# 1AC

## 1AC – NDT Round 3

### 1AC – Self Defense Advantage

#### CONTENTION 1: SELF-DEFENSE

#### The Bush Doctrine failed to legitimize preventive war but planted the seeds for a future shift in norms---eroding the imminence requirement causes rapid global prolif and war

Dr. Theresa Rheinhold 12, PhD in Political Science from Tübingen University, postdoctoral research fellow at the Social Science Research Center Berlin, Dec 23 2012, Sovereignty and the Responsibility to Protect: The Power of Norms and the Norms of the Powerful, Ch 5: The Duty to Prevent, p. 148, google books

In sum, the present case study has thrown into sharp relief the limits of hegemonic law-making. Whereas the cases discussed in Chapters 3 and 4 testified to the significant influence of powerful states on the international legal architecture, this chapter has demonstrated the autonomy of the law from attempts at political usurpation. The overall lesson is that if the cognitive dissonance between the hegemon’s claims and existing legal norms is too blatant, hegemonic law-making is doomed to fail. In Chapter 2 I explained that, even though in hegemonic societies domination against “pariah” or “outlaw” elements may persist, this is only possible if society at large condones such discrimination. The case study on the duty to prevent has shown that the international community is clearly not willing to take the discriminatory approach against outlaw states to its logical extreme and sanction unilateral military intervention by a self-styled global Leviathan. The Bush administration’s preventive war rhetoric was aimed at expanding the sovereign prerogatives of some (the United States) while at the same time making sovereignty more conditional for others. Choosing the “wrong side of history” (Luke 1994: 55) can be fatal for regime survival, as Saddam Hussein painfully experienced in 2003. Yet the factual assumption of the role of a global Leviathan by the United States as well as the concomitant relegation of other states to the status of second-class sovereigns has not received intersubjective recognition, and hence the duty to prevent has not ripened into a customary norm. The United States was neither able to legitimize the duty to prevent by creating analogy to past state practice, nor could it prove its concordance with existing universal (extra-legal) values, nor could it convince a sufficiently large number of states that the proposed duty to prevent constituted a necessary change to existing norms. Although designed to contain the proliferation of nuclear weapons to rogue regimes and non-state actors, the duty to prevent could ultimately have the perverse effect of accelerating the spread of WMD, thus ultimately making the world less, not more secure. In an international system governed by a clear-cut prohibition on the use of force which only allows for narrowly circumscribed exceptions the security dilemma does exist, but it is manageable. In a world, however, in which no such restrictive rules exist, a world in which each state basically arrogates to itself the Schmittian right to decide upon the exception – in such a world, the security dilemma is unmanageable. This may well lead many states to conclude that the best defense against a preventive attack is the acquisition of WMD as a means of deterrence. The example of North Korea shows that once a nuclear program has become mature, there is not much the world can do about it.¶ One of the goals of the drafters of the UN Charter was to lay down a restrictive concept of just war. It is true that the UN charter was drafted at a time when the gravity of the threat emanating from nuclear weapons could not be anticipated – therefore the NSS’s argument that this new generation of threats requires new rules should not be dismissed lightly. However, the fundamental problem with the rule proposed by the United States is that it revives an expansive notion of just war. The NSS does not clearly specify the triggers for preventive action and fails to comment on what role, if any, the Security Council would have in any decision on the use of force against rogue states. If the Caroline criterion of imminence is no longer valid, where does one draw the line? For instance, would the mere possession of WMD justify preventive war? This would mean that Iran could legitimately target Israel, Pakistan could attack India, and many states could use force against France, Great Britain, Russia, China, and the United States. Should the criterion of WMD-possession thus be complemented by the criterion of hostile intent? While this may sound appealing at first, it does in fact not make the use of force any less permissive, because the judgment of hostile intent is ultimately a subjective one. If the UN Security Council loses its monopoly on the definition of threats to international peace and security, this would take us back to the realist scenario of an unmitigated security dilemma.¶ On the basis of the indicators provided by the norm life-cycle, the duty to prevent must currently be located in stage one (norm emergence). After 9/11 the Bush administration engaged in strategic social construction by framing the issue of nuclear-armed rogue states as a grave threat to international security – a claim which received intersubjective legitimation in various Charter VII resolutions passed by the UN Security Council. However, thus far Washington has failed to convince a sufficient majority of states that appropriate remedies for the threat posed by these pariah states include the unilateral preventive use of force. As we recall from Chapter 2, a behavioral regularity in itself is insufficient to give rise to a new customary rule but must be complemented by a corresponding opinio juris. In the case of the duty to prevent, we have merely two instances of the exercise of naked, illegitimate state power (Osirak 1981 and Iraq 2003) and no intersubjective consensus about the legality of preventive war. In sum, neither the material nor the psychological criterion of custom formation is met – hence, no right, let alone duty to prevent exists under current international law. Washington’s decision to ultimately refrain from invoking the preventive war doctrine when justifying the war against Iraq in its letter to the UN Security Council suggests that the intervening party itself had second thoughts about the legality of preventive self-defense, which further undermines the position of those who argue in favor of a legal right to preventive war.¶ Yet the debate over the legitimacy of preventive war has not only reaffirmed the primary rules of international law on the use of force but has moreover bolstered the traditional approach to custom formation which draws a clear distinction between what the law is and what the law ought to be. The NSS – and its proponents in academia – sought to legitimize the duty to prevent by representing it as a widely recognized legal right, i.e., by conflating the controversial notion of prevention with the accepted concept of preemption. They argue that the concept of imminence is obsolete because they believe it to be obsolete, i.e., they advance statements of de lege ferenda cloaked as lex lata, which is a defining feature of the modern approach to custom formation. As we have seen in this chapter, however, this line of reasoning has been rejected by most states and legal scholars around the world. Another feature of the modern approach is its disregard for the principles of sovereign equality and state consent. The present case study, however, has underlined states’ continuing attachment to these principles. The Non-Proliferation Treaty does not divide states into responsible versus irresponsible ones, but is premised on the assumption that all signatories have an equal right to a peaceful nuclear program, irrespective of the nature of their regimes. It treats Tehran no differently than Tokyo. American rogue state rhetoric, by contrast, aims at constructing a system of stratified sovereignty. This type of liberalism is not the laissez-faire liberalism of the UN Charter but a liberalism whose defining feature is the intolerance of the illiberal. It allocates sovereign privileges on the basis of respect for certain international rules of the game and adherence to good governance standards at home. However, due to wide-spread international opposition to the proposed duty to prevent, the “law desired” by the Bush administration has not become the “law established” for all, as Weil feared (1983: 441). Instead, the law established for all remains the law on self-defense enshrined in the UN Charter, complemented by the Webster formula which articulates customary international law on self-defense.¶ Nonetheless, proclaiming the “death” of the Bush doctrine (Daalder 2004) may be premature. Although it is true that international normative structures are rather inert, and that Article 2(4) is probably the most deeply entrenched international norm, an external shock of sufficient gravity (such as WMD terrorism) may lead to a wholesale revision of the Charter’s framework on the use of force and legitimize the notion of a duty to prevent. If the world were to witness a replay of the catastrophic terrorist attacks of 9/11 – this time involving WMD – this would drastically influence global threat perceptions, and would likely precipitate a loosening of the restraints on the use of force. Although the United States has not achieved a revision of the international norms governing self-defense, the steps usually preceding normative change have been taken, i.e., the United States has succeeded in shaping the international agenda by making the alleged nuclear weapons aspirations of some states issues that deserve deliberation (and ultimately sanctions), while ensuring that the actually existing nuclear arsenal of other states remain “non-issues”. Put differently, Washington managed to create a “threat” virtually out of the blue (in the case of Iraq), and convinced the Security Council that two other rogue regimes (North Korea and Iran) constitute threats to international peace and security and must be sanctioned, all the while preventing the Council from sanctioning the nuclear weapons capabilities of US allies such as Israel or India. The nuclear threat conjured up by Washington has not (yet) been proven (in the case of Iran), or turned out to be fictitious (in the case of Iraq). It is therefore remarkable to what extent the international community has come to share US threat perceptions based on the strategic social construction of irresponsible sovereigns allegedly aiming to threaten the peace of the world. The international community’s future response to Iran’s nuclear aspirations will shed further light on the development of the duty to prevent in international law. If, as newspaper reports indicate, Israel is seriously considering a preventive attack on Iran’s nuclear facilities (Bergman 2012), then much depends on the reactions of the international community. Outright international endorsement or at least tacit acquiescence would contribute to the formation of opinion juris on the legality of the duty to prevent, whereas a condemnation of the strikes would reinforce the existing intersubjective consensus on restrictive rules on anticipatory self-defense, thrown into sharp relief by the Iraq war.

#### Current US TK policies are driving a global shift in strategic doctrine toward preventive self-defense---results in nuclear war

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

#### Limiting self-defense avoids preventive war---US norms are modeled

Beau Barnes 12, J.D. Candidate, Boston University School of Law, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2150874

The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos.”148¶ Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration’s national security policy, sapping U.S. credibility. The Administration’s National Security Strategy emphasizes U.S. “moral leadership,” basing its approach to U.S. security in large part on “pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests.”149 Defense Department General Counsel Jeh Johnson has argued that “[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.”150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States “must not make [legal authority] up to suit the moment.”151 The Obama Administration’s global counterterrorism strategy is to “adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy” of “turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation.”152¶ Widely accepted legal arguments also facilitate cooperation from U.S. allies, especially from the United States’ European allies, who have been wary of expansive U.S. legal interpretations.153 Moreover, U.S. strategy vis-à-vis China focuses on binding that nation to international norms as it gains power in East Asia.154 The United States is an international “standard-bearer” that “sets norms that are mimicked by others,”155 and the Obama Administration acknowledges that its drone strikes act in a quasi-precedential fashion.156 Risking the obsolescence of the AUMF would force the United States into an “aggressive interpretation” of international legal authority,157 not just discrediting its own rationale, but facilitating that rationale’s destabilizing adoption by nations around the world.158

#### US justifications for targeted killing will spill over to erode legal restraints on all violence --- causes strikes on rogue military facilities

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

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

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

#### Expansive self-defense causes Iranian strikes on Israeli nuclear scientists---causes global nuclear war

Noura Erakat 13, Abraham L. Freedman Teaching Fellow at Temple University, "New Imminence in the Time of Obama: The Impact of Targeted Killings on the Law of Self Defense", Arizona Law Review, SSRN

In addition to putting at risk the international regulation of the use of force, the U.S.’s redefinition of imminence and legal self-defense may also violate the principle of reciprocity thereby undermining the equality of states.227 International law is based on the theory that all states are equal to one another regardless of size or power.228 Therefore, what is available to one nation in its defense of self should be equally available to all other nations per the principle of reciprocity.229 By consistently advancing new imminence in practice, the U.S. may be planting the seed for a new customary law regarding permissible use of force in anticipatory self-defense.230 On the other hand, it may insist that such a right belongs only to itself and its allies, in which case, the U.S. is undermining the equality of states.231 If the U.S. retains an exclusive right to such practice, it is effectively declaring that it is exercising a privilege as global superpower, and not a sovereign right that belongs to all other states.232 Alternatively, if other states are permitted to use similar force based on the new imminence, this poses great challenges to the regulation of the use of force globally.233 ¶ Neither scenario bodes well for the rule of law. Consider, for example, the case of Iran and Israel.¶ Israel has historically applied the new imminence to kill individuals in the Occupied Palestinian Territory and beyond without objection from the U.S. 234 More recently, Israel has made repeated threats to preemptively strike Iran to curtail its nuclear ambitions.235 Amid reports that he has been trying to persuade his cabinet to support an attack on Iran,236 Prime Minister Binyamin Netanyahu has made numerous public statements vaguely threatening a strike. At the opening of the 2011 Knesset winter session, Netanyahu declared that among Israel’s guiding principles, is the principle that if ‘[i]f someone comes to kill you, rise up and kill him first.’237 In a UN speech in early 2012, he warned that Iran’s nuclear ambitions must be stopped “before it’s too late.”238 Several other Israeli officials have suggested that Israel had the right and the desire to preemptively strike Iran, thereby indicating a national policy. 239 Such a strike would be tantamount to preventive war and raises the question, whether the Obama Administration limits its new imminence to cases involving non-state actors only, thereby distinguishing itself from the Bush Administration, which applied it to states as well. Nevertheless, it is very plausible that the U.S. may tolerate a preemptive Israeli strike on Iran.240 Would it respond with similar approbation, however, if Iran preemptively attacked Israel in self-defense based on new imminence? ¶ Under new imminence, Iran can legitimately kill Israeli nuclear scientists in anticipatory self-defense.241 Iran can demonstrate that there exists a very likely probability that Israel will strike it, based upon Israel’s history of violent attack (i.e., 1982 attack on Iraq’s Osirak nuclear reactor) together with its intent to strike Iran today (i.e., official Israeli statements), and a capacity to do so. Although much of its nuclear program remains shrouded in secrecy, experts have estimated Israel has nearly four-hundred nuclear devices, delivery systems with a range that reaches far beyond Iran, and the ability to deliver nuclear weapons by submarine or jet fighter.242 In late 2011, Israel test-fired a Jericho missile capable of reaching Iran.243 Based upon the U.S.’s redefinition of imminence, Iran can legitimately launch a preemptive strike against Israel. ¶ An Iranian targeted killing of Israeli scientists deemed critical for a nuclear attack against Iran would be destabilizing not just for Israel, and a conflict-ridden Middle East, but for the entire world. At worst, it has the potential to draw several other state actors into a devastating armed conflict.244 Additionally, unless Iran approached the UN Security Council to present its case and demonstrate that it had exhausted all other pacific means to avert an inevitable Israeli strike, it would undermine the UN Security Council’s authority to maintain international peace and security.245 In light of the U.S.s unique alliance with Israel, it will likely enter an armed conflict and use its authority in the Security Council to condemn Iran’s attack.246 While such condemnation would be deserved and rightly placed, it would also illustrate a stark double-standard that limits the use of new imminence to the U.S. and its allies, thereby undermining the principle of reciprocity.247

#### Defense doesn’t assume a world of preventive war----independently causes global nuclear conflicts

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

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

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

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

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

#### Specifically causes a Chinese attack on US missile defense

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

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

#### That goes nuclear

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

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

#### And expansive self-defense makes Indo-Pak war inevitable

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Predictably, however, muted international criticism of the U.S. attacks on Afghanistan, which were carried out on the basis of self-defense in response to terrorism, has had tremendous negative ramifications for both respect for international law and global peace and stability. For instance, it has provided an impetus to many states to freely and disproportionately attack other states on the basis of terrorism either on whim or pretext, 171 and it has perpetuated the development of unacceptable attitudes such as the Bush Doctrine, which also allows for use of force against non - imminent threats. 172 For example, the United States justified the long drawn ― Operation Iraqi Freedom ‖ on the basis of terrorism. 173 Disproportionate Israeli armed attacks and incursions in Lebanon 174 and Gaza, 175 which caused immense civilian casualties and suffering, were also based on the same self-defense and terrorism connections . 176 These developments greatly endangered international peace and security. What is more disturbing is that this espoused framework of preemptive and retaliatory acts, when justified on the basis of a terrorist connection, however tenuous the connection might be, has serious potential to ignite a much more dangerous armed conflict involving the use of nuclear weapons, for instance between Pakistan and India. 177

#### Extinction

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

The greatest threat to regional security (although curiously not at the top of most lists of U.S. regional concerns) is the possibility that increased India-Pakistan tension will erupt into all-out warthat could quickly escalate into a nuclear exchange. Indeed, in just the past two decades, the two neighbors have come perilously close to war on several occasions. India and Pakistan remain the most likely belligerents in the world to engage in nuclear war. Due to an Indian preponderance of conventional forces, Pakistan would have a strong incentive to use its nuclear arsenal very early on before a routing of its military installations and weaker conventional forces. In the event of conflict, Pakistan’s only chance of survival would be the early use of its nuclear arsenal to inflict unacceptable damage to Indian military and (much more likely) civilian targets. By raising the stakes to unacceptable levels, Pakistan would hope that India would step away from the brink. However, it is equally likely that India would respond in kind, with escalation ensuing. Neither state possesses tactical nuclear weapons, but both possess scores of city-sized bombs like those used on Hiroshima and Nagasaki. Furthermore, as more damage was inflicted (or as the result of a decapitating strike), command and control elements would be disabled, leaving individual commanders to respondin an environment increasingly clouded by the fog of war and decreasing the likelihood that either government (what would be left of them) would be able to guarantee that their forces would follow a negotiated settlement or phased reduction in hostilities. As a result any suchconflict would likely continue to escalateuntil one side incurred an unacceptable or wholly debilitating level of injury or exhausted its nuclear arsenal. A nuclear conflict in the subcontinentwould havedisastrous effects on the world as a whole. In a January 2010 paper published in Scientific American, climatology professors Alan Robock and Owen Brian Toon forecast the global repercussionsof a regional nuclear war. Their results are strikingly similar to those of studies conducted in 1980 that conclude that a nuclear war between the United States and the Soviet Union wouldresult in acatastrophic and prolonged nuclear winter,which could very well place the survival of the human race in jeopardy. In their study, Robock and Toon use computer models to simulate the effect of a nuclear exchange between India and Pakistan in which each were to use roughly half their existing arsenals (50 apiece). Since Indian and Pakistani nuclear devices are strategic rather than tactical, the likely targets would be major population centers. Owing to the population densities of urban centers in both nations, the number of direct casualties could climb as high as 20 million. The fallout of such an exchange would not merely be limited to the immediate area. First, the detonation of a large number of nuclear devices would propel as much as seven million metric tons of ash, soot, smoke, and debris as high as the lower stratosphere. Owing to their small size (less than a tenth of a micron) and a lack of precipitation at this altitude, ash particles would remain aloft for as long as a decade, during which time the world would remain perpetually overcast. Furthermore, these particles would soak up heat from the sun, generating intense heat in the upper atmosphere that would severely damage the earth’s ozone layer. The inability of sunlight to penetrate through the smoke and dust would lead toglobal cooling by as much as 2.3 degrees Fahrenheit. This shift in global temperature would lead to more drought, worldwide food shortages, and widespread political upheaval. Although the likelihood of this doomsday scenario remains relatively low, the consequences are dire enough to warrant greater U.S. and international attention. Furthermore, due to the ongoing conflict over Kashmir and the deep animus held between India and Pakistan, it might not take much to set them off. Indeed, following the successful U.S. raid on bin Laden’s compound, several members of India’s security apparatus along with conservative politicians have argued that India should emulate the SEAL Team Six raid and launch their own cross-border incursions to nab or kill anti-Indian terrorists, either preemptively or after the fact. Such provocative action could very well lead to all-out war between the two that could quickly escalate.

### 1AC – New

#### CONTENTION 2: YEMEN

#### Accountability mechanisms that constrain the executive prevent drone overuse in Yemen---that’s key to stability

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

Use-of-force decisions that avoid accountability are problematic for both functional and normative reasons. Functionally, accountability avoidance yields increased risk-taking and increases the likelihood of policy failure. The constraints imposed by political, supervisory, fiscal, and legal accountability "make[] leaders reluctant to engage in foolhardy military expeditions... . If the caution about military adventure is translated into general risk-aversion when it comes to unnecessary military engagements, then there will likely be a distributional effect on the success rates of [democracies]." n205 Indeed, this result is predicted by the structural explanation of the democratic peace. It also explains why policies that rely on covert action - action that is necessarily less constrained by accountability mechanisms - carry an increased risk of failure. n206 Thus, although accountability avoidance seductively holds out the prospect of flexibility and freedom of action for policymakers, it may ultimately prove counterproductive.¶ In fact, policy failure associated with the overreliance on force - due at least in part to lowered barriers from drone-enabled accountability avoidance - may be occurring already. Airstrikes are deeply unpopular in both Yemen n207 and Pakistan, n208 and although the strikes have proven critical [\*421] to degrading al-Qaeda and associated forces in Pakistan, increased uses of force may be contributing to instability, the spread of militancy, and the failure of U.S. policy objectives there. n209 Similarly, the success of drone [\*422] strikes in Pakistan must be balanced against the costs associated with the increasingly contentious U.S.-Pakistani relationship, which is attributable at least in part to the number and intensity of drone strikes. n210 These costs include undermining the civilian Pakistani government and contributing to the closure of Pakistan to NATO supplies transiting to Afghanistan, n211 thus forcing the U.S. and NATO to rely instead on several repressive central Asian states. n212 Arguably the damage to U.S.-Pakistan relations and the destabilizing influence of U.S. operations in Yemen would be mitigated by fewer such operations - and there would be fewer U.S. operations in both Pakistan and Yemen if U.S. policymakers were more constrained by use-of-force accountability mechanisms.

#### Current broad definitions of imminent threat guarantee blowback and collateral damage

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

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

#### The aff’s the middle ground---allows high-value strikes while avoiding the bad ones

John Odle 13, J.D. from Emory School of Law, "Targeted Killings in Yemen and Somalia: Can the United States Target Low-Level Terrorists?", Emory International Law Review, www.law.emory.edu/fileadmin/journals/eilr/27/27.1/Odle.pdf

B. Analysis Under Self-Defense ¶ In the case where the United States does not obtain consent to use force in Yemen or Somalia, the United States could justify its use of force against AQAP in Yemen or Al-Shabab in Somalia under the international law of self-defense.295 One of the main requirements of the U.S. counterterrorism policy that was approved in 2013 is that lethal force will only be used to stop “a continuing, imminent threat to U.S. persons . . . [when] the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons.”296 While requiring that the threat be continuing, imminent, and necessary would satisfy the international law of self-defense, under a self-defense analysis, the United States would not be justified in targeting low-level members of AQAP and Al-Shabab when the involvement of those low-level members in any future armed attacks is too attenuated to satisfy the necessity, proportionality and imminence requirements; the involvement of lower-level members is often too attenuated unless an attack is just about to occur and the United States knows that the lower-level members are participating.297 However, the United States can still target operational-level terrorist leaders, provided there is some intelligence that they planning actual terrorist attacks against the United States.298

#### Overuse of targeted killings in Yemen fuels instability

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

Civilian deaths have bred resentments on a local level, sometimes undermining U.S. efforts to turn the public against the militants. The backlash in Yemen is still not as large as in Pakistan, where there is heavy pressure on the government to force limits on strikes — but public calls for a halt to strikes are starting to emerge.¶ In May, President Obama promised to increase transparency on the drone strike program and enhance guidelines on their use. But the Bureau of Investigative Journalism found in November that the six months following Obama's speech actually saw an increase of drone strike casualties in Yemen and Pakistan. ¶ Human Rights Watch and Amnesty International reported in October that civilian casualties of drone strikes are higher than the U.S. admits. Around the same time, a U.N. human rights investigator said 400-600 of the 2,200 people killed by drones in the past decade were noncombatants. And in 2012, reports emerged that the Yemeni government works to help the U.S. hide it deadly errors. ¶ Data on drone strikes, like all counter-terrorism efforts, is necessarily shrouded in mystery, making it difficult to measure success. But if drone strikes continue to indiscriminately kill civilians, moderates in Yemen may be driven towards more extremist positions. Even governments working with Washington to coordinate the strikes could turn against the U.S. if drone casualties are not scaled back or eliminated.

#### Excessive strikes in Yemen undermine Hadi’s legitimacy---wrecks the GCC initiative

Robert Sharp 14, International Policy Digest, "Revisiting the Use of Drones in Yemen", January 12, www.internationalpolicydigest.org/2014/01/12/revisiting-use-drones-yemen/

President Hadi faces a real challenge in 2014. If he presses to stop drone attacks he knows he will be giving into AQAP demands and may also weaken his country’s ability to adequetly confront the millitants who are seeking his downfall, and in the process, turn Yemen into another safe haven similar to Afghanistan, pre-2001.¶ Yemen’s military alone cannot defeat AQAP and it needs the support of the United States. President Hadi is also managing the next steps of the troublesome National Dialogue Conference which appears to be making progress and emerges as a workable federal structure. Spoilers will use the drone issue as leverage to threaten the progress with the GCC initiative and mechanism for Yemen’s future. All could come undone.¶ Maybe it is time to review U.S. policy for the use of drones and limit their use to pre-April 2012 levels. Possibly, the width of the aperture could be adjusted to reduce the risk of collateral damage and/or drones could also specifically be used to target militants who cut electricity lines and blow up oil pipelines which would help support the Yemeni government provide essential services. Whatever the case, the central discussion is that for Yemen the continued unfettered use of drones is clearly undermining their utility. The healthy debate will drone on!

#### Collapses Middle East arms control

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Yemen’s ongoing domestic crisis has profound regional and global implications. This is due to the country’s unique combination of a geostrategically sensitive location, the stubborn weakness of state institutions, linkages with transnational terrorism, a prominent role in the regional weapons market, and, crucially, the suspected existence and use of nerve gas. These inter-related challenges might constitute a serious impediment to the short-term success and long-term sustainability of the Middle East Conference (MEC). This gathering on the establishment of a regional zone free of weapons of mass destruction (WMD) and their delivery vehicles (DVs) was mandated by the 2010 Review Conference of the Nuclear Non-Proliferation Treaty (NPT).In this context, Yemen’s ongoing domestic crisis thus requires urgent attention by policy-makers in the region and beyond.¶ The Importance of Yemen in the Context of the Middle East Conference ¶ While in a geographical and political sense Yemen is far from being a central actor in the envisioned MEC, its political future could easily shape the gathering on several levels. First, the Middle East Conference aims at establishing a WMD/DVs Free Zone. On the one hand, Yemen is a party to all three legal documents banning weapons of mass destruction: the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention (BTWC), and the Chemical Weapons Convention (CWC).In addition, Sana’a has embraced the Gulf Cooperation Council’s (GCC) call for a Gulf WMD Free Zone, independent of Israeli nuclear policy. On the other hand, when it comes to the problématique of WMD and proliferation, Yemen might store chemical weapons, depending on whether rumors about the use of nerve gas against anti-government protesters in early 2011 turnout to be true. In addition, Yemen imported various WMD-capable aircraft and missiles and probably still operates most of them (see Table No. 1). In the aircraft realm, Yemeni decision-makers from the North, the South, and the unified country alike have mostly received Soviet/Russian fighter jets andbombers.1¶ The current level of instability and the threat of further deterioration could thus spoil any serious arms control effort in Yemen. This is particularly troublesome since the country, given its history and affiliation with the Arab League, will have to be part of far-reaching regional disarmament initiatives. The prospect of an Arab state with an uncon-trolled chemical arsenal is likely to affect Israeli and Iranian calculations with regard to the MEC. Both states are suspicious of the Arab League and tensions between Iran and Saudi Arabia, which is particularly influ-ential in Yemen, have recently worsened. ¶ Second, with a long history as one of the region’s eminent weapons markets, Yemen has the potential to serve as a major gateway for illicit weapons, both conventional and unconventional, entering the Arab peninsula and other parts of the Arab East. If the situation escalates, states with an interest in such technology might, for instance, try to obtain missiles and their spare parts or attempt to gain access to sensitive material from the country’s suspected chemical warheads. This could contribute to the proliferation of delivery systems as well as WMD thereby undermining the MEC. In 2011, protesters seized an army base in Sana’a, while Al-Qaeda in the Arab Peninsula (AQAP) has, on a frequent basis, been able to temporarily control several cities and launch deadly assaults on military bases in the southern province of Abyan. Such developments could offer AQAP the chance to use existing dual-use laboratories or even to build their own facilities capable of producing biological and chemical material in remote areas under their control.

#### Further instability in Yemen trades off conservation efforts in Socotra

Mohammed Yahia 11, editor at Nature Middle East- for over three years, Mohammed has worked on raising the profile of science and science journalism in the Middle East. He graduated from Cairo University with a bachelor degree in Pharmacy and Pharmacology, “Foreign researchers flee Yemen leaving conservation programmes in trouble”, 3/22, <http://www.nature.com/nmiddleeast/2011/110322/full/nmiddleeast.2011.36.html>]

Public protests in Yemen that began on 27 January have escalated, with security forces now using extreme violence to disperse demonstrators. Snipers killed over 50 people last Friday with shots mostly in the heads and chests. Several generals and soldiers have defected and now side with the protesters. As Western countries warn their citizens against travel to the country and are evacuating those already there, **biologists are worried that conservation efforts in one of the region's richest areas for biodiversity, is under threat. Socotra Archipelago**, dubbed the Galápagos of the Indian Ocean**, is one such place** concerning biologists. It lies about 380 kilometres south of mainland Yemen in the Arabian Sea. The main island, Socotra, is the largest Arabian island. With over 300 unique plant species, a third of the island's flora is endemic, found nowhere else in the world. More than 90% of the reptile species on the island are unique. "In marine habitats, the extensive coral reefs bordering the island harbour a remarkably high biodiversity and provide an important source for local inhabitants. Both local culture and nature are strongly intertwined and mutually dependent," says Kay van Damme, an ecologist at Ghent University, Belgium, and chairman of Friends of Socotra. "Islands fascinate biologists because of a disproportionately large number of unique species, occurring on a relatively small area," he explains. The relative isolation of islands makes them ideal for biologists to study speciation and evolution. Unique life forms "Socotra Archipelago is interesting to biologists because it is an old, continental island, an ancient part of South Arabia that separated at the opening of the Gulf of Aden. It contains several plant and animal species no longer found, or no longer common, in Arabia or Africa and went extinct through time because of increased aridity," he adds. In 2008, Socotra was designated a world natural heritage site by the United Nations Educational, Scientific and Cultural Organization (UNESCO). Its unique and strange selection of flora and fauna has fascinated scientists for decades. The species Dragon's Blood Tree (Dracaena cinnabari) and the genus of strange, freshwater crabs, Socotrapotamon, are examples of some of the island's relicts. "**Conservation in Yemen is centrally-based, depending largely on international support.** Therefore changes or instabilities are thought to have indirect and direct effects on biodiversity," says van Damme. Abdul Karim Nasher, a zoologist at Sana'a University, Yemen, and editor-in-chief of the Yemeni Journal of Science, worries what affect the escalating tension will have on biological research on the island. "Right now most of the [conservation] work on Socatra comes from international agencies and overseas research centres. The Yemenis involved are very few. **Because of the unstable situation,** many of the colleagues who used to visit us will not be able to come anymore." "**International researchers are being pulled back** to their respective countries or requested to stay available for possible evacuation. Advised against all but essential visits by most Western governments, the doors towards Yemen close as embassies assess safety risks," says van Damme. Researchers that have left Yemen are uncertain when they can return to Yemen or when their respective countries will give clearance again. Endangered conservation efforts Yemen is the poorest Arab state, and one of the least developed countries in the world. The island in particular has few schools and suffers from a high infant mortality rate. For the residents of Socotra, ecotourism became a major source of income in the mid-1990s. "This was something that the conservation programmes on Socotra have actively encouraged," says Tony Miller, director of the Centre of Middle Eastern Plants at the Royal Botanic Garden in Edinburgh. The present situation could scare tourists off, cutting a major source of income for many people and leading them to look for alternative sources by turning to the natural world. "Over-grazing and unsustainable exploitation of plant resources increases, which in turn leads to environmental degradation — this happens very rapidly in arid and semi-arid tropical and sub-tropical environments." **As the uprising in Yemen continues, the uncertainty is having irreversible effects on biodiversity in Socotra. "Conservation depends on infrastructure, which in turn depends on long-term commitment from international organizations,**" says van Damme. **The weakening of international commitment may break down this infrastructure. Exploitation of terrestrial and marine ecosystems could quickly follow, he warns**.

#### We’re at a biodiversity crossroads---protecting Socotra is key to prevent a negative cascade

Kay Van Damme 11, is a hydrobiologist at Ghent University in Belgium, has extensively explored the freshwater and cave ecosystems of Socotra and Lisa Banfield works at the Centre for Middle Eastern Plants, Royal Botanical Gardens Edinburgh, Edinburgh, United Kingdom, “Past and present human impacts on the biodiversity of Socotra Island (Yemen): implications for future conservation,” <http://www.kasparek-verlag.de/PDF%20Abstracts/PDF-SUPP3%20Weboptimiert/031-088%20VanDammeBanfield.pdf>

The United Nations declared 2010 as the International Year of Biodiversity, “a celebration of life on earth and of the value of biodiversity for our lives” (CBD 2010). At the same time, **our planet is facing a new biodiversity crisis,** dubbed by some as **the sixth mass extinction,** caused by human activities (PURVIS et al. 2000a, NOVACEK 2009). Rates of extinction are presently regarded as 1,000-10,000 times the geological background rate (PIMM et al. 1995). **Protecting biodiversity has never been as pressing. Nowhere on earth is biodiversity more** apparent and **in need** of urgent attention **than on islands** (PAULAY 1994). Recently illustrated by DA FONSECA et al. (2006), islands cover 5% of the global land surface, yet their number of endemics is highly disproportionate: about 20% of the world’s vascular plant diversity and 15% of the world’s mammals, birds and amphibians are found only on islands. Island plants and terrestrial vertebrates are more likely to be classified as endangered than those on continents (GROOMBRIDGE 1992). Considered biological hotspots and evolutionary engines, islands receive much attention in conservation because of their high taxonomic uniqueness, endemism and habitat rarity (DA FONSECA et al. 2006). However, **island biotas are more prone to extinction than continents due to their isolation and small population sizes**. Island endemics are likely to have small geographical ranges and hence small populations, mostly evolved in isolation from predators/competitors (including humans) hence more vulnerable to exploitation and introduction (PIMM 1991). Small populations are more likely to die out than large ones due to genetic factors (FRANKHAM 1997; PURVIS et al. 2000a). Different approaches are needed in conservation of islands versus continents (WHITTAKER 1998). **Human-mediated disturbances have catastrophic effects on island ecosystems over short timescales**, regardless of the fact that insular biota evolved and persisted under extreme climatic conditions over long periods (CRONK 1997). “It is only when we turn to islands that man's negative impact on biotic diversity can be truly appreciated so far” (OLSON 1989). There are four main mechanisms through which humans reduce island biodiversity (WHITTAKER 1998): (1) direct predation, (2) introduction of non-native species, (3) spread of disease caused by exotic competitors, and (4) habitat degradation. The relative importance of these mechanisms is subject to debate. In a global context, habitat loss and degradation together with fragmentation are commonly seen as the major threat to biodiversity, yet on islands introduced species may perhaps be even more important (e.g. GROOMBRIDGE 1992; see below). **The synergy between impacts and possible cascade effects results in an inevitable loss of biodiversity on islands**. On most of the world’s islands, basic studies on the impacts and relationships with biodiversity have been carried out and situated within a historical context. On Socotra, such focused studies have not started yet. TheSocotraArchipelago (Yemen) is the largest, biologically most diverse island group in the Arabian Region. It is located 380 km southeast of the coast of Yemen and ca. 100 km east of the Horn of Africa. For recent descriptions and maps of the island, we refer to VAN DAMME (2009), CHEUNG & DEVANTIER (2006) and MILLER & MORRIS (2004), basic sources for this paragraph. The archipelago consists of a major island in the east (Socotra Island), ca. 130 km long and 40 km wide, three smaller islands Samha, Darsa and Abd al Kuri to the west and a few rocky limestone outcrops. The largest island is populated by at least 50,000 inhabitants (ELIE 2008, IUCN 2008, UNEP/WCMC 2008a, KLAUS et al. 2003), with the highest concentration in the towns of Hadiboh and Qalansiyah. The population is increasing and there are high numbers of seasonal immigrants from the mainland, with yearly urban expansion. **Socotra can be considered an insular hotspot with exceptionally high marine and terrestrial biodiversity, internationally recognized for its uniqueness**: a UNESCO World Heritage (2008); UNESCO MAB (2003); WWF Global 200 Terrestrial Ecoregion (Socotra Island xeric shrublands); WWF Freshwater Ecoregion (n°52); Plantlife International Centre of Plant Diversity and part of Conservation International’s Horn of Africa Hotspot. The island is continental, not oceanic.

#### Socotran ecosystems are not resilient---failure to act soon guarantees rapid ecosystem collapse that threatens global spread

Kay van Damme 11, hydrobiologist at Ghent University in Belgium, has extensively explored the freshwater and cave ecosystems of Socotra, “Insular biodiversity in a changing world”, 5/25, <http://www.nature.com/nmiddleeast/2011/110525/full/nmiddleeast.2011.61.html>

How long a species has been around is no guarantee of its resilience against one of the younger, more invasive species on the planet: humans. **We are witnesses and instigators of a global biodiversity crisis, the first human-mediated mass extinction in the planet's history**, which the renowned American paleontologist Niles Eldredge refers to as the 'sixth extinction'. The human impact on Socotra's ecosystems remained relatively low until a few decades ago, in comparison to many other islands of the world. For example, Socotra has lost none of its unique terrestrial bird, reptile or mollusk species in the last century2. **The island is not invulnerable**, however. Researchers from international institutes such as Ghent University, Belgium, the Royal Botanical Garden Edinburgh, United Kingdom, Birdlife International and Senkenberg Research Institute, Germany, closely interact with local authorities on biodiversity and conservation issues. Recently, two such researchers, Lisa Banfield and myself, combined botanical and zoological experience on the island and examined the contemporary issues of terrestrial biodiversity in Socotra in a historical context2. Challenges are relatively new but quickly spreading. They include well-known causes for global insular biodiversity loss (including habitat fragmentation, over-exploitation and loss of traditional knowledge). Tourism has increased exponentially over the past decade and is concentrated in the few months at the end of the year when tourists converge on the most sensitive protected areas of the island. In 2010, the Socotra Tourism Office officially recorded 3,788 foreign visitors, of which 95% were tourists (Socotra Governance and Biodiversity Project, UNDP, pers. comm.). The situation parallels that of the Galapagos in the early 1970s, where tourism boomed but was ultimately held responsible as one of the major underlying causes for local ecosystem decline 30-40 years later2. Facing a looming wave of extinction, **the biodiversity of Socotra is at stake. The time to act is now — not in 20 or 30 years, when extinctions will have caused unforeseen cascade effects in the weakened ecosystems**. On an island, people and the environment are more closely connected than on continents and changes in the ecosystems can irreversibly affect the local inhabitants in the long term. When biologists talk about biodiversity and stability, they mostly refer to the effects of biological changes and diversity on the functioning of ecosystems. But what is the effect of political instability on biodiversity? Major causes of biodiversity loss are often political, not biological3. **New challenges arise with increased instability in the region**. The Middle East is changing — and fast. How can we ensure the protection of biodiversity in a rapidly changing world?

#### Extinction

Dana Clark 6, Center for International Environmental Law, and David Downes, US Interior Dept. Policy Analysis Senior Trade Advisor, 2006, What price biodiversity?, http://www.ciel.org/Publications/summary.html

Biodiversity is the diversity of life on earth, on which **we depend for our survival**. The variability of and within species and ecosystems helps provide some of our basic needs: food, shelter, and medicine, as well as recreational, cultural, spiritual and aesthetic benefits. Diverse ecosystems create the air we breathe, enrich the soil we till and purify the water we drink. Ecosystems also regulate local and global climate. No one can seriously argue that biodiversity is not valuable. Nor can anyone seriously argue that biodiversity is not at risk. There are over 900 domestic species listed as threatened or endangered under the Endangered Species Act, and 4,000 additional species are candidates for listing. We are losing species as a result of human activities at hundreds of times the natural rate of extinction. The current rate of extinction is the highest since the mass extinction of species that wiped out the dinosaurs millions of years ago. The Economics of Biodiversity Conservation The question which engenders serious controversy is whether society can afford the costs associated with saving biodiversity. Opponents of biodiversity conservation argue that the costs of protecting endangered species are too high. They complain that the regulatory burden on private landowners is too heavy, and that conservation measures impede development. They seek to override scientific determinations with economic considerations, and to impose cost/benefit analyses on biodiversity policy making. An equally important question, however, is whether we can afford not to save biodiversity. The consequences of losing this critical resource could be devastating. As we destroy species and habitat, we endanger food supplies (such as crop varieties that impart resistance to disease, or the loss of spawning grounds for fish and shellfish); we lose the opportunity to develop new medicines or other chemicals; and we impair critical ecosystem functions that protect our water supplies, create the air we breathe, regulate climate and shelter us from storms. We lose creatures of cultural importance - the bald eagle is an example of the cultural significance of biodiversity and also of the need for strong regulations to protect species from extinction. And, we lose the opportunity for mental or spiritual rejuvenation through contact with nature.

### 1AC – Plan

#### The United States Congress should statutorily limit the war powers authority of the President of the United States for self-defense targeted killings that are not guided by self-defense standards of necessity, proportionality and impending peril of the threat.

### 1AC – Solvency

#### CONTENTION 3: SOLVENCY

#### Limiting self-defense targeting using more restrictive guidelines solves inevitable damage to jus ad bellum and expansiveness

Craig Martin 11, Associate Professor of Law at Washburn University School of Law, “GOING MEDIEVAL: TARGETED KILLING, SELF-DEFENSE AND THE JUS AD BELLUM REGIME”, SSRN

Without going through the analysis for each of these scenarios in detail, we can nonetheless conclude that while it may be possible to justify the use of force against these states on the basis of self-defense, the crucial point is that the justificatory analysis is case-dependent. When the United States engages in strikes that constitute the use of force against each of these states, the claim of the right of self-defense must make specific reference to the armed attacks that justify it, how the group that is the object of the use of force is responsible for the attacks, and how the state in which the group is being targeted can itself be held legally responsible for the operations of that group so as to justify the use of force against the state. The problem with the current U.S. claim of self-defense is that it does none of this, but rather asserts a general right to use force against Al Qaeda, the Taliban, and any other groups associated with them; and against any country in which the members of such groups are located, not based on the state’s actual involvement in the group’s attacks, but merely on it being insufficiently willing or able to suppress the group’s operations.96¶ It almost goes without saying that the principles of necessity and proportionality cannot be satisfied under such sweeping and general claims of self-defense. It is not possible to demonstrate that the use of force was strictly necessary when there has been no identification of the armed attacks in question, or explanation of how the specific groups being targeted pose the threat of imminent armed attacks, that can only be stopped through the use of force. Similarly, there can be no proportionality analysis without the identification of the harm that would be caused by specific attacks, against which one can compare the harm being inflicted by the defensive use of force.97 Thus, in order to satisfy the necessity and proportionality principles that are at the core of the doctrine, the United States must provide the information required for such analysis.¶ In sum, the U.S. government’s reliance upon self-defense as a justification for the targeted killing policy in countries such as Yemen, Somalia, and Pakistan, at least in the very general terms with which it has been asserted, is not consistent with the principles of self-defense under the jus ad bellum regime. This finding would suggest that, unless and until the administration offers more particularized support for this justification, the ongoing use of missile strikes for the purposes of killing suspected “terrorists,” “militants” and “insurgents” in countries like Somalia, Yemen, and Pakistan, is a violation of the prohibition on the use of armed force.¶

Such a conclusion is troubling enough. But even more important in the long run is the potential harm this continued practice could cause to the jus ad bellum regime, and to the relationship between the jus ad bellum and IHL regimes, to which we turn next.

#### Congress is necessary for legal clarity to prevent ad-hoc self-defense

Mark David Maxwell 12, Colonel, Judge Advocate with the U.S. Army, Winter, “TARGETED KILLING, THE LAW, AND TERRORISTS”, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

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 selfdefense 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.¶ History of Targeted Killing During the Cold War, the United States used covert operations to target certain political leaders with deadly force.8 These covert operations, such as assassination plots against Fidel Castro of Cuba and Ngo Dinh Diem of South Vietnam, came to light in the waning days of the Richard Nixon administration in 1974. In response to the public outrage at this tactic, the Senate created a select committee in 1975, chaired by Senator Frank Church of Idaho, to “Study Government Operations with Respect to Intelligence Activities.”9 This committee, which took the name of its chairman, harshly condemned such targeting, which is referred to in the report as assassination: “We condemn assassination and reject it as an instrument of American policy.”10 In response to the Church Committee’s findings, President Gerald R. Ford issued an Executive order in 1976 prohibiting assassinations: “No employee of the United States Government shall engage in, or conspire to engage in political assassination.”11 The order, which is still in force today as Executive Order 12333, “was issued primarily to preempt pending congressional legislation banning political assassination.”12 President Ford did not want legislation that would impinge upon his unilateral ability as Commander in Chief to decide on the measures that were necessary for national security. 13 In the end, no legislation on assassinations was passed; national security remained under the President’s purview. Congress did mandate, however, that the President submit findings to select Members of Congress before a covert operation commences or in a timely fashion afterward.14 This requirement remains to this day. Targeted killings have again come to center stage with the Barack Obama administration’s extraordinary step of acknowledging the targeting of the radical Muslim cleric Anwar al-Awlaki, a U.S. citizen who lived in Yemen and was a member of an Islamic terrorist organization, al Qaeda in the Arabian Peninsula.15 Al-Awlaki played a significant role in an attack conducted by Umar Farouk Abdulmutallab, the Nigerian Muslim who attempted to blow up a Northwest Airlines flight bound for Detroit on Christmas Day 2009.16 According to U.S. officials, al-Awlaki was no longer merely encouraging terrorist activities against the United States; he was “acting for or on behalf of al-Qaeda in the Arabian Peninsula . . . and providing financial, material or technological support for . . . acts of terrorism.”17 Al-Awlaki’s involvement in these activities, according to the United States, made him a belligerent and therefore a legitimate target. The context of the fierce debates in the 1970s is different from the al-Awlaki debate. The targeted killing of an individual for a political purpose, as investigated by the Church Committee, was the use of lethal force during peacetime, not during an armed conflict. During armed conflict, the use of targeted killing is quite expansive.18 But in peacetime, the use of any lethal force is highly governed and limited by both domestic law and international legal norms. The presumption is that, in peacetime, all use of force by the state, especially lethal force, must be necessary. The Law Enforcement Paradigm Before 9/11, the United States treated terrorists under the law enforcement paradigm—that is, as suspected criminals.19 This meant that a terrorist was protected from lethal force so long as his or her conduct did not require the state to respond to a threat or the indication of one. The law enforcement paradigm assumes that the preference is not to use lethal force but rather to arrest the terrorist and then to investigate and try him before a court of law.20 The presumption during peacetime is that the use of lethal force by a state is not justified unless necessary. Necessity assumes that “only the amount of force required to meet the threat and restore the status quo ante may be employed against [the] source of the threat, thereby limiting the force that may be lawfully applied by the state actor.”21 The taking of life in peacetime is only justified “when lesser means for reducing the threat were ineffective.”22 Under both domestic and international law, the civilian population has the right to be free from arbitrary deprivation of life. Geoff Corn makes this point by highlighting that a law enforcement officer could not use deadly force “against suspected criminals based solely on a determination an individual was a member of a criminal group.”23 Under the law enforcement paradigm, “a country cannot target any individual in its own territory unless there is no other way to avert a great danger.”24 It is the individual’s conduct at the time of the threat that gives the state the right to respond with lethal force. The state’s responding force must be reasonable given the situation known at the time. This reasonableness standard is a “commonsense evaluation of what an objectively reasonable officer might have done in the same circumstances.”25 The U.S. Supreme Court has opined that this reasonableness is subjective: “[t]he calculus of reasonableness must embody allowances for the fact that police officers often are forced to make split-second judgments . . . about the amount of force that is necessary in a particular situation.”26 The law enforcement paradigm attempts to “minimize the use of lethal force to the extent feasible in the circumstances.”27 This approach is the starting point for many commentators when discussing targeted killing: “It may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but the goal of the operation, from its inception, should not be to kill.”28 The presumption is that intentional killing by the state is unlawful unless it is necessary for self-defense or defense of others.29 Like the soldier who acts under the authority of self-defense, if one acts reasonably based on the nature of the threat, the action is justified and legal. What the law enforcement paradigm never contemplates is a terrorist who works outside the state and cannot be arrested. These terrorists hide in areas of the world where law enforcement is weak or nonexistent. The terrorists behind 9/11 were lethal and lived in ungovernable areas; these factors compelled the United States to rethink its law enforcement paradigm. The Law of War Paradigm The damage wrought by the 9/11 terrorists gave President George W. Bush the political capital to ask Congress for authorization to go to war with these architects of terror, namely al Qaeda. Seven days later, Congress gave the President the Authorization for the Use of Military Force (AUMF) against those “nations, organizations, or persons [the President] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.”30 For the first time in modern U.S. history, the country was engaged in an armed conflict with members of an organization, al Qaeda, versus a state. The legal justification to use force, which includes targeted killings, against al Qaeda, the Taliban, and associated forces is twofold: self-defense and the law of war.31 In armed conflict, the rules governing when an individual can be killed are starkly different than in peacetime. The law enforcement paradigm does not apply in armed conflict. Rather, designated terrorists may be targeted and killed because of their status as enemy belligerents. That status is determined solely by the President under the AUMF. Unlike the law enforcement paradigm, the law of war requires neither a certain conduct nor an analysis of the reasonable amount of force to engage belligerents. In armed conflict, it is wholly permissible to inflict “death on enemy personnel irrespective of the actual risk they present.”32 Killing enemy belligerents is legal unless specifically prohibited—for example, enemy personnel out of combat like the wounded, the sick, or the shipwrecked.33 Armed conflict also negates the law enforcement presumption that lethal force against an individual is justified only when necessary. If an individual is an enemy, then “soldiers are not constrained by the law of war from applying the full range of lawful weapons.”34 Now the soldier is told by the state that an enemy is hostile and he may engage that individual without any consideration of the threat currently posed. The enemy is declared hostile; the enemy is now targetable. Anticipatory Self-defense¶ This paradigm shift is novel for the United States. The President’s authority to order targeted killings is clear under domestic law; it stems from the AUMF. Legal ambiguity of the U.S. authority to order targeted killings emerges, however, when it is required to interpret international legal norms like self-defense and the law of war. The United States has been a historic champion of these international norms, but now they are hampering its desires to target and kill terrorists.¶ Skeptics of targeted killing admit that “[t]he decision to target specific individuals with lethal force after September 11 was neither unprecedented nor surprising.”35 Mary Ellen O’Connell has conceded, for example, that targeted killing against enemy combatants in Afghanistan is not an issue because “[t]he United States is currently engaged in an armed conflict” there.36 But when the United States targets individuals outside a zone of conflict, as it did with alAwlaki in Yemen,37 it runs into turbulence because a state of war does not exist between the United States and Yemen.38 A formidable fault line that is emerging between the Obama administration’s position and many academics, international organizations,39 and even some foreign governments40 is where these targeted killings can be conducted.41¶ According to the U.S. critics, if armed conflict between the states is not present at a location, then the law of war is never triggered, and the state reverts to a peacetime paradigm. In other words, the targeted individual cannot be killed merely because of his or her status as an enemy, since there is no armed conflict. Instead, the United States, as in peacetime, must look to the threat the individual possesses at the time of the targeting. There is a profound shift of the burden upon the state: the presumption now is that the targeted killing must be necessary. When, for example, the United States targeted and killed six al Qaeda members in Yemen in 2002, the international reaction was extremely negative: the strike constituted “a clear case of extrajudicial killing.”42¶ The Obama administration, like its predecessor, disagrees. Its legal justification for targeted killings outside a current zone of armed conflict is anticipatory self-defense. The administration cites the inherent and unilateral right every nation has to engage in anticipatory self-defense. This right is codified in the United Nations charter43 and is also part of the U.S. interpretation of customary international law stemming from the Caroline case in 1837. A British warship entered U.S. territory and destroyed an American steamboat, the Caroline. In response, U.S. Secretary of State Daniel Webster articulated the lasting acid test for anticipatory self-defense: “[N]ecessity of self defense [must be] instant, overwhelming, leaving no choice of means and no moment for deliberation . . . [and] the necessity of self defense, must be limited by that necessity and kept clearly within it.”44¶ A state can act under the guise of anticipatory self-defense. This truism, however, leaves domestic policymakers to struggle with two critical quandaries: first, the factual predicate required by the state to invoke anticipatory self-defense, on the one hand; and second, the protections the state’s soldiers possess when they act under this authority, on the other. As to the first issue, there is simply no guidance from Congress to the President; the threshold for triggering anticipatory self-defense is ad hoc. As to the second issue, under the law of war, a soldier who kills an enemy has immunity for these precapture or warlike acts.45 This “combatant immunity” attaches only when the law of war has been triggered. Does combatant immunity attach when the stated legal authority is self-defense? There is no clear answer.¶ The administration is blurring the contours of the right of the state to act in Yemen under self-defense and the law of war protections afforded its soldiers when so acting. Therefore, what protections do U.S. Airmen enjoy when operating the drone that killed an individual in Yemen, Somalia, or Libya? If they are indicted by a Spanish court for murder, what is the defense? Under the law of war, it is combatant immunity. But if the law of war is not triggered because the killing occurred outside the zone of armed conflict, the policy could expose Airmen to prosecution for murder. In order to alleviate both of these quandaries, Congress must step in with legislative guidance. Congress has the constitutional obligation to fund and oversee military operations.46 The goal of congressional action must not be to thwart the President from protecting the United States from the dangers of a very hostile world. As the debates of the Church Committee demonstrated, however, the President’s unfettered authority in the realm of national security is a cause for concern. Clarification is required because the AUMF gave the President a blank check to use targeted killing under domestic law, but it never set parameters on the President’s authority when international legal norms intersect and potentially conflict with measures stemming from domestic law.

#### Congress prevents circumvention and ensures sufficient clarity

Mark David Maxwell 12, Colonel, Judge Advocate with the U.S. Army, Winter, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

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.

# 2AC

## Yemen

### AT: Drones Good

#### Civilian casualties mean the costs outweigh the benefits---we’re creating 40 AQAP recruits for every operative killed

Baraa Shiban 1/14, Yemen project co-ordinator for Reprieve, citing Nabeel Khoury, Senior Fellow for Middle East and National Security at the Chicago Council on Global Affairs, PhD in Poli Sci from SUNY Albany, “When will drones stop killing innocent people in Yemen?” http://edition.cnn.com/2014/01/14/opinion/yemen-drone-strikes-reprieve/index.html

The use of drones in Yemen might seem a simple, quick-fix option for Obama. But with every civilian death, al Qaeda's recruiting power increases. Nabeel Khoury, former U.S. Deputy Chief of Mission to Yemen, recently reminded us of just that. Asked whether the covert U.S. drone war in Yemen was creating more enemies than it removed, he concluded: "Drone strikes take out a few bad guys to be sure, but they also kill a large number of innocent civilians. Given Yemen's tribal structure, the U.S. generates roughly forty to sixty new enemies for every AQAP operative killed by drones."¶ Let me be clear: I, like the vast majority of my countrymen, reject terrorism. All of us were repulsed by footage of the gruesome al Qaeda attack on a Defence Ministry hospital that left dozens dead in December. We agree that our fight against extremist groups cannot be won without a variety of efforts, including robust law enforcement. But U.S. drone strikes are exacerbating our problem by leaving families bereaved and entire villages terrified. Drones destroy the fabric of Yemeni society. Wronged and angry men are just the sort extreme groups like al Qaeda in the Arab Peninsula find easiest to recruit.

#### Plan still allows us to target key Yemeni operatives

John Odle 13, J.D. from Emory School of Law, "Targeted Killings in Yemen and Somalia: Can the United States Target Low-Level Terrorists?", Emory International Law Review, www.law.emory.edu/fileadmin/journals/eilr/27/27.1/Odle.pdf

The U.S. Policy Standards and Procedure for the Use of Force in Counterterrorism Operations limit the use of lethal force outside areas hostilities to what is required by the international law of self-defense.397 However, the United States has previously stated that it is engaged in an armed conflict with AQAP and Al-Shabab as part of its armed conflict with Al Qaeda because those groups are affiliates of Al Qaeda. Arguably, the international law of self-defense does not prohibit the targeting of higher-level terrorists members because they pose a direct threat by planning terrorist attacks against the United States. However, once self-defense gets the United States over the border of another country, targeting is still subject to the law of war or international human rights law. In the case of Somalia, the United States is not engaged in an armed conflict and thus international humanitarian law would not apply. Yemen, however, is a closer case. But the fact that the United States has a stated policy of not targeting lower-level terrorists in Yemen398 suggests that while the United States says it is engaged in an armed conflict, **it does not act as if it is engaged in an armed conflict**.

## Solvency

### AT: Circumvention – Top Shelf

#### TK specific – no circumvention

Jack Goldsmith 12, a Harvard Law professor and a member of the Hoover Task Force on National Security and Law, He served in the Bush administration as assistant attorney general in charge of the Office of Legal Counsel, “Fire When Ready,” 3-19, <http://www.foreignpolicy.com/articles/2012/03/19/fire_when_ready?page=full>, March 19, 2012]

When the Obama administration made the decision to kill Awlaki, it did not rely on the president's constitutional authority as commander in chief. Rather, it relied on authority that Congress gave it, and on guidance from the courts. In September 2001, Congress authorized the president "to use all necessary and appropriate force against those nations, organizations, or persons he determines" were responsible for 9/11. Whatever else the term "force" may mean, it clearly includes authorization from Congress to kill enemy soldiers who fall within the statute. Unlike some prior authorizations of force in American history, the 2001 authorization contains no geographical limitation. Moreover, the Supreme Court, in the detention context, has ruled that the "force" authorized by Congress in the 2001 law could be applied against a U.S. citizen. Lower courts have interpreted the same law to include within its scope co-belligerent enemy forces "associated" with al Qaeda who are "engaged in hostilities against the United States." International law is also relevant to targeting decisions. Targeted killings are lawful under the international laws of war only if they comply with basic requirements like distinguishing enemy soldiers from civilians and avoiding excessive collateral damage. And they are consistent with the U.N. Charter's ban on using force "against the territorial integrity or political independence of any state" only if the targeted nation consents or the United States properly acts in self-defense. There are reports that Yemen consented to the strike on Awlaki. But even if it did not, the strike would still have been consistent with the Charter to the extent that Yemen was "unwilling or unable" to suppress the threat he posed. This standard is not settled in international law, but it is sufficiently grounded in law and practice that no American president charged with keeping the country safe could refuse to exercise international self-defense rights when presented with a concrete security threat in this situation. The "unwilling or unable" standard was almost certainly the one the United States relied on in the Osama bin Laden raid inside Pakistan. These legal principles are backed by a system of internal and external checks and balances that, in this context, are without equal in American wartime history. Until a few decades ago, targeting decisions were not subject to meaningful legal scrutiny. Presidents or commanders typically ordered a strike based on effectiveness and, sometimes, moral or political considerations. President Harry Truman, for example, received a great deal of advice about whether and how to drop the atomic bomb on Hiroshima and Nagasaki, but it didn't come from lawyers advising him on the laws of war. Today, all major military targets are vetted by a bevy of executive branch lawyers who can and do rule out operations and targets on legal grounds, and by commanders who are more sensitive than ever to legal considerations and collateral damage. Decisions to kill high-level terrorists outside of Afghanistan (like Awlaki) are considered and approved by lawyers and policymakers at the highest levels of the government. The lawyers and policymakers are guided in part by Supreme Court and lower court decisions that, in the context of reviewing military detentions, have interpreted the meaning, scope, and limits of the congressional authorization to use force. The executive branch also has tools at its disposal -- an elaborate intelligence bureaucracy, precision weapons, and computer targeting algorithms -- to minimize collateral damage in war like never before (indeed, these tools sometimes force an operation or target to be avoided or aborted). We do not know the full details of targeting decisions, but we do know -- from administration speeches and press coverage of internal deliberations -- that Obama administration policymakers and lawyers seriously grapple with the legal limits of their authorities, construe them narrowly to meet the case at hand, and are constrained in who they target. Congress too is involved. The executive branch only targets enemy forces that fall within the parameters set by Congress in 2001. All major targeting operations conducted as "covert actions" must, under laws in place before 9/11, be conducted in conformity with presidential "findings" and reported to congressional intelligence committees. These committees lack a formal veto, but they have many ways to push back against covert actions they dislike. House Minority Leader Nancy Pelosi is said to have scaled back a covert operation in 2004 to influence the outcome of elections in Iraq by complaining to the White House, while the House Intelligence Committee reportedly persuaded the Obama administration not to arm the Libyan rebels in 2011. Operations by the U.S. military are also reported to and scrutinized by congressional armed services committees through less formal means. More broadly, Congress as a whole is well aware of the president's targeted killing program, and many congressional committees have held public hearings on targeted killing in the last few years. And yet, in contrast to its actions to tighten the president's traditional military authorities in other contexts (like interrogation, military detention, and military commissions), Congress has not tightened the president's power to target. Instead, Congress chose to reaffirm the 2001 authorization on which the president has rested his targeting practices in December 2011, and to bless the judicial construction of the statute that extended the president's authorities to co-belligerents like Awlaki, all without a word about limitations on targeted killing. Congress did this against the backdrop of many public reports that the 2001 statute was relied on to kill Awlaki. The targeted killing of Awlaki was also subject to a limited but important form of judicial scrutiny. In 2010, the ACLU and the Center for Constitutional Rights brought a novel lawsuit that sought to enjoin the president from killing Awlaki. Judge John Bates of the U.S. District Court for the District of Columbia dismissed the case, in part because of "the impropriety of judicial review." Bates explained that the Constitution places "responsibility for the military decisions at issue in this case 'in the hands of those who are best positioned and most politically accountable for making them'" -- Congress and the president. This ruling, based on extensive precedent, is almost certainly right. Commanders in chief have always had discretion over targeting decisions in wars authorized by Congress. No court has ever suggested that judicial approval for these decisions was appropriate or necessary. This is so even though the U.S. military killed U.S. citizens in the Civil War and most likely in World War II as well, when some fought in the Italian and German armies. The Supreme Court itself has ruled -- in the context of military commissions and military detention -- that U.S. citizenship does not by itself preclude the commander in chief from exercising traditional forms of military force. This is the background against which to assess Attorney General Holder's claim that the Constitution "guarantees due process, not judicial process." Holder was referring to the Fifth Amendment's prohibition on taking life without due process, a further legal limitation on the targeted killing of U.S. citizens. Critics belittled Holder for distinguishing due process from judicial process, but Holder is right. The Supreme Court has ruled in many contexts that due process does not always demand judicial scrutiny. It has also ruled that the type and extent of process due depends on the nature and circumstances of the deprivation, including a balance between the interests of the individual and the government. A U.S. citizen's interest is obviously at its height when he is targeted with lethal force. The government's interest is at its height when it seeks to incapacitate a threatening enemy in a congressionally sanctioned war. Holder only defended the wartime authority to kill a U.S. citizen who presents "an imminent threat of violent attack against the United States" and for whom "capture is not feasible," and only when operations are "conducted in a manner consistent with applicable law of war principles." In these circumstances, he claimed, high-level executive deliberation, guided by judicial precedent and subject to congressional oversight, is all the process that is due. Is Holder right? It is hard to say for sure because the due process clause has never before been thought relevant to wartime presidential targeting decisions. The system described above goes far beyond any process given to any target in any war in American history. Awlaki was not given a formal notice and opportunity to defend himself in court, but war does not permit such formal practices. One predicate for the killing was that Awlaki was in hiding -- beyond legal process or the reasonable possibility of capture -- and plotting and directing attacks on the United States. The U.S. government made clear that if Awlaki "were to surrender or otherwise present himself to the proper authorities in a peaceful and appropriate manner, legal principles with which the United States has traditionally and uniformly complied would prohibit using lethal force or other violence against him in such circumstances." And as Judge Bates noted, while Awlaki's placement on a targeting list was publicly disclosed in January 2010, Awlaki publicly disclaimed any intention of challenging his status or turning himself in. It is hard to see how the executive branch could have taken its constitutional responsibilities more seriously while honoring its obligation to keep the nation safe. In light of Judge Bates's ruling and the analysis on which it rests, and until Congress thinks the president's approach to targeting requires change, the current system -- executive deliberation guided by judicial precedent and subject to congressional oversight -- almost certainly satisfies any constitutional requirement. In any event, it belies the claim that the president is not subject to checks and balances. This conclusion will not assuage critics like Andrew Rosenthal who insist that "the president must receive judicial input before ordering the death of an American citizen." What Rosenthal and other krytocrats have not explained is how the Constitution permits, much less demands, such ex ante judicial input. These critics have not grappled with Judge Bates's analysis. Nor have they explained how a presidential request for judicial approval to target and kill a terrorist suspect is consistent with the constitutional limitation of judicial power to cases and controversies between parties in court. It is also unclear whether judges possess the competence to assess and quickly act upon military targets, or whether they would welcome the responsibility for targeting decisions. Perhaps Congress could devise a lawful and effective scheme of judicial or administrative review of the president's targeting decisions. But it has shown no inclination to do so, and it appears to support the current arrangement.

#### No circumvention with self-defense

Barnes 12 – Law Clerk at United States District Court for the District of Massachusetts

J.D., Boston University School of Law, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, Lexis

The AUMF's inevitable expiration, brought about by the increasingly tenuous link between current U.S. military and covert [\*87] operations and those who perpetrated the September 11 attacks, leaves few good options for the Obama Administration. Unless Congress soon reauthorizes military force in the struggle against international terrorists, the administration will face difficult policy decisions. Congress, however, shows no signs of recognizing the AUMF's limited lifespan or a willingness to meaningfully re-write the statute. In light of this reticence, one choice would be for the Obama Administration to acknowledge the AUMF's limited scope and, on that basis, forego detention operations and targeted killings against non-Al Qaeda-related terrorists. For both strategic and political reasons, this is extremely unlikely, especially with a president in office who has already shown a willingness to defy legal criticism and aggressively target terrorists around the globe. n120 Another option would be for the Executive Branch to acknowledge the absence of legal authority, but continue targeted killings nonetheless. For obvious reasons, this option is problematic and unlikely to occur.

### AT: Covert Action Circumvention

#### Obama won’t cite inherent Article II or covert action to circumvent

Captain Richard K. Sala 13, Captain US Marine Corps, Judge Advocate, JD Vermont Law School, "The Illusory Unitary Executive: A Presidential Penchant for Jackson's Youngstown Concurrence", Vol. 38: 155, 2013, lawreview.vermontlaw.edu/files/2014/01/07-Sala1.pdf

Finally, beyond Justice Jackson’s concurrence, expansive Unitary Executive Theory is unlikely to be realized so long as Congress remains at the outer edges of wartime decision-making. Presumably, Congress is content to broadly authorize the executive branch to pursue military objectives and to rely on the Executive’s exercise of his “interpretive discretion”361 in prosecuting hostilities, leaving the supervision of the Executive to the judicial branch. Moreover, given Congress’s sweeping authorization under the AUMF, there is simply no reason for a President to step outside of the surety of Justice Jackson’s “widely accepted”362 concurrence in Youngstown. It is as likely as it is not, given the correct set of circumstances, that Justice Jackson’s approach to executive power will yield an Executive as powerful as expansive Unitary Executive Theory. As evidenced in this Article’s brief overview of the **Obama Administration’s use of the AUMF, it is easier to operate within a** broad **grant of congressional authority**, unassumingly alluding to a reserved inherent power, than to brazenly assert an implied power that has rarely, if ever, been vindicated. The exoneration of expansive Unitary Executive Theory will have to wait for another exigency.

### AT: Glennon

#### Exposing secrecy and furthering public engagement through the 1AC resolves Glennon

ACLU 14, Privacy SOS campaign from Massachusetts ACLU, “When it comes to fighting the 'double state', knowledge is power”, 1/20, http://privacysos.org/node/1304

As Glennon argues in the Harvard National Security Journal, the danger in the United States is likely not the sudden takeover of government by an authoritarian monster like Hitler. The very real and present danger is the slow erosion of the Madisonian institutions, and the untouchable and growing supremacy of the efficient ones. Like frogs boiling in a pot, the danger is that by the time a large number of us realize what’s happened, it will be too late to turn back the clock.¶ **What can we do to avert this disaster** in the making? **If the efficient institutions thrive when the public is ignorant, we must speak out loudly and more often**. If the deep state can only sustain its power under cover of darkness, we must open the closets and turn on the lights. And if its excesses can only be justified to a fearful population, we must reject fearmongering and the Islamophobia that serves as its carrier.¶ So no matter who is the president, let's resolve to speak out against government secrecy and autocracy; support and defend the courageous whistleblowers who risk life and limb to tell the public the truth; and call out anti-Muslim racism and discrimination everywhere we see it. All of that might not avert this disaster in the making, but if we fail to do these things we can be sure that the country our children inherit will be a democracy in name only, no matter what the Bill of Rights has to say about it.

## T

### 2AC T – WPA

#### We meet: Plan restricts implicit Presidential authorization

Jack Goldsmith 13, Harvard Law School, 9/1/, “A Quick Primer on AUMFs”, www.lawfareblog.com/2013/09/a-quick-primer-on-aumfs/

Via Ilya Somin at Volokh, I see that the administration has proffered its proposed Authorization for the Use of Military Force (AUMF) for Syria. Now it is Congress’s turn to decide what proposal(s) it wants to debate and possibly approve. And it appears that the scope of the authorization will be an issue in Congress. For example, Senators Graham and McCain have announced that they will not support a narrow AUMF supporting only isolated strikes, and some members of Congress surely will not support one that is that broad.¶ An article that I wrote with Curt Bradley, which examined AUMFs throughout American history, provides a framework for understanding AUMFs. (And the Lawfare Wiki collects many historical AUMFs and declarations of war, here.) AUMFs can (as Bradley and I argued on pp. 2072 ff.) be broken down into five analytical components:¶ (1) the authorized military resources;¶ (2) the authorized methods of force;¶ (3) the authorized targets;¶ (4) the purpose of the use of force; and¶ (5) the timing and procedural restrictions on the use of force¶ Most AUMFs in U.S. History – for example, AUMFs for the Quasi-War with France in the 1790s, for repelling Indian tribes, for occupying Florida, for using force against slave traders and pirates, and many others – narrowly empower the President to use particular armed forces (such as the Navy) in a specified way for limited ends. At the other extreme, AUMFs embedded within declarations of war (here is the one against Germany in World War II) typically authorize the President to employ the entire U.S. armed forces without restriction except for the named enemy. The Gulf of Tonkin Resolution for Vietnam was also famously broad, as was the 2002 AUMF for Iraq, although the latter did require the President to make certain diplomatic and related determinations, and to report to Congress. Narrower AUMFs in the post-World War II era include the one in 1955 for Taiwan (narrow purpose and timing limitations) and the 1991 Iraq AUMF (narrow purpose and many procedural restrictions). Narrower yet were AUMFs for Lebanon in 1983 and Somalia in 1993, both of which had a very narrow and restrictive purpose, and which contained time limits on the use of force. And of course there is the relatively broad AUMF that everyone knows, from September 18, 2001.¶ Bradley and I summarized historical AUMFs as follows:¶ This survey of authorizations to use force shows that Congress has authorized the President to use force in many different situations, with varying resources, an array of goals, and a number of different restrictions. All of the authorizations restrict targets, either expressly (as in the Quasi-War statutes’ restrictions relating to the seizure of certain naval vessels), implicitly (based on the identified enemy and stated purposes of the authorization), or both. Such restrictions may be constitutionally compelled. Congress’s power to authorize the President to use force, whatever its scope, arguably could not be exercised without specifying (at least implicitly) an enemy or a purpose.¶ The primary differences between limited and broad authorizations are as follows: In limited authorizations, Congress restricts the resources and methods of force that the President can employ, sometimes expressly restricts targets, identifies relatively narrow purposes for the use of force, and sometimes imposes time limits or procedural restrictions. In broad authorizations, Congress imposes few if any limits on resources or methods, does not restrict targets other than to identify an enemy, invokes relatively broad purposes, and generally imposes few if any timing or procedural restrictions.

#### C/I: War powers authority is the President executing warfighting missions---that includes self-defense

Fred F. Magnet 87, Fmr. Legal Counsel @ C.I.A, Records of the Central Intelligence Agency, 1894 – 2002, Articles from "Studies in Intelligence", 1955 – 1992, Summer 1987: 10-114-7: Presidential War Powers (A Constitutional Basis for Foreign Intelligence Operations), “Presidential War Powers.” In Extracts from studies in Intelligence: A Commemoration of the Bicentennial of the U.S. Constitution. Washington. D.C Central Intelligence Agency, 1987, http://research.archives.gov/description/7283242

**The President has constitutional authority to order defensive military action in response to aggression without congressional approval**. This theory of **self-defense** has justified many military actions, from the Barbary Coast to the Mexican-American War to the Tonkin Gul£. 29 The Supreme Court has agreed. In The Prize Cases, it found that President Lincoln had the right to blockade southern states without a congressional declaration of war: "If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. " 30 In a case arising out of the Vietnam war, the defendant claimed that draft law was unconstitutionally applied to him because Congress had not declared war. The court rejected that claim, stating that on the basis of the Commander in Chief power, "Unquestionably the President can start the gun at home or abroad to meet force with force. " 3 1 **When the President acts in defense of the nation, he acts under war powers authority**.¶ 3. Protection of Life and Property¶ The President also has the power to order military intervention in foreign countries to protect American citizens and property without prior congressional approval.32 This theory has been cited to justify about 200 instances of use of force abroad in the last 200 years.33 The theory was given legal sanction in a case arising from the bombardrment of a Nicaraguan court by order of the President in 1854, in retaliation for an attack on an American consul. The court stated that it is the President to whom ".. . citizens abroad must look for protection of person and property. . . . The great object and duty of Government is the protection of the lives, liberty, and property of the people composing it, whether abroad or at home.'3~Other cases have been in accord.35 The President may use force or any other means to protect American citizens in foreign countries under his war powers authority. This extends even to a retaliatory military strike against a country supporting terrorist acts against Americans, which occurred in April1986 when US Navy and Air Force aircraft bombed the modern Barbary Coast nation of Libya. ¶ 4. Collective Security¶ The President may also authorize military operations without prior congressional approval pursuant to collective security agreements such as NA TO or OAS treaties. Unilaterial presidential action under these agreements may be justified as necessary for the protection of national security even though hostilities occur overseas and involve allies.36¶ 5. National Defense Power¶ The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. "3; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything reQuired to wage war successfully.3H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means."39¶ Thus, the Executive Branch 's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.¶ 6. Role of the Military¶ The fundamental function of the armed forces is to fight or to be ready to fight wars. 40 The Supreme Court has recognized the existence of limited, partial, and undeclared wars:41 Thus, there is a judicially recognized and legitimate activity of the armed services in times of no armed conflict that stems directly from **the war powers authority of the President**. That activity is the preparation for the successful waging of war, which may come in any form or level of conflict. **Any actions of the Executive Branch that** are part of the fundamental functions of the armed services in **ready**ing **for any type of hostility are based on** constitutional war powers authority of the President.

#### 2) Imprecise overlimiting --- they only allow zone 1 cases

Colby P. Horowitz 13 “CREATING A MORE MEANINGFUL DETENTION STATUTE: LESSONS LEARNED FROM HEDGES V. OBAMA,” FORDHAM L.R. Vol. 81, <http://fordhamlawreview.org/assets/pdfs/Vol_81/Horowitz_April.pdf>

2. The Relational Theory of Presidential War Powers ¶ Justices Jackson and Frankfurter both wrote concurring opinions in Youngstown expressing the idea that presidential powers can change over time based on action or inaction by Congress. Justice Jackson stated, in his famous concurrence, that “[p]residential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress.”120 Justice Jackson established a three-category framework for evaluating presidential power in relation to Congress. In the first category, or Zone 1, the President’s authority is the greatest because he is acting “pursuant to an express or implied authorization of Congress . . . .”121 If the President’s action falls within Zone 1, he “personif[ies] the federal sovereignty” and has the full power of the federal government.122 In the second category, called Zone 2 or the “zone of twilight,” the President “acts in absence of either a congressional grant or denial of authority . . . .”123 Here, the President’s power is less, but “congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility.”124 In the third category, the President’s “power is at its lowest ebb” because he is pursuing “measures incompatible with the expressed or implied will of Congress . . . .”125 In Zone 3, the President “can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.”126

## CP

### 2AC Exec CP

#### 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

#### Voluntary restraint doesn’t set a precedent

Anthony Dworkin 12, Senior Policy Fellow at the European Council on Foreign Relations, Executive Director of the Crimes of War Project, 19 June 2012, “Obama’s Drone Attacks: How the EU Should Respond,” http://ecfr.eu/content/entry/commentary\_obamas\_drone\_attacks\_how\_the\_eu\_should\_respond

Over time, the United States and its European allies might be able move closer to a common understanding of the concept of imminence through a process of discussion. But in any case there is an independent reason why the Obama administration’s policy of claiming expansive legal powers, while limiting them in practice on a voluntary basis, is a dangerous one. Precisely because he has greater international credibility than President Bush, the claims that Obama makes are likely to be influential in setting global standards for the use of the use of this new and potentially widely available technology. The United States is currently the only country that uses armed drones for targeted killing outside the battlefield, but several other countries already have remotely controlled pilotless aircraft or are in the process of acquiring them. The United States is unlikely to remain alone in this practice for long. At the same time, there have been several other examples in recent years of countries engaging in military campaigns against non-state groups outside their borders – as with Israel in Lebanon and Ethiopia in Somalia. For this reason, there is a strong international interest in trying to establish clear and agreed legal rules (not merely a kind of pragmatic best practice) to govern the use of targeted killing of non-state fighters.

#### Statutory restrictions key---executive action is reversible and not credible

Daphne Eviatar 3/7, Senior Counsel in Human Rights First's Law and Security Program, "It's a Serious Mistake for the US Government To Maintain It Need Not Follow Human Rights Law Beyond US Borders", 2014, justsecurity.org/2014/03/07/its-mistake-government-maintain-follow-human-rights-law-borders/

When President Obama took office, he announced, to much fanfare, that he was ending the use of torture, closing secret CIA prisons, and planning to close the Guantanamo Bay detention center. He signed those executive orders, at least in part, in the name of improving U.S. national security.¶ As Gen. David Petraeus put it in February 2010, “whenever we have, perhaps, taken expedient measures, they have turned around and bitten us in the backside… Abu Ghraib and other situations like that are nonbiodegradable. They don’t go away. The enemy continues to beat you with them like a stick . . . .”¶ As a matter of policy, President Obama has made some progress in terms of human rights and counterterrorism. The U.S. government appears to no longer be torturing detainees in U.S. detention centers (though the Bush administration seemed to have largely stopped that practice by that point as well), and President Obama is finally picking up the pace on transferring some of the remaining Guantanamo detainees back to their home countries. But as we know all too well, **policies are easily reversible**. Until the United States agrees that international human rights law actually prohibits these sorts of basic human rights violations, the **U**nited **S**tates **can’t expect to be trusted**. That won’t help cooperation from U.S. allies, and it will make it far too easy for enemies to dismiss the United States as hypocritical, with no right to expect other countries to abide by international law. If President Obama wants to leave a lasting legacy of progress in international human rights, he should insist on making clear that the United States is indeed bound by international human rights law.¶ The consequences of not conceding this are evident. In Afghanistan, for example, the Obama administration for years insisted that none of the thousands of detainees detained indefinitely at the Bagram prison under U.S. control were entitled to the minimum due process rights guaranteed by the ICCPR. The United States eventually wiggled out of that controversy by turning most (but not all) of the detainees over to the control of the Afghan government. The United States continues to conduct its so-called “targeted killing” program along with a range of other military operations.¶ **Members of Congress** outside the intelligence committees **have asked** for years, to no avail, **to be briefed** on the authorities under which the U.S. conducts these operations. The administration has claimed that the presidential policy guidance issued last year provides intense internal oversight and ensures that the operations meet or exceed international standards. When American Special Operations teams enter Libya or Somalia, for example, it’s in their interest, and all of ours, for civilian bystanders to believe the Americans will not torture, abuse or kill them. The U.S. claim that international human rights law that prevents arbitrary killings does not apply to U.S. actions abroad flies in the face of that goal.¶ Imagine how the U.S. position comes across in places like Yemen, where the United States has stepped up its drone campaign and reportedly killed hundreds of people without explanation**. Sure, as a matter of policy**, President Obama has said that the United States will only target people with lethal force beyond “the Afghan theater” who pose a “continuing and imminent threat” to “the American people,” and when there is a “near-certainty” that civilians won’t be killed or injured. But the dozen people killed when a U.S. drone attacked a row of cars driving to a wedding party in Yemen in December, for example, **doesn’t seem to comport with that policy**. And since the United States maintains that this is only a **matter of policy, and not of law**, the U.S. government **can change (or simply ignore) its own policy statement as it chooses. It need not account to anyone for the results of its actions**.

#### 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.

#### Executive links to politics

Maureen Dowd 3/15, New York Times, "Dems in Distress", 2014, www.nytimes.com/2014/03/16/opinion/sunday/dowd-dems-in-distress.html?hp&rref=opinion&\_r=1

Due to the inability of the president and congressional Democrats to move their agenda through Congress, the president is having to govern through executive order and revising federal regulations.¶ Republicans have latched on to this to make the case around the country that Obama is a dictator and an imperial president. But governing through executive order isn’t a sign of strength. It’s a sign of weakness.

#### 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.

### AT: Michaels Mechanism

**Guts transparency – President will obscure the mechanisms of self-constraint**

**Michaels 11** - Professor of Law @ UCLA

The (Willingly) Fettered Executive: Presidential Spinoffs in National Security Domains and Beyond

Jon D. Michaels, University of California, Los Angeles - School of Law, May 19, 2011, Virginia Law Review, Vol. 97, No. 4, pp. 801-898, 2011, UCLA School of Law Research Paper No. 11-23, Lexis

In all, the In-Q-Tel and CFIUS examples compel us to reconsider the relationship between institutional design and legal and political accountability. Indeed, they suggest a new template, a way of understanding and reconfiguring regulatory space deprived of [\*898] the traditional mechanisms employed to ensure reasoned and reasonable public administration. As such, the case studies pose a real challenge **to the dominant understandin**g of the Executive as power-aggrandizing. Yet, in marking that challenge, we ought not lose sight of the subtlety with which that challenge is presented. Indeed, the fact that the Executive seemingly **takes pains to obscure the** acts and mechanisms **of** **self-constraint** itself pays fealty to the durability and resonance of **that dominant understanding**.

### Conditionality Bad – 2AC (S)

#### Conditionality is a voting issue—destroys 2AC strategic flexibility which is the arc of clash and education in debate—magnified by multiple worlds—depth is key to debate’s political value—multiple CPs removes the squo as a logical option and causes late developing debates – reject the team to set a precedent – 1 solves

### \*2AC EU CP

#### US first mover key

Robert O. Keohane 12, Professor of International Affairs at Princeton University, July/August 2012, “Hegemony and After,” Foreign Affairs, Vol. 91, No. 4, p. 114-118

Apart from questions of originality and the specifics of the declinist debate, the central problem with books of present- oriented foreign policy commentary such as these lies in their failure to distinguish between what is known and what is unknowable. By conflating the two, they end up misleading readers rather than educating them. It might be useful, therefore, to indicate half a dozen things relevant to the future of the U.S. global role that can now be said with confidence.¶ First, we know that in the absence of leadership, world politics suffers from collective action problems, as each state tries to shift the burdens of adjustment to change onto others. Without alliances or other institutions helping provide reassurance, uncertainty generates security dilemmas, with states eyeing one another suspiciously. So leadership is indeed essential in order to promote cooperation, which is in turn necessary to solve global problems ranging from war to climate change.¶ Second, we know that leadership is exercised most effectively by creating multilateral institutions that enable states to share responsibilities and burdens. Such institutions may not always succeed in their objectives or eliminate disagreements among their members, but they make cooperation easier and reduce the leader's burdens--which is why policymakers in Washington and many other capitals have invested so much effort for so many decades in creating and maintaining them.¶ Third, we know that leadership is costly and states other than the leader have incentives to shirk their responsibilities. This means that the burdens borne by the leader are likely to increase over time and that without efforts to encourage sharing of the load, leadership may not be sustainable.¶ Fourth, we know that in a democracy such as the United States, most people pay relatively little attention to details of policy in general and foreign policy in particular. Pressures for benefits for voters at home-- in the form of welfare benefits and tax cuts--compete with demands for military spending and especially nonmilitary foreign affairs spending. This means that in the absence of immediate threats, the public's willingness to invest in international leadership will tend to decline. (A corollary of this point is that advocates of international involvement have incentives to exaggerate threats in order to secure attention and resources.)¶ Fifth, we know that autocracies are fundamentally less stable than democracies. Lacking the rule of law and accepted procedures for leadership transitions, the former are subject to repeated internal political crises, even though these might play out beneath a unified and stable façade. China's leadership crisis during the spring of 2012, marked by the detention of the politician Bo Xilai and his wife, illustrated this point.¶ And sixth, we know that among democracies in the world today, only the United States has the material capacity and political unity to exercise consistent global leadership. It has shown a repeated ability to rebound from economic and political difficulties. The size, youth, and diversity of its population; the stability and openness of its political institutions; and the incentives that its economic system creates for innovation mean that it remains the most creative society in the world. Yet it also has major problems-- along with intense domestic partisan conflict that prevents those problems from being resolved and that constitutes a major threat

## DA

### 2AC China Soft Power DA

#### Soft power not zero sum and Chinese soft power is down and fails

Joseph Nye 13, Harvard University international relations professor, “What China and Russia Don't Get About Soft Power”, April 29, <http://www.foreignpolicy.com/articles/2013/04/29/what_china_and_russia_don_t_get_about_soft_power?page=full>

China and Russia make the mistake of thinking that government is the main instrument of soft power. In today's world, information is not scarce but attention is, and attention depends on credibility. Government propaganda is rarely credible. The best propaganda is not propaganda. For all the efforts to turn Xinhua and China Central Television into competitors to CNN and the BBC, there is little international audience for brittle propaganda. As the Economist noted about China, "the party has not bought into Mr. Nye's view that soft power springs largely from individuals, the private sector, and civil society. So the government has taken to promoting ancient cultural icons whom it thinks might have global appeal." But soft power doesn't work that way. As Pang Zhongying of Renmin University put it, it highlights "a poverty of thought" among Chinese leaders.¶ The development of soft power need not be a zero-sum game. All countries can gain from finding each other attractive. But for China and Russia to succeed, they will need to match words and deeds in their policies, be self-critical, and unleash the full talents of their civil societies. Unfortunately, that is not about to happen soon.

#### No impact---intangible and human rights is a massive alt cause

Sheng Ding 12, associate professor of political science, received his masters and doctoral degrees from Rutgers University, “Is Human Rights the Achilles' Heel of Chinese Soft Power? A New Perspective on Its Appeal”, Asian Perspective36.4 (Oct-Dec 2012): 641-665, ProQuest

While Chinese softpower has attracted increasing attention from academia and the foreign-policy community, doubts remain about its efficacy. Many question whether the Chinese government has genuinely developed its soft-power resources or effectively wielded softpower. These doubts have much to do with Beijing's controversial human rights record. Moreover, as a rising power, Beijing's performance of defending and promoting human rights is important to the IHR discourse. While few states have more power than China, few can do more damage with a mistake or even with inaction. Rarely has Beijing been considered by the Western states as a constructive player in the IHR regime. On the other hand, the Chinese government has always accused the West of adopting a double standard on human rights and misusing China's human rights record for political advantage. Beijing has regularly published white papers to show progress on many fronts of what its leaders consider human rights development. At numerous international events and in media interviews, Beijing's leaders have forcefully argued that they define improvement in terms of higher living standards and the alleviation of poverty. They claim that the economic, social, and cultural rights of Chinese citizens have continuously improved. Many scholars and policymakers around the world believe that the Chinese government has gained some credibility regarding respect for human rights as a result of China's proven success in economic development during the last three decades. And China's economic development with its own characteristics has become an important source of its soft-power appeal. These two types of viewpoints on the appeal of Chinese softpower from the perspective of Chinese human rights are, at the very least, contradictory. While Chinese softpower is drawing increasing attention, no systematic assessment of its appeal from the perspective of human rights has been conducted. To what extent has the Chinese government lived up to its own human rights values domestically and abroad? It remains a puzzle whether Beijing's performance in defending and promoting its own human rights values can contribute to China's soft-power appeal. With higher conceptual refinement and richer empirical data, this article provides a balanced assessment of the appeal of Chinese softpower by reconstituting the rhetoric and reality of Chinese human rights. But three important methodological questions need answers before conducting such an assessment. First, should Beijing's performance in defending and promoting its own human rights values be thought of as a governance component that is either present or absent, or as an element of governance quality that can be evaluated to some extent? This author's answer is the latter. Based on this construction, this article assesses Beijing's domestic human rights performance on the basis of two factors: (1) time series trend to determine whether the human rights situation in China has been getting better, has remained the same, or has deteriorated; and (2) some comparisons between China's human rights record and the record of analogous countries to determine if the Chinese government's performance in defending and promoting human rights is better than or worse than the performance of other governments. Second, should softpower be assessed in structuralist or behaviorist terms? Using a structuralist model, softpower's appeal would rest on a collection of a state's attributes that make this state "attractive" or "pivotal" in the eyes of other states. In a behaviorist model, softpower's appeal would be considered an exercise of a state's leadership based on its attraction and agendasetting capacity that provides a state with the opportunity to project its views in interactions with others. This article adopts the behaviorist model to assess Beijing's international human rights performance by employing some case studies, including Beijing's no-strings diplomacy toward the oil-rich countries and its friendships with some notorious regimes. Third, the very nature of softpower makes its assessment a tricky endeavor. The intangible soft-power resources-such as values, culture, ideology, and institutions-are more difficult to measure than tangible hard-power resources such as military preparedness and economic output. This author agrees with Blanchard and Lu's critical observation in their introduction that an assessment of softpower should be related to context and target (or audience). In behaviorist terms, softpower is an integral part of a relationship between actors. Human rights values and performance that appeal to one targeted country may not be attractive to other targeted countries. To assess a state's softpower, we have to take into account the context and target of soft-power projection. In recognition of this problem, this article uses some structured and focused surveys to evaluate the effectiveness of China's soft-power appeal.

### AT: China Economy

#### No lash-out – CCP knows it would be suicide and PLA wouldn’t support it

Gilley 4 [Bruce, former contributing editor at the Far Eastern Economic Review, M.A. Oxford, 2004, China’s Democratic Future, p. 114]

Yet the risks, even to a dying regime, may be too high. An unprovoked attack on Taiwan would almost certainly bring the U.S. and its allies to the island's rescue. Those forces would not stop at Taiwan but might march on Beijing and oust the CCP, or attempt to do so through stiff sanctions, calling it a threat to regional and world peace. Such an attack might also face the opposition of the peoples of Fujian, who would be expected to provide logis¬tical support and possibly bear the worst burdens of war. They, like much of coastal China, look to Taiwan for investment and culture and have a close affinity with the island. As a result, there are doubts about whether such a plan could be put into action. A failed war would prompt a Taiwan declaration of independence and a further backlash against the CCP at home, just as the May Fourth students of 1919 berated the Republican government for weakness in the face of foreign powers. Failed wars brought down authoritarian regimes in Greece and Portugal in 1974 and in Argentina in 1983. Even if CCP leaders wanted war, it is unlikely that the PLA would oblige. Top officers would see the disastrous implications of attacking Taiwan. Military caution would also guard against the even wilder scenario of the use of nuclear weapons against Japan or the U.S.47 At the height of the Tiananmen protests it appears there was consideration given to the use of nuclear weapons in case the battle to suppress the protestors drew in outside countries.48 But even then, the threats did not appear to gain even minimal support. In an atmosphere in which the military is thinking about its future, the resort to nuclear confrontation would not make sense.

### 2AC LCS DA

#### They already have a ton of LCS and just bought 2 more --- cx proves this is stupid

Austal 3/11/14,U.S. NAVY FUNDS TWO FURTHER LITTORAL COMBAT SHIPS, www.austal.com/us/media/media-releases/14-03-11/U-S-Navy-funds-two-further-Littoral-Combat-Ships.aspx

Austal Limited (Austal) (ASX:ASB) is pleased to announce that the construction of two additional Littoral Combat Ships has been funded by the U.S. Navy.

The vessels, LCS 18 and LCS 20, will be the seventh and eighth vessels to be built by Austal as prime contractor under a 10 vessel, US$3.5 billion contract with the U.S. Navy.

The funding of LCS 18 and LCS 20 adds approximately US$684 million to Austal’s order book, raising it to a record total of $3.3 billion.

### AT: Heg Impact

#### Plan’s vital to legitimacy

Kenneth Anderson 9, Prof. of Law @ American University & Research Fellow @ Hoover, Professor of Law, Washington College of Law, American University, and Research Fellow, The Hoover Institution, Stanford University and Member of its Task Force on National Security and the Law, 5/11/2009, Targeted Killing in U.S. Counterterrorism Strategy and Law, http://www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\_counterterrorism\_anderson.pdf

These traditional underpinnings of international law are, however, contested in the contemporary world as the “ownership” of international law—who sets its terms, interprets its rules, determines its content and meaning—is no longer entirely in the hands of sovereign states. Other actors—international advocacy organizations, international tribunals, international organizations and their functionaries, professors and academics, middle-weight states that see international law as a means to constrain more powerful sovereign states—play a significant role in setting the terms of the meaning and interpretation of international law. And while it’s easy now for the American administration to pretend these currents don’t exist, they have a way of seeping in as real constraints on American practice. ¶ The stakes are higher than American policymakers appear to realize—as even a cursory look back over the past few years should make plain. At the most overt level, there is the possibility of prosecution abroad based on a consensus view of international law that the United States rejects. No one who has watched the European eagerness to initiate criminal and civil proceedings against Israeli and American officials in ever-proliferating judicial forums can be entirely sanguine about a giant gulf between American and international understanding of a practice that the international law community regards as murder.96 The more aggressively the United States uses this instrument, the more glaring the gulf will become—until, in some jurisdiction, someone decides to assert the consensus view as operative law. Absent some aggressive effort to defend the American position, that magistrate or prosecutor will have the overwhelming weight of international legal opinion behind him. ¶ But the problem for the United States is not limited to the possibility of criminal proceedings abroad. American courts themselves are far from immune to the influence of soft law development. Consider only the manner in which American detention policy has been affected by parallel currents of international law opinion imported into American law through Supreme Court opinions. Only seven years ago, an American administration took a “so what” attitude toward international law ferment over detention that was rather similar to the current consensus on targeted killings. International legal scholars, NGOs, international organizations, and most countries took a far more restrictive view of the detention authority residing in IHL—specifically with respect to the protections due to unlawful enemy combatants—than did the United States, which had quietly preserved but not fought aggressively for a different approach over the preceding decades. The Supreme Court, however, has now gone a considerable distance to bridge the gulf by insisting that at least a portion of the Geneva Conventions covers all detainees. Whatever one thinks of that judgment, it is a striking example of the capacity to impact American law of the sort of international legal developments we are now seeing with respect to targeted killing. ¶ More broadly, there are hidden but important costs when the United States is perceived by the rest of the world to be acting illegally. For one thing, it limits the willingness and capacity of other countries to assist American efforts. Detention here again offers a striking example; virtually no other country has assisted in American detention operations since September 11 in large part because of concerns over its legality. The more heavily and aggressively the United States banks on a policy that a strong consensus regards as per se criminal, the more tension it can expect in efforts to garner other countries’ and organizations' cooperation in counterterrorism efforts. Absent a strong effort to establish the legitimacy of current American practice, this too, over time, will push the United States away from it.¶ The Obama foreign policy team may assume that the world's goodwill toward the new administration means acceptance over time of these actions. That is surely mistaken. The admirable, if mistaken, views of international law scholars and the international law community on how human rights law should apply universally did not develop because Obama's predecessor was named Bush—and they won't melt in the face of affection for a popular new president. Over the long run, if the Obama Administration wants to continue to fight using more discriminating, precisely-targeted weapons instead of full- scale combat, it's going to have to confront this problem while it still has intellectual and legal maneuvering space.

#### That’s key to heg

Martha Finnemore 9, professor of political science and international affairs at George Washington University, January 2009, “Legitimacy, Hypocrisy, and the Social Structure of Unipolarity: Why Being a Unipole Isn’t All It’s Cracked Up to Be,” World Politics, Volume 61, Number 1

The strength of a unipolar system depends heavily, not just on the unipole’s material capabilities, but also on the social system in which unipolarity is embedded. Unipoles can shape that system at least to some degree. They can portray themselves as champions of universal values that appeal to other states and other publics. They can invest in the building of norms or institutions in which they believe and from [End Page 83] which they will benefit. The U.S. was remarkably effective at this in the years following WWII. Within its own sphere of influence under bipolarity, the U.S. was a vocal (if not always consistent) proponent of freedom, democracy, and human rights. It built an extended institutional architecture designed to shape global politics in ways that both served its interests and propagated its values. So successful was the U.S. at legitimating and institutionalizing its power, that by the time the Berlin Wall fell, other models of political and economic organization had largely disappeared. The U.S.-favored liberal model of free markets and democracy became the model of choice for states around the world not through overt U.S. coercion, but in significant part because states and publics had accepted it as the best (ergo most legitimate) way to run a country.¶ Constructing a social system that legitimates preferred values can grease the wheels of unipolar power by inducing cooperation or at least acquiescence from others, but legitimacy’s assistance comes at a price. The process by which a unipole’s power is legitimated fundamentally alters the social fabric of politics. Successful legitimation persuades people that the unipole will serve some set of values. Those persuaded may include publics in the unipolar state, foreign states and publics, and even decision makers in the unipole itself. Legitimacy can thus constrain unipoles, creating resistance to policies deemed illegitimate. Voters may punish leaders at the next election; allies may withhold support for favored policies. But legitimacy can also have a more profound effect—it can change what unipoles want. To the extent that unipole leaders and publics are sincere, they will conform to legitimacy standards because they believe in them. Institutionalizing power similarly changes the political playing field. It creates new authoritative actors (intergovernmental organizations) that make rules, create programs, and make decisions based on the values they embody—values given to them in no small part by the unipole.¶ Legitimacy is invaluable to unipoles. Creating a robust international order is all but impossible without it and unipoles will bend over backward to secure it since great power demands great legitimacy. At the same time, service to the values that legitimate its power and institutions may be inconvenient for unipoles; examples of hypocritical behavior are never hard to find among the powerful. Hypocrisy varies in degree and kind, however, and the price a unipole pays for it will vary accordingly. Simple opportunism will be appropriately condemned by those who judge a unipole’s actions, but other kinds of hypocrisy may provoke more mixed reactions. Like any social system, the one constructed [End Page 84] by a unipole is bound to contain contradictions. Tragic choices created by conflict among widely shared values will be unavoidable and may evoke some sympathy. Balancing these contradictions and maintaining the legitimacy of its power requires at least as much attention from a unipole as building armies or bank accounts.

#### Legitimacy means inevitable protectionist action doesn’t escalate

Martha Finnemore 9, professor of political science and international affairs at George Washington University, January 2009, “Legitimacy, Hypocrisy, and the Social Structure of Unipolarity: Why Being a Unipole Isn’t All It’s Cracked Up to Be,” World Politics, Volume 61, Number 1

It suggests, however, that successful unipoles need strategies for managing inevitable hypocrisy—strategies that involve some combination of social strength (i.e., deep legitimacy) and sympathy among potential accusers with the values conflict that prompts unipole hypocrisy. If the unipole (or any actor) has great legitimacy and others believe deeply in the value claims that legitimate its power, they may simply overlook or excuse a certain amount of hypocrisy, even of a venal kind. Many countries for many years have accepted U.S. and European protectionism in agriculture because they valued deeply the larger free-trade system supported by them.55 “Good,” or legitimate, unipoles get some slack. Others may tolerate hypocrisy if they can be persuaded that it flows from a trade-off among shared values, not just from convenience or opportunism of the unipole. Agreement to violate one value, sovereignty, to promote others, security and justice, by toppling a sitting government member of the UN was easy to come by in the case of Afghanistan after September 11, 2001. Other states were convinced that this was a necessary value trade-off. Conversely, side agreements protecting U.S. troops from International Criminal Court prosecution look self-serving since other troops receive no such protection.

### AT: Protectionism

#### Global trade resilient

Barnett 9**—**senior managing director of Enterra Solutions LLC (Thomas, The New Rules: Security Remains Stable Amid Financial Crisis, 25 August 2009, http://www.aprodex.com/the-new-rules--security-remains-stable-amid-financial-crisis-398-bl.aspx)

Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was no great slide into "trade wars." Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such "diverging interests" hardly constitute signposts for wars up ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that this global financial crisis has proven the great resilience of America's post-World War II international liberal trade order.

#### Trade leadership is shot no matter what

Pearson 3/19 Daniel Pearson - CATO institute, March 19, 2014, "The Obama Administration’s Trade Agenda Is Crumbling," theglobalrealm.com/2014/03/21/the-obama-administrations-trade-agenda-is-crumbling/

The nation has been living with the Obama administration’s trade policy for five years, with relatively little to show for it. In the remaining three years, is the executive branch likely to obtain Trade Promotion Authority (TPA) and successfully conclude the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP)? Although free traders very much want all of this to happen, hard-headed experience indicates it’s most likely that the administration will accomplish none of this.¶ Why such a downbeat conclusion? Debates over the North American Free Trade Agreement (NAFTA) and the Uruguay Round in the 1990s illustrated how very difficult it could be to build support for the negotiation of trade agreements and for the passage of enacting legislation. Building such support requires a firm commitment to the cause of trade liberalization, an understanding of the economics that make open markets so desirable, an eagerness to explain the benefits to those who are undecided, and a willingness to invest a whole lot of political capital to round up the required votes. It’s not clear whether any of those conditions currently exist.

#### Sanctions don’t cause war or protectionism

John Rosen 14, area director American Jewish Committee, 1/2, “Senate bill shifts burden to Iran’s leaders,” New Jersey Jewish News, http://www.njjewishnews.com/article/20235/senate-bill-shifts-burden-to-irans-leaders#.UswiL\_RDs4A

Sanctions work. They prompted Iran to return to negotiations with the United States, Russia, Germany, France, China, and Britain — the P5+1 — that led to the potentially promising deal announced in Geneva on Nov. 23. But with details of the agreement not yet final, it is surely prudent to prepare additional measures to strengthen existing sanctions, in case Tehran is not really committed to negotiating a permanent accord to end its nuclear-weapons program. That’s the essence of the Nuclear Weapon Free Iran Act of 2013 introduced by New Jersey Sen. Robert Menendez along with Senators Mark Kirk (R-Ill.), Lindsey Graham (R-SC), and Charles Schumer (D-NY). The bill does not call for an immediate imposition of new sanctions; rather, preparing for the possibility that current talks with Iran may not succeed, it provides for powerful measures that can be applied to impede the regime’s progress toward nuclear weapons capability. It already has nearly 50 cosponsors, including New Jersey’s Sen. Cory Booker, and could reach a veto-proof majority of 67 soon after Congress returns next week. For this initiative Menendez, as chair of the Senate Foreign Relations Committee, should be applauded. Instead, he has been singled out for attack by those who are convinced that Iran has substantially changed its approach to discussing its nuclear program with the United States and other world powers. He has been accused of undermining the talks with Iran, and even risking war. But senators who have already passed sanctions legislation against Iran’s nuclear ambition in recent years have good reasons to remain suspicious about the Iranian leadership’s true intentions. The Nuclear Weapon Free Iran Act is exactly what is needed now to keep up the pressure on Iran. Why? Numerous questions have arisen about the details of the Geneva agreement since it was announced, and at least one P5+1 country, France, has publicly expressed serious doubts about the Iranian commitment to reach a final deal. That skepticism is shared by many Americans. A national survey conducted by the Pew Research Center and USA Today in December found that only 32 percent approve of the Geneva deal, while 43 percent disapprove (24 percent have no opinion). Meanwhile, the clock on the six-month interim accord has not even begun ticking. Further technical talks are needed to clarify details and obligations. Iran is warning that the proposed Senate action — even discussion of it — could derail the process, which raises the question of who really is committed to completing the interim accord and implementing it in good faith. If Iran is serious about a deal, then this legislation will have zero impact, so why is Iran threatening to bolt? We have confronted this morass many times before in recent years, as the international community has sought to gain Iran’s cooperation and together resolve the nuclear crisis peacefully. Tehran repeatedly offers to negotiate in good faith, but continues to pursue unabated its nuclear ambitions, a large-scale program with an inherent military component. International Atomic Energy Agency director general Yukiya Amano has warned several times that Iran is not coming clean on its nuclear program and that its military dimension cannot be discounted. Indeed, only last week, barely a month after the apparent diplomatic achievement in Geneva was announced to great celebration, Iran’s nuclear chief, Ali Akbar Salehi, declared that another 1,000 centrifuges were ready for activation. For years Iran has practiced deceit and defiance toward the UN, the IAEA, and nations around the world, including, centrally, the P5+1. The supply of centrifuges, well-hidden in Fordow, Natanz, and other nuclear facilities, has grown exponentially over the past decade, and the number of new centrifuges that enrich uranium faster than older models is increasing. The challenge of getting Iran to end, once and for all, its quest for nuclear-weapons capability may appear daunting. But it must be done, since a nuclear-armed Iran is the most dangerous threat to the Middle East region and to global security today. The bipartisan Senate bill will help keep all parties to the talks focused on the end game. The bill holds in reserve new sanctions that could be activated if Iran does not fulfill its obligations under the interim deal, including setting the terms for a permanent agreement, or if Iran again walks away from the entire process. That should give additional incentive to progress toward a final deal that ensures that Iran’s actions are concrete and verifiable. The burden should remain where it rightly belongs, on Iran’s leadership. The Senate should approve the Nuclear Weapon Free Iran Act as one more meaningful action underscoring the seriousness of America’s determination and the consequences of an Iranian failure to act in good faith.

### 2AC Iran Sanctions DA

#### \*No chance of sanctions relief

Omri Ceren 3-26, PhD Candidate in Communication at USC Annenberg, though he may have finished his Ph.D. by now, unclear, idk, 3/26/14, “Schumer: Iran Deal a Mistake, Congress Will Ensure Tehran’s Economic “Decline”,” http://www.thetower.org/0050oc-schumer-iran-deal-a-mistake-congress-will-ensure-tehrans-economic-decline/

Sen. Chuck Schumer (D-NY) declared over the weekend that ”Congress is monitoring… to make sure the Iranian economy continues to decline” and that pressure on the Islamic republic had to be maintained, amid widening efforts in both the House and Senate to reassert a Congressional voice in Washington’s diplomacy with Iran.

In a brief interview after his remarks Schumer told The Jewish Week that the deal was a mistake. “I thought they shouldn’t have given in and reduced the sanctions,” he said. “But now, the view of the administration in Israel, the Netanyahu government and all of us is we have to see what happens with the negotiations. If they don’t come to much we’re going to tighten sanctions and do what it takes to prevent a nuclear Iran.

“We have a whole new proposal that we have on the table,” he said, referring to the Nuclear Weapon Free Iran Act, backed in the Senate by 12 Democrats and 12 Republicans and introduced earlier this year in response to the State Department-brokered deal, which some members of Congress say has no teeth.

Bipartisan groups from both chambers had in recent weeks sent letters to President Barack Obama outlining what they considered to be the minimum conditions for a comprehensive deal with Tehran, and emphasizing among other things that Iran must be forced to dismantle its nuclear infrastructure. The Islamic republic is obligated by roughly half a dozen United Nations Security Council resolutions to commit to such dismantlement.

Schumer’s comments – and broader efforts on the Hill – come as evidence continues to pile up that the interim Joint Plan of Action (JPA) has allowed Iran to begin to stabilizing its economy, generating worries that US negotiators may lack the leverage necessary to convince the Iranians to put their atomic program beyond use for weaponization.

Data released Tuesday by the state-run Korea National Oil Corporation documented a spike in South Korean imports of crude Iranian oil.

South Korea’s imports of Iranian crude oil in February more than doubled to 8.140 million barrels, or 290,714 b/d, compared with 3.974 million barrels a year earlier, data released Tuesday by state-run Korea National Oil Corp. showed.

Overwhelming majorities in Congress and across the American electorate have held that financial pressure should be maintained on Iran throughout negotiations, both to maintain short-term leverage and as a signal that walking away from the negotiating table will quickly trigger genuinely crippling sanctions.

#### The DA is not intrinsic – it’s within the agential ambit of the USFG to do the plan and prevent Iran sanctions

#### \*Sanctions definitely aren’t going anywhere and Obama has no PC

Parsi & Cullis 3/24 Tyler Cullis is a Policy Associate at the National Iranian American Council (NIAC). Trita Parsi is the co-founder and President of NIAC. Iran Matters: Will US Sanctions Scuttle a Nuclear Deal With Iran? http://www.niacouncil.org/site/News2?page=NewsArticle&id=10656&security=1&news\_iv\_ctrl=-1

Less discussed, however, is what will need to happen in the US should that balance be found. This is troubling, especially in light of the fact that the White House **might not have the power at present to meet its commitments** if and when a nuclear deal is agreed to.¶ As a recent NIAC report demonstrates, the President is **deeply constrained** in his ability to lift the robust energy and financial sanctions Congress has imposed on Iran. Under current law, **the best** the President can offer Iran are time-limited waivers that he promises to renew for as long as Iran keeps to its commitments under a nuclear deal and for as long as he remains in office. Whether succeeding Administrations would feel similarly bound to a nuclear deal that might well prove a political thunderbolt is unclear.

#### \*CIA larger issue than the plan—it’ll keep escalating

Conor Friedersdorf 3/24, The Atlantic, 2014, False Equivalence and the Feud Between the CIA and the Senate, www.theatlantic.com/politics/archive/2014/03/false-equivalence-and-the-feud-between-the-cia-and-the-senate/284596/

But now that the Justice Department is involved in the dispute between Feinstein’s Intelligence Committee staff and the CIA—deciphering whether the CIA violated the Constitution or federal law by searching Senate computers, or whether Democratic staffers hacked into the CIA’s system to obtain classified documents—things have escalated to an unprecedented level. What vexes me about how this dispute is being covered—not just in this Politico story, but in many media outlets—is the false equivalence implicit in the juxtaposition: as if the CIA and the Senate committee stand accused of like transgressions. If the charges against the CIA are true, our nation's foreign spy agency, which is forbidden from conducting any surveillance in the U.S., snooped on our legislature. That's a transgression against our constitutional framework. If the accusations against the Senate intel committee are accurate, its staffers, who have security clearances, obtained documents that the CIA ought to have turned over anyway. Are we prepared to accept that, during a comprehensive congressional inquiry into torture, the CIA was justified withholding torture documents? Senate staffers committed no great sin getting documents wrongly denied them. To its credit, the Politico article quotes Majority Leader Harry Reid articulating some of these points about the separation of powers. But the analysis next offered is the following: With no clear resolution in sight, Capitol Hill and the CIA are stuck in the awkward spot of trying to maintain business as usual, when the reality is it’s anything but. “This is the most serious feud since the Intelligence committees were established,” said Amy Zegart, a former National Security Council staffer and senior fellow at Stanford University’s Hoover Institution. Most alarming, Zegart explained, is Feinstein’s Senate floor broadside earlier this month against the CIA. The senator’s remarks broke from her well-established reputation as a staunch defender of another wing of the intelligence community, the National Security Agency, amid scores of Edward Snowden-inspired leaks to the media. “When someone who says they can be trusted now says they can’t, it’s really bad,” Zegart said. Incredible. "Business as usual" is implicitly defined as the desirable state of affairs. And what's deemed "most alarming"? Not CIA torture. Not the CIA withholding torture documents from a Senate investigation. Not the CIA spying on Congress, or trying to intimidate oversight staffers with criminal charges for doing their jobs. Bizarrely, the thing declared "most alarming" are Feinstein's words! By attacking rather than deferring to the CIA, she disrupted business as usual. Her act of "saying" is emphasized as the important factor. Then a bit farther on: Feinstein and [CIA Director John] Brennan are standing by their contradictory explanations of what happened in the course of the Democratic staff’s investigation into the Bush-era CIA programs. Absent a meeting of the minds, some say the only way for the chairwoman to save face is for Brennan to go. The article might have said, "Absent a meeting of the minds, some say the Senate intel committee should show its oversight ability is intact by forcing Brennan to resign." Instead, the focus is on Feinstein's ability to save face, as if her face-saving itself—not its implications for good governance—is what's important. Perhaps face-saving is what they're gossiping about in Washington, D.C.? In the article's defense, it then goes on to quote former Representative Pete Hoekstra, who has a far more sensible analysis of the stakes: "The real question it will come down to is whether Dianne Feinstein believes she can have a working relationship with John Brennan. And if she believes that relationship is beyond repair and it’s going to be difficult to rebuild that trust between the oversight committee and the CIA … then there’s really only one alternative. And that’s Brennan has to step aside." The reporter also quotes House Intelligence Committee Chairman Mike Rogers: “Our oversight is alive and well and robust. That won’t change,” House Intelligence Committee Chairman Mike Rogers said in an interview. But the Michigan Republican also warned that the dispute needed to be resolved, and soon—otherwise there could be consequences. “I think if this doesn’t get handled right in the next short period of time this has the potential of having other broader implications, and I hope it doesn’t get to that,” Rogers said. “You don’t want everything to become adversarial,” he added. “The oversight will continue. If it’s adversarial or not, it will continue. It’s always better when both sides agree to a framework on what will be provided; otherwise, it becomes a subpoena exchange, and that’s just not helpful.” This is why the Tea Party should subject Rogers to a primary challenge: A man charged with overseeing the CIA actually believes that the spy agency would agree to a framework where it voluntarily provided overseers with all they needed to know! It's hard to say whether he's been co-opted or is staggeringly naive. The article goes astray again by putting forth the following passage without rebuttal: In the absence of answers of what happened, several intelligence veterans said the Feinstein-CIA dispute is taking up lawmakers’ limited oxygen supply on complex issues ranging from Snowden’s revelations about government surveillance overreach to cybersecurity threats and tensions flaring in Ukraine, Syria, Egypt and other global hotspots. Implicit in this treatment is the notion that CIA spying on Congress is a tertiary concern, a controversy distracting us from more important issues. I'd argue that, if there's a limited oxygen supply in Washington, D.C., safeguarding the separation of powers and adequate oversight of the CIA is far more important than, say, Syria. It is troubling, but unsurprising, that intelligence veterans think otherwise.

Ukraine pounder

RT 3/27 Historical Iranian nuclear deal to be shelved again? rt.com/op-edge/iran-nuclear-deal-problems-621/

The situation in Ukraine could also have an effect on the negations over Iran’s nuclear program. While the talks themselves were **steeped in mutual mistrust** and **years of adversity,** tensions between Moscow and the West over Crimea could **further strain diplomacy, which would decrease chances for a final deal**.

#### \*Obama’s NSA proposal triggers the link

Paul Waldman 3/25, Washington Post, 2014, “NSA may give up on phone records. But they’re still watching”, www.washingtonpost.com/blogs/plum-line/wp/2014/03/25/nsa-may-give-up-on-phone-records-but-theyre-still-watching/

At a presser today in the Netherlands, President Obama confirmed reports that his administration is preparing to release a plan to end National Security Agency bulk information collection and leave that information with phone companies instead — albeit not for a longer duration than they are already required to hold the information for. Obama described the plan as “workable,” adding: “This insures that the government is not in possession of that bulk data.” What makes this surprising is that old axiom about presidents: they don’t relinquish power willingly. No matter what they might say about the appropriate limits of executive authority before they take office, once they’re actually in the White House, they want to hold on to every shred they can. Obama is now poised to give up some of his power. But it needs to be restated that this would not have happened without all those revelations from Edward Snowden. What will Obama’s proposal look like? Charlie Savage of the New York Times reported: The Obama administration is preparing to unveil a legislative proposal for a far-reaching overhaul of the National Security Agency’s once-secret bulk phone records program in a way that — if approved by Congress — would end the aspect that has most alarmed privacy advocates since its existence was leaked last year, according to senior administration officials. Under the proposal, they said, N.S.A. would end its systematic collection of data about Americans’ calling habits. The records would be stay in the hands of phone companies, which would not be required to retain the data for any longer than they normally would. And the N.S.A. could obtain specific records only with permission from a judge, using a new kind of court order.

# 1AR

## Case

### Circumvention

#### Increases political costs and solves signal regardless

Will Wilkinson 12, Research Fellow at the Cato Institute, M.A. in Philosophy from the Northern Illinois University, Academic Coordinator of the Social Change Project and the Global Prosperity Initiative at The Mercatus Center at George Mason University, "Rebridling the Executive", Economist, 4-17, http://www.economist.com/blogs/democracyinamerica/2012/04/democracy-and-war

I think this is good, sound sense. Fabio Rojas, a professor of sociology at Indiana University, disagrees. "[T]he sorts of rules that Maddow proposes are useless", he argues. "People will just ignore the rules when they want to when they want war". How so?¶ First, if you really want war, you can always vote to have a new rule for war or to make an exception. Also, most rules have wiggle room in them, which makes it easy to wage war under other guises. Secondly, there's a consistent “rally around the leader effect.” It is incredibly hard for anyone to oppose leaders during war time. Elected leaders are in a particularly weak position. Simply put, legislatures can't be trusted to assert their restraining role in most cases.¶ This is too fatalistic. Taking advantage of "wiggle room" or finding a way to "wage war in other guises" requires some effort and some expenditure of political capital. A weak impediment is an impediment nonetheless, and can be well worth having. Anyway, I suspect Ms Maddow's policy proposals, should they be enacted, would not be as impotent as Mr Rojas contends.¶ Imagine Congress did explicitly require that wars be financed with new tax revenue, that democratically unaccountable clandestine operations must either be suspended or made subject to congressional oversight, that appropriations not be approved to pay mercenaries, and so forth. It's inconceivable that Congress would set in place these measures if they did not reflect widespread public sentiment. And in that case, it would seem that such policies would stand as a powerful expression of the people's resistance to easy, unaccountable wars. New rules explicitly intended to reign in unilateral executive power will exist only if they are popular. The executive would defy them at his or her electoral peril. That's how democracies restrain, isn't it? How is that useless?

## T

### CI

#### Presidential war powers authority includes declared wars, statutorily authorized wars and inherent self-defense authority

Mark J. Yost 89, JD from Georgetown Law School, “NOTE: Self Defense or Presidential Pretext? The Constitutionality of Unilateral Preemptive Military Action,” 78 Geo. L.J. 415, lexis

This note explores the limits of the President's war powers authority. Specifically, it analyzes whether the President, consistent with his constitutional grant of war powers, can order preemptive military action without congressional consultation. The preemptive air strike that President Reagan planned, but did not order, against the chemical weapons factory at Rabta, Libya provides the context for this discussion. Part I outlines the history of United States-Libyan relations and tracks the construction of the chemical weapons plant at Rabta. Part II discusses the various types of war that may [\*417] be waged under the Constitution. It argues that the Constitution provides for only three types of warmaking: (1) acts of war pursuant to a congressional declaration of war, n10 (2) acts of war authorized by statute, n11 and (3) acts of war pursuant to the President's self-defense power under the commander in chief clause and the executive power clause of article II. This Part then analyzes the factual circumstances attending the Rabta chemical weapons factory and concludes that because there was no congressional declaration of war and because no legislation authorized a preemptive military strike, the President constitutionally could have ordered a strike only under his self-defense power. It concludes by tracing the development of this presidential authority and analyzing the factors that have determined its scope.

#### Wars power authority includes commander-in-chief power

Lawfare 12, Lawfare Staff, "War Powers", November 25, www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/war-powers/

The executive’s war powers stem primarily from three constitutional provisions:¶ Vesting clause, Art. II, § 1, cl. 1: “The executive Power shall be vested in a President of the United States of America.”¶ **Commander-in-Chief clause**, Art. II, § 2, cl. 1: “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States . . . .”¶ Take Care clause, Art. II, § 3: The President “shall take Care that the Laws be faithfully executed . . . .”

#### The war powers authority of the President is Commander-in-Chief authority

Joseph Gallagher 11, Pakistan/Afghanistan coordination cell of the U.S. Joint Staff, Summer, “Unconstitutional War: Strategic Risk in the Age of Congressional Abdication,” Parameters, http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/2011summer/Gallagher.pdf

First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. The founders carefully crafted constitutional war-making authority with the branch most representative of the people—Congress.4¶ The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.5 This principle applies in practice to all decisions of considerable national importance. Specific to war powers authority, the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief.6 This construct designates Congress, not the president, as the primary decisionmaking body to commit the nation to war—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort.

#### CiC authority is topical

Jules Lobel 8, professor of law at the University of Pittsburgh, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

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

#### “War powers authority” covers commander in chief operations

Oxford 12 International Encyclopedia of Legal History, Oxford University Press via Oxford Reference, Georgetown University library

**The War Power in the Twenty-First Century**.¶ The presumption of a dual war-making role appears to have been eclipsed since 2001, during which time it has been argued by some that the president stands supreme in his war-making capacity as **commander in chief** and that he has no obligation to share such power with Congress. This view assumes that the president has all the requisite and necessary **authority to order whatever he deems necessary in terms of military operations** and that Congress can claim only the power to declare war; the resulting operational conduct is strictly a presidential prerogative. Opponents of this interpretation point to all the additional powers dealing with the military that are vested in Congress.

## Politics

### Resilient

#### Resilient --- 08 crisis overwhelmingly disproves

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

Another salient outcome is mass public attitudes about the global economy. A general assumption in public opinion research is that during a downturn, demand for greater economic closure should spike, as individuals scapegoat foreigners for domestic woes. The global nature of the 2008 crisis, combined with anxiety about the shifting distribution of power, should have triggered a fall in support for an open global economy. Somewhat surprisingly, however, the reverse is true. Pew’s Global Attitudes Project has surveyed a wide spectrum of countries since 2002, asking people about their opinions on both international trade and the free market more generally.35 The results show resilient support for expanding trade and business ties with other countries. 24 countries were surveyed in both 2007 and in at least one year after 2008, including a majority of the G-20 economies. Overall, 18 of those 24 countries showed equal or greater support for trade in 2009 than two years earlier. By 2011, 20 of 24 countries showed greater or equal support for trade compared to 2007. Indeed, between 2007 and 2012, the unweighted average support for more trade in these countries increased from 78.5% to 83.6%. Contrary to expectation, there has been no mass public rejection of the open global economy. Indeed, public support for the open trading system has strengthened, despite softening public support for freemarket economics more generally.36

#### U.S. leadership’s not key

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

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

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

**Leadership irrelevant – trades inet**

Ikenson, 9associate director for the Center for Trade Policy Studies at the Cato Institute (Daniel, “A Protectionism Fling: Why Tariff Hikes and Other Trade Barriers Will Be Short-Lived,” 3/12, http://www.freetrade.org/pubs/FTBs/FTB-037.html

A Little Perspective, Please

Although some governments will dabble in some degree of protectionism, the combination of a sturdy rules-based system of trade and the economic self interest in being open to participation in the global economy will limit the risk of a protectionist pandemic. According to recent estimates from the International Food Policy Research Institute, if all WTO members were to raise all of their applied tariffs to the maximum bound rates, the average global rate of duty would double and the value of global trade would decline by 7.7 percent over five years.8 That would be a substantial decline relative to the 5.5 percent annual rate of trade growth experienced this decade.9

But, to put that 7.7 percent decline in historical perspective, the value of global trade declined by 66 percent between 1929 and 1934, a period mostly in the wake of Smoot Hawley's passage in 1930.10 So the potential downside today from what Bergsten calls "legal protectionism" is actually not that "massive," even if all WTO members raised all of their tariffs to the highest permissible rates.

If most developing countries raised their tariffs to their bound rates, there would be an adverse impact on the countries that raise barriers and on their most important trade partners. But most developing countries that have room to backslide (i.e., not China) are not major importers, and thus the impact on global trade flows would not be that significant. OECD countries and China account for the top twothirds of global import value.11 Backsliding from India, Indonesia, and Argentina (who collectively account for 2.4 percent of global imports) is not going to be the spark that ignites a global trade war. Nevertheless, governments are keenly aware of the events that transpired in the 1930s, and have made various pledges to avoid protectionist measures in combating the current economic situation.

In the United States, after President Obama publicly registered his concern that the "Buy American" provision in the American Recovery and Reinvestment Act might be perceived as protectionist or could incite a trade war, Congress agreed to revise the legislation to stipulate that the Buy American provision "be applied in a manner consistent with United States obligations under international agreements." In early February, China's vice commerce minister, Jiang Zengwei, announced that China would not include "Buy China" provisions in its own $586 billion stimulus bill.12

But even more promising than pledges to avoid trade provocations are actions taken to reduce existing trade barriers. In an effort to "reduce business operating costs, attract and retain foreign investment, raise business productivity, and provide consumers a greater variety and better quality of goods and services at competitive prices," the Mexican government initiated a plan in January to unilaterally reduce tariffs on about 70 percent of the items on its tariff schedule. Those 8,000 items, comprising 20 different industrial sectors, accounted for about half of all Mexican import value in 2007. When the final phase of the plan is implemented on January 1, 2013, the average industrial tariff rate in Mexico will have fallen from 10.4 percent to 4.3 percent.13

And Mexico is not alone. In February, the Brazilian government suspended tariffs entirely on some capital goods imports and reduced to 2 percent duties on a wide variety of machinery and other capital equipment, and on communications and information technology products.14 That decision came on the heels of late-January decision in Brazil to scrap plans for an import licensing program that would have affected 60 percent of the county's imports.15

Meanwhile, on February 27, a new free trade agreement was signed between Australia, New Zealand, and the 10 member countries of the Association of Southeast Asian Nations to reduce and ultimately eliminate tariffs on 96 percent of all goods by 2020.

While the media and members of the trade policy community fixate on how various protectionist measures around the world might foreshadow a plunge into the abyss, there is plenty of evidence that governments remain interested in removing barriers to trade. Despite the occasional temptation to indulge discredited policies, there is a growing body of institutional knowledge that when people are free to engage in commerce with one another as they choose, regardless of the nationality or location of the other parties, they can leverage that freedom to accomplish economic outcomes far more impressive than when governments attempt to limit choices through policy constraints.

### UQ

#### Congress insists on no enrichment as a precondition for sanctions relief---Iran rejects that

AFP 3-18 – Agence France Presse, 3/18/14, “US Congress to Obama: Stand tough on Iran,” http://www.spacedaily.com/reports/US\_Congress\_to\_Obama\_Stand\_tough\_on\_Iran\_999.html

In bipartisan letters, House and Senate members sent wish lists to the president specifying what they wanted to see in any final deal, namely that Iran never gain ability to build a nuclear bomb.

Topping the list of "core principles" sought by 83 of the Senate's 100 members was their demand that Iran not have the right to enrich uranium -- a position rejected by Iranian officials.

"We believe that Iran has no inherent right to enrichment under the Nuclear Non-Proliferation Treaty, (and) we believe any agreement must dismantle Iran's nuclear weapons program and prevent it from ever having a uranium or plutonium path to a nuclear bomb," they said in a letter to Obama.

"We must signal unequivocally to Iran that rejecting negotiations and continuing its nuclear weapon program will lead to much more dramatic sanctions, including further limitations on Iran's exports of crude oil and petroleum products."

The group, led by Senate Foreign Relations Committee chairman Robert Menendez and hawkish Republican Senator Lindsey Graham, also called for shuttering Iran's heavy-water reactor at Arak and an explanation by Tehran on United Nations Security Council concerns about possible military dimensions of Iran's nuclear program.

Some 394 of the House's current 432 members wrote a similar letter, warning Obama that Iran's "history of delay, deception, and dissembling on its nuclear program" raise concerns that Tehran will seek to secure an "economic lifeline" out of prolonged negotiations while progressing toward nuclear breakout capability.

#### No one is willing to make any concessions on either side---means no uniqueness and no overall conflict resolution

RT 3/27 Historical Iranian nuclear deal to be shelved again? rt.com/op-edge/iran-nuclear-deal-problems-621/

While Iranian authorities continue insisting on Iran’s right to develop peaceful atomic energy, there is no joint position on the framework of negations within the state. Many Iranian hardliners believe the Iranian team has given too many concessions to the West in return for too little. Besides, even though in return for all concessions on its program Iran would see sanctions lifted, it remains uncertain whether ultra-conservative elements in Tehran around supreme leader Ayatollah Ali Khamenei would accept such limitations.

**The same situation can be witnessed among US politicians**. For example, a large group of US senators is calling for a set of "core principles" it wants to see in a permanent deal. In a letter to Barack Obama, 83 senators said Iran must understand there will be consequences for not reaching "an acceptable final agreement," including "much more dramatic sanctions."

“**We must signal unequivocally** to Iran that rejecting negotiations and continuing its nuclear weapon program **will lead to much more dramatic sanctions**, including further limitations on Iran's exports of crude oil and petroleum products," the senators wrote to Obama.

The letter also stated that Iran "has no reason" to have enrichment facilities like its Fordow site or the Arak heavy-water reactor.

The Arak reactor, which is still under construction, is one of the biggest concerns of the West, who wants it to be modified sufficiently to ensure it poses no bomb proliferation risk. Iran insists the facility must be free to operate under any deal, saying it will be geared solely to producing radio-isotopes for medical treatments.

"The Arak reactor is part of Iran's nuclear program and will not be closed down, (like) our research and development activities," Foreign Minister Javad Zarif said.

Thus, **it’s clear that both parties of the negotiations do not want to make any concessions and change their initial stance**. While some progress has really been achieved, in particular Iran decreased its enrichment levels from 20 percent to 5 percent and opened its nuclear sites for IAEA inspections, it’s very unlikely that the April round of talks will make chances of signing a final deal more real.

#### There’s literally momentum for *more* sanctions---and those will independently ruin any negotiations

Benari 3/23 Elad Senators Urge Obama to Stand Firm Against Iran http://www.israelnationalnews.com/News/News.aspx/178782#.UzXs9\_ldWSo

The 23 senators said they embraced Obama's two-track approach **twinning sanctions** against Tehran with negotiations, but urged strict procedures of transparency and verification to ensure Iran does not obtain a nuclear weapon.¶ Under a six-month interim deal which was reached in November and went into effect in January, Iran agreed to freeze its uranium enrichment program in return for sanctions relief worth some $6-7 billion, including the transfer of some $4.2 billion in frozen overseas funds.¶ That interim agreement is meant to lead to a final accord that minimizes any potential Iranian nuclear weapons threat in return for a full lifting of sanctions.¶ The sides gathered for another meeting in Vienna this past week, with EU foreign policy chief Catherine Ashton describing them as "substantive and useful", and Iranian Foreign Minister Mohammad Javad Zarif saying he saw "signs" that a long-term nuclear deal could be reached.¶ As talks have continued, a bill in the Senate to **impose more sanctions** on Iran has been **gaining momentum**.

Obama, however, has pledged to veto the bill should it pass.¶ Zarif has warned the United States that if it imposes **any new sanctions** on his country, the nuclear deal reached in Geneva **would be “dead**”.

#### Too much sanction support in Congress

Johnson 3/24 Bridgette, journalist for wsj the hill usa today and like 10 other awesome papers, “Dem Senators Who Back Obama on Iran Negotiations Warn of ‘Delay, Deception’” pjmedia.com/tatler/2014/03/24/dem-senators-who-back-obama-on-iran-negotiations-warn-of-delay-deception/

Twenty-three senators — all Democrats except for independents Bernie Sanders (I-Vt.) and Angus King (I-Maine) — sent President Obama a letter Saturday indicating their support for his negotiations with Iran yet warning that the Islamic Republic’s deception is showing through.

It follows last week’s letter spearheaded by Sens. Robert Menendez (D-N.J.), Lindsey Graham (R-S.C.), Chuck Schumer (D-N.Y.), Mark Kirk (R-Ill.), Chris Coons (D-Del.) and Kelly Ayotte (R-N.H.) demanding that Obama meet core principles, including clear consequences, in any final nuclear agreement with Iran.

**Both communications indicate Obama does not have a veto-proof majority to beat back a new sanctions effort in Congress**.

### 1AR NSA Pounder

#### NSA guarantees a massive partisan fight

Kevin Liptak 3-27, CNN White House Reporter, 3/27/14, “Obama: Government shouldn't hold phone data,” http://www.localnews8.com/news/politics/Obama-Government-shouldn-t-hold-phone-data/25192472

The federal government must get out of the business of collecting bulk data about Americans' telephone calls, President Barack Obama said Thursday, saying the information should instead be held by phone carriers who would then provide the material to counterterrorism agencies.

The shift came after the collection program, administered by the National Security Agency, was revealed by former government contractor Edward Snowden. The bulk collection of telephone records was criticized as a major breach of Americans' privacy, and Obama vowed to make changes to the program while maintaining the ability to keep the country safe from terrorist attacks.

"I have decided that the best path forward is that the government should not collect or hold this data in bulk," Obama said in a written statement. "Instead, the data should remain at the telephone companies for the length of time it currently does today."

A months-long review led to the decision, which Obama announced while on an overseas tour of Europe and Saudi Arabia. Congress would have to approve the plan; this week, the House Intelligence Committee introduced similar legislation that would end government collection of phone data.

Officials said the White House-proposed changes would require a federal court to grant its approval before the government could obtain phone records from carriers. Those records contain information about calls made to individual phone numbers but do not include the content of the calls.

Among the provisions included in the White House's suggested law is an "emergency" clause allowing the government to collect phone data without court approval. A senior administration official, speaking anonymously, said high-level government officials would determine what situations amount to national security emergencies, though the official didn't offer a definition of what might constitute such an occasion.

Under the new rules, phone companies would be compelled to provide technical assistance to the government during the collection process. That includes making sure the information is produced quickly and in a usable format.

A U.S. official said the White House had "fairly high-level discussions with some of the providers" to discuss the changes and how they'd affect individual businesses.

Initial industry reaction to the proposed changes was largely lukewarm. A spokesman for Sprint said the company was reviewing the proposal, while AT&T declined to comment.

Randal Milch, general counsel and executive vice president at Verizon, said the telecom giant supported the plan to end government collection of data but added that the new rules "should not require companies to store data for longer than, or in formats that differ from, what they already do for business purposes."

"If Verizon receives a valid request for business records, we will respond in a timely way, but companies should not be required to create, analyze or retain records for reasons other than business purposes," he wrote.

Because the current authorization for the government phone data collection program expires this week, officials said the government would seek an additional 90-day approval period while the proposed legislation makes its way through Congress.

On Tuesday, Reps. Mike Rogers of Michigan and Dutch Ruppersberger of Maryland -- the top Republican and Democrat on the House Intelligence Committee -- unveiled their own plan for ending the automatic NSA collection of phone metadata.

The issue touches on deep political and ideological fissures between Republicans and Democrats, promising an extended battle in Congress over the necessary legislation, especially in an election year.

On Thursday, Republican Sen. Rand Paul took harsh aim at Obama's record on privacy as the President was meeting with Pope Francis in Rome.

"@BarackObama to @Pontifex: Forgive me father for I have spied. #NSA," tweeted Paul, who's been one of the fiercest critics of the NSA spying programs that Snowden helped reveal.

Those leaks unleashed a political firestorm, with privacy advocates and others calling the NSA surveillance programs a violation of constitutional rights. In particular, many Americans feared inevitable abuse of a system in which the government collected billions of phone records for possible review in terrorism investigations.

and pass yet more sanctions on Iran if there is no deal -- or one seen as too soft.

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### Neg Fisher Card Votes Aff

#### CIC powers are only defensive

Fisher, Specialist with the Law Library, The Library of Congress, 5

(Louis, Fall, “ARTICLE: Lost Constitutional Moorings: Recovering the War Power,” 81 Ind. L.J. 1199, lexis, accessed 3-21-14, CMM)

B. The American Model¶ Scrutinize the U.S. Constitution as carefully as you like and you will not find a single one of Blackstone's prerogatives assigned to the President. The powers to declare war, raise armies and navies, and issue letters of marque and reprisal are placed exclusively in Congress. The powers to make treaties and appoint ambassadors are shared between the President and the Senate. Thomas Jefferson expressed his satisfaction with this division of power: "We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay." n9¶ The Framers rejected the British model because of their strong commitment to a republic, with citizens depending on their elected representatives and a system of one branch checking another. To assure public control, the decision to go to war against another country was vested in Congress, the branch closest to the people. At the Philadelphia Convention in 1787, where the delegates assembled to draft the Constitution, the monarchical model was rejected whenever it was raised. Charles Pinckney said he was "for a vigorous Executive but was afraid the Executive powers of <the existing> Congress might extend to peace & war &c which would render the Executive a Monarchy, of the worst kind, towit an elective one." n10 John Rutledge wanted the executive power placed in a single person, "tho' he was not for giving him the power of war and peace." n11 James Wilson also preferred a single executive but "did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of a Legislative nature. Among others that of war & peace &c." n12¶ Edmund Randolph worried about executive power, calling it "the faetus of monarchy." n13 The delegates at the Philadelphia convention, he said, had "no motive to be governed by the British Governm[ent] as our prototype." n14 If the United States had no other choice he might adopt the British model, but "the fixt genius of the people of America required a different form of Government." n15 Wilson agreed that the British model "was inapplicable to the situation of this Country; the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it." n16¶ [\*1203] One might expect to find Blackstone's prerogative championed by Alexander Hamilton, but that is not the case. In a lengthy speech delivered on June 18, Hamilton set forth his principles of government and explained why the British model of executive monopoly over foreign affairs and the war power had no home in America. In his "private opinion he had no scruple in declaring . . . that the British Gov[ernment] was the best in the world[,]" n17 but monarchical powers did not mix with republican government. The American President would have "with the advice and approbation of the Senate" the power of making treaties, the Senate would have the "sole power of declaring war," and the President would be authorized to have "the direction of war when authorized or begun." n18¶ The one area of the war power that the Framers assigned to the President, to be taken on his initiative, was of a defensive nature. The early draft empowered Congress to "make war." Charles Pinckney objected that legislative proceedings "were too slow" for the safety of the country in an emergency, since he expected Congress to meet but once a year for short periods. n19 James Madison and Elbridge Gerry moved to insert "declare" for "make," leaving to the President "the power to repel sudden attacks." n20 Their motion carried on a vote of seven to two. After Rufus King explained that the word "make" would allow the President to conduct war, which was "an Executive function," Connecticut changed its vote and the final tally became eight to one. n21¶ Debate on the Madison-Gerry amendment underscored the narrow grant of authority to the President. Pierce Butler wanted to give the President the power to make war, arguing that he "will have all the requisite qualities, and will not make war but when the Nation will support it." n22 Not a single delegate supported Butler. Roger Sherman insisted that the President should be able "to repel and not to commence war." n23 Gerry said he "never expected to hear in a republic a motion to empower the Executive alone to declare war." n24 George Mason spoke "[against] giving the power of war to the Executive, because not <safely> to be trusted with it; . . . He was for clogging rather than facilitating war." n25 In the Pennsylvania ratifying convention, James Wilson voiced the prevailing confidence that the American system of checks and balances "will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large[.]" n26¶ Under Article II of the Constitution, Presidents have the title commander in chief. Unlike the interpretations offered by some advocates of executive power, this title never gave the President the authority to take the country to war. Instead, it was limited [\*1204] to two purposes. One was to promote unity of command. The framers wanted the accountability that comes with a single person in charge of military operations. In Federalist No. 74, Hamilton explained that "the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand." n27 The second purpose was to assure civilian supremacy. In time of war, control was not to be transferred to generals and admirals. Whatever soldier leads U.S. armies to victory against an enemy, "he is subject to the orders of the civil magistrate, and he and his army are always 'subordinate to the civil power.'" n28¶ Nothing in the Commander in Chief Clause contemplated that Presidents may initiate offensive wars against other nations. In the Steel Seizure case of 1952, Justice Robert Jackson noted that the Commander in Chief Clause is sometimes put forth "as support for any Presidential action, internal or external, involving use of force, the idea being that it vests power to do anything, anywhere, that can be done with army or navy." n29 To this proposition he said that nothing would be "more sinister and alarming than that a President whose conduct of foreign affairs is so largely uncontrolled, and often even is unknown, can vastly enlarge his mastery over the internal affairs of the country by his own commitment of the Nation's armed forces to some foreign venture." n30

### Authority = Pre-Delegated

#### “Authority” refers to existing actions by the President – answers his laundry list at the top – the limit on the topic would be actions the president is currently undertaking using war powers justications (i.e. statute or self-D) – justified by 2NR cards

Vance 83, U.S. appeals judge for the Eleventh Circuit, U.S. v. Frade, 709 F.2d 1387, Lexis

Arguing for an expansive reading of this provision, the government strenuously contends that 31 C.F.R. § 515.415, prohibiting transactions incident to travel to, from, and within Cuba when in connection with the transportation of certain Cuban nationals from Cuba to the United States, falls within the category of authorities being exercised on July 1, 1977, because, on that date, Executive authority [\*\*32] under the TWEA was being exercised regarding Cuba through the Cuban Assets Control Regulations. The government argues that either Regulation 515.415 is a mere explanatory modification of the Cuban Assets Control Regulations, or, alternatively, the existence of some regulations regarding Cuba under the TWEA as of July 1, 1977, is a sufficient ground to invoke the grandfather clause as statutory authority for the promulgation of future regulations regarding Cuba. **While the ambiguous term**s "**authorities**" and "exercised" **may** appear to be **elastic** enough to encompass the interpretation for which the government argues, we agree with the recent first circuit opinion in Wald [\*1398] v. Regan, 708 F.2d 794, (1st Cir.1983), that **a narrow**, **restrictive interpretation is compelled** by the legislative history and purpose of the grandfather clause and by its function within the broader statutory scheme. First, the legislative history reveals that it was the intent of Congress **to** grandfather **only the ongoing uses of Executive authority**. "Throughout the committee hearings and the [\*\*33] House and Senate reports, **nearly every time a legislator referred to** the 'savings clause ' and to the exercise of the TWEA **'authorities**, ' he [SETH ADDED: **they**] **spoke of specific**, **existing** **'uses'** **of those authorities**." Wald v. Regan, 708 F.2d 794 at 798 [manuscript at 11] (emphasis in original). See Report of the Committee on International Relations on H.R. 7788: Trading With the Enemy Act Reform Legislation, H.R.Rep. No. 459, 95th Cong., 1st Sess. 2 (1977) (TWEA Reform) ("the current uses of these authorities . . . may continue"); id.at 10 ("'grandfathering' existing uses of these powers"); Emergency Controls on International Economic Transactions: Hearings before the Subcommittee on International Economic Policy and Trade of the House Committee on International Relations, 95th Cong., 1st Sess. 147 (1977) (Emergency Controls) (statement of R. Roger Majak, Staff Director of Subcommittee on International Economic Policy & Trade) ("There is a clear need to grandfather or deal in some special way with existing uses of section 5(b) authorities"); id. at 168 (statement of Rep. Cavanaugh) ("where the powers of 5(b) are currently operative"); id. at 189 (statement of [\*\*34] Rep. Bingham) ("it was the purpose . . . to grandfather in existing uses of 5(b)"). **Language which would have given broader scope** to the grandfather clause **by permitting** "**any** other **authority conferred upon the President** by . . . section [5(b) to be] exercised to deal with the same set of circumstances," Amendments to the Trading With the Enemy Act: Subcommittee Working Draft of June 8, 1977, 95th Cong., 1st Sess. § 101(b), **was deliberately striken from the bill**. Representative Bingham, a principal sponsor of the 1977 amendment, explained "I think it boils down to a question of whether we are grandfathering a particular situation, and all the powers that may be necessary to deal with the situation, or whether we are grandfathering the particular authorities themselves and their usage . . . I don't know why it should be necessary to give [the President] authority to expand what has already been done." Emergency Controls, supra at 167.