique of Carl Schmitt's international political and legal theory”, International Theory (2011), 3 : pp 179-227

For at the centre of the heterodox – partly post-structuralist, partly realist – neo-Schmittian analysis stands the conclusion of The Nomos: the thesis of a structural and continuous relation between liberalism and violence (Mouffe 2005, 2007; Odysseos 2007). It suggests that, in sharp contrast to the liberal-cosmopolitan programme of ‘perpetual peace’, the geographical expansion of liberal modernity was accompanied by the intensification and de-formalization of war in the international construction of liberal-constitutional states of law and the production of liberal subjectivities as rights-bearing individuals. Liberal world-ordering proceeds via the conduit of wars for humanity, leading to Schmitt's ‘spaceless universalism’. In this perspective, a straight line is drawn from WWI to the War on Terror to verify Schmitt's long-term prognostic of the 20th century as the age of ‘neutralizations and de-politicizations’ (Schmitt 1993). But this **attempt to** read **the history of 20th century international relations in terms of a succession of confrontations between the carrier-nations of liberal modernity and the criminalized foes at its outer margins** seems unable to comprehend the complexities and specificities of ‘liberal’ world-ordering, then and now. For in the cases of Wilhelmine, Weimar and fascist Germany, the assumption that their conflicts with the Anglo-American liberal-capitalist heartland were grounded in an antagonism between liberal modernity and a recalcitrant Germany outside its geographical and conceptual lines runs counter to the historical evidence. For this reading presupposes that late-Wilhelmine Germany was not already substantially penetrated by capitalism and fully incorporated into the capitalist world economy, posing the question of whether the causes of WWI lay in the capitalist dynamics of inter-imperial rivalry (Blackbourn and Eley 1984), or in processes of belated and incomplete liberal-capitalist development, due to the survival of ‘re-feudalized’ elites in the German state classes and the marriage between ‘rye and iron’ (Wehler 1997). It also assumes that the late-Weimar and early Nazi turn towards the construction of an autarchic German regionalism – Mitteleuropa or Großraum – was not deeply influenced by the international ramifications of the 1929 Great Depression, but premised on a purely political–existentialist assertion of German national identity. Against a reading of the early 20th century conflicts between ‘the liberal West’ and Germany as ‘wars for humanity’ between an expanding liberal modernity and its political exterior, there is more evidence to suggest that these confrontations were interstate conflicts within the crisis-ridden and nationally uneven capitalist project of modernity. Similar objections and caveats to the binary opposition between the Western discourse of liberal humanity against non-liberal foes apply to the more recent period. For how can this optic explain that the ‘liberal West’ coexisted (and keeps coexisting) with a large number of pliant authoritarian client-regimes (Mubarak's Egypt, Suharto's Indonesia, Pahlavi's Iran, Fahd's Saudi-Arabia, even Gaddafi's pre-intervention Libya, to name but a few), which were and are actively managed and supported by the West as anti-liberal Schmittian states of emergency, with concerns for liberal subjectivities and Human Rights secondary to the strategic interests of political and geopolitical stability and economic access? Even in the more obvious cases of Afghanistan, Iraq, and, now, Libya, the idea that Western intervention has to be conceived as an encounter between the liberal project and a series of foes outside its sphere seems to rely on a denial of their antecedent histories as geopolitically and socially contested state-building projects in pro-Western fashion, deeply co-determined by long histories of Western anti-liberal colonial and post-colonial legacies. If these states (or social forces within them) turn against their imperial masters, the conventional policy expression is ‘blowback’. And as the Schmittian analytical vocabulary does not include a conception of human agency and social forces – only friend/enemy groupings and collective political entities governed by executive decision – **it** also lacks the categories of analysis to comprehend the social dynamics that drive the struggles around sovereign power and the eventual overcoming, for example, of Tunisian and Egyptian states of emergency without US-led wars for humanity. Similarly, it seems unlikely that the generic idea of liberal world-ordering and the production of liberal subjectivities can actually explain why Western intervention seems improbable in some cases (e.g. Bahrain, Qatar, Yemen or Syria) and more likely in others (e.g. Serbia, Afghanistan, Iraq, and Libya). Liberal world-ordering consists of differential strategies of building, coordinating, and drawing liberal and anti-liberal states into the Western orbit, and overtly or covertly intervening and refashioning them once they step out of line. These are conflicts within a world, which seem to push the term liberalism beyond its original meaning. The generic Schmittian idea of a liberal ‘spaceless universalism’ sits uncomfortably with the realities of maintaining an America-supervised ‘informal empire’, **which has to manage a persisting interstate system in diverse and case-specific ways**. But it is this persistence of a worldwide system of states, which encase national particularities, which renders challenges to American supremacy possible in the first place.

### Environment

#### Democracy solves environment

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(Quan and Rafael, “The Effects of Liberalism on the Terrestrial Environment” http://cmp.sagepub.com/cgi/content/abstract/24/3/219)

A second set of considerations on the positive role of democracy on environmental quality focuses on the effects of democracy on human life and crisis situations. The famines argument (Sen, 1994) observes that famines tend to promote environmental degradation because they divert attention away from longer-term environmental concerns. Since famines typically do not occur in democracies, argues Sen, environmental quality is expected to be higher in democracies than in autocracies. The human life argument (Gleditsch & Sverdlop, 2003) suggests that since democracies respect human life more than autocracies, they are more responsive to life-threatening environmental degradation. A related argument, the war channel, reasons that to the extent that democracies engage in fewer wars, they should also have a higher level of environmental quality (Gleditsch & Sverdlop, 2003), since war often destroys the environment of the warring parties (Lietzmann & Vest, 1999).