# 1AC – Wake Doubles

### 1AC – Executive Overreach

#### CONTENTION 1: OVERREACH

#### *Scenario A: Targeted Strikes*

#### Global prolif of drones is inevitable---the plan establishes norms for restrained use that prevents war

Kristen Roberts 13, news editor for the National Journal, master in security studies from Georgetown, “When the Whole World Has Drones”, 3/22, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>

The proliferation of drone technology has moved well beyond the control of the United States government and its closest allies. The aircraft are too easy to obtain, with barriers to entry on the production side crumbling too quickly to place limits on the spread of a technology that promises to transform warfare on a global scale. Already, more than 75 countries have remote piloted aircraft. More than 50 nations are building a total of nearly a thousand types. At its last display at a trade show in Beijing, China showed off 25 different unmanned aerial vehicles. Not toys or models, but real flying machines. It’s a classic and common phase in the life cycle of a military innovation: An advanced country and its weapons developers create a tool, and then others learn how to make their own. But what makes this case rare, and dangerous, is the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use. This technology is snowballing through a global arena where the main precedent for its application is the one set by the United States; it’s a precedent Washington does not want anyone following. America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts. To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order. Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan. This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself that would at minimum create a globally relevant standard for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation. THE WRONG QUESTION The United States is the indisputable leader in drone technology and long-range strike. Remote-piloted aircraft have given Washington an extraordinary ability to wage war with far greater precision, improved effect, and fewer unintended casualties than conventional warfare. The drones allow U.S. forces to establish ever greater control over combat areas, and the Pentagon sees the technology as an efficient and judicious force of the future. And it should, given the billions of dollars that have gone into establishing and maintaining such a capability. That level of superiority leads some national security officials to downplay concerns about other nations’ unmanned systems and to too narrowly define potential threats to the homeland. As proof, they argue that American dominance in drone warfare is due only in part to the aircraft itself, which offers the ability to travel great distances and loiter for long periods, not to mention carry and launch Hellfire missiles. The drone itself, they argue, is just a tool and, yes, one that is being copied aggressively by allies and adversaries alike. The real edge, they say, is in the unparalleled intelligence-collection and data-analysis underpinning the aircraft’s mission. “There is what I think is just an unconstrained focus on a tool as opposed to the subject of the issue, the tool of remotely piloted aircraft that in fact provide for greater degrees of surety before you employ force than anything else we use,” said retired Lt. Gen. David Deptula, the Air Force’s first deputy chief of staff for intelligence, surveillance, and reconnaissance. “I think people don’t realize that for the medium altitude aircraft—the MQ-1 [Predator] and MQ-9 [Reaper] that are generally written about in the press—there are over 200 people involved in just one orbit of those aircraft.… The majority of those people are analysts who are interpreting the information that’s coming off the sensors on the aircraft.” The analysts are part of the global architecture that makes precision strikes, and targeted killing, possible. At the front end, obviously, intelligence—military, CIA, and local—inform target decisions. But in as near-real time as technologically possible, intel analysts in Nevada, Texas, Virginia, and other locations watch the data flood in from the aircraft and make calls on what’s happening on target. They monitor the footage, listen to audio, and analyze signals, giving decision-makers time to adjust an operation if the risks (often counted in potential civilian deaths) outweigh the reward (judged by the value of the threat eliminated). “Is that a shovel or a rifle? Is that a Taliban member or is this a farmer? The way that warfare has advanced is that we are much more exquisite in our ability to discern,” Maj. Gen. Robert Otto, commander of the Air Force Intelligence, Surveillance, and Reconnaissance Agency, told National Journal at Nellis Air Force Base in Nevada. “We’re not overhead for 15 minutes with a fighter that’s about to run out of gas, and we have to make a decision. We can orbit long enough to be pretty sure about our target.” Other countries, groups, and even individuals can and do fly drones. But no state or group has nearly the sophisticated network of intelligence and data analysis that gives the United States its strategic advantage. Although it would be foolish to dismiss the notion that potential U.S. adversaries aspire to attain that type of war-from-afar, pinpoint-strike capability, they have neither the income nor the perceived need to do so. That’s true, at least today. It’s also irrelevant. Others who employ drones are likely to carry a different agenda, one more concerned with employing a relatively inexpensive and ruthlessly efficient tool to dispatch an enemy close at hand. “It would be very difficult for them to create the global-strike architecture we have, to have a control cell in Nevada flying a plane over Afghanistan. The reality is that most nations don’t want or need that,” said Peter Singer, director of the Brookings Institution’s Center for 21st Century Security and Intelligence and one of the foremost experts in advanced military technology. “Turkey’s not looking to conduct strikes into the Philippines.... But Turkey is looking to be able to carry out long-duration surveillance and potentially strike inside and right on its border.” And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.” BEHIND CLOSED DOORS The argument against public debate is easy enough to understand: Operational secrecy is necessary, and total opacity is easier. “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things,” said Dennis Blair, Obama’s former director of national intelligence. “The reason it’s not been undertaken by the administration is that they just make a cold-blooded calculation that it’s better to hunker down and take the criticism than it is to get into the public debate, which is going to be a hard one to win.” But by keeping legal and policy positions secret, only partially sharing information even with congressional oversight committees, and declining to open a public discussion about drone use, the president and his team are asking the world to just trust that America is getting this right. While some will, many people, especially outside the United States, will see that approach as hypocritical, coming from a government that calls for transparency and the rule of law elsewhere. “I know these people, and I know how much they really, really attend to the most important details of the job,” said Barry Pavel, a former defense and security official in the Bush and Obama administrations who is director of the Brent Scowcroft Center on International Security at the Atlantic Council. “If I didn’t have that personal knowledge and because there isn’t that much really in the press, then I would be giving you a different rendering, and much more uncertain rendering.” That’s only part of the problem with the White House’s trust-us approach. The other resides in the vast distance between the criteria and authorization the administration says it uses in the combat drone program and the reality on the ground. For example, according to administration officials, before a person is added to the targeted strike list, specific criteria should be met. The target should be a 1) senior, 2) operational 3) leader of al-Qaida or an affiliated group who presents 4) an imminent threat of violent attack 5) against the United States. But that’s not who is being targeted. Setting aside the administration’s redefining of “imminence” beyond all recognition, the majority of the 3,500-plus people killed by U.S. drones worldwide were not leaders of al-Qaida or the Taliban; they were low- or mid-level foot soldiers. Most were not plotting attacks against the United States. In Yemen and North Africa, the Obama administration is deploying weaponized drones to take out targets who are more of a threat to local governments than to Washington, according to defense and regional security experts who closely track unrest in those areas. In some cases, Washington appears to be in the business of using its drone capabilities mostly to assist other countries, not to deter strikes against the United States (another precedent that might be eagerly seized upon in the future). U.S. defense and intelligence officials reject any suggestion that the targets are not legitimate. One thing they do not contest, however, is that the administration’s reliance on the post-9/11 Authorization for Use of Military Force as legal cover for a drone-strike program that has extended well beyond al-Qaida in Afghanistan or Pakistan is dodgy. The threat that the United States is trying to deal with today has an ever more tenuous connection to Sept. 11. (None of the intelligence officials reached for this article would speak on the record.) But instead of asking Congress to consider extending its authorization, as some officials have mulled, the administration’s legal counsel has chosen instead to rely on Nixon administration adviser John Stevenson’s 1970 justification of the bombing of Cambodia during the Vietnam War, an action new Secretary of State John Kerry criticized during his confirmation hearing this year. Human-rights groups might be loudest in their criticism of both the program and the opaque policy surrounding it, but even the few lawmakers who have access to the intelligence the administration shares have a hard time coping with the dearth of information. “We can’t always assume we’re going to have responsible people with whom we agree and trust in these positions,” said Sen. Angus King, I-Maine, who sits on the Senate Intelligence Committee. “The essence of the Constitution is, it shouldn’t matter who is in charge; they’re still constrained by principles and rules of the Constitution and of the Bill of Rights.” PEER PRESSURE Obama promised in his 2013 State of the Union to increase the drone program’s transparency. “In the months ahead, I will continue to engage 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,” the president said on Feb. 12. Since then, the administration, under pressure from allies on Senate Intelligence, agreed to release all of the legal memos the Justice Department drafted in support of targeted killing. But, beyond that, it’s not certain Obama will do anything more to shine light on this program. Except in situations where leaks help it tell a politically expedient story of its skill at killing bad guys, the administration has done little to make a case to the public and the world at large for its use of armed drones. Already, what’s become apparent is that the White House is not interested in changing much about the way it communicates strike policy. (It took Sen. Rand Paul’s 13-hour filibuster of CIA Director John Brennan’s nomination to force the administration to concede that it doesn’t have the right to use drones to kill noncombatant Americans on U.S. soil.) And government officials, as well as their surrogates on security issues, are actively trying to squash expectations that the administration would agree to bring the judicial branch into the oversight mix. Indeed, judicial review of any piece of the program is largely off the table now, according to intelligence officials and committee members. Under discussion within the administration and on Capitol Hill is a potential program takeover by the Pentagon, removing the CIA from its post-9/11 role of executing military-like strikes. Ostensibly, that shift could help lift the secret-by-association-with-CIA attribute of the program that some officials say has kept them from more freely talking about the legitimate military use of drones for counterterrorism operations. But such a fix would provide no guarantee of greater transparency for the public, or even Congress. And if the administration is not willing to share with lawmakers who are security-cleared to know, it certainly is not prepared to engage in a sensitive discussion, even among allies, that might begin to set the rules on use for a technology that could upend stability in already fragile and strategically significant places around the globe. Time is running out to do so. “The history of technology development like this is, you never maintain your lead very long. Somebody always gets it,” said David Berteau, director of the International Security Program at the Center for Strategic and International Studies. “They’re going to become cheaper. They’re going to become easier. They’re going to become interoperable,” he said. “The destabilizing effects are very, very serious.” Berteau is not alone. Zenko, of the Council on Foreign Relations, has urged officials to quickly establish norms. Singer, at Brookings, argues that the window of opportunity for the United States to create stability-supporting precedent is quickly closing. The problem is, the administration is not thinking far enough down the line, according to a Senate Intelligence aide. Administration officials “are thinking about the next four years, and we’re thinking about the next 40 years. And those two different angles on this question are why you see them in conflict right now.” That’s in part a symptom of the “technological optimism” that often plagues the U.S. security community when it establishes a lead over its competitors, noted Georgetown University’s Kai-Henrik Barth. After the 1945 bombing of Hiroshima and Nagasaki, the United States was sure it would be decades before the Soviets developed a nuclear-weapon capability. It took four years. With drones, the question is how long before the dozens of states with the aircraft can arm and then operate a weaponized version. “Pretty much every nation has gone down the pathway of, ‘This is science fiction; we don’t want this stuff,’ to, ‘OK, we want them, but we’ll just use them for surveillance,’ to, ‘Hmm, they’re really useful when you see the bad guy and can do something about it, so we’ll arm them,’ ” Singer said. He listed the countries that have gone that route: the United States, Britain, Italy, Germany, China. “Consistently, nations have gone down the pathway of first only surveillance and then arming.” The opportunity to write rules that might at least guide, if not restrain, the world’s view of acceptable drone use remains, not least because this is in essence a conventional arms-control issue. The international Missile Technology Control Regime attempts to restrict exports of unmanned vehicles capable of carrying weapons of mass destruction, but it is voluntary and nonbinding, and it’s under attack by the drone industry as a drag on business. Further, the technology itself, especially when coupled with data and real-time analytics, offers the luxury of time and distance that could allow officials to raise the evidentiary bar for strikes—to be closer to certain that their target is the right one. But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions. A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs. Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists. The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

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

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

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

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

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

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

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

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

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

#### Congressional geographic restrictions are key---prevents global war

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

Mr. Chairman, I would like to turn now to the legal framework applicable to US drone strikes. Both the United States and the international community have long had rules governing armed conflicts and the use of force in national self-defense. These rules apply whether the lethal force at issue involves knives, handguns, grenades or weaponized drones. When drone technologies are used in traditional armed conflicts—on “hot battlefields” such as those in Afghanistan, Iraq or Libya, for instance – they pose no new legal issues. As Administration officials have stated, their use is subject to the same requirements as the use of other lawful means and methods of warfare.28 But if drones used in traditional armed conflicts or traditional self-defense situations present no “new” legal issues, some of the activities and policies enabled and facilitated by drone technologies pose significant challenges to existing legal frameworks. As I have discussed above, the availability of perceived low cost of drone technologies makes it far easier for the US to “expand the battlefield,” striking targets in places where it would be too dangerous or too politically controversial to send troops. Specifically, drone technologies enable the United States to strike targets deep inside foreign states, and do so quickly, efficiently and deniably. As a result, drones have become the tool of choice for so-called “targeted killing” – the deliberate targeting of an individual or group of individuals, whether known by name or targeted based on patterns of activity, inside the borders of a foreign country. **It is when drones are used in targeted killings outside of traditional or “hot” battlefields that their use challenges existing legal frameworks**. Law is almost always out of date: we make legal rules based on existing conditions and technologies, perhaps with a small nod in the direction of predicted future changes. As societies and technologies change, law increasingly becomes an exercise in jamming square pegs into round holes. Eventually, that process begins to do damage to existing law: it gets stretched out of shape, or broken. Right now, I would argue, US drone policy is on the verge of doing significant damage to the rule of law. A. The Rule of Law At root, the idea of “rule of law” is fairly simple, and well understood by Americans familiar with the foundational documents that established our nation, such as the Declaration of Independence, the Constitution and the Bill of Rights. The rule of law requires that governments follow transparent, clearly defined and universally applicable laws and procedures. The goal of the rule of law is to ensure predictability and stability, and to prevent the arbitrary exercise of power. In a society committed to the rule of law, the government cannot fine you, lock you up, or kill you on a whim -- it can restrict your liberty or take your property or life only in accordance with pre-established processes and rules that reflect basic notions of justice, humanity and fairness. Precisely what constitutes a fair process is debatable, but most would agree that at a minimum, fairness requires that individuals have reasonable notice of what constitutes the applicable law, reasonable notice that they are suspected of violating the law, a reasonable opportunity to rebut any allegations against them, and a reasonable opportunity to have the outcome of any procedures or actions against them reviewed by some objective person or body. These core values are enshrined both in the US Constitution and in international human rights law instruments such as the International Covenant on Civil and Political Rights, to which the United States is a party. In ordinary circumstances, this bundle of universally acknowledged rights (together with international law principles of sovereignty) means it is clearly unlawful for one state to target and kill an individual inside the borders of another state. Recall, for instance, the 1976 killing of Chilean dissident Orlando Letelier in Washington DC. When Chilean government intelligence operatives planted a car bomb in the car used by Letelier, killing him and a US citizen accompanying him, the United States government called this an act of murder—an unlawful political assassination. B. Targeted Killing and the Law of Armed Conflict Of course, sometimes the “ordinary” legal rules do not apply. In war, the willful killing of human beings is permitted, whether the means of killing is a gun, a bomb, or a long-distance drone strike. The law of armed conflict permits a wide range of behaviors that would be unlawful in the absence of an armed conflict. Generally speaking, the intentional destruction of private property and severe restrictions on individual liberties are impermissible in peacetime, but acceptable in wartime, for instance. Even actions that a combatant knows will cause civilian deaths are lawful when consistent with the principles of necessity, humanity, proportionality,29 and distinction.30 It is worth briefly explaining these principles. The principle of necessity requires parties to a conflict to limit their actions to those that are indispensible for securing the complete submission of the enemy as soon as possible (and that are otherwise permitted by international law). The principle of humanity forbids parties to a conflict to inflict gratuitous violence or employ methods calculated to cause unnecessary suffering. The principle of proportionality requires parties to ensure that the anticipated loss of life or property incidental to an attack is not excessive in relation to the concrete and direct military advantage expected to be gained. Finally, the principle of discrimination or distinction requires that parties to a conflict direct their actions only against combatants and military objectives, and take appropriate steps to distinguish between combatants and non-combatants.31 This is a radical oversimplification of a very complex body of law.32 But as with the rule of law, the basic idea is pretty simple. When there is no war -- when ordinary, peacetime law applies -- agents of the state aren't supposed to lock people up, take their property or kill them, unless they have jumped through a whole lot of legal hoops first. When there is an armed conflict, however, everything changes. War is not a legal free-for-all33 -- torture, rape are always crimes under the law of war, as is killing that is willful, wanton and not justified by military necessity34 -- but there are far fewer constraints on state behavior. Technically, the law of war is referred to using the Latin term “lex specialis” – special law. It is applicable in—and only in -- special circumstances (in this case, armed conflict), and in those special circumstances, it supersedes “ordinary law,” or “lex generalis,” the “general law” that prevails in peacetime. We have one set of laws for “normal” situations, and another, more flexible set of laws for “extraordinary” situations, such as armed conflicts. None of this poses any inherent problem for the rule of law. Having one body of rules that tightly restricts the use of force and another body of rules that is far more permissive does not fundamentally undermine the rule of law, as long as we have a reasonable degree of consensus on what circumstances trigger the “special” law, and as long as the “special law” doesn’t end up undermining the general law. To put it a little differently, war, with its very different rules, does not challenge ordinary law as long as war is the exception, not the norm -- as long as we can all agree on what constitutes a war -- as long as we can tell when the war begins and ends -- and as long as we all know how to tell the difference between a combatant and a civilian, and between places where there's war and places where there's no war. Let me return now to the question of drones and targeted killings. When all these distinctions I just mentioned are clear, the use of drones in targeted killings does not necessarily present any great or novel problem. In Libya, for instance, a state of armed conflict clearly existed inside the borders of Libya between Libyan government forces and NATO states. In that context, the use of drones to strike Libyan military targets is no more controversial than the use of manned aircraft. That is because our core rule of law concerns have mostly been satisfied: we know there is an armed conflict, in part because all parties to it agree that there is an armed conflict, in part because observers (such as international journalists) can easily verify the presence of uniformed military personnel engaged in using force, and in part because the violence is, from an objective perspective, widespread and sustained: it is not a mere skirmish or riot or criminal law enforcement situation that got out of control. We know who the “enemy” is: Libyan government forces. We know where the conflict is and is not: the conflict was in Libya, but not in neighboring Algeria or Egypt. We know when the conflict began, we know who authorized the use of force (the UN Security Council) and, just as crucially, we know whom to hold accountable in the event of error or abuse (the various governments involved).35 Once you take targeted killings outside hot battlefields, it’s a different story. The Obama Administration is currently using drones to strike terror suspects in Pakistan, Somalia, Yemen, and –perhaps—Mali and the Philippines as well. Defenders of the administration's increasing reliance on drone strikes in such places assert that the US is in an armed conflict with “al Qaeda and its associates,” and on that basis, they assert that the law of war is applicable -- in any place and at any time -- with regard to any person the administration deems a combatant. The trouble is, no one outside a very small group within the US executive branch has any ability to evaluate who is and who isn’t a combatant. The war against al Qaeda and its associates is not like World War II, or Libya, or even Afghanistan: it is an open-ended conflict with an inchoate, undefined adversary (who exactly are al Qaeda’s “associates”?). What is more, targeting decisions in this nebulous “war” are based largely on classified intelligence reporting. **As a result, Administration assertions** about who is a combatant and what constitutes a threat **are entirely non-falsifiable, because they're based wholly on undisclosed evidence**. Add to this still another problem: most of these strikes are considered covert action, so although the US sometimes takes public credit for the deaths of alleged terrorist leaders, most of the time, the US will not even officially acknowledge targeted killings. This leaves all the key rule-of-law questions related to the ongoing war against al Qaeda and its "associates" unanswered.36 Based on what criteria might someone be considered a combatant or directly participating in hostilities? What constitutes “hostilities” in the context of an armed conflict against a non-state actor, and what does it mean to participate in them? And just where is the war? Does the war (and thus the law of war) somehow "travel" with combatants? Does the US have a “right” to target enemy combatants anywhere on earth, or does it depend on the consent of the state at issue? Who in the United States government is authorized to make such determinations, and what is the precise chain of command for such decisions? I think the rule of law problem here is obvious: when “armed conflict” becomes a term flexible enough to be applied both to World War II and to the relations between the United States and “associates” of al Qaeda such as Somalia’s al Shabaab, the concept of armed conflict is not very useful anymore. And **when we lack clarity and consensus on how to recognize “armed conflict,” we no longer have a clear or principled basis for deciding how to categorize US** t**argeted** k**illing**s. Are they, as the US government argues, legal under the laws of war? Or are they, as some human rights groups have argued, unlawful murder? C. Targeted Killing and the International Law of Self-Defense When faced with criticisms of the law of war framework as a justification for targeted killing, Obama Administration representatives often shift tack, arguing that international law rules on national self-defense provide an alternative or additional legal justification for US targeted killings. Here, the argument is that if a person located in a foreign state poses an "imminent threat of violent attack" against the United States, the US can lawfully use force in self-defense, provided that the defensive force used is otherwise consistent with law of war principles. Like law of war-based arguments, this general principle is superficially uncontroversial: if someone overseas is about to launch a nuclear weapon at New York City, no one can doubt that the United States has a perfect right (and the president has a constitutional duty) to use force if needed to prevent that attack, regardless of the attacker's nationality. But once again, the devil is in the details. To start with, what constitutes an "imminent" threat? Traditionally, both international law and domestic criminal law understand that term narrowly: 37 to be "imminent," a threat cannot be distant or speculative.38 But much like the Bush Administration before it, the Obama Administration has put forward an interpretation of the word “imminent” that bears little relation to traditional legal concepts. According to a leaked 2011 Justice Department white paper39—the most detailed legal justification that has yet become public-- the requirement of imminence "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future." This seems, in itself, like a substantial departure from accepted international law definitions of imminence. But the White Paper goes even further, stating that "certain members of al Qaeda are continually plotting attacks...and would engage in such attacks regularly [if] they were able to do so, [and] the US government may not be aware of all... plots as they are developing and thus cannot be confident that none is about to occur." For this reason, it concludes, anyone deemed to be an operational leader of al Qaeda or its "associated forces" presents, by definition, an imminent threat even in the absence of any evidence whatsoever relating to immediate or future attack plans. In effect, the concept of "imminent threat" (part of the international law relating to self-defense) becomes conflated with identity or status (a familiar part of the law of armed conflict). That concept of imminence has been called Orwellian, and although that is an overused epithet, in this context it seems fairly appropriate. According to the Obama Administration, “imminent” no longer means “immediate,” and in fact the very absence of clear evidence indicating specific present or future attack plans becomes, paradoxically, the basis for assuming that attack may perpetually be “imminent.” The 2011 Justice Department White Paper notes that the use of force in self-defense must comply with general law of war principles of necessity, proportionality, humanity, and distinction. The White Paper offers no guidance on the specific criteria for determining when an individual is a combatant (or a civilian participating directly in hostilities), however. It also offers no guidance on how to determine if a use of force is necessary or proportionate. From a traditional international law perspective, this necessity and proportionality inquiry relates both to imminence and to the gravity of the threat itself, but so far there has been no public Administration statement as to how the administration interprets these requirements. Is any threat of "violent attack" sufficient to justify killing someone in a foreign country, including a U.S. citizen? Is every potential suicide bomber targetable, or does it depend on the gravity of the threat? Are we justified in drone strikes against targets who might, if they get a chance at some unspecified future point, place an IED that might, if successful, kill one person? Ten people? Twenty? 2,000? How grave a threat must there be to justify the use of lethal force against an American citizen abroad -- or against non-citizens, for that matter? As I have noted, it is impossible for outsiders to fully evaluate US drone strikes, since so much vital information remains classified. In most cases, we know little about the identities; activities or future plans of those targeted. Nevertheless, given the increased frequency of US targeted killings in recent years, it seems reasonable to wonder whether the Administration conducts a rigorous necessity or proportionality analysis in all cases. So far, the leaked 2011 Justice Department White Paper represents the most detailed legal analysis of targeted killings available to the public. It is worth noting, incidentally, that this White Paper addresses only the question of whether and when it is lawful for the US government to target US citizens abroad. We do not know what legal standards the Administration believes apply to the targeting of non-citizens. It seems reasonable to assume, however, that the standards applicable to non-citizens are less exacting than those the Administration views as applicable to citizens. Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41 No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should not depend solely on the good faith and benevolence of government officials. As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness. The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable? 5. Setting Troubling International Precedents **Here is an a**dditional **reason to worry** about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice. Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. **We should use this window to advance a robust legal** and normative **framework that will help protect against abuses by those states whose leaders can rarely be trusted**. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder. Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack." The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an ill- defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

#### *Scenario B – Detention*

#### The detention of al-Libi locks in the Warsame model of transfer to civilian court

NYT 10/6/13 BENJAMIN WEISER and ERIC SCHMITT, October 6, 2013, U.S. Said to Hold Qaeda Suspect on Navy Ship, http://www.nytimes.com/2013/10/07/world/africa/a-terrorism-suspect-long-known-to-prosecutors.html?\_r=0

An accused operative for Al Qaeda seized by United States commandos in Libya over the weekend is being interrogated while in military custody on a Navy ship in the Mediterranean Sea, officials said on Sunday. He is expected eventually to be sent to New York for criminal prosecution. The fugitive, known as Abu Anas al-Libi, is seen as a potential intelligence gold mine, possessing perhaps two decades of information about Al Qaeda, from its early days under Osama bin Laden in Sudan to its more scattered elements today.¶ The decision to hold Abu Anas and question him for intelligence purposes without a lawyer present follows a pattern used successfully by the Obama administration with other terrorist suspects, most prominently in the case of Ahmed Abdulkadir Warsame, a former military commander with the Somali terrorist group Shabab. Mr. Warsame was captured in 2011 by the American military in the Gulf of Aden and interrogated aboard a Navy ship for about two months without being advised of his rights or provided a lawyer.¶ After a break of several days, Mr. Warsame was advised of his rights, waived them, was questioned for about a week by law enforcement agents and was then sent to Manhattan for prosecution. “Warsame is the model for this guy,” one American security official said.

#### That will trigger a wave of litigation against military operations

Chesney 13 - Charles I. Francis Professor in Law @ Texas, BEYOND THE BATTLEFIELD, BEYOND AL QAEDA: THE DESTABILIZING LEGAL ARCHITECTURE OF COUNTERTERRORISM, Public Law and Legal Theory Research Paper No. 227, Robert M. Chesney, Also Michigan Law Review, Forthcoming in vol 112, Fall 2013.

Ultimately, the Obama administration settled on a compromise approach in Warsame’s case. On one hand, he was eventually placed on a “kill/capture” list maintained by Joint Special Operations Command (“JSOC”), and when he attempted to cross the Gulf the decision was made to attempt a capture.7 The operation came off in textbook fashion. JSOC operators were watching closely as Warsame proceeded across the Gulf on April 19th, and eventually they seized the vessel without a shot fired.8 For the next two months, moreover, Warsame languished in the brig of the USS Boxer—which happened to be on station in the region as part of an anti-piracy task force—undergoing interrogation in military custody. Before the detention became known to the public, however, and before any possibility of judicial intervention that might put the government’s claim of authority to the test in a formal manner, the administration switched gears. In a rather bold move, it transferred Warsame to civilian custody, flying him to New York City to face criminal charges. This solution rendered the question of authority academic as to Warsame, but it did not make the underlying issues disappear. On the contrary, the domestic political backlash against Warsame’s transfer to civilian custody in New York may well deter the executive branch from charting that same course, and Congress for its part might eventually act to forbid such transfers by statute in the future (for now it has forbidden such transfers only if the detainee is first held at Guantanamo). Yet the Warsame fact pattern, or something like it, is certain to arise again in the future in light of the strategic trends described below. The ultimate lesson of the Warsame scenario is not that hard questions about the authority to use military detention or lethal force in such settings can be avoided, then, but rather that they deserve sustained public attention. In the pages that follow, I explain that the second post-9/11 decade will be increasingly characterized by a kind of “shadow war,” taking place on an episodic basis in locations far removed from zones of conventional combat operations and involving opponents not readily described as members of al Qaeda as such. The legal architecture that developed to a point of seeming stability over the past decade is not well-adapted to this environment, and as time goes by—as new Warsames emerge—the gaps will become increasingly apparent and problematic. \*\*\*Part I below fleshes out my baseline claim that the status quo legal architecture reached a point of apparent stability by the close of the first post-9/11 decade. Political debates still raged, of course, and legal criticism certainly continued in the pages of law reviews and advocacy group briefs. Yet across a range of issues—including the use of military detention at Guantanamo and in Afghanistan, the use of reformed military commissions to prosecute a narrowed set of offenses, and the use of drones to carry out lethal strikes in remote areas—the most striking fact was the emergence of cross-party and cross-branch consensus. The Obama administration famously continued rather than terminated the core elements of various Bush administration counterterrorism programs (not to mention a dramatic expansion of the drone program), and three years’ worth of habeas litigation following the Supreme Court’s famous decision in Boumediene v. Bush served primarily (and quite surprisingly to many) to validate the legal foundation of the detention system. Congress, for its part, first took the lead in reviving the military commission system, and then in the National Defense Authorization Act for Fiscal Year 2012 reinvigorated the 2001 Authorization for Use of Military Force, providing a fresh statutory foundation at least for detention operations. In Part II I make the case that this consensus depended in significant part upon the presence of two factors. First, throughout the first post-9/11 decade there has always been a “hot battlefield” in Afghanistan, an area involving high-intensity, large-footprint conventional combat operations as to which there is no serious dispute that the law of armed conflict (LOAC) applies. This has long provided a center of gravity for the legal debate surrounding the law of counterterrorism, ensuring that there is at least some setting in which LOAC authorities relating to detention and lethal force apply. Insofar as a given fact pattern could be linked back to Afghanistan, therefore, it has been possible to avoid thorny questions regarding the geographic scope of LOAC principles. Notably, the dozens of habeas cases of the first post-9/11 decade— which collectively have played an outsized role in the process of establishing the appearance that the law has stabilized—almost entirely involve direct links to Afghanistan (the sole exception being an al Qaeda detainee captured in the US, whose case rather tellingly produced badly splintered judicial opinions). Second, throughout the same period there also has been at least a working assumption that we can coherently identify the enemy by referring to al Qaeda and the Taliban (along with glancing-but-unelaborated references to the “associated forces” of such groups). Again, the habeas case law has played a critical role in cementing this impression of clarity. In Part III, I demonstrate that both of these stabilizing factors are rapidly eroding in the face of larger strategic trends concerning both al Qaeda and the United States. First, the United States for a host of reasons (fiscal constraints, diplomatic pressure, and a growing sense of policy futility) is accelerating its withdrawal from Afghanistan. Second, the United States simultaneously is shifting to a low-visibility “shadow war” strategy that will rely on Special Operations Forces, CIA paramilitary forces, drones operated by both, proxy forces, and quiet partnerships with foreign security services. Meanwhile, al Qaeda itself has fractured and diffused, both in pursuit of the security that comes from geographic dispersal of personnel into new regions and also in pursuit of a strategic vision that embraces decentralization in the form of relationships with quasi-independent regional organizations that may have independent origins and agendas. As a result, it grows increasingly difficult to speak coherently of “al Qaeda”; the senior leadership of the original network has been decimated, and so-called franchises with uncertain (or no) ties to that leadership not only are proliferating but are rapidly emerging as more significant threats to U.S. national security. The upshot of all this is that there soon will be no undisputed hot battlefield in existence anywhere, while the center of gravity with respect to the use of lethal force will continue to shift to locations like Yemen, Pakistan, and Somalia. Already these unorthodox scenarios are the primary focus for the use of lethal force, and they will similarly be the focus should the United States resume the practice of long-term military detention for new detainees (a distinct possibility in the event of a Romney presidency). Part III also maps the disruptive legal consequences of these strategic trends. My essential point is that the apparent stability of the post-9/11 legal architecture—the semblance that some sort of sustained institutional settlement has occurred—is an illusion. As the second post-9/11 decade progresses, policies associated with drone strikes and detention unquestionably will face increasing legal friction, casting doubt over the legality of the U.S. government use of detention and lethal force in an array of settings. In Part IV, I take up the question whether we really ought to care about all of this and, if so, what if anything can and should be done. We should care, for it will not be possible to simply ride out the increasing legal friction. The current climate of judicial passivity—reflected in the Supreme Court’s unwillingness to reengage with the Guantanamo habeas cases, the unwillingness of the D.C. Circuit Court of Appeals to adjudicate habeas petitions arising out of Afghanistan, and the unwillingness of a district judge to adjudicate a suit challenging the planned use of lethal force against an American citizen —will not last. For a host of reasons, a fresh wave of detention litigation concentrating on these very issues is all but guaranteed to arise. It is not beyond the realm of possibility that the judiciary will engage as well in connection with the use of lethal force, moreover, though even if it does not its engagement on detention issues will in any event cast a long shadow over practices relating to lethal force. Bearing all this in mind, I conclude by distinguishing those elements of legal uncertainty that are simply unavoidable (given a pluralistic legal environment in which a host of relevant actors simply do not share common ground with respect to which bodies of law are applicable to these questions and what those bodies of law can fairly be said to require) and those that might usefully be addressed by statutory innovation.

#### Legal challenges are coming now---failure to get out in front of the issue crushes US security strategy---Congress is key

Anderson 9 – Prof. of Law @ American University & Research Fellow @ Hoover, Kenneth Anderson, 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

Does this analysis offer any practical policy prescriptions for Congress and the administration? The problem is not so much a need for new legislation to create new structures or new policies. The legislative category in which many instances of targeted killing might take place in the future already exists. The task for Congress and the administration, rather, is instead to preserve a category that is likely to be put under pressure in the future and, indeed, is already seen by many as a legal non-starter under international law. Before addressing what Congress should do in this regard, we might ask from a strictly strategic political standpoint whether, given that the Obama Administration is committed to this policy anyway, whether it is politically prudent to draw public attention to the issue at all. Israeli officials might be threatened with legal action in Spain; but so far no important actor has shown an appetite for taking on the Obama Administration. Perhaps it is better to let sleeping political dogs lie. These questions require difficult political calculations. However, the sources cited above suggest that even if no one is quite prepared at this moment to take on the Obama Administration on targeted killing, the intellectual and legal pieces of the challenge are already set up and on the table. Having asserted certain positions concerning human rights law and its application and the United States having unthinkingly abandoned its self-defense rationale for its policy, the play can be made at any time—at some later time in the Obama Administration or in the next Republican administration, prying apart the “American” position to create a de facto alliance among Democrats and Europeans and thereby undermining the ability of the United States to craft a unified American security strategy. 101 The United States would be best served if the Obama Administration did that exceedingly rare thing in international law and diplomacy: Getting the United States out in front of the issue by making plain the American position, rather than merely reacting in surprise when its sovereign prerogatives are challenged by the international soft-law community.

#### Risks prosecution of key US personnel

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

While no American has been prosecuted for participating in drone strikes, the specter of criminal prosecution remains present. For example, a member of the military might be prosecuted pursuant to the UCMJ, while CIA personnel may face trial in a civilian court. “Incidents in Iraq and Afghanistan involving members of the armed forces and private contractors illustrate how this can occur from time to time, as individuals are prosecuted for allegedly killing civilians or prisoners.”434 Title 18 of the U.S. code, at section 2441, establishes jurisdiction over war crimes committed by or against members of the U.S. armed forces or U.S. nationals.435 War crimes are defined as any conduct: (1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party; (2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907; (3) which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or (4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.436 Thus, Title 18 references and incorporates various aspects of international humanitarian law into domestic law and makes violations of those laws a violation of U.S. criminal law. Similarly, the UCMJ in Article 18 allows for the exercise of jurisdiction over “any person who by the law of war is subject to trial by a military tribunal.”437 Other sources of authority for prosecuting citizens involved in wrongful targeting decisions may include the punitive articles of the UCMJ (such as Article 118 regarding murder). The CIA is not exempt from these prohibitions, as Agency personnel are under an obligation to report any criminal or administrative wrongdoing to the CIA inspector general’s office.438 That office is obligated to refer certain cases to the Department of Justice for prosecution.439 Furthermore, because CIA personnel do not enjoy combatant immunity, they could be prosecuted in the criminal courts of other nation states for their involvement in targeted killing operations.440

#### Even if lawsuits are lost, that crushes special operations

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

#### JSOC/CIA conflation means prosecution threat ends SOF effectiveness

Thorsten Wetzling 11, non-resident fellow at the Center for Transatlantic Relations at the Paul H. Nitze School of Advanced International Studies (SAIS), PhD in Political Science, “What role for what rule of law in EU-US counterterrorism cooperation?”, <http://transatlantic.sais-jhu.edu/publications/articles/Chapter1_EUISS_ChaillotPaper127_WETZLING.pdf>

While President Obama deserves credit for having abolished the most controversial counterterrorism practice to date (i.e. the ‘enhanced interrogation techniques’ and the extraordinary rendition of terrorist suspects to secret and indeﬁnite detention), his administration currently relies heavily on two practices that also bode rather poorly for the rule of law: capture-or-kill raids and drone strikes against suspected terrorists by poorly overseen CIA and JSOC operatives in various hotspots around the globe. ¶ ‘The individuals targeted are alleged terrorists or others deemed dangerous, and their inclusion on what are known as kill-or-capture lists is based on undisclosed intelligence applied against secretive criteria.’44 This practice45 raises severe doubts on the US’s ‘full respect for our obligations under applicable [...] domestic constitutional law’.46 Philip Alston argues convincingly that the convergence of the CIA (intelligence) and JSOC (military) activities in these raids clearly undermines the effectiveness of the two separate oversight regimes for ‘traditional military activities’ (Title 10 US Code) and covert intelligence activities (Title 50 US code) in the US constitution. The ‘extensive ﬂuidity between the JSOC (DOD) special forces and their CIA counterparts’ makes it ‘virtually impossible for anyone outside the two agencies to know who is in fact responsible in any given context.’47 While there is no room here to spell out the separate oversight regimes for the military and the intelligence services, it should be noted, however, that this intentional double-hatting of CIA and JSOC forces creates de facto accountability gaps. These activities often ‘escape the scrutiny of the intelligence committees, and the congressional defense committees cannot be expected to exercise oversight outside of their jurisdiction’.48

#### SOF key to counter A2/AD capabilities globally---key to effective power projection and U.S. defense alliances

Jim Thomas 13, Vice President and Director of Studies at the Center for Strategic and Budgetary Assessments, and Chris Dougherty is a Research Fellow at the Center for Strategic and Budgetary Assessments, 2013, “BEYOND THE RAMPARTS THE FUTURE OF U.S. SPECIAL OPERATIONS FORCES,” http://www.csbaonline.org/wp-content/uploads/2013/05/SOF-Report-CSBA-Final.pdf

The spread of advanced military technologies, such as precision-guided munitions, is enabling a number of countries to construct A2/AD networks that could erode the United States’ ability to project military power into key regions. Nations such as China and Iran are actively seeking to acquire and field A2/AD capabilities, including precision-guided ballistic and cruise missiles, attack submarines, fast-attack craft, anti-satellite (ASAT) weapons, computer-network attack capabilities, advanced fighter aircraft, and integrated air defenses, that may challenge the U.S. military’s ability to project power. The cumulative effect of spreading A2/ AD systems is that the land, air, sea, space, and cyberspace domains will be far less permissive for U.S. military operations. In the face of growing A2/AD threats, the value of low-signature forces capable of operating independently and far forward in denied areas is likely to increase substantially. SOF may offer the most viable ground-force option in future A2/AD environments, either executing direct action against key targets or working by, with, and through partner forces to conduct peripheral campaigns (i.e., operations designed to impose costs and conducted beyond the territory or reach of the enemy). Prior to hostilities, SOF could carry out preparation of the environment (PE) and special reconnaissance (SR) missions. At the outset of hostilities, SOF might serve as an early-entry force to blind or disrupt enemy command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR) networks, thereby enabling higher-signature conventional forces to penetrate A2/AD networks. Inserting or extracting SOF from denied environments, and supporting them once there, will challenge SOF aviation and undersea capabilities. Accordingly, SOF will need stealthy means of insertion from the air and sea. SOF may also need to conduct foreign external defense (FED) missions in states to build their capacity to repel foreign military aggression. This could entail helping key partners to create their own versions of A2/AD networks.¶ The proliferation of WMD and A2/AD capabilities will erode the conventional power-projection capability of not only the United States, but of other countries as well. In the future, states may therefore avoid direct confrontations and be more inclined to use unconventional methods and measures short of war to gain influence and achieve their foreign policy goals. States may also turn to third-party proxies to maintain plausible deniability for their actions. States could engage in influence campaigns and proxy competitions to achieve objectives such as: imposing costs on major competitors, foreclosing opportunities for other countries or non-state actors to gain a foothold in a region, “peeling away” allies or partners from competitors, diverting the attention and resources of competitors (misdirection), conducting cross-border operations against a major power with less risk of confrontation, or controlling (or denying) critical resources and trade routes. SOF will be critical to success in persistent influence campaigns and pro􀁛y competitions. They will need exquisite, local-area expertise and language skills, along with deep, longstanding relationships with key local actors built over time by embedding and living with foreign partner forces. Though SOF already operate in smaller units than GPF, the breadth, specificity, and need to minimize the visibility of these operations will place an emphasis on even smaller SOF teams and single operators working in close collaboration with other government agencies. These four security challenges􀂲coming to the fore during a time of 􀂿scal austerity in the United States and global economic uncertainty􀂲are likely to dominate the national security agenda for decades to come. These challenges are not mutually e􀁛clusive and, in almost every case, the challenges are intertwined with opportunities for SOF to impose costs on U.S. adversaries. Given their global nature, and recognizing the interrelationship between the various challenges and opportunities, SOF are uniquely suited to address them asymmetrically.

#### Solves a laundry list of nuclear conflicts

Mackenzie Eaglen 11, research fellow for national security – Heritage, and Bryan McGrath, former naval officer and director – Delex Consulting, Studies and Analysis, “Thinking About a Day Without Sea Power: Implications for U.S. Defense Policy,” Heritage Foundation

Global Implications. Under a scenario of dramatically reduced naval power, the United States would cease to be active in any international alliances. While it is reasonable to assume that land and air forces would be similarly reduced in this scenario, the lack of credible maritime capability to move their bulk and establish forward bases would render these forces irrelevant, even if the Army and Air Force were retained at today’s levels. In Iraq and Afghanistan today, 90 percent of material arrives by sea, although material bound for Afghanistan must then make a laborious journey by land into theater. China’s claims on the South China Sea, previously disputed by virtually all nations in the region and routinely contested by U.S. and partner naval forces, are accepted as a fait accompli, effectively turning the region into a “Chinese lake.” China establishes expansive oil and gas exploration with new deepwater drilling technology and secures its local sea lanes from intervention. Korea, unified in 2017 after the implosion of the North, signs a mutual defense treaty with China and solidifies their relationship. Japan is increasingly isolated and in 2020–2025 executes long-rumored plans to create an indigenous nuclear weapons capability.[11] By 2025, Japan has 25 mobile nuclear-armed missiles ostensibly targeting China, toward which Japan’s historical animus remains strong. China’s entente with Russia leaves the Eurasian landmass dominated by Russia looking west and China looking east and south. Each cedes a sphere of dominance to the other and remains largely unconcerned with the events in the other’s sphere. Worldwide, trade in foodstuffs collapses. Expanding populations in the Middle East increase pressure on their governments, which are already stressed as the breakdown in world trade disproportionately affects food importers. Piracy increases worldwide, driving food transportation costs even higher. In the Arctic, Russia aggressively asserts its dominance and effectively shoulders out other nations with legitimate claims to seabed resources. No naval power exists to counter Russia’s claims. India, recognizing that its previous role as a balancer to China has lost relevance with the retrenchment of the Americans, agrees to supplement Chinese naval power in the Indian Ocean and Persian Gulf to protect the flow of oil to Southeast Asia. In exchange, China agrees to exercise increased influence on its client state Pakistan. The great typhoon of 2023 strikes Bangladesh, killing 23,000 people initially, and 200,000 more die in the subsequent weeks and months as the international community provides little humanitarian relief. Cholera and malaria are epidemic. Iran dominates the Persian Gulf and is a nuclear power. Its navy aggressively patrols the Gulf while the Revolutionary Guard Navy harasses shipping and oil infrastructure to force Gulf Cooperation Council (GCC) countries into Tehran’s orbit. Russia supplies Iran with a steady flow of military technology and nuclear industry expertise. Lacking a regional threat, the Iranians happily control the flow of oil from the Gulf and benefit economically from the “protection” provided to other GCC nations. In Egypt, the decade-long experiment in participatory democracy ends with the ascendance of the Muslim Brotherhood in a violent seizure of power. The United States is identified closely with the previous coalition government, and riots break out at the U.S. embassy. Americans in Egypt are left to their own devices because the U.S. has no forces in the Mediterranean capable of performing a noncombatant evacuation when the government closes major airports. Led by Iran, a coalition of Egypt, Syria, Jordan, and Iraq attacks Israel. Over 300,000 die in six months of fighting that includes a limited nuclear exchange between Iran and Israel. Israel is defeated, and the State of Palestine is declared in its place. Massive “refugee” camps are created to house the internally displaced Israelis, but a humanitarian nightmare ensues from the inability of conquering forces to support them. The NATO alliance is shattered. The security of European nations depends increasingly on the lack of external threats and the nuclear capability of France, Britain, and Germany, which overcame its reticence to military capability in light of America’s retrenchment. Europe depends for its energy security on Russia and Iran, which control the main supply lines and sources of oil and gas to Europe. Major European nations stand down their militaries and instead make limited contributions to a new EU military constabulary force. No European nation maintains the ability to conduct significant out-of-area operations, and Europe as a whole maintains little airlift capacity. Implications for America’s Economy. If the United States slashed its Navy and ended its mission as a guarantor of the free flow of transoceanic goods and trade, globalized world trade would decrease substantially. As early as 1890, noted U.S. naval officer and historian Alfred Thayer Mahan described the world’s oceans as a “great highway…a wide common,” underscoring the long-running importance of the seas to trade.[12] Geographically organized trading blocs develop as the maritime highways suffer from insecurity and rising fuel prices. Asia prospers thanks to internal trade and Middle Eastern oil, Europe muddles along on the largesse of Russia and Iran, and the Western Hemisphere declines to a “new normal” with the exception of energy-independent Brazil. For America, Venezuelan oil grows in importance as other supplies decline. Mexico runs out of oil—as predicted—when it fails to take advantage of Western oil technology and investment. Nigerian output, which for five years had been secured through a partnership of the U.S. Navy and Nigerian maritime forces, is decimated by the bloody civil war of 2021. Canadian exports, which a decade earlier had been strong as a result of the oil shale industry, decline as a result of environmental concerns in Canada and elsewhere about the “fracking” (hydraulic fracturing) process used to free oil from shale. State and non-state actors increase the hazards to seaborne shipping, which are compounded by the necessity of traversing key chokepoints that are easily targeted by those who wish to restrict trade. These chokepoints include the Strait of Hormuz, which Iran could quickly close to trade if it wishes. More than half of the world’s oil is transported by sea. “From 1970 to 2006, the amount of goods transported via the oceans of the world…increased from 2.6 billion tons to 7.4 billion tons, an increase of over 284%.”[13] In 2010, “$40 billion dollars [sic] worth of oil passes through the world’s geographic ‘chokepoints’ on a daily basis…not to mention $3.2 trillion…annually in commerce that moves underwater on transoceanic cables.”[14] These quantities of goods simply cannot be moved by any other means. Thus, a reduction of sea trade reduces overall international trade. U.S. consumers face a greatly diminished selection of goods because domestic production largely disappeared in the decades before the global depression. As countries increasingly focus on regional rather than global trade, costs rise and Americans are forced to accept a much lower standard of living. Some domestic manufacturing improves, but at significant cost. In addition, shippers avoid U.S. ports due to the onerous container inspection regime implemented after investigators discover that the second dirty bomb was smuggled into the U.S. in a shipping container on an innocuous Panamanian-flagged freighter. As a result, American consumers bear higher shipping costs. The market also constrains the variety of goods available to the U.S. consumer and increases their cost. A Congressional Budget Office (CBO) report makes this abundantly clear. A one-week shutdown of the Los Angeles and Long Beach ports would lead to production losses of $65 million to $150 million (in 2006 dollars) per day. A three-year closure would cost $45 billion to $70 billion per year ($125 million to $200 million per day). Perhaps even more shocking, the simulation estimated that employment would shrink by approximately 1 million jobs.[15] These estimates demonstrate the effects of closing only the Los Angeles and Long Beach ports. On a national scale, such a shutdown would be catastrophic. The Government Accountability Office notes that: [O]ver 95 percent of U.S. international trade is transported by water[;] thus, the safety and economic security of the United States depends in large part on the secure use of the world’s seaports and waterways. A successful attack on a major seaport could potentially result in a dramatic slowdown in the international supply chain with impacts in the billions of dollars.[16]

### 1AC – Allied Coop

#### CONTENTION 2: ALLIES

**Allies will insist on a policy that limits operations to zones of active hostilities with criminal prosecutions elsewhere---codification key**

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

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

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

**Alignment with allies brings detention policy into compliance---makes criminal justice effective outside zones**

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

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

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

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

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

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

**Plan prevents end of allied intel cooperation and reinvigorates NATO and EU relations**

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

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

#### NATO prevents global nuclear war

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

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

#### CT violations spill over to end EU relations

Thorsten Wetzling 11, non-resident fellow at the Center for Transatlantic Relations at the Paul H. Nitze School of Advanced International Studies (SAIS), PhD in Political Science, “What role for what rule of law in EU-US counterterrorism cooperation?”, <http://transatlantic.sais-jhu.edu/publications/articles/Chapter1_EUISS_ChaillotPaper127_WETZLING.pdf>

Having said this, it is instructive to recall David Cole’s observation that ‘the rule of law may be tenacious when it is supported, but violations of it that go unaccounted corrode its very foundation’.17 Thus, while a more balanced depiction of ‘compatible’ and ‘incompatible’ counterterrorism practices may be required to substantiate broader claims, it is also true that a few severely misguided counterterrorism practices sufﬁce to discredit the ever-present promise of ‘full respect for our obligations under applicable international and domestic constitutional law’.18 In the light of the potentially contagious effect of individual rule-of-law deviations on the entire collaborative effort, the actual percentage of incompatible practices among the grand total of transatlantic counterterrorism activities appears secondary.

#### EU relations are at a key turning point---cementing strategic partnership prevents extinction

Dr. Yannis A. Stivachtis 10, Director, International Studies Program, Virginia Polytechnic Institute & State University, “THE IMPERATIVE FOR TRANSATLANTIC COOPERATION,” online: http://www.rieas.gr/research-areas/global-issues/transatlantic-studies/78.html

There is no doubt that US-European relations are in a period of transition, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations. ¶ The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, international terrorism, the nuclearization of North Korea and especially Iran, the proliferation of weapons of mass destruction (WMD), the transformation of Russia into a stable and cooperative member of the international community, the growing power of China, the political and economic transformation and integration of the Caucasian and Central Asian states, the integration and stabilization of the Balkan countries, the promotion of peace and stability in the Middle East, poverty, climate change, AIDS and other emergent problems and situations require further cooperation among countries at the regional, global and institutional levels. ¶ Therefore, cooperation between the U.S. and Europe is more imperative than ever to deal effectively with these problems. It is fair to say that the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global. ¶ The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense. ¶ Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements. ¶ There are two reasons for concern regarding the transatlantic rift. First, if European leaders conclude that Europe must become counterweight to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations.¶ If both sides would actively work to heal the breach, a new opportunity could be created. A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment.

### 1AC – Plan

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

### 1AC – Solvency

#### CONTENTION 3: SOLVENCY

**Plan’s key to codify existing policy into law---prevents expansive executive targeted killings and indefinite detention**

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

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

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

**Congressional codification sets a precedent and the prevents the erosion of rule of law**

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

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

#### The aff solves --- a zone approach is the perfect middle ground that resolves their downsides like circumvention and safe-havens

Jennifer Daskal 13, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 161 U. Pa. L. Rev. 1165, Lexis

II. A New Approach: Zones of Active Hostilities and Beyond¶ The current debate has resulted in a stalemate, with neither side adequately addressing the legitimate concerns of the other. The notion of an on-off switch, in which the state's ability to go after the enemy is restricted to limited territorial regions, ignores the geographically unbounded nature of a conflict with a transnational non-state actor. Conversely, the notion of an unbounded conflict raises legitimate concerns about the use of force as a first resort and the erosion of peacetime norms in areas far from any recognized "hot" battlefield. What is needed is a new framework of domestic and international law that better balances the multiple security and liberty interests at stake.¶ This Article offers such a framework - one that recognizes the broad scope of the conflict, but distinguishes between zones of active hostilities and elsewhere in setting the procedural and substantive standards for detention and targeting. This framework, which I call the zone approach, accommodates the state's key security interests while also protecting against the erosion of peacetime norms outside zones of active hostilities. It recognizes that rules applicable in wartime - rules that permit killing and [\*1193] detention without charge based on status alone - should be the exception rather than the norm, limited to circumstances in which security so demands.¶ This Part outlines the several normative and practical reasons why the zone approach should be adopted and incorporated into U.S. and, ultimately, international law. Although the analysis focuses primarily on the United States, the arguments as to the benefits of this framework apply equally to any other belligerent state seeking to defeat a transnational non-state enemy.¶ A. Basis for the Distinction¶ There is an intuitive sense that, separate and apart from any sovereignty concerns, the killing or detention of an alleged enemy of the state in a war zone is different from the killing or detention of an alleged enemy in a peaceful zone (think Munich or London), even if the known facts about the enemy's role in the opposing force are the same. Similarly, there is a less intuitive, but equally important, difference between both of those situations and the killing or detention of an alleged enemy in a lawless zone (think Yemen or Somalia). This Section highlights several reasons why these distinctions should be reflected in the law - reasons largely based on the relevant exigency, the importance of notice, and the intrinsic value of cabining war and its permissive use of force and detention without charge.¶ 1. The War Zone Versus the Peaceful Zone¶ The exigencies that justify application of wartime rules simply do not apply outside zones of active hostilities. The Supreme Court recognized this important distinction in Reid v. Covert, n83 in which it ruled that civilians accompanying the armed forces outside a war zone could not be subject to military trial. "The exigencies which have required military rule on the battlefield are not present where no conflict exists. Military trial of civilians "in the field' is an extraordinary jurisdiction and it should not be expanded at the expense of the Bill of Rights." n84 The Reid opinion echoed the reasoning of a case from almost ninety years prior, when the Court ruled that Indiana - which was not the site of any active fighting - could not be subject to martial law during the Civil War: "Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion [\*1194] real, such as effectually closes the courts and deposes the civil administration." n85 Similar reasoning has led courts to conclude that the requisition of property by the United States government is permitted at the "scene of conflict" but not thousands of miles away n86 and that the protections of the Suspension Clause depend to a large extent on whether or not the detainees are held in an "active theater of war." n87¶ As these cases recognize, the existence of warlike conditions in one part of the world should not lead to a relaxation of the substantive and procedural standards embodied in peacetime rules elsewhere. In some areas, intense fighting can create conditions that often make it impracticable, if not impossible, to apply ordinary peacetime rules. Such situations justify resort to more expedient wartime rules. By contrast, in areas where ordinary institutions are functioning, domestic police are effectively maintaining law and order, and communication and transportation networks are undisturbed, the exigent circumstances justifying the reliance on law-of-war tools are typically absent. n88 In those areas, the peacetime standards - which themselves reflect a careful balancing of liberty and security interests - serve the important functions of minimizing error and abuse and enhancing the legitimacy of the state's actions. These standards should be respected absent exigent circumstances that justify an exception.¶ Second, the notion of a global conflict clashes with the legitimate and reasonable expectations of persons residing in a peacetime zone. These expectations matter. The corollary - the requirement of fair notice - is perhaps the primary factor that distinguishes a law-abiding government from a lawless dictatorship. Its importance is emphasized time and time again in both U.S. constitutional law and international law doctrines. It sets boundaries [\*1195] on substantive rights, n89 is key to choice of law questions, n90 and is the core of procedural-rights protections in both domestic and international law. n91¶ In places of intense, obvious, and publicly acknowledged fighting, civilians are on notice that they are residing within a zone of conflict. Those who remain within the conflict zone have implicitly accepted some risk, albeit not voluntarily in most cases. They can, at least in theory, take steps to protect themselves and minimize the likelihood of being caught in the crossfire by, when possible, leaving or avoiding areas with the heaviest concentration of fighters or taking extra precautions in conducting their daily activities. n92 Host states are similarly on notice of the likelihood of ongoing hostilities and can take appropriate steps to move their citizens away from areas of intense fighting.¶ [\*1196] By comparison, civilians sitting at an outdoor cafe in Paris are not on notice that they are within the zone of conflict. As a result, there is something intuitively unsettling about the idea that they could be deemed the legitimate collateral damage of a state-sponsored attack. It is precisely this fear of the unpredictable on which terrorists capitalize when they attack unsuspecting civilians. A legal doctrine that allows the state to engage in attacks that may have a similar consequence - even if civilians are not the intended or expected targets of the attacks - raises legitimate concerns.¶ It is, of course, possible to conceive of a new set of rules for this new type of conflict, under which the procedural and substantive requirements of domestic criminal justice systems and human rights norms give way when the non-state enemy crosses into one's jurisdiction. But the idea that a non-state actor could, through its clandestine behavior, trigger the permissive use of killing and detention without charge runs counter to longstanding conceptions of fairness and justice. n93 It essentially allows the terrorist to erode protections of basic rights simply by crossing state lines.¶ Third, the conditions on the ground affect the assumptions as to who qualifies as the enemy. While it may be valid to presume that individuals who attend a training camp and are found in a zone of active hostilities intend to join the fight, the same presumption does not necessarily hold for individuals who are subsequently located thousands of miles away in a zone of relative peace. n94 Absent additional, specific information suggesting that the individual is actively engaged in attack planning or playing a sufficiently important role in the organization so as to pose a significant ongoing threat, the justifications for law-of-war detention or lethal killing (to prevent the return to the battlefield or otherwise eliminate the threat) are questionable. n95 At a minimum, heightened quantum-of-information standards ought to [\*1197] apply to detention and targeting that take place outside a zone of active hostilities. n96¶ 2. The Lawless Zone¶ In practice, the truly contested areas fall somewhere between the obvious warzone and the peacetime zone. The United States is unlikely to begin launching drone strikes in Paris. It is, however, reportedly doing so with increasing frequency in places like Yemen and possibly Somalia n97 - areas that can be loosely characterized as "lawless zones."¶ In some ways, a lawless zone shares attributes with a zone of active hostilities. Domestic law enforcement tends to be largely ineffective or nonexistent, suggesting the need for alternative mechanisms to deal with threats. In many instances (and certainly in much of Yemen as well as Somalia), civilians are on notice that they are living in a conflict zone, even if the main conflict is distinct from the transnational conflict between the state and a non-state entity (e.g., the internal armed conflict between the government and insurgent forces in southern Yemen, and the internal armed conflict between al Shabaab and the Transitional Federal Government in Somalia).¶ Despite these similarities, the lawless zone where a discrete number of non-state actors find sanctuary is analytically distinct from the hot conflict zone where there is overt, active, ongoing fighting between troops on the ground. This is so for two main reasons.¶ First, the existence of a separate, distinct conflict of the type often found in a lawless zone does not provide notice of a conflict between a belligerent state and transnational non–state enemy. In concrete terms, the existence of a conflict between al Shabaab and the Transitional Federal Government does not provide notice of a conflict between the United States and al Qaeda affiliates reportedly operating in Somalia. This matters for reasons of attribution and accountability. It also affects the degree, if not the fact, of conflict experienced by the civilian population. Imagine if the existence of a lawless zone gave states free rein to unilaterally attack any alleged non–state enemy found therein. Absent any meaningful limits, such a region might be decimated by external attacks. The situation would likely exacerbate the separate conflict, prolong the situation of lawlessness, and make it exceed- ingly difficult for the population properly to identify or take steps to address the source of conflict.98¶ Second, operations in a lawless zone are likely to be limited to targeted and surgical strikes, often with advance planning and little risk to the state's own troops. This is a very different setting than an active battlefield where troops on the ground are exposed to high levels of risk. As is often noted, those engaged in on-the-ground combat should not be required to hold their fire until they conduct a careful evaluation of the threat posed; such a rule would be potentially suicidal. In Yemen and Somalia, by contrast, the United States carefully pinpoints and identifies targets, with little to no danger to its own troops. When engaging in that type of deliberate killing, with negligible risk to one's own forces, there should be a corresponding obligation to take extra precautions to prevent error, overzealousness, and abuse. N99¶ B. Current State Practice¶ Since 2006, the United States has, at least implicitly and as a matter of policy, distinguished between zones of active hostilities and elsewhere. n100 The Bush Administration initially placed a significant number of off-the-battlefield captures into long-term law-of-war detention. Detainees reportedly included persons captured in places as far-flung from the Afghanistan battlefield as Bosnia, Mauritania, and Thailand - as well as the United States. n101 These off-the-battlefield detentions turned out to be highly controversial. They have been the subject of numerous court challenges, [\*1199] international criticism, and endless commentary. n102 Moreover, they raise difficult questions about repatriation - issues with which the United States continues to struggle. n103¶ Beginning in September 2006, the Bush Administration initiated a shift in policy. Largely in response to the Supreme Court's ruling in Hamdan v. Rumsfeld, n104 President Bush announced that he was closing CIA-run black sites, at least temporarily, and ordered the transfer of fourteen long-term CIA detainees to Guantanamo. n105 Subsequently, the number of out-of-battlefield captures transferred to Guantanamo fell to a mere three captures in 2007 n106 and only one capture in 2008. n107 All were described as high-value targets based on alleged links to al Qaeda leadership or involvement in specific terrorist attacks. n108¶ [\*1200] On January 22, 2009, two days after taking office, President Obama declared the permanent shuttering of CIA black sites as well as his plan to close the detention center at Guantanamo Bay. n109 While Guantanamo remains open today, the Obama Administration has committed not to transfer any additional detainees there. n110 Since 2009, Warsame is the only known case of an out-of-battlefield detainee being placed in anything other than very short-term military custody. n111¶ Some have argued that the low number of out-of-battlefield detentions is due in part to the lack of viable locations for holding detainees. But while that may be a factor, it seems that the difficulty of apprehension, the high diplomatic, reputational, and transactional costs of such detentions, and the relative effectiveness of the criminal justice system in responding to threats, are equal - if not more - important factors in limiting the reliance on law-of-war detention. n112¶ As out-of-battlefield detentions have declined, targeted killings reportedly have increased dramatically. n113 The vast majority of these killings appear [\*1201] to have been concentrated in northwest Pakistan - an area that most concede is a spillover of the zone of active hostilities in Afghanistan. n114 A growing number of strikes reportedly have been launched in Yemen as well. n115¶ The Obama Administration also appears to have adopted a distinction between Afghanistan and elsewhere in setting the rules for these strikes. While top administration officials have argued that their military authorities are not restricted to the "hot" battlefield of Afghanistan, they also have argued that "outside of Afghanistan and Iraq" targets are focused on those "who are a threat to the United States, whose removal would cause a significant - even if only temporary - disruption of the plans and capabilities of al-Qa'ida and its associated forces." n116 Whether or not one agrees with the standard employed, it is clear that the administration itself recognizes a distinction between Afghanistan (and, earlier, Iraq) and other areas embroiled in the conflict with al Qaeda. Procedural rules in terms of who must authorize the strike also reportedly vary depending on whether one is operating within Afghanistan and the border regions of Pakistan or elsewhere. n117 While there are good reasons to demand additional safeguards, the [\*1202] United States' own actions already reflect the importance and value of distinguishing between zones of active hostilities and other areas.¶ III. The Specifics: Defining the Zones and Setting the Standards¶ Given the basis for distinguishing between zones of active hostilities and elsewhere, this Part provides the specifics of the proposed approach. It first lays out criteria for distinguishing between a zone of active hostilities and elsewhere by drawing on both existing law and the normative justifications for the distinctions. It then describes the proposed substantive and procedural standards that ought to apply, consistent with the goals of protecting individual liberty, peacetime institutions, and the fundamental security interests of the state.¶ This task is both necessary and inherently difficult. It is an attempt to develop a set of clear standards, or on-off triggers, for a situation in which the gravity, imminence, and likelihood of a threat are dynamic, uncertain, and difficult to categorize. My aim is to propose an initial set of standards that will regulate the use of force and detention without charge outside a zone of active hostilities, consistent with the state's legitimate security needs. The expectation is that debate and discussion will help develop and refine the details over time.¶ A. The Zone of Active Hostilities¶ Commentary, political discourse, court rulings, and academic literature are rife with references to the distinction between the so-called "hot battlefield" and elsewhere. Yet despite the salience of this distinction, there is no commonly understood definition of a "hot battlefield," let alone a common term applied by all. n118 In what follows, I briefly survey the relevant treaty [\*1203] and case law and offer a working definition of what I call the "zone of active hostilities." This definition takes into account such sources of law as well as the normative and practical reasons for this distinction.¶ 1. Treaty and Case Law¶ While not explicitly articulated, the notion of a distinct zone of active hostilities where fighting is underway is implicit in treaty law. The Geneva Conventions, for example, specify that prisoners of war and internees must be moved away from the "combat zone" in order to keep them out of danger, n119 and that belligerent parties must conduct searches for the dead and wounded left on the "battlefield." n120 While there are no explicit definitions provided, the context suggests that these terms refer to those areas where fighting is currently taking place or very likely to occur. The related term "zones of military operations," which is spelled out in a bit more detail in the Commentaries to the Geneva Conventions, is described as covering those areas where there is actual or planned troop movement, even if no active fighting. n121¶ [\*1204] In a variety of contexts, U.S. courts also have opined on whether certain activities fall within or outside of a zone of active hostilities, indicating that the existence and quantity of fighting forces are key. In Hamdi v. Rumsfeld, for example, the Supreme Court observed that the large number of troops on the ground in Afghanistan supported the finding that the United States was involved in "active combat" there. n122 A panel of the D.C. Circuit subsequently noted that the ongoing military campaign by U.S. forces, the attacks against U.S. forces by the Taliban and al Qaeda, the casualties U.S. personnel incurred, and the presence of other non-U.S. troops under NATO command supported its finding that Afghanistan was "a theater of active military combat." n123 Previous cases have similarly used the presence of fighting forces, the actual engagement of opposing forces, and casualty counts to identify a theater of active conflict. n124¶ Conversely, U.S. courts have often assumed that areas in which there is no active fighting between armed entities fall outside of the zone of active hostilities. Thus, the Al-Marri and Padilla litigations were premised on the notion that the two men were outside of the zone of active hostilities when [\*1205] taken into custody in the United States. n125 The central issue in those cases was how much this distinction mattered. n126 The D.C. Circuit in Al Maqaleh similarly distinguished Afghanistan - defined as part of "the theater of active military combat" - from Guantanamo - described as outside of this "theater of war" - presumably because of the absence of active fighting there. n127 In the context of the Guantanamo habeas litigation, D.C. District Court judges have at various times also described Saudi Arabia, Gambia, Zambia, Bosnia, Pakistan, and Thailand as outside an active battle zone. n128¶ In defining what constitutes a conflict in the first place, international courts have similarly looked at the existence, duration, and intensity of the actual fighting. Specifically, in Tadic, the ICTY defined a noninternational armed conflict as involving "protracted armed violence between governmental authorities and organized armed groups." n129 In subsequent cases, the ICTY [\*1206] described the term "protracted armed violence" as turning on the intensity of the violence and encompassing considerations such as "the number, duration, and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of weapons fired; the number of persons and type of forces partaking in the fighting; the number of casualties; [and] the extent of material destruction." n130 Security Council attention is also deemed relevant. n131¶ The International Committee of the Red Cross (ICRC) has similarly defined noninternational armed conflicts as "protracted armed confrontations" that involve a "minimum level of intensity." n132¶ 2. Identifying the Zone¶ Consistent with treaty and case law, overt and sustained fighting are key factors in identifying a zone of active hostilities. Specifically, the fighting must be of sufficient duration and intensity to create the exigent circumstances that justify application of extraordinary war authorities, to put civilians on notice, and to justify permissive evidentiary presumptions regarding the identification of the enemy. n133 The presence of troops on the [\*1207] ground is a significant factor, although neither necessary nor sufficient to constitute a zone of active hostilities. Action by the Security Council or regional security bodies such as NATO, as well as the belligerent parties' express recognition of the existence of a hot conflict zone, are also relevant.¶ Linking the zone of active hostilities primarily to the duration and intensity of the fighting and to states' own proclamations suffers, however, from an inherent circularity. A state can itself create a zone of active hostilities by ratcheting up violence or issuing a declaration of intent, thereby making previously unlawful actions lawful. n134¶ It is impossible to fully address this concern. The problem can, however, be significantly reduced by insisting on strict compliance with the law-of-war principles of distinction and proportionality and by vigorously punishing states for acts of aggression. n135 There will, of course, be disagreement as to whether a state's escalation of a certain conflict constitutes aggression, particularly given underlying disagreements about who qualifies as a lawful target. The zone approach is helpful in this regard as well: it narrows the range of disagreement by demanding heightened substantive standards as to who qualifies as a legitimate target outside the zones of active hostilities. Under the zone approach, the escalation of force must be aimed at a narrower set of possible military targets until the increased use of force is sufficiently intense and pervasive enough to create a new zone of active hostilities.¶ 3. Geographic Scope of the Zone¶ A secondary question relates to the geographic scope of the zone of active hostilities. In answering the related question of the scope of the overarching armed conflict, the Tadic court defined the conflict as extending throughout the state in which hostilities were conducted (in the case of international armed conflict) n136 and the area over which a party had territorial control (in the case of a noninternational armed conflict that did not extend [\*1208] throughout an entire state). n137 Neither approach, however, maps well onto the practical realities of a transnational conflict between a state and a non-state actor. In many cases, the non-state actor and related hostilities will be concentrated in a small pocket of the state. It would be contrary to the justifications of exigency and proper notice to define the zone of active hostilities as extending to the entire state. A territorial control test also does not make sense when dealing with a non-state actor, such as al Qaeda, which does not exercise formal control over any territory and is driven more by ideology than territorial ambition.¶ This Article suggests a more nuanced, albeit still imperfect, approach: If the fighting is sufficiently widespread throughout the state, then the zone of active hostilities extends to the state's borders. If, however, hostilities are concentrated only in certain regions within a state, then the zone will be geographically limited to those administrative areas or provinces in which there is actual fighting, a significant possibility of fighting, or preparation for fighting. This test is fact-intensive and will depend on both the conditions on the ground and preexisting state and administrative boundaries.¶ It remains somewhat arbitrary, of course, to link the zone of hostilities to nation-state boundaries or administrative regions within a state when neither the state itself nor the region is a party to the conflict and when the non-state party lacks explicit ties to the state or region at issue. This proposed framework inevitably will incorporate some areas into the zone of active hostilities in which the key triggering factors - sustained, overt hostilities - are not present. But such boundaries, even if overinclusive or artificial, provide the most accurate means available of identifying the zone of active hostilities, at least over the short term.¶ Over the long term, it would be preferable for the belligerent state to declare particular areas to be within the zone of active hostilities, either through an official pronouncement by the state party to the conflict or via a resolution by the Security Council or a regional security body. A public declaration would provide explicit notice as to the existence and parameters of the zone of active hostilities, thereby reducing uncertainty as to which legal rules apply. Such declarations would allow for public debate and diplomatic pressure in the event of disagreement. Furthermore, the belligerent states could then define the zone with greater nuance, which would better [\*1209] reflect the actual fighting than would preexisting state or administrative boundaries. n138¶ Some likely will object that such an official designation would recreate the same safe havens that this proposal seeks to avoid. But a critical difference exists between a territorially restricted framework that effectively prohibits reliance on law-of-war tools outside of specific zones of active hostilities and a zone approach that merely imposes heightened procedural and substantive standards on the use of such tools. Under the zone approach, the non-state enemy is not free from attack or capture; rather, the belligerent state simply must take greater care to ensure that the target meets the enhanced criteria described in Section III.B.¶ B. Setting the Standards¶ Law-of-war detention and lethal targeting outside a zone of active hostilities should be limited, not categorically prohibited. It should be focused on those threats that are clearly tied to the zone of active hostilities and other significant and ongoing threats that cannot be adequately addressed through other means. Moreover, a heightened quantum of information and other procedural requirements should apply, given the possibility and current practice of ex ante deliberation and review. Pursuant to these guiding principles, this Section proposes the adoption of an individualized threat requirement, a least-harmful-means test, and meaningful procedural safeguards for lethal targeting and law-of-war detention that take place outside zones of active hostilities.

### If Time

#### States choose to follow LOAC based on a system of incentives – studies prove that solves violence

Prorock and Appel 13 (Alyssa, and Benjamin, Department of Political Science, Michigan State University, “Compliance with International Humanitarian Law: Democratic Third Parties and Civilian Targeting in Interstate War,” Journal of Conflict Resolution 00(0) 1-28)

Coercion is a strategy of statecraft involving the threat or use of positive inducements and negative sanctions to alter a target state’s behavior. It influences the decision making of governments by altering the payoffs of pursuing various policies. Recent studies demonstrate, for example, that third-party states have used the carrot of preferential trade agreements (PTAs) to induce better human rights outcomes in target states (Hafner-Burton 2005, 2009), while the World Bank has withheld aid to states with poor human rights records as a form of coercive punishment (Lebovic and Voeten 2009).

We focus theoretically and empirically on the **expectation of coercion**. As Thompson (2009) argues, coercion has already failed once an actor has to carry through on its coercive threat. Thus, an accurate understanding of coercion’s impact must account for the expectation rather than the implementation **of overt penalties** or benefits. It follows that leaders likely incorporate the expected reactions of third parties into their decision making when they weigh the costs/benefits of complying with international law (Goodliffe and Hawkins 2009; Goodliffe et al. 2012). Because governments care about the ‘‘economic, security, and political goods their network partners provide, they anticipate likely reactions of their partners and behave in ways they expect their partners will approve’’ (Goodliffe et al. 2012, 132).8 Anticipated positive third-party reactions for compliance increase the expected payoffs for adhering to legal obligations, while anticipated negative responses to violation decrease the expected payoffs for that course of action. Coercion succeeds, therefore, when states comply with the law because the expected reactions of third parties alter payoffs such that compliance has a higher utility than violating the law. Based on this logic, we focus on the conditions under which states expect third parties to engage in coercive statecraft. We identify when combatant states will anticipate coercion and when that expectation will alter payoffs sufficiently to induce compliance with the law.

While a **growing body of literature** recognizes that international coercion can **induce compliance and contribute to international cooperation** more generally (Goldsmith and Posner 2005; Hafner-Burton 2005; Thompson 2009; Von Stein 2010), many scholars remain skeptical about coercion’s effectiveness as an enforcement mechanism. Skeptics argue that coercion is costly to implement; third parties value the economic, political, and military ties they share with target states and may suffer along with the target from cutting those ties. This may undermine the credibility of coercive threats and a third party’s ability to induce compliance through this enforcement mechanism.

While acknowledging this critique of coercion, we argue that it can act as an **effective enforcement mechanism** under certain conditions. Specifically, successful coercion requires that third parties have (1) the incentive to commit to and implement their coercive threats and (2) sufficient leverage over target states in order to meaningfully alter payoffs for compliance. This suggests that only some third parties can engage in successful coercion and that it is necessary to identify the specific conditions under which third parties can generate credible coercive threats to enforce compliance with international humanitarian law. In the following sections, we argue that third-party states are most likely to effectively use coercion to alter the behavior of combatants when they have both the willingness and opportunity to coerce (e.g., Most and Starr 1989; Siverson and Starr 1990; Starr 1978).

Willingness: Clarity, Democracy, and the Salience of International Humanitarian Law

Enforcement through the coercion mechanism is only likely when at least one third-party state has a substantial enough interest in another party’s compliance that it is willing to act (Von Stein 2010). Third-party willingness, in turn, depends upon two conditions: (1) legal principles must be clearly defined, making violations easily identifiable and (2) third parties must regard the legal obligation as highly salient.

First, scholars have long recognized that there is significant variation in the precision and clarity of legal rules, and that clarity contributes to compliance with the law (e.g., Abbott et al. 2000; Huth, Croco, and Appel 2011; Morrow 2007; Wallace 2013**).** Precise rules **increase the effectiveness of the law** by **narrowing the range of possible interpretations** and allowing all states to clearly identify acceptable versus unacceptable conduct. By clearly proscribing unacceptable behavior, clear legal obligations allow states to more precisely respond to compliant versus noncompliant behavior. In contrast, **ambiguous legal principle**s often lead to **multiple interpretations** among relevant actors, **impeding a convergence of expectations** and increasing uncertainty about the payoffs for violating (complying with) the law. Thus, the clarity of the law shapes states’ expectations by allowing them to predict the reactions of other states with greater confidence. In particular, they can expect **greater cooperation and rewards following compliance** and more punishment and sanctions for violating the law when legal obligations are clearly defined.

While some bodies of law are imprecise, i**nternational humanitarian law establishes a comprehensive code of conduct** regarding the intentional targeting of noncombatants during war (e.g., Murphy 2006; Shaw 2003). Starting with the 1899 and 1907 Hague Conventions and continuing through the 1949 Geneva Convention (Protocol IV), the law clearly prohibits the intentional targeting of noncombatants in war.

This clarity **allows international humanitarian law to** serve as a “bright line” **that coordinates the expectations of both war combatants and third parties** (Morrow 2007). By creating a **common set of standards,** it reduces uncertainty, narrowing the range of interpretations of the law and allowing both combatants and third parties to readily recognize violations of these standards. Third parties are, as a result, more likely to expend resources to punish conduct that transgresses legal standards or to support behavior in accordance with them. This, in turn, alters the expectations of war combatants who can expect greater support for abiding by the law and greater punishment for violating it when the clarity condition is met.

# 2AC

### AT: McClintock

#### Psychoanalysis is false---heg not paranoid

Samuels 93—Training Analyst – Society of Analytical Psychology and Science Associate – American Academy of Psychoanalysis (Andrew, Free Associations, “The mirror and the hammer: depth psychology and political transformation”, Vol. 3D, Psychoanalytic Electronic Publishing)

The paper is about the depth psychology of political processes, focusing on processes of political change. It is a contribution to the longstanding ambition of depth psychology to develop a form of political and cultural analysis that will, in Freud's words, 'under-stand the riddles of the world'. It has to be admitted that there is an equally longstanding reluctance in the non-psychological commun¬ity to accept the many and varied ideas and suggestions concerning political matters that have been offered by analysts of all persua¬sions. I do not believe this can all be put down to resistance. There is something offensive above reductive interpretations of complex socio-political problems in exclusively psychological terms. The tendency to panpsychism on the part of some depth psychologists has led me to wonder if an adequate methodology and ethos actually exists with which to make an engagement of depth psychology with the public sphere possible.¶ By 'politics' I mean the arrangements within a culture for the organization and distribution of power, especially economic power, and the way in which power is deployed to maintain the survival and enhance the quality of human life. Economic and political power includes control of processes of information and representation as well as the use of physical force and possession of vital resources such as land, food and water. On a more personal level, political power reflects the ability to choose freely whether to act and what action to take in a given situation. 'Politics' refers to the interplay between the personal and public dimensions of power. That is, there is an articulation between public, economic power and power as expressed on the personal, private level. This articulation is demonstrated in family organization, gender and race relations, and in religious and artistic assumptions as they affect the life of individuals. (I have also tried to be consistent in my use of the terms 'culture', 'society' and 'collective'.)'¶ Here is an example of the difficulty with psychological rcduc-tionism to which I am referring. At a conference 1 attended in London in 1990, a distinguished psychoanalyst referred to the revolutionary students in Paris in 1968 as 'functioning as a regressive group'. Now, for a large group of students to be said to regress, there must be, in the speaker's mind, some sort of normative developmental starting point for them to regress to. The social group is supposed to have a babyhood, as it were. Similarly, the speaker must have had in mind the possibility of a healthier, progressive group process — what a more mature group of revolutionary students would have looked like. But complex social and political phenomena do not conform to the individualistic, chronological, moralistic, pathologizing framework that is often imported.¶ The problem stems from treating the entire culture, or large chunks of it, as if it were an individual or, worse, as if it were a baby. Psychoanalysts project a version of personality development couched in judgemental terms onto a collective cultural and political process. If we look in this manner for pathology in the culture, we will surely find it. As we are looking with a psychological theory in mind, then, lo and behold, the theory will explain the pathology, but this is a retrospective prophecy (to use a phrase of Freud's), twenty-twenty hindsight. In this psychoanalytic tautologizing there is really nothing much to get excited about. Too much psychological writing on the culture, my own included, has suffered from this kind of smug 'correctness' when the 'material' proves the theoretical point. Of course it does! If we are interested in envy or greed, then we will find envy or greed in capitalistic organization. If we set out to demonstrate the presence of archetypal patterns, such as projection of the shadow, in geopolitical relations, then, without a doubt, they will seem to leap out at us. We influence what we analyse and so psychological reflection on culture and politics needs to be muted- there is not so much 'aha!' as one hoped.

### AT: NSA

#### NSA scandal won’t taint relations---even if it’s never ending

David Francis 11/4, The Fiscal Times, "Why Europe Won't Punish the U.S. over NSA Scandal", 2013, www.thefiscaltimes.com/Articles/2013/11/04/Why-Europe-Won-t-Punish-US-over-NSA-Scandal

At this point, the National Security Agency spying scandal seems never-ending. It’s been ongoing since June, when the first of Edward Snowden’s stolen documents was made public. Each time it appears to be dying, another round of documents appear and the scandal lives on.¶ The latest series of leaks is perhaps the most serious. Less than two weeks ago, on the eve of a European Union summit in Brussels, reports emerged that the NSA had been spying on European leaders, including German Chancellor Angela Merkel.¶ The outcry from the German public and politicians continues to this day. German officials have demanded and been granted meetings with high-level Obama administration officials to complain about the spying and Merkel called President Obama to voice her displeasure with the practice.¶ Hans-Christian Stroebele, a legislator for the Germany's opposition Greens party, said that Snowden might be called to testify in a German investigation into NSA practices.¶ "He made it clear he knows a lot and that as long as the National Security Agency blocks investigations, he is essentially prepared to come to Germany and give testimony, but the conditions must be discussed," Stroebele, who met with Snowden in Russia last week, said.¶ Similar anger has been expressed around the European continent. Some are saying that irreparable damage has been done to the relationship between the United States and its European partners.¶ But is this truly the case? Expressing anger over NSA practices is one thing; actually making policy changes because of the behavior is entirely another. A close examination of statements made by European officials shows their tone softening.¶ There is not likely to be any long-term fallout in two key areas: economic negotiations over a $287 billion EU/U.S. trade pact are going to continue, and intelligence is still likely to pass back and forth across the Atlantic. The only real damage has been to the standing of the United States with the European public and fringe lawmakers.

## T

### 2AC T – Authority

#### C/I --- C/I--- Authority is what the president may do not what the president can do

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

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

#### Their war making authority definition doesn’t even use that term

#### They overlimit – they allow only zone one cases – Congressional silence also creates authority in zone two – and the Constitution does in zone three – their author:

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

## K

### Mellor

#### Policy relevant debate about war powers is critical to hold the government accountable --- must engage specific proposals to solve

Ewan E. Mellor 13, European University Institute, Political and Social Sciences, Graduate Student, Paper Prepared for BISA Conference, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs”, <http://www.academia.edu/4175480/Why_policy_relevance_is_a_moral_necessity_Just_war_theory_impact_and_UAVs>

This section of the paper considers more generally the need for just war theorists to engage with policy debate about the use of force, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. It draws on John Kelsay’s conception of just war thinking as being a social practice,35 as well as on Michael Walzer’s understanding of the role of the social critic in society.36 It argues that the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.”37¶ Kelsay argues that:¶ [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38¶ He also argues that “good just war thinking involves continuous and complete deliberation, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 This is important as it highlights the need for just war scholars to engage with the ongoing operations in war and the specific policies that are involved. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”40 in terms of being able to discuss it and judge it in moral terms.¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. The just war theorist, as a social critic, must be involved with his or her own society and its practices. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 the just war theorist must be close to and must understand the language through which war is constituted, interpreted and reinterpreted.42 It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to¶ demonstrate its hypocrisy and to show the gap that exists between its practice and its values.43 The tradition itself provides a set of values and principles and, as argued by Cian O’Driscoll, constitutes a “language of engagement” to spur participation in public and political debate.44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis.¶ Engaging with the reality of war requires recognising that war is, as Clausewitz stated, a continuation of policy. War, according to Clausewitz, is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued.47 Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship.48 This engagement must bring just war theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers, however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition the policy-makers will be forced to account for their decisions and justify them in just war language. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 it is incumbent upon just war theorists to ensure that the public are informed and are capable of holding their political leaders to account. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, it is precisely because it is “our country” that we are “especially obligated to criticise its policies.”51

### Isaac-Must Read

#### Consequentialism key---alt is complicit with evil

**Isaac 2**—Professor of Political Science at Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD from Yale (Jeffery C., Dissent Magazine, Vol. 49, Iss. 2, “Ends, Means, and Politics,” p. Proquest)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness **undercuts political responsibility**. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of **complicity in injustice**. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that **politics is as much about unintended consequences as it is about intentions**; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

### AT: Prior Questions – Cochrane

#### Prior questions will never be fully settled---action’s prior

Molly Cochran 99, Assistant Professor of International Affairs at Georgia Institute for Technology, “Normative Theory in International Relations”, 1999, pg. 272

To conclude this chapter, while modernist and postmodernist debates continue, while we are still unsure as to what we can legitimately identify as a feminist ethical/political concern, while we still are unclear about the relationship between discourse and experience, it is particularly important for feminists that we proceed with analysis of both the material (institutional and structural) as well as the discursive. This holds not only for feminists, but for all theorists oriented towards the goal of extending further moral inclusion in the present social sciences climate of epistemological uncertainty. Important ethical/political concerns hang in the balance. We cannot afford to wait for the meta-theoretical questions to be conclusively answered. Those answers may be unavailable. Nor can we wait for a credible vision of an alternative institutional order to appear before an emancipatory agenda can be kicked into gear. Nor do we have before us a chicken and egg question of which comes first: sorting out the metatheoretical issues or working out which practices contribute to a credible institutional vision. The two questions can and should be pursued together, and can be via moral imagination. Imagination can help us think beyond discursive and material conditions which limit us, by pushing the boundaries of those limitations in thought and examining what yields. In this respect, I believe international ethics as pragmatic critique can be a useful ally to feminist and normative theorists generally.

### AT: Discourse First

#### Discourse/framing doesn’t shape reality

Tuathail 96 (Gearóid, Professor of Government and International Affairs, Virginia Tech, The patterned mess of history and the writing of critical geopolitics: a reply to Dalby, Political Geography 15:6/7, p 661-5 http://www.nvc.vt.edu/toalg/Website/Publish/miscellaneous/DalbyResponse.htm)

While theoretical debates at academic conferences are important to academics, the discourse and concerns of foreign policy decision makers are quite different, so different that they constitutes a distinctive problem-solving theory-averse policy making sub-culture. There is a danger that academics assume that the discourses they engage are more significant in the practice of foreign policy and the exercise of power than they really are. This is not, however, to minimize the obvious importance of academia as a general institutional structure among many which sustain certain epistemic communities in particular states. In general, I do not disagree with Dalby's fourth point about politics and discourse except to note that his statement -- "Precisely because reality could be represented in particular ways political decisions could be taken, troops and material moved and war fought" -- evades the important question of agency I noted in my review essay. The assumption that it is representations that make action possible is inadequate by itself. Political, military and economic structures, institutions, discursive networks and leadership are all crucial in explaining social action and should be theorized together with representational practices. Both here and earlier, Dalby's reasoning inclines towards a form of idealism. In response to Dalby's fifth point (with its three subpoints), it is worth noting, first, that his book is about the CPD not the Reagan administration. He analyzes certain CPD discourses not the geographical reasoning practices of the Reagan administration nor its public policy reasoning on national security. Dalby's book is narrowly textual; the general contextuality of the Reagan administration is not dealt with in the book. Second, let me simply note that I find that the distinction between critical theorists and post-structuralists is a little too rigidly and heroically drawn by Dalby and others. Third, Dalby's interpretation of the reconceptualization of national security in Moscow as heavily influenced by dissident peace researchers in Europe is highly idealist, an interpretation that ignores the structural and ideological crises facing the Soviet elite at that time. Gorbachev's reforms and his new security discourse were also strongly self-interested, an ultimately futile attempt to save the Communist Party and a discredited regime of power from disintegration. The issues raised by Simon Dalby in his comment are important ones for all those interested in the practice of critical geopolitics. While I agree with Dalby that questions of discourse are extremely important ones for political geographer's to engage, there is a danger of fetishizing this concern with discourse so that we neglect the institutional and the sociological, the materialist and the cultural, the political and the geographical contexts within which particular discursive strategies become significant. Critical geopolitics, in other words, should not be a prisoner of the sweeping ahistorical cant that sometimes accompanies "post-structuralism" nor convenient reading strategies like the identity politics narrative; it needs to always be open to the patterned mess that is human history.

### No Securitization from Speech Act

#### One speech act doesn’t cause securitization

Irina Ghughunishvili 10, “Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies”, Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

As provided by the Copenhagen School securitization theory is comprised by speech act, acceptance of the audience and facilitating conditions or other non-securitizing actors contribute to a successful securitization. The causality or a one-way relationship between the speech act, the audience and securitizing actor, where politicians use the speech act first to justify exceptional measures, has been criticized by scholars, such as Balzacq. According to him, the one-directional relationship between the three factors, or some of them, is not the best approach. To fully grasp the dynamics, it will be more beneficial to “rather than looking for a one-directional relationship between some or all of the three factors highlighted, it could be profitable to focus on the degree of congruence between them. 26 Among other aspects of the Copenhagen School’s theoretical framework, which he criticizes, the thesis will rely on the criticism of the lack of context and the rejection of a ‘one-way causal’ relationship between the audience and the actor. The process of threat construction, according to him, can be clearer if external context, which stands independently from use of language, can be considered. 27 Balzacq opts for more context-oriented approach when it comes down to securitization through the speech act, where a single speech does not create the discourse, but it is created through a long process, where context is vital. 28 He indicates: In reality, the speech act itself, i.e. literally a single security articulation at a particular point in time, will at best only very rarely explain the entire social process that follows from it. In most cases a security scholar will rather be confronted with a process of articulations creating sequentially a threat text which turns sequentially into a securitization. 29 This type of approach seems more plausible in an empirical study, as it is more likely that a single speech will not be able to securitize an issue, but it is a lengthy process, where a the audience speaks the same language as the securitizing actors and can relate to their speeches.

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#### It solves and avoids cooption

McCormack 10 (Tara, is Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster. 2010, (Critique, Security and Power: The political limits to emancipatory approaches, page 59-61)

In chapter 7 I engaged with the human security framework and some of the problematic implications of ‘emancipatory’ security policy frameworks. In this chapter I argued that the shift away from the pluralist security framework and the elevation of cosmopolitan and emancipatory goals has served to enforce international power inequalities rather than lessen them. Weak or unstable states are subjected to greater international scrutiny and international institutions and other states have greater freedom to intervene, but the citizens of these states have no way of controlling or influencing these international institutions or powerful states. This shift away from the pluralist security framework has not challenged the status quo, which may help to explain why major international institutions and states can easily adopt a more cosmopolitan rhetoric in their security policies. As we have seen, the shift away from the pluralist security framework has entailed a shift towards a more openly hierarchical international system, in which states are differentiated according to, for example, their ability to provide human security for their citizens or their supposed democratic commitments. In this shift, the old pluralist international norms of (formal) international sovereign equality, non-intervention and ‘blindness’ to the content of a state are overturned. Instead, international institutions and states have more freedom to intervene in weak or unstable states in order to ‘protect’ and emancipate individuals globally. Critical and emancipatory security theorists argue that the goal of the emancipation of the individual means that security must be reconceptualised away from the state. As the domestic sphere is understood to be the sphere of insecurity and disorder, the international sphere represents greater emancipatory possibilities, as Tickner argues, ‘if security is to start with the individual, its ties to state sovereignty must be severed’ (1995: 189). For critical and emancipatory theorists there must be a shift towards a ‘cosmopolitan’ legal framework, for example Mary Kaldor (2001: 10), Martin Shaw (2003: 104) and Andrew Linklater (2005). For critical theorists, one of the fundamental problems with Realism is that it is unrealistic. Because it prioritises order and the existing status quo, Realism attempts to impose a particular security framework onto a complex world, ignoring the myriad threats to people emerging from their own governments and societies. Moreover, traditional international theory serves to obscure power relations and omits a study of why the system is as it is: [O]mitting myriad strands of power amounts to exaggerating the simplicity of the entire political system. Today’s conventional portrait of international politics thus too often ends up looking like a Superman comic strip, whereas it probably should resemble a Jackson Pollock. (Enloe, 2002 [1996]: 189) Yet as I have argued, contemporary critical security theorists seem to show a marked lack of engagement with their problematic (whether the international security context, or the Yugoslav break-up and wars). Without concrete engagement and analysis, however, the critical project is undermined and critical theory becomes nothing more than a request that people behave in a nicer way to each other. Furthermore, whilst contemporary critical security theorists argue that they present a more realistic image of the world, through exposing power relations, for example, their lack of concrete analysis of the problematic considered renders them actually unable to engage with existing power structures and the way in which power is being exercised in the contemporary international system. For critical and emancipatory theorists the central place of the values of the theorist mean that it cannot fulfil its promise to critically engage with contemporary power relations and emancipatory possibilities. Values must be joined with engagement with the material circumstances of the time.

### Liberalism Good – Epistemology

#### We have a defense of the way we view international relations---game-theory proves that liberal internationalism is effective

Recchia and Doyle 11 Stefano, Assistant Professor in International Relations at the University of Cambridge, and Michael, Harold Brown Professor of International Affairs, Law and Political Science at Columbia University, “Liberalism in International Relations”, In: Bertrand Badie, Dirk Berg-Schlosser, and Leonardo Morlino, eds., International Encyclopedia of Political Science (Sage, 2011), pp. 1434-1439

Relying on new insights from game theory, scholars during the 1980s and 1990s emphasized that so-called international regimes, consisting of agreed-on international norms, rules, and decision-making procedures, can help states effectively coordinate their policies and collaborate in the production of international public goods, such ¶ as free trade, arms control, and environmental protection. Especially, if embedded in formal multilateral institutions, such as the World Trade ¶ Organization (WTO) or North American Free ¶ Trade Agreement (NAFT A), regimes crucially ¶ improve the availability of information among ¶ states in a given issue area, thereby promoting ¶ reciprocity and enhancing the reputational costs ¶ of noncompliance. As noted by Robert Keohane, ¶ institutionalized multilateralism also reduces strategic competition over relative gains and thus ¶ further advances international cooperation. ¶ Most international regime theorists accepted ¶ Kenneth Waltz's (1979) neorealist assurription of ¶ states as black boxes-that is, unitary and rational ¶ actors with given interests. Little or no attention ¶ was paid to the impact on international cooperation of domestic political processes and dynamics. ¶ Likewise, regime scholarship largely disregarded ¶ the arguably crucial question of whether prolonged interaction in an institutionalized international setting can fundamentally change states' interests or preferences over outcomes (as opposed ¶ to preferences over strategies), thus engendering positive feedback loops of increased overall cooperation. For these reasons, international regime ¶ theory is not, properly speaking, liberal, and the ¶ term neoliberal institutionalism frequently used to ¶ identify it is somewhat misleading. ¶ It is only over the past decade or so that liberal ¶ international relations theorists have begun to systematically study the relationship between domestic politics and institutionalized international cooperation or global governance. This new scholarship ¶ seeks to explain in particular the close interna tional ¶ cooperation among liberal democracies as well as ¶ higher-than-average levels of delegation b)' democracies to complex multilateral bodies, such as the ¶ \ ¶ Liberalism in International Relations 1437 ¶ European Union (EU), North Atlantic Treaty ¶ Organization (NATO), NAFTA, and the WTO ¶ (see, e.g., John Ikenberry, 2001; Helen Milner & ¶ Andrew Moravcsik, 2009). The reasons that make liberal democracies particularly enthusiastic about international cooperation are manifold: First, transnational actors such as nongovernmental ¶ organizations and private corporations thrive in liberal democracies, and they frequently advocate increased international cooperation; second, elected democratic officials rely on delegation to multilateral bodies such as the WTO or the EU to commit to a stable policy line and to internationally lock in fragile domestic policies and constitutional arrangements; and finally, powerful liberal democracies, such as the United States and its ¶ allies, voluntarily bind themselves into complex global governance arrangements to demonstrate strategic restraint and create incentives for other states to cooperate, thereby reducing the costs for ¶ maintaining international order. ¶ Recent scholarship, such as that of Charles ¶ Boehmer and colleagues, has also confirmed the ¶ classical liberal intuition that formal international ¶ institutions, such as the United Nations (UN) or ¶ NATO, independently contribute to peace, especially when they are endowed with sophisticated ¶ administrative structures and information-gathering ¶ capacities. In short, research on global governance ¶ and especially on the relationship between democracy and international cooperation is thriving, and ¶ it usefully complements liberal scholarship on the ¶ democratic peace.

### Liberalism Good – Horgan

#### Shocks to the system are the ONLY propensity for conflict—liberal norms have eradicated warfare and structural violence—every field study proves

JOHN HORGAN 9 is Director of the Center for Science at Stevens Institute of Technology, former senior writer at Scientific American, B.A. from Columbia and an M.S. from Columbia “The End of the Age of War,” Dec 7, http://www.newsweek.com/id/225616/page/1

The economic crisis was supposed to increase violence around the world. The truth is that we are now living in one of the most peaceful periods since war first arose 10 or 12 millennia ago. The relative calm of our era, say scientists who study warfare in history and even prehistory, belies the popular, pessimistic notion that war is so deeply rooted in our nature that we can never abolish it. In fact, war seems to be a largely cultural phenomenon, which culture is now helping us eradicate. Some scholars now even cautiously speculate that the era of traditional war—fought by two uniformed, state-sponsored armies—might be drawing to a close. "War could be on the verge of ceasing to exist as a substantial phenomenon," says John Mueller, a political scientist at Ohio State University.¶ That might sound crazy, but consider: if war is defined as a conflict between two or more nations resulting in at least 1,000 deaths in a year, there have been no wars since the U.S. invasion of Iraq in 2003 and no wars between major industrialized powers since World War II. Civil wars have also declined from their peak in the early 1990s, when fighting tore apart Rwanda, the Balkans, and other regions. Most armed conflicts now consist of low-level guerrilla campaigns, insurgencies, and terrorism—what Mueller calls the "remnants of war."¶ These facts would provide little comfort if war's remnants were nonetheless killing millions of people—but they're not. Recent studies reveal a clear downward trend. In 2008, 25,600 combatants and civilians were killed as a direct result of armed conflicts, according to the University of Uppsala Conflict Data Program in Sweden. Two thirds of these deaths took place in just three trouble spots: Sri Lanka (8,400), Afghanistan (4,600), and Iraq (4,000).¶ Uppsala's figures exclude deaths from "one-sided conflict," in which combatants deliberately kill unarmed civilians, and "indirect" deaths from war-related disease and famine, but even when these casualties are included, annual war-related deaths from 2004 to 2007 are still low by historical standards. Acts of terrorism, like the 9/11 attacks or the 2004 bombing of Spanish trains, account for less than 1 percent of fatalities. In contrast, car accidents kill more than 1 million people a year.¶ The contrast between our century and the previous one is striking. In the second half of the 20th century, war killed as many as 40 million people, both directly and indirectly, or 800,000 people a year, according to Milton Leitenberg of the University of Maryland. He estimates that 190 million people, or 3.8 million a year, died as a result of wars and state--sponsored genocides during the cataclysmic first half of the century. Considered as a percentage of population, the body count of the 20th century is comparable to that of blood-soaked earlier cultures, such as the Aztecs, the Romans, and the Greeks.¶ By far the most warlike societies are those that preceded civilization. War killed as many as 25 percent of all pre-state people, a rate 10 times higher than that of the 20th century, estimates anthropologist Lawrence Keeley of the University of Illinois. Our ancestors were not always so bellicose, however: there is virtually no clear-cut evidence of lethal group aggression by humans prior to 12,000 years ago. Then, "warfare appeared in the evolutionary trajectory of an increasing number of societies around the world," says anthropologist Jonathan Haas of Chicago's Field Museum of Natural History. He attributes the emergence of warfare to several factors: growing population density, environmental stresses that diminished food sources, and the separation of people into culturally distinct groups. "It is only after the cultural foundations have been laid for distinguishing 'us' from 'them,' " he says, "that raiding, killing, and burning appear as a complex response to the external stress of environmental problems."¶ Early civilizations, such as those founded in Mesopotamia and Egypt 6,000 years ago, were extremely warlike. They assembled large armies and began inventing new techniques and technologies for killing, from horse-drawn chariots and catapults to bombs. But nation-states also developed laws and institutions for resolving disputes nonviolently, at least within their borders. These cultural innovations helped reduce the endless, tit-for-tat feuding that plagued pre-state societies.¶ A host of other cultural factors may explain the more recent drop-off in international war and other forms of social violence. One is a surge in democratic rather than totalitarian governance. Over the past two centuries democracies such as the U.S. have rarely if ever fought each other. Democracy is also associated with low levels of violence within nations. Only 20 democratic nations existed at the end of World War II; the number has since more than quadrupled. Yale historian Bruce Russett contends that international institutions such as the United Nations and the European Union also contribute to this "democratic peace" phenomenon by fostering economic interdependence. Advances in civil rights for women may also be making us more peaceful. As women's education and economic opportunities rise, birthrates fall, decreasing demands on governmental and medical services and depletion of natural resources, which can otherwise lead to social unrest.¶ Better public health is another contributing factor. Over the past century, average life spans have almost doubled, which could make us less willing to risk our lives by engaging in war and other forms of violence, proposes Harvard psychologist Steven Pinker. At the same time, he points out, globalization and communications have made us increasingly interdependent on, and empathetic toward, others outside of our immediate "tribes."¶ Of course, the world remains a dangerous place, vulnerable to disruptive, unpredictable events like terrorist attacks. Other looming threats to peace include climate change, which could produce droughts and endanger our food supplies; overpopulation; and the spread of violent religious extremism, as embodied by Al Qaeda. A global financial meltdown or ecological catastrophe could plunge us back into the kind of violent, Hobbesian chaos that plagued many pre--state societies thousands of years ago. "War is not intrinsic to human nature, but neither is peace," warns the political scientist Nils Petter Gleditsch of the International Peace Research Institute in Oslo.¶ So far the trends are positive. If they continue, who knows? World peace—the dream of countless visionaries and -beauty--pageant -contestants—or something like it may finally come to pass.

### Liberalism Good – Arkedis

#### Their K of “intervention” is asinine---they collapse a core difference between neoconservative militarism and liberalism

Jim Arkedis 11, the director of the National Security Project at the Progressive Policy Institute and a principal fellow of the Truman National Security Project "Not All Interventions Are The Same" March 28 www.foreignpolicy.com/articles/2011/03/28/not\_all\_interventions\_are\_the\_same?print=yes&hidecomments=yes&page=full

"Liberal interventionists are just 'kinder, gentler' neocons, and neocons are just liberal interventionists on steroids," political scientist and blogger Stephen M. Walt, commenting on calls for U.S. involvement in Libya, asserted recently on this website, **echoing a false equivalence** that has sadly become a **common conceit** among foreign-policy thinkers. It was inevitable that pundits would **compare the invasion of Iraq** (an idea promoted by neoconservatives) **to the imposition of a no-fly zone in Libya** (an idea promoted by liberal interventionists). Yet **obscuring the difference between these two schools of thought** threatens more than the vanity of a group of academics: It places the coherence and stability of the United States' long-term grand strategy in jeopardy.¶ While Walt, a self-identified "realist," develops a more sophisticated version of this false equivalence, there are, of course, obvious fundamental differences between neocons' triumphal nationalism and liberals' conviction that America can best advance its interests and values in cooperation with other democracies. Walt concedes the distinction, only to accuse liberals of being more cunning than neocons about concealing their will to power: "[T]he former have disdain for international institutions (which they see as constraints on U.S. power), and the latter see them as a useful way to legitimate American dominance."¶ In Walt's estimation, intervention is intervention, no matter the avowed motives behind a given mission, or the various circumstances that can justify the use of force. Because George W. Bush and Barack Obama have each initiated a military action, it follows for Walt that neocons and "liberal interventionists" see the world much the same way.¶ This is bunk. Traumatized by U.S. blunders in Iraq, realists now misapply that war's lessons to Obama's decision to join international efforts to protect Libyans from the wrath of a mad dictator. While the president is being attacked by everyone from John Boehner to Dennis Kucinich, it is critical to set the record straight.¶ Because Walt uses the terms "liberal interventionist" or "liberal hawk" pejoratively, I'll refer to "progressive internationalism" instead. Progressive internationalists aren't hard-core lefties, but rather progressives in the original sense of the word: pragmatic liberals. We are ideological moderates rooted in classically liberal understandings of individual liberty and equality of opportunity -- at home and abroad -- who believe the world's problems should be solved through tough-minded diplomacy and negotiation, whenever possible.¶ Further, the terms "hawk" or "interventionist" imply an overreliance on the military. Walt accuses both neocons and progressive internationalists of looking at every problem as a nail to be pounded by the hammer of U.S. military might. While progressive internationalists certainly support a strong military as the bedrock of America's foreign policy, they also know that international affairs in the 21st century seldom present black-and-white binary decisions of the sort that Bush mistakenly sought to resolve with a good whack.¶ This no doubt brings to mind Iraq, and I cannot go further without acknowledging the elephant in the room: Yes, many progressive internationalists did support the decision to invade Iraq. (In 2003, I was a civilian counterterrorism analyst at the Department of Defense and did not take a public position on that action.) In hindsight, I believe constructive critique of my colleagues is warranted and they have learned much in Iraq's wake. The only point I offer in their defense is this: It's just hard to imagine that an Al Gore administration -- which would have been stocked full of progressive internationalists -- would have ginned up that ideological charge to war.¶ Progressive internationalists recognize that U.S. foreign policy is now a holistic enterprise that must first summon all sources of national power to deal with what goes on within states as well as between them -- **direct and multilateral diplomacy, development aid to build infrastructure and civil society**, trade to promote growth, intelligence collection, and law enforcement, to name a few -- and only then turn to force as the final guarantor of peace and stability.¶ Neocons, however, disdain multilateral diplomacy and overestimate the efficacy of military force. Their lopsided preoccupation with "hard power" creates an imposing facade of strength, but in fact saps the economic, political, and moral sources of American influence. By overspending on the military and allowing the other levers of American power to atrophy, neocons misallocate precious U.S. national resources in two ways -- leaving the United States with too little of the "smart power" capacities desperately needed in war zones like Afghanistan and an overabundance of "hard power" capacities it will never use. The trick is to carefully cultivate both, as Defense Secretary Robert Gates, Secretary of State Hillary Clinton, and Chairman of the Joint Chiefs of Staff Adm. Mike Mullen have championed since Obama took power.¶ Walt allows some daylight between neocons and progressive internationalists in their willingness to defer to international institutions, but he again misses the true difference. He rightly characterizes neocons' disdain for multilateral talking shops (see: John Bolton) but wrongly suggests progressives are insincere in embedding U.S. power in international institutions. The fact is that we do indeed believe that international institutions make the world a safer place for the United States and other democracies by entrenching liberal norms around the globe. Can it really be an accident that America is embroiled in conflicts across the Middle East, a region whose countries are least touched by liberal democracy and adherence to internationalism?¶ Progressive internationalists believe the United States should be the unquestioned vanguard of democratic values, and that American leadership is strengthened when granted a sense of legitimacy that attracts others to our cause. Without a doubt, unilateral application of force in self-defense is a legitimate exercise of power, but legitimacy can evaporate under two circumstances: when America's actions betray its core values or when America acts offensively without an international mandate and the backing of close allies. My organization, the Progressive Policy Institute, in a 2003 manifesto on progressive internationalism, argued that "the way to keep America safe and strong is not to impose our will on others or pursue a narrow, selfish nationalism that betrays our best values, but to lead the world toward political and economic freedom."¶ Neocons, by contrast, pursue security interests at the expense of American values and damage U.S. legitimacy while doing so. That was George W. Bush: He betrayed American values and alienated core international partners by torturing prisoners, denying them any sense of due process, and falsifying a threat to justify an effectively unilateral invasion of a Muslim country. He strove for the mere appearance of legitimacy, forging ham-fisted, bribed coalitions of the somewhat willing.¶ The Obama administration's actions in Libya are surely legitimate. The president chose to intervene after securing active support from the Arab League, the Organization of the Islamic Conference, and the Gulf Cooperation Council, not to mention the U.N. Security Council. The international community's near-unanimity is an acknowledgement of the "responsibility to protect" (or R2P), a U.N. norm that obliges the international community to defend innocents in the face of humanitarian atrocities.¶ Realists like Walt disdain R2P because shielding other human beings from mass murder does not fit within the realists' narrow band of core American interests. To them, America's blood, attention, and treasure are not worth spending unless there is an immediate quid pro quo payoff in terms of national security. Ironically for Walt, realists are closer to neoconservatives on this score: Bush and Cheney meshed realism with neoconservatism when they sold the Iraq invasion as a quick and painless exercise of overwhelming American power that would render an immediate payoff in the form of a decapitated threat and an instantaneous "beacon of democracy" in the Middle East.¶ Progressive internationalists, like neocons, would define R2P as a core national interest, and we would both advocate strongly for the protection of innocent civilians who yearn to express their individual freedoms. We believe protecting civilians from murderous dictators creates a more stable international community and a safer America while promoting universal human rights and values. But though our ends are similar, our thresholds for intervention, our military methodology, and our justifications for action could not be more different. Neoconservatives' disdain for smart power and realists' shortsighted interpretation of core U.S. interests are poor uses of national resources. In contrast, progressive internationalists seek to use all of America's might to shape an international environment more congenial to the country's true interests and democratic values.¶ **These differences are hardly trivial**. Conflating them, as Walt does, is a transparent attempt to reframe U.S. foreign-policy debates around a choice between intervention and nonintervention. But time and again, the American people stubbornly refuse to make those choices in a moral vacuum. This leaves the United States with a messy, imprecise, unscientific approach to international politics, just like its approach to domestic politics. Yes, this pragmatic progressive tradition has sometimes proved chaotic in practice, but Obama should be commended, not chastised, for aligning American interests and values, seeking international legitimacy, and looking to shape the world as both more democratic and ultimately safer.

### States Follow LOAC – Incentives

#### Finishing Prorock and Appel – answers their law of war link

many scholars remain skeptical about coercion’s effectiveness as an enforcement mechanism. Skeptics argue that coercion is costly to implement; third parties value the economic, political, and military ties they share with target states and may suffer along with the target from cutting those ties. This may undermine the credibility of coercive threats and a third party’s ability to induce compliance through this enforcement mechanism.

While acknowledging this critique of coercion, we argue that it can act as an **effective enforcement mechanism** under certain conditions. Specifically, successful coercion requires that third parties have (1) the incentive to commit to and implement their coercive threats and (2) sufficient leverage over target states in order to meaningfully alter payoffs for compliance. This suggests that only some third parties can engage in successful coercion and that it is necessary to identify the specific conditions under which third parties can generate credible coercive threats to enforce compliance with international humanitarian law. In the following sections, we argue that third-party states are most likely to effectively use coercion to alter the behavior of combatants when they have both the willingness and opportunity to coerce (e.g., Most and Starr 1989; Siverson and Starr 1990; Starr 1978).

Willingness: Clarity, Democracy, and the Salience of International Humanitarian Law

Enforcement through the coercion mechanism is only likely when at least one third-party state has a substantial enough interest in another party’s compliance that it is willing to act (Von Stein 2010). Third-party willingness, in turn, depends upon two conditions: (1) legal principles must be clearly defined, making violations easily identifiable and (2) third parties must regard the legal obligation as highly salient.

First, scholars have long recognized that there is significant variation in the precision and clarity of legal rules, and that clarity contributes to compliance with the law (e.g., Abbott et al. 2000; Huth, Croco, and Appel 2011; Morrow 2007; Wallace 2013**).** Precise rules **increase the effectiveness of the law** by **narrowing the range of possible interpretations** and allowing all states to clearly identify acceptable versus unacceptable conduct. By clearly proscribing unacceptable behavior, clear legal obligations allow states to more precisely respond to compliant versus noncompliant behavior. In contrast, **ambiguous legal principle**s often lead to **multiple interpretations** among relevant actors, **impeding a convergence of expectations** and increasing uncertainty about the payoffs for violating (complying with) the law. Thus, the clarity of the law shapes states’ expectations by allowing them to predict the reactions of other states with greater confidence. In particular, they can expect **greater cooperation and rewards following compliance** and more punishment and sanctions for violating the law when legal obligations are clearly defined.

While some bodies of law are imprecise, i**nternational humanitarian law establishes a comprehensive code of conduct** regarding the intentional targeting of noncombatants during war (e.g., Murphy 2006; Shaw 2003). Starting with the 1899 and 1907 Hague Conventions and continuing through the 1949 Geneva Convention (Protocol IV), the law clearly prohibits the intentional targeting of noncombatants in war.

This clarity **allows international humanitarian law to** serve as a “bright line” **that coordinates the expectations of both war combatants and third parties** (Morrow 2007). By creating a **common set of standards,** it reduces uncertainty, narrowing the range of interpretations of the law and allowing both combatants and third parties to readily recognize violations of these standards. Third parties are, as a result, more likely to expend resources to punish conduct that transgresses legal standards or to support behavior in accordance with them. This, in turn, alters the expectations of war combatants who can expect greater support for abiding by the law and greater punishment for violating it when the clarity condition is met.

### Law Works

#### Pragmatic approach is critical to productive change---alt fails

William J. Novak 8, Associate Professor of History at the University of Chicago and Research Professor at the American Bar Foundation, “The Myth of the “Weak” American State”, June, http://www.history.ucsb.edu/projects/labor/speakers/documents/TheMythoftheWeakAmericanState.pdf

There is an alternative. In the early twentieth century, amid a first wave of nation- state and economic consolidation and assertiveness, American social science generated some fresh ways of looking at power in all its guises—social, economic, political, and legal. Overshadowed to some extent by exuberant bursts of American exceptionalism that greeted confrontations with totalitarianism and then terrorism, the pragmatic, critical, and realistic appraisal of American power is worth recovering. From Lester Frank Ward and John Dewey to Ernst Freund and John Commons to Morris Cohen and Robert Lee Hale, early American socioeconomic theorists developed a critique of a thin, private, and individualistic conception of American liberalism and interrogated the location, organization, and distribution of power in a modernizing United States. All understood the problem of power in America as complex and multifaceted, not simple or one-dimensional, especially as it concerned the relationship of state and civil society. Rather than spend endless time debating the proper definition of law or the correct empirical measure of the state, they concentrated instead on detailed investigations of power in action in the everyday practices and policies that constituted American public life. Rather than confine the examination of power to the abstract realm of political theory or the official political acts of elites, electorates, interest groups, or social movements, these analysts instead embraced a more capacious conception of governance as “an activity which is apt to appear whenever men are associated together.”35 More significantly, these political and legal realists never forgot, amid the rhetoric of law and the pious platitudes that routinely flow from American political life, the very real, concrete consequences of the deployment of legal and political power. They never forgot the brutal fact that Robert Cover would later state so provocatively at the start of his article “Violence and the Word” that legal and political interpretation take place “in a field of pain and death.” 36 The real consequences of American state power are all around us. In a democratic republic, where force should always be on the side of the governed, writing the history of that power has never been more urgent.

#### No impact---legal checks work

William E. Scheuerman 6, Professor of Political Science at Indiana University, Constellations, Vol. 13, No. 1. p. 116

Schmitt offers three reasons in support of this view. First, he implicitly relies on the stock argument that “authentic” politics necessarily elides legal regulation: when conflicts involve “existentially” distinct collectivities faced with “the real possibility of killing,” the attempt to tame such conflicts by juridical means is destined to fail, or at least badly distort the fundamental (political) questions at hand. Insofar as the partisan fighter represents one of the last vestiges of authentic (i.e., *Schmittian*) politics in an increasingly depoliticized world, he has to dub any attempt to regulate the phenomenon at hand as misguided and maybe even dangerous. Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous *Concept of the Political*. To be sure, there *are* intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices *in order then* to argue against legal or juridical solutions to them. The claim also suffers from a certain vagueness and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in *the courts or juridical system narrowly understood*; at other times it is directed against *any legal* regulation of intense conflict. The former argument is surely stronger than the latter. After all, legal devices have undoubtedly played a positive role in taming or at least minimizing the potential dangers of harsh political antagonisms. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22

[italics in original]

### AT: Threat Con

**No impact to threat con in context of war powers**

Eric A. Posner and Adrian Vermeule 3, Law Professors at Chicago and Harvard, Accommodating Emergencies, September, <http://www.law.uchicago.edu/files/files/48.eap-av.emergency.pdf>

Against the view that panicked government officials overreact to an emergency, and unnecessarily curtail civil liberties, we suggest a more constructive theory of the role of fear. Before the emergency, government officials are complacent. They do not think clearly or vigorously about the potential threats faced by the nation. After the terrorist attack or military intervention, their complacency is replaced by fear. Fear stimulates them to action. Action may be based on good decisions or bad: fear might cause officials to exaggerate future threats, but it also might arouse them to threats that they would otherwise not perceive. **It is impossible to say in the abstract whether decisions and actions provoked by fear are likely to be better than decisions and actions made in a state of calm**. But our limited point is that there is no reason to think that the fear-inspired decisions are likely to be worse. For that reason, the existence of fear during emergencies does not support the antiaccommodation theory that the Constitution should be enforced as strictly during emergencies as during non-emergencies.¶ C. The Influence of Fear during Emergencies ¶ Suppose now that the simple view of fear is correct, and that it is an unambiguously negative influence on government decisionmaking. Critics of accommodation argue that this negative influence of fear justifies skepticism about emergency policies and strict enforcement of the Constitution. However, this argument is implausible. It is doubtful that fear, so understood, has more influence on decisionmaking during emergencies than decisionmaking during non-emergencies.¶ The panic thesis, implicit in much scholarship though rarely discussed in detail, holds that citizens and officials respond to terrorism and war in the same way that an individual in the jungle responds to a tiger or snake. The national response to emergency, because it is a standard fear response, is characterized by the same circumvention of ordinary deliberative processes: thus, (i) the response is instinctive rather than reasoned, and thus subject to error; and (ii) the error will be biased in the direction of overreaction. While the flight reaction was a good evolutionary strategy on the savannah, in a complex modern society the flight response is not suitable and can only interfere with judgment. Its advantage—speed—has minimal value for social decisionmaking. No national emergency requires an immediate reaction—except by trained professionals who execute policies established earlier—but instead over days, months, or years people make complex judgments about the appropriate institutional response. And the asymmetrical nature of fear guarantees that people will, during a national emergency, overweight the threat and underweight other things that people value, such as civil liberties. ¶ But if decisionmakers rarely act immediately, then the tiger story cannot bear the metaphoric weight that is placed on it. Indeed, the flight response has nothing to do with the political response to the bombing of Pearl Harbor or the attack on September 11. The people who were there—the citizens and soldiers beneath the bombs, the office workers in the World Trade Center—no doubt felt fear, and most of them probably responded in the classic way. They experienced the standard physiological effects, and (with the exception of trained soldiers and security officials) fled without stopping to think. It is also true that in the days and weeks after the attacks, many people felt fear, although not the sort that produces a irresistible urge to flee. **But this kind of fear is not the kind in which cognition shuts down**. (Some people did have more severe mental reactions and, for example, shut themselves in their houses, but these reactions were rare.) The fear is probably better described as a general anxiety or jumpiness, an anxiety that was probably shared by government officials as well as ordinary citizens.53¶ While, as we have noted, there is psychological research suggesting that normal cognition partly shuts down in response to an immediate threat, we are aware of no research suggesting that people who feel anxious about a non-immediate threat are incapable of thinking, or thinking properly, or systematically overweight the threat relative to other values. Indeed, it would be surprising to find research that clearly distinguished “anxious thinking” and “calm thinking,” given that anxiety is a pervasive aspect of life. People are anxious about their children; about their health; about their job prospects; about their vacation arrangements; about walking home at night. No one argues that people’s anxiety about their health causes them to take too many precautions—to get too much exercise, to diet too aggressively, to go to the doctor too frequently—and to undervalue other things like leisure. So it is hard to see why anxiety about more remote threats, from terrorists or unfriendly countries with nuclear weapons, should cause the public, or elected officials, to place more emphasis on security than is justified, and to sacrifice civil liberties.¶ Fear generated by immediate threats, then, causes instinctive responses that are not rational in the cognitive sense, not always desirable, and not a good basis for public policy, but it is not this kind of fear that leads to restrictions of civil liberties during wartime. The internment of Japanese Americans during World War II may have been due to racial animus, or to a mistaken assessment of the risks; it was not the direct result of panic; indeed there was a delay of weeks before the policy was seriously considered.54 Post-9/11 curtailments of civil liberties, aside from immediate detentions, came after a significant delay and much deliberation. The civil libertarians’ argument that fear produces bad policy trades on the ambiguity of the word “panic,” which refers both to real fear that undermines rationality, and to collectively harmful outcomes that are driven by rational decisions, such as a bank run, where it is rational for all depositors to withdraw funds if they believe that enough other depositors are withdrawing funds. Once we eliminate the false concern about fear, it becomes clear that the panic thesis is indistinguishable from the argument that during an emergency people are likely to make mistakes. But if the only concern is that during emergencies people make mistakes, there would be no reason for demanding that the constitution be enforced normally during emergencies. Political errors occur during emergencies and nonemergencies, but the stakes are higher during emergencies, and that is the conventional reason why constitutional constraints should be relaxed.

### AT: Endless War

#### No risk of endless warfare

Gray 7—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

### AT: Global War – Chandler

#### The affirmatives embrace of a law enforcement approach to terrorism is necessary to solve global war---the alt reifies the status quo which embraces uncertainty

David **Chandler 9**, Professor of International Relations at the Department of Politics and International Relations, University of Westminster, War Without End(s): Grounding the Discourse of `Global War', Security Dialogue 2009; 40; 243

International law evolved on the basis of the ever-present possibility of real war between real enemies. Today’s global wars of humanitarian intervention and the ‘war on terror’ appear to be bypassing or dismantling this framework of international order. Taken out of historical context, today’s period might seem to be analogous to that of the imperial and colonial wars of the last century, which evaded or undermined frameworks of international law, which sought to treat the enemy as a justus hostis – a legitimate opponent to be treated with reciprocal relations of equality. Such analogies have enabled critical theorists to read the present through past frameworks of strategic political contestation, explaining the lack of respect for international law and seemingly arbitrary and ad hoc use of military force on the basis of the high political stakes involved. Agamben’s argument that classical international law has dissipated into a ‘permanent state of exception’, suggesting that we are witnessing a global war machine – constructing the world in the image of the camp and reducing its enemies to bare life to be annihilated at will – appears to be given force by Guantánamo Bay, extraordinary rendition and Abu Ghraib.

Yet, once we go beyond the level of declarations of policy values and security stakes, the practices of Western militarism fit uneasily with the policy discourses and suggest a different dynamic: one where the lack of political stakes in the international sphere means that there is little connection between military intervention and strategic planning. In fact, as Laïdi suggests, it would be more useful to understand the projection of violence as a search for meaning and strategy rather than as an instrumental outcome. To take one leading example of the ‘unlimited’ nature of liberal global war: the treatment of terrorist suspects held at Guantánamo Bay, in legal suspension as ‘illegal combatants’ and denied Geneva Red Cross conventions and prisoner-of-war status. The ‘criminalization’ of the captives in Guantánamo Bay is not a case of reducing their status to criminals but the development of an exceptional legal category. In fact, far from criminalizing fundamentalist terrorists, the USA has politically glorified them, talking up their political importance.

It would appear that the designation of ‘illegal combatants’ could be understood as an ad hoc and arbitrary response to the lack of a clear strategic framework and ‘real enemy’. In this context, the concept of criminalization needs to be reconsidered. Guantánamo Bay can be seen instead as an attempt to create an enemy of special status. In fact, with reference to Agamben’s thesis, it would be better to understand the legal status of the ‘illegal combatants’ as sacralizing them rather than reducing them to the status of ‘bare life’. In acting in an exceptional way, the USA attempted to create a more coherent and potent image of the vaguely defined security threat

This approach is very different, for example, from the framework of criminalization used by the British government in the fight against Irish republicanism, where the withdrawal of prisoner-of-war status from republican prisoners was intended to delegitimize their struggle and was a strategic act of war. Ironically, whereas the criminalization of the republican struggle was an attempt to dehumanize the republicans – to justify unequal treatment of combatants – the criminalization of global terrorists has served to humanize them in the sense of giving coherence, shape and meaning to a set of individuals with no clear internally generated sense of connection. Far from ‘denying the enemy the very quality of being human’, it would appear that the much-publicized abuses of the ‘war on terror’ stem from the Western inability to cohere a clear view of who the enemy are or of how they should be treated.

The policy frameworks of global war attempt to make sense of the implosion of the framework of international order at the same time as articulating the desire to recreate a framework of meaning through policy activity. However, these projections of Western power, even when expressed in coercive and militarized forms, appear to have little connection to strategic or instrumental projects of hegemony. The concept of ‘control’, articulated by authors such as Carl Schmitt and Faisal Devji, seems to be key to understanding the transition from strategic frameworks of conflict to today’s unlimited (i.e. arbitrary) expressions of violence. Wars fought for control, with a socially grounded telluric character, are limited by the needs of instrumental rationality: the goals shape the means deployed. Today’s Western wars are fought in a nonstrategic, non-instrumental framework, which lacks a clear relationship between means and ends and can therefore easily acquire a destabilizing and irrational character. To mistake the arbitrary and unlimited nature of violence and coercion without a clear strategic framework for a heightened desire for control fails to contextualize conflict in the social relations of today.

### AT: Legal Norms = War

#### Legal norms don’t cause wars and the alt can’t effect liberalism

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

Among these associations is the positive, constructive side of politics, the very foundation of Aristotle's conception of politics, which Schmitt completely ignores. Politics, we often say, is the art of the possible. It is the medium for organizing all human cooperation. Peaceable civilization, civil institutions, and elemental tasks such as collecting the garbage and delivering food to hungry mouths all depend on politics. Of course, peering into the sausage factory of even such mundane municipal institutions as the town mayor's office will reveal plenty of nasty politicking, jockeying for position and patronage, and downright corruption. Schmitt sneers at these as "banal forms of politics, . . . all sorts of tactics and practices, competitions and intrigues" and dismisses them contemptuously as "parasite- and caricature-like formations." n55 The fact is that Schmitt has nothing whatever to say about the constructive side of politics, and his entire theory focuses on enemies, not friends. In my small community, political meetings debate issues as trivial as whether to close a street and divert the traffic to another street. It is hard to see mortal combat as even a remote possibility in such disputes, and so, in Schmitt's view, they would not count as politics, but merely administration. Yet issues like these are the stuff of peaceable human politics.

Schmitt, I have said, uses the word "political" polemically--in his sense, politically. I have suggested that his very choice of the word "political" to describe mortal enmity is tendentious, attaching to mortal enmity Aristotelian and republican associations quite foreign to it. But the more basic point is that Schmitt's critique of humanitarianism as political and polemical is itself political and polemical. In a word, the critique of lawfare is itself lawfare. It is self-undermining because to the extent that it succeeds in showing that lawfare is illegitimate, it de-legitimizes itself.

What about the merits of Schmitt's critique of humanitarianism? His argument is straightforward: either humanitarianism is toothless and [\*471] apolitical, in which case ruthless political actors will destroy the humanitarians; or else humanitarianism is a fighting faith, in which case it has succumbed to the political but made matters worse, because wars on behalf of humanity are the most inhuman wars of all. Liberal humanitarianism is either too weak or too savage.

The argument has obvious merit. When Schmitt wrote in 1932 that wars against "outlaws of humanity" would be the most horrible of all, it is hard not to salute him as a prophet of Hiroshima. The same is true when Schmitt writes about the League of Nations' resolution to use "economic sanctions and severance of the food supply," n56 which he calls "imperialism based on pure economic power." n57 Schmitt is no warmonger--he calls the killing of human beings for any reason other than warding off an existential threat "sinister and crazy" n58 --nor is he indifferent to human suffering.

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

### AT: Rana

#### Rana’s claim is too sweeping, the alt is impossible

David Cole 12, professor of law at Georgetown, “Confronting the Wizard of Oz: National Security,

Expertise, and Secrecy” 44 Conn. L. Rev. 1617-1625 (2012), <http://scholarship.law.georgetown.edu/facpub/1085>)

Rana is right to focus our attention on the assumptions that frame modern Americans’ conceptions about national security, but his assessment raises three initial questions. First, it seems far from clear that there ever was a “golden” era in which national security decisions were made by the common man, or “the people themselves,” as Larry Kramer might put it.8 Rana argues that neither Hobbes nor Locke would support a worldview in which certain individuals are vested with superior access to the truth, and that faith in the superior abilities of so-called “experts” is a phenomenon of the New Deal era.9 While an increased faith in scientific solutions to social problems may be a contributing factor in our current overreliance on experts,10 I doubt that national security matters were ever truly a matter of widespread democratic deliberation. Rana notes that in the early days of the republic, every able-bodied man had to serve in the militia, whereas today only a small (and largely disadvantaged) portion of society serves in the military.11 But serving in the militia and making decisions about national security are two different matters. The early days of the Republic were at least as dominated by “elites” as today. Rana points to no evidence that decisions about foreign affairs were any more democratic then than now. And, of course, the nation as a whole was far less democratic, as the majority of its inhabitants could not vote at all.12 Rather than moving away from a golden age of democratic decision-making, it seems more likely that we have simply replaced one group of elites (the aristocracy) with another (the experts). Second, to the extent that there has been an epistemological shift with respect to national security, it seems likely that it is at least in some measure a response to objective conditions, not just an ideological development. If so, it’s not clear that we can solve the problem merely by “thinking differently” about national security. The world has, in fact, become more interconnected and dangerous than it was when the Constitution was drafted. At our founding, the oceans were a significant buffer against attacks, weapons were primitive, and travel over long distances was extremely arduous and costly. The attacks of September 11, 2001, or anything like them, would have been inconceivable in the eighteenth or nineteenth centuries. Small groups of non-state actors can now inflict the kinds of attacks that once were the exclusive province of states. But because such actors do not have the governance responsibilities that states have, they are less susceptible to deterrence. The Internet makes information about dangerous weapons and civil vulnerabilities far more readily available, airplane travel dramatically increases the potential range of a hostile actor, and it is not impossible that terrorists could obtain and use nuclear, biological, or chemical weapons.13 The knowledge necessary to monitor nuclear weapons, respond to cyber warfare, develop technological defenses to technological threats, and gather intelligence is increasingly specialized. The problem is not just how we think about security threats; it is also at least in part objectively based.

## Add-Ons

### Terror AO

#### Allied cooperation’s key to effective CT – that’s Kris

#### That prevents an attack

Patrick B. Johnston 12, Associate political scientist at the RAND Corporation, a nonprofit, nonpartisan research institution. He is the author of "Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns," published in International Security (Spring), 8/22, "Drone Strikes Keep Pressure on al-Qaida", www.rand.org/blog/2012/08/drone-strikes-keep-pressure-on-al-qaida.html

Should the U.S. continue to strike at al-Qaida's leadership with drone attacks? A recent poll shows that while most Americans approve of drone strikes, in 17 out of 20 countries, more than half of those surveyed disapprove of them.¶ My study of leadership decapitation in 90 counter-insurgencies since the 1970s shows that when militant leaders are captured or killed militant attacks decrease, terrorist campaigns end sooner, and their outcomes tend to favor the government or third-party country, not the militants.¶ Those opposed to drone strikes often cite the June 2009 one that targeted Pakistani Taliban leader Baitullah Mehsud at a funeral in the Tribal Areas. That strike reportedly killed 60 civilians attending the funeral, but not Mehsud. He was killed later by another drone strike in August 2009. His successor, Hakimullah Mehsud, developed a relationship with the foiled Times Square bomber Faisal Shahzad, who cited drone strikes as a key motivation for his May 2010 attempted attack.¶ Compared to manned aircraft, drones have some advantages as counter-insurgency tools, such as lower costs, longer endurance and the lack of a pilot to place in harm's way and risk of capture. These characteristics can enable a more deliberative targeting process that serves to minimize unintentional casualties. But the weapons employed by drones are usually identical to those used via manned aircraft and can still kill civilians—creating enmity that breeds more terrorists.¶ Yet many insurgents and terrorists have been taken off the battlefield by U.S. drones and special-operations forces. Besides Mehsud, the list includes Anwar al-Awlaki of al-Qaida in the Arabian Peninsula; al-Qaida deputy leader Abu Yahya al-Li-bi; and, of course, al-Qaida leader Osama bin Laden. Given that list, it is possible that the drone program has prevented numerous attacks by their potential followers, like Shazad.¶ What does the removal of al-Qaida leadership mean for U.S. national security? Though many in al-Qaida's senior leadership cadre remain, the historical record suggests that "decapitation" will likely weaken the organization and could cripple its ability to conduct major attacks on the U.S. homeland.¶ Killing terrorist leaders is not necessarily a knockout blow, but can make it harder for terrorists to attack the U.S. Members of al-Qaida's central leadership, once safely amassed in northwestern Pakistan while America shifted its focus to Iraq, have been killed, captured, forced underground or scattered to various locations with little ability to communicate or move securely.¶ Recently declassified correspondence seized in the bin Laden raid shows that the relentless pressure from the drone campaign on al-Qaida in Pakistan led bin Laden to advise al-Qaida operatives to leave Pakistan's Tribal Areas as no longer safe. Bin Laden's letters show that U.S. counterterrorism actions, which had forced him into self-imposed exile, had made running the organization not only more risky, but also more difficult.¶ As al-Qaida members trickle out of Pakistan and seek sanctuary elsewhere, the U.S. military is ramping up its counterterrorism operations in Somalia and Yemen, while continuing its drone campaign in Pakistan. Despite its controversial nature, the U.S. counter-terrorism strategy has demonstrated a degree of effectiveness.¶ The Obama administration is committed to reducing the size of the U.S. military's footprint overseas by relying on drones, special operations forces, and other intelligence capabilities. These methods have made it more difficult for al-Qaida remnants to reconstitute a new safe haven, as Osama bin Laden did in Afghanistan in 1996, after his ouster from Sudan.

#### Causes extinction

Martin E. Hellman 8, Professor @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also **significant**. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of **85 national security experts**, Senator Richard Lugar **found** a median estimate of 20 percent for the “probability of **an attack involving a nuclear explosion occurring** somewhere in the world **in the next 10 years**,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a **full-scale nuclear war**, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western **civilization will be destroyed**” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a **nuclear winter** that might **erase homo sapiens from** the face of the **earth**, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have **devastating** long-lasting c**limatic consequences** due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

#### CTS is wrong---our authors are at least as objective as theirs

Verena Erlenbusch 13, Assistant Professor in the Department of Philosophy at the University of Memphis., How (Not) to Study Terrorism, http://www.tandfonline.com/doi/pdf/10.1080/13698230.2013.767040

Even though CTS scholars correctly point out some of the major short- comings of conventional terrorism scholarship, some of their key objections are simply false. First, claiming that the field of terrorism research lacks historicity, interdisciplinarity, and a focus on state terrorism is disingenuous and factually wrong. While the way in which historical examples of terrorism are used in much of the more mainstream literature is indeed problematic (see the second section above), critical scholars of terrorism are wrong to accuse traditional scholarship of a lack of historicity and con- textualization. Even though one might harbor legitimate concerns about the motivations for and approach to historical examples, it is insincere, to say the least, to discount a whole body of literature examining the relevance of the history of political violence for terrorism studies. Second, it is certainly true that the bulk of terrorism research has traditionally been policy oriented or at least used for political purposes. Nevertheless, it does not follow that neutral or unbiased knowledge about terrorism, including knowledge about the contexts and conditions in which something like terrorism is mobilized as a form of violence or as a discursive representation of violence, is impossible. Neither does the overwhelmingly pejorative understanding of the term ‘terrorism’ necessarily preclude any objective knowledge of the concept, its meaning, and its use. Similarly, many more mainstream scholars in the field have documented the use of terrorism his- torically made by states and governments against their own populations. While it is true that these scholars have generally been unwilling to extend this kind of analysis to the United States and other liberal democracies, a wholesale dismissal of terrorism research for not considering state terrorism tout court is both false and dishonest.7 More interesting for the purpose of this article, however, is the solution proposed by CTS to the failure of Terrorism Studies to generate an accepted definition of terrorism. One might expect a certain reluctance to define terrorism, given CTS scholars’ commitment to the ‘inherent ontological instability of the “terrorism” category’ (Jackson 2007, p. 244) and their consequent skepticism towards [...] the ‘terrorism’ label because it is recognized that in practice it has always been a pejorative rather than analytical term and that to use the term is a powerful form of labeling that implies a political judge- ment about the legitimacy of actors and their actions. (p. 247) It is, therefore, all the more surprising that ‘CTS views terrorism funda- mentally as a strategy or a tactic of political violence’ which ‘involves the deliberate targeting of civilians in order to intimidate or terrorise for dis- tinctly political purposes’ (p. 248). Despite the claim that terrorism is neither a ‘brute fact’ nor an ‘analyti- cal term’ but instead a way of representing violence in a certain way (p. 247), CTS nevertheless conceptualizes terrorism as a ‘form of behaviour that can, within specific discursive and structural contexts, be understood as “terrorist”’ (Jackson et al. 2009, p. 9). Not only does this view reproduce key elements of many mainstream definitions of terrorism, but also it belies the alleged anti-naturalism, anti-essentialism, and anti-determinism of CTS by having to determine the specific difference that distinguishes the tactic of terrorism from other forms of political violence. Even though CTS scholars are critical of the attribution of the label ‘ter- rorism’ to certain kinds of violence, they agree with traditional accounts of terrorism that something like terrorism exists and that it is possible to identify it. The problem diagnosed by CTS, then, is not only that governments themselves seem to engage in what they define as terrorism, but also that governments apply the term to forms of violence that are, in fact, legitimate forms of resistance, insurgency, or civil conflict. CTS scholars claim to know that governments do this because of ideological reasons. They also argue that governments are not justified in doing so. Consequently, CTS scholars seek to reclaim and reserve the label terrorism for forms of vio- lence that are ‘properly’ terrorist. As Jackson explains, CTS consequently has to be ‘openly normative in orientation’ because through the identification of who the ‘terrorist other’ actually is – deciding and affirming which individuals and groups may be rightly called ‘terrorists’ is a routine practice in the field – terrorism studies actually provides an authoritative judgment about who may legitimately be killed, tortured, ren- dered or incarcerated by the state in the name of counter-terrorism. (Jackson 2007, p. 249) It is, however, not at all clear by what standards this distinction is made or on what basis CTS scholars can claim a privileged position in distinguishing between terrorist and non-terrorist or legitimate and illegitimate violence – let alone attribute authority to determine who may be tortured or killed on the basis of such problematic arguments. CTS scholars have to introduce a criterion by which to differentiate terrorism proper from legitimate violence, a criterion that is neither clear cut nor his- torically or contextually stable. Justifications of violence in terms of a natu- ral or moral right to violent resistance, for instance, are not too far away from the legitimation of state violence proffered by conventional terrorism research.8 Just like Terrorism Studies, CTS enshrines terrorism as an instrument for classifying particular types of behavior and then giving that classification the force of law. By announcing its critical stance towards governments’ opportunism and politicization of terrorism, CTS covers over its own complicity in the production of a powerful weapon that allows one to attribute legitimacy to certain forms of violence while criminalizing oth- ers.

# 1AR

### AT: Relations Inev

#### Relations at critical point---aff’s key

Devin Streeter 13, Liberty University Strategic Intelligence Society, Director of Activities, Public Relations, and Recruitment, 4/19, http://www.academia.edu/3523639/U.S.\_Drone\_Policy\_Tactical\_Success\_and\_Strategic\_Failure

In essence, the United States has sparked a miniature arms race and has intimidated nations with the threat of a new, superior technology. Governments that have begun pursuing their own UAV programs have shown a notable bitterness to the United States for its unchecked use of drones. 34 Nations such as China, Japan, Russia, and Brazil all disapprove of United States drone policies by over 30 percentage points. 35 To them, the United States seems heavy handed and brutish; holding back technology while indiscriminately using it against our enemies. The lack of consideration and cooperation is a negative influence on world leaders. At the same time, other nations feel that drones violate their airspace and are used without approval from the international community. 36 The majority of these nations fall within the boundaries of the European Union, and while their disapproval is not as notable as the first group, it often reaches the double digits rate. 37 Germany, Great Britain, Poland, and other European Union members do not understand the ‘fire from the hip’ mentality of drone strikes. 38 The European Council on Foreign Relations noted “it [United States] seems to interpret the concept of imminence in a rather more permissive way than most Europeans would be comfortable with.” 39 The European Union fully supports drones in combat support and reconnaissance roles, but has issues with the concept of targeted killings, which often result in collateral damage. 40 European leaders desire an international consensus on how drones should be operated, before more civilians become casualties. 41 The European Council on Foreign Relations further notes: The Obama administration has so far chosen to operate by analogy with inter-state war, but in an era marked by the individualization of conflict, this seems like an outdated approach. 42 Europe does not share the mentality of drone strikes with "acceptable" collateral damage and apolicy that is not accountable to the international community. As a result, relations with Europe have reached a critical point. 43 European nations, alienated by the Obama administration’s progressive dialogue but aggressive drone policy, 44 are ready to try and take the lead in international relations. 45 Germany in particular will be a key nation as it increases in prominence among European states. 46 Hans Kundnani, a well-known journalist and political pundit, notes, “Obama is extremely popular in Germany, but Berlin’s deeply-held views on the use of military force… have the potential to create a Europe-America split.” 47 Kundnani also states, “A ‘special relationship’ is developing between China and Germany.” 48 Because of anti-drone sentiment, long-time U.S. allies grow increasingly distant, to the point of forming new relationships with China. This is a direct threat to the United States’ place in international relations and a direct challenge to its hegemony. If the relations with Europe are to be fixed, a change in drone protocol is needed.

### Boulding

**Nuke war threat is real and o/w structural violence**

Ken **Boulding 78** is professor of economics and director, Center for Research on Conflict Resolution, University of Michigan, “Future Directions in Conflict and Peace Studies,” The Journal of Conflict Resolution, Vol. 22, No. 2 (Jun., 1978), pp. 342-354

Galtung is very legitimately interested in problems of world poverty and the failure of development of the really poor. He tried to amalga- mate this interest with the peace research interest in the more narrow sense. Unfortunately, he did this by downgrading the study of inter- national peace, labeling it "negative peace" (it should really have been labeled "negative war") and then developing the concept of "structural violence," which initially meant all those social structures and histories which produced an expectation of life less than that of the richest and longest-lived societies. He argued by analogy that if people died before the age, say, of 70 from avoidable causes, that this was a death in "war"' which could only be remedied by something called "positive peace." Unfortunately, the concept of structural violence was broadened, in the word of one slightly unfriendly critic, to include anything that Galtung did not like. Another factor in this situation was the feeling, certainly in the 1960s and early 1970s, that nuclear deterrence was actually succeeding as deterrence and that the problem of nuclear war had receded into the background. This it seems to me is a most danger- ous illusion and diverted conflict and peace research for ten years or more away from problems of disarmament and stable peace toward a grand, vague study of world developments, for which most of the peace researchers are not particularly well qualified. To my mind, at least, the quality of the research has suffered severely as a result.' The complex nature of the split within the peace research community is reflected in two international peace research organizations. The official one, the International Peace Research Association (IPRA), tends to be dominated by Europeans somewhat to the political left, is rather, hostile to the United States and to the multinational cor- porations, sympathetic to the New International Economic Order and thinks of itself as being interested in justice rather than in peace. The Peace Science Society (International), which used to be called the Peace Research Society (International), is mainly the creation of Walter Isard of the University of Pennsylvania. It conducts meetings all around the world and represents a more peace-oriented, quantitative, science- based enterprise, without much interest in ideology. COPRED, while officially the North American representative of IPRA, has very little active connection with it and contains within itself the same ideological split which, divides the peace research community in general. It has, however, been able to hold together and at least promote a certain amount of interaction between the two points of view. Again representing the "scientific" rather than the "ideological" point of view, we have SIPRI, the Stockholm International Peace Research Institute, very generously (by the usual peace research stand- ards) financed by the Swedish government, which has performed an enormously useful service in the collection and publishing of data on such things as the war industry, technological developments, arma- ments, and the arms trade. The Institute is very largely the creation of Alva Myrdal. In spite of the remarkable work which it has done, how- ever, her last book on disarmament (1976) is almost a cry of despair over the folly and hypocrisy of international policies, the overwhelming power of the military, and the inability of mere information, however good, go change the course of events as we head toward ultimate ca- tastrophe. I do not wholly share her pessimism, but it is hard not to be a little disappointed with the results of this first generation of the peace research movement. Myrdal called attention very dramatically to the appalling danger in which Europe stands, as the major battleground between Europe, the United States, and the Soviet Union if war ever should break out. It may perhaps be a subconscious recognition-and psychological denial-of the sword of Damocles hanging over Europe that has made the European peace research movement retreat from the realities of the international system into what I must unkindly describe as fantasies of justice. But the American peace research community, likewise, has retreated into a somewhat niggling scientism, with sophisticated meth- odologies and not very many new ideas. I must confess that when I first became involved with the peace research enterprise 25 years ago I had hopes that it might produce some- thing like the Keynesian revolution in economics, which was the result of some rather simple ideas that had never really been thought out clearly before (though they had been anticipated by Malthus and others), coupled with a substantial improvement in the information system with the development of national income statistics which rein- forced this new theoretical framework. As a result, we have had in a single generation a very massive change in what might be called the "conventional wisdom" of economic policy, and even though this conventional wisdom is not wholly wise, there is a world of difference between Herbert Hoover and his total failure to deal with the Great Depression, simply because of everybody's ignorance, and the moder- ately skillful handling of the depression which followed the change in oil prices in 1-974, which, compared with the period 1929 to 1932, was little more than a bad cold compared with a galloping pneumonia. In the international system, however, there has been only glacial change in the conventional wisdom. There has been some improvement. Kissinger was an improvement on John Foster Dulles. We have had the beginnings of detente, and at least the possibility on the horizon of stable peace between the United States and the Soviet Union, indeed in the whole temperate zone-even though the tropics still remain uneasy and beset with arms races, wars, and revolutions which we cannot really afford. Nor can we pretend that peace around the temper- ate zone is stable enough so that we do not have to worry about it. The qualitative arms race goes on and could easily take us over the cliff. The record of peace research in the last generation, therefore, is one of very partial success. It has created a discipline and that is something of long-run consequence, most certainly for the good. It has made very little dent on the conventional wisdom of the policy makers anywhere in the world. It has not been able to prevent an arms race, any more, I suppose we might say, than the Keynesian economics has been able to prevent inflation. But whereas inflation is an inconvenience, the arms race may well be another catastrophe. Where, then, do we go from here? Can we see new horizons for peace and conflict research to get it out of the doldrums in which it has been now for almost ten years? The challenge is surely great enough. It still remains true that war, the breakdown of Galtung's "negative peace," remains the greatest clear and present danger to the human race, a danger to human survival far greater than poverty, or injustice, or oppression, desirable and necessary as it is to eliminate these things. Up to the present generation, war has been a cost and an inconven- ience to the human race, but it has rarely been fatal to the process of evolutionary development as a whole. It has probably not absorbed more than 5% of human time, effort, and resources. Even in the twenti- eth century, with its two world wars and innumerable smaller ones, it has probably not acounted for more than 5% of deaths, though of course a larger proportion of premature deaths. Now, however, ad- vancing technology is creating a situation where in the first place we are developing a single world system that does not have the redundancy of the many isolated systems of the past and in which therefore if any- thing goes wrong everything goes wrong. The Mayan civilization could collapse in 900 A.D., and collapse almost irretrievably without Europe or China even being aware of the fact. When we had a number of iso- lated systems, the catastrophe in one was ultimately recoverable by migration from the surviving systems. The one-world system, therefore, which science, transportation, and communication are rapidly giving us, is inherently more precarious than the many-world system of the past. It is all the more important, therefore, to make it internally robust and capable only of recoverable catastrophes. The necessity for stable peace, therefore, increases with every improvement in technology, either of war or of peacex

### Varisco

#### Diagnosis of problems in our method fails in the absence of a positive alt to orientalism

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In sum, the essential argument of Orientalism is that a pervasive and endemic Western discourse of Orientalism has constructed "the Orient," a representation that Said insists not only is perversely false but prevents the authentic rendering of a real Orient, even by Orientals themselves. Academicized Orientalism is thus dismissed, in the words of one critic, as "the magic wand of Western domination of the 0rient."283i The notion of a single conceptual essence of Orient is the linchpin in Said's polemical reduction of all Western interpretation of the real or imagined geographical space to a single and latently homogeneous discourse. Read through Orientalism and only the Orient of Western Orientalism is to be encountered; authentic Orients are not imaginable in the text. The Orient is rhetorically available for Said simply by virtue of not really being anywhere. Opposed to this Orient is the colonialist West, exemplified by France, Britain, and the United States. East versus West, Occident over Orient: this is the debilitating binary that has framed the unending debate over Orientalism. A generation of students across disciplines has grown up with limited challenges to the polemical charge by Said that scholars who study the Middle East and Islam still do so institutionally through an interpretive sieve that divides a superior West from an inferior East. Dominating the **debate** has been a **tiresome point/counterpoint** on whether literary critic Edward Said or historian Bernard Lewis knows best. Here is where the **dismissal of academic Orientalism has gone wrong**. Over and over again the same problem is raised. Does the Orient as several generations of Western travelers, novelists, theologians, politicians, and scholars discoursed it really exist? To not recognize this as a fundamentally rhetorical question because of Edward Said is, nolo contendere, nonsense. No serious scholar can assume a meaningful cultural entity called "Orient" after reading Said's Orientalism; some had said so before Said wrote his polemic. Most of his readers agreed with the thrust of the Orientalism thesis because they shared the same frustration with misrepresentation. There is no rational retrofit between the imagined Orient, resplendent in epic tales and art, and the space it consciously or unwittingly misrepresented. **However, there** was and **is a real Orient**, flesh-and-blood people, viable cultural traditions, aesthetic domains, documented history, and an ongoing intellectual engagementwith the past, present, and future. What is missing from Orientalism **is any systematic sense of what that real Orient was** and how individuals reacted to the imposing forces that sought to label it and theoretically control it. ASLEEP IN ORIENTALISM'S WAKE I have avoided taking stands on such matters as the real, true or authentic Islamic or Arab world. —EDWARD SAID, "ORIENTALISM RECONSIDERED" Orientalism is frequently praised for exposing skeletons in the scholarly closet, but the book itself **provides no blueprint for how to proceed**.=84 Said's approach is of the cut-and-paste variety—a dash of Foucauldian discourse here and a dram of Gramscian hegemony there—rather than a howto model. In his review of Orientalism, anthropologist Roger Joseph concludes: Said has presented a thesis that on a number of counts is quite compelling. He seems to me, however, to have begged one major question. If **discourse,** by its very metanature, is destined to **misrepresent** and to be mediated by all sorts of private agendas, how can we represent cultural systems in ways that will allow us to escape the very dock in which Said has placed the Orientalists? The aim of the book was not to answer that question, but surely the book itself compels us to ask the question of its author.a85 Another cultural anthropologist, Charles Iindholm, criticizes Said's thesis for its "rejection of the possibility of constructing general comparative arguments about Middle Eastern cultures.286 Akbar Ahmed, a native Pakistani trained in British anthropology, goes so far as to chide Said for leading scholars into "an intellectual cul-de- sac."287 For a historian's spin, Peter Gran remarks in a favorable review that Said "does not fully work out the post-colonial metamorphosis."288 As critic Rey Chow observes, "Said's work **begs the question** as to how otherness—the voices, languages, and cultures of those who have been and continue to be marginalized and silenced— could become a genuine oppositional force and a usable value." Said's revisiting and reconsidering of Orientalism, as well as his literary expansion into a de-geographicalized Culture and Imperialism, never resolved the suspicion that **the question still goes begging.** There remains an essential problem. Said's periodic vacillation in Orientalism on whether or not the Orient could have a true essence leads him to an infinity of mere representations, presenting a default persuasive act by not representing that reality for himself and the reader. If Said claims that Orientalism created the false essence of an Orient, and critics counterclaim that Said himself proposes a false essence of Orientalism, how do we end the cycle of guilt by essentialization? **Is there a way out of this epistemologieal morass?** If not a broad way to truth, at least a narrow path toward a clearing? With most of the old intellectual sureties now crumbling, the prospect of ever finding a consensus is numbing, in part because the formidably linguistic roadblocks are—or at least should be—humbling. The history of philosophy, aided by Orientalist and ethnographic renderings of the panhumanities writ and unwrit large, is littered with searches for meaning. Yet, **mystical ontologies aside**, the barrier that has thus far proved unbreachable is the very necessity of using **language**, reducing **material reality** and imaginary potentiality to mere words. As long as concepts are essential for understanding and communication, reality—conterminous concept that it must be—will be embraced through worded essences. **Reality must be represented, like it or not,** so how is it to be done better? Neither categorical nor canonical Truth" need be of the essence. One of the pragmatic results of much postmodern criticism is the conscious subversion of belief in a singular Truth" in which any given pronouncement could be ascribed the eternal verity once reserved for holy writ. In rational inquiry, all truths are limited by the inescapable force of **pragmatic change.** Ideas with "whole truth" in them can only be patched together for so long. Intellectual activity proceeds by characterizing verbally what is encountered and by **reducing the complex to simpler and more graspable elements.** A world without proposed and **debated essences** would be an unimaginable realm with no imagination, annotation without nuance, activity without art. I suggest that when cogito ergo sum is melded with "to err is human," essentialization of human realities becomes less an unresolvable problem and more a profound challenge. Contra Said's polemical contentions, not all that has been created discursively about an Orient is essentially wrong or without redeeming intellectual value. Edward Lane and Sir Richard Burton can be read for valuable firsthand observations despite their ethnocentric baggage. Wilfrid and Anne Blunt can be appreciated for their moral suasion. TheJ 'accuse of criticism must be tempered constructively with the louche of everyday human give-and-take. In planed biblical English, it is helpful to see that the beam in one's own rhetorical eye usually blocks appreciation of the mote in the other's eye. Speaking truth to power a la Said's oppositional criticism is appealing at first glance, but speaking truths to varieties of ever-shifting powers is surely a more productive process for a pluralistic society. As Richard King has eloquently put it, "Emphasis upon the diversity, fluidity and complexity within as well as between cultures precludes a reification of their differences and allows one to avoid the kind of monadic essentialism that renders cross-cultural engagement an a priori impossibility from the outset."2?0 Contrasted essentialisms, as the debate over Orientalism bears out, do not rule each other out. **Claiming that an argument is essentialist does not disprove it;** such a ploy serves mainly to taint the ideas opposed and thus tends to rhetorically mitigate opposing views. **Thesis countered by antithesis becomes sickeningly cyclical without a willingness to negotiate synthesis**. The critical irony is that Said, the author as advocate who at times denies agency to authors as individuals, uniquely writes and frames the entire script of his own text. **Texts**, in the loose sense of anything conveniently fashioned with words, become the meter for Said's poetic performance. The historical backdrop is hastily arranged, not systematically researched, to authorize the staging of his argument. The past becomes the whiggishly drawn rationale for pursuing a present grievance. As the historian Robert Berkhofer suggests, Said "uses many voices to exemplify the stereotyped view, but he makes no attempt to show how the new self/other relationship ought to be represented. Said's book does not practice what it preaches multiculturally."29i Said's method, Berkhofer continues, is to "quote past persons and paraphrase them to reveal their viewpoints as stereotyped and hegemonic." Napoleon's savants, Renan's racism, and Flaubert's flirtations serve to accentuate the complicity of modern-day social scientists who support Israel. Orientalism is a prime example of a historical study with one voice and one viewpoint. Some critics have argued in rhetorical defense of Said that he should not be held accountable for providing an alternative. **The voice of** dissent, the **critique (of Orientalism** or any other hegemonic discourse) **does not need to propose an alternative** for the critique to be effective and valid," claim Ashcroft and Ahluwalia.29= Saree Makdisi suggests that Said's goal in Orientalism is "to specify the constructedness of reality" rather than to "unmask and dispel" the illusion of Orientalist discourse.=93 Timothy Brennan argues that Said's aim is not to describe the "brute reality" of a real Orient but rather to point out the "relative indifference" of Western intellectuals to that reality.=94 Certainly no author is under an invisible hand of presumption to solve a problem he or she wishes to expose. Yet, it is curious that Said would not want to suggest an alternative, to directly engage the issue of how the "real" Orient could be represented. He reacts forcefully to American literary critics of the "left" who fail to specify the ideas, values, and engagement being urged.=95 If, as Said, insists "politics is something more than liking or disliking some intellectual orthodoxy now holding sway over a department of literature,"=9'6 then why would he not follow through with what this "something more" might be for the discourse he calls Orientalism? As Abdallah Laroui eloquently asks, "**Having become concerned with an essentially political problem, the Arab intelligentsia must inevitably reach the stage where it passes from diagnosis of the situation to prescription of remedial action**. Why should I escape this rule?"=97 This is a question that escapes Edward Said in Orientalism, although it imbues his life work as an advocate against ethnocentric bias. **CLASH TALKING AD NAUSEAM** The **questioning** of whether or not there really is an Orient, a West, or a unified discourse called Orientalism **might be relatively harmless philosophical musing, were it not for the contemporary, confrontational political involvement of the United States** and major European nations **with buyable governments and bombable people in the Middle East.** One of the reasons Said's book has been so influential, especially among scholars in the emerging field of post-colonial studies, is that it appeared at the very moment in which the Cold War divide reached a zenith in Middle East politics. In 1979, the fall of the United States-backed and anti-communist Shah allowed for the creation of the first modern Islamic republic in Iran, even as the Soviet Union invaded Afghanistan to try to prevent the same thing happening there. Almost three decades later, the escalation of tension and violence sometimes described as "Islamic terrorism" **has become a pressing global concern.** In the climate of renewed American and British political engagement in Afghanistan and Iraq after September 11, 2001, the essential categories of East and West continue to dominate public debate through the widely touted mantra of a "clash of civilizations.\* The idea of civilizations at war with each other is probably as old as the very idea of civilization. The modern turn of phrase owes its current popularity to the title of a 1993 Foreign Affairs article by political historian Samuel Huntington, although this is quite clearly a conscious borrowing from a 1990 Atlantic Monthly article by Said's nemesis, Bernard Lewis. Huntington, speculating in an influential policy forum, suggests that Arnold Toynbee's outdated list of twenty-one major civilizations had been reduced after the Cold War to six, to which he adds two more. With the exception of his own additions of Latin America and Africa, the primary rivals of the West, according to his list, are currently Confucian, Japanese, Islamic, Hindu, and Slavic-Orthodox. To say, as Huntington insists, that the main criterion separating these civilizations is religion, given the labels chosen, borders on the tautological.2?8 But logical order here would suggest that the West be seen as Christian, given its dominant religion. In a sense, Huntington echoes the simplistic separation of the West from the Rest, for secular Western civilization is clearly the dominant and superior system in his mind. The rejection of the religious label for his own civilization, secular as it might appear to him, seriously imbalances Huntington's civilizational breakdown. It strains credulity to imagine that religion in itself is an independent variable in the contemporary world of nation-states that make up the transnationalized mix of cultural identities outside the United Sates and Europe. Following earlier commentary of Bernard Lewis, Huntington posits a "fault line" between the West and Islamic civilization ever since the Arabs were turned back in 732 CE at the Battle of Tours.=99 The fault of Islam, however, appears to be less religious than politie-al and ideological. The fundamental clash Huntington describes revolves around the seeming rejection by Islam (and indeed all the rest) of "Western ideas of individualism, liberalism, constitutionalism, human rights, equality, liberty, the rule of law, democracy, free markets, the separation of church and state/300 In citing this neoconservative laundry list, Huntington is blind to the modern history of Western nations. He assumes that these idealized values have in fact governed policy in Europe and America, as though divine kingship, tyranny, and fascism have not plagued European history. Nor is it credible to claim that such values have all been rejected by non-Western nations. To assert, for example, that the rule of law is not consonant with Islam, or that Islamic teaching is somehow less concerned with human rights than Western governments, implies that the real clash is between Huntington's highly subjective reading of a history he does not know very well and a current reality he does not like. Huntington's thesis was challenged from the start in the very next issue of Foreign Affairs. "But Huntington is wrong," asserts Fouad Ajami.301 Even former U. N. Ambassador Jeane Kirkpatrick, hardly a proponent of postcolonial criticism, called Huntington's list of civilizations 'strange."3°= Ironically, both Ajami and Kirkpatrick fit Said's vision of bad-faith Orientalism. Being wrong in the eyes of many of his peers did not prevent Huntington from expanding the tentative proposals of a controversial essay into a book, nor from going well outside his field of expertise to write specifically on the resurgence of Islam. Soon after the September 11,2001, tragedy, Edward Said weighed in with a biting expose on Huntington's "clash of ignorance." Said rightly crushes the blatant political message inherent in the clash thesis, explaining why labels such as "Islam\* and "the West" are unedifying: They mislead and confuse the mind, which is trying to make sense of a disorderly reality that won't be pigeonholed or strapped down as easily as all that."3°3 Exactly, but the same must therefore be true about Said's imagined discourse of Orientalism. Pigeonholing all previous scholars who wrote about Islam or Arabs into one negative category is discursively akin to Huntington's pitting of Westerners against Muslims. Said is right to attack this pernicious binary, but again he leaves it intact by not posing a viable alternative. Both Edward Said and Fouad Ajami, who rarely seem to agree on anything, rightly question the terms of Huntington's clash thesis. To relabel the Orient of myth as a Confucian-Islamic military complex is not only ethnocentric but resoundingly ahistorical. No competent historian of either Islam or Confucianism recognizes such a misleading civilizational halfbreed. Saddam Hussein's Iraq and Kim Jong Il's Korea could be equated as totalitarian states assumed to have weapons of mass destruction, but not for any religious collusion. This is the domain of competing political ideologies, not the result of religious affiliation. And, as Richard Bulliet warns, the phrase "clash of civilizations\* so readily stirs up Islamophobia in the United States that it "must be retired from public discourse before the people who like to use it actually begin to believe it."3°4 **Unfortunately, many policy-makers and media experts talk and act as if they do believe it.** **The best way to defeat such simplistic ideology,** I suggest, **is not to lapse into blame-casting polemics but to encourage sound scholarship of the real Orient** that Said so passionately tried to defend.

### Squo Improving

#### Squo is structurally improving---war, health, environment and equality

Bjorn Lomborg 10/16, Adjunct Professor at the Copenhagen Business School, "A Better World Is Here", 2013, www.project-syndicate.org/commentary/on-the-declining-costs-of-global-problems-by-bj-rn-lomborg

COPENHAGEN – For centuries, optimists and pessimists have argued over the state of the world. Pessimists see a world where more people means less food, where rising demand for resources means depletion and war, and, in recent decades, where boosting production capacity means more pollution and global warming. One of the current generation of pessimists’ sacred texts, The Limits to Growth, influences the environmental movement to this day.¶ The optimists, by contrast, cheerfully claim that everything – human health, living standards, environmental quality, and so on – is getting better. Their opponents think of them as “cornucopian” economists, placing their faith in the market to fix any and all problems.¶ But, rather than picking facts and stories to fit some grand narrative of decline or progress, we should try to compare across all areas of human existence to see if the world really is doing better or worse. Together with 21 of the world’s top economists, I have tried to do just that, developing a scorecard spanning 150 years. Across ten areas – including health, education, war, gender, air pollution, climate change, and biodiversity – the economists all answered the same question: What was the relative cost of this problem in every year since 1900, all the way to 2013, with predictions to 2050.¶ Using classic economic valuations of everything from lost lives, bad health, and illiteracy to wetlands destruction and increased hurricane damage from global warming, the economists show how much each problem costs. To estimate the magnitude of the problem, it is compared to the total resources available to fix it. This gives us the problem’s size as a share of GDP. And the trends since 1900 are sometimes surprising.¶ Consider gender inequality. Essentially, we were excluding almost half the world’s population from production. In 1900, only 15% of the global workforce was female. What is the loss from lower female workforce participation? Even taking into account that someone has to do unpaid housework and the increased costs of female education, the loss was at least 17% of global GDP in 1900. Today, with higher female participation and lower wage differentials, the loss is 7% – and projected to fall to 4% by 2050.¶ It will probably come as a big surprise that climate change from 1900 to 2025 has mostly been a net benefit, increasing welfare by about 1.5% of GDP per year. This is because global warming has mixed effects; for moderate warming, the benefits prevail.¶ On one hand, because CO2 works as a fertilizer, higher levels have been a boon for agriculture, which comprises the biggest positive impact, at 0.8% of GDP. Likewise, moderate warming prevents more cold deaths than the number of extra heat deaths that it causes. It also reduces demand for heating more than it increases the costs of cooling, implying a gain of about 0.4% of GDP. On the other hand, warming increases water stress, costing about 0.2% of GDP, and negatively affects ecosystems like wetlands, at a cost of about 0.1%.¶ As temperatures rise, however, the costs will rise and the benefits will decline, leading to a dramatic reduction in net benefits. After the year 2070, global warming will become a net cost to the world, justifying cost-effective climate action now and in the decades to come.¶ Yet, to put matters in perspective, the scorecard also shows us that the world’s biggest environmental problem by far is indoor air pollution. Today, indoor pollution from cooking and heating with bad fuels kills more than three million people annually, or the equivalent of a loss of 3% of global GDP. But in 1900, the cost was 19% of GDP, and it is expected to drop to 1% of GDP by 2050.¶ Health indicators worldwide have shown some of the largest improvements. Human life expectancy barely changed before the late eighteenth century. Yet it is difficult to overstate the magnitude of the gain since 1900: in that year, life expectancy worldwide was 32 years, compared to 69 now (and a projection of 76 years in 2050).¶ The biggest factor was the fall in infant mortality. For example, even as late as 1970, only around 5% of infants were vaccinated against measles, tetanus, whooping cough, diphtheria, and polio. By 2000, it was 85%, saving about three million lives annually – more, each year, than world peace would have saved in the twentieth century.¶ This success has many parents. The Gates Foundation and the GAVI Alliance have spent more than $2.5 billion and promised another $10 billion for vaccines. Efforts by the Rotary Club, the World Health Organization, and many others have reduced polio by 99% worldwide since 1979.¶ In economic terms, the cost of poor health at the outset of the twentieth century was an astounding 32% of global GDP. Today, it is down to about 11%, and by 2050 it will be half that.¶ While the optimists are not entirely right (loss of biodiversity in the twentieth century probably cost about 1% of GDP per year, with some places losing much more), the overall picture is clear. Most of the topics in the scorecard show improvements of 5-20% of GDP. And the overall trend is even clearer. Global problems have declined dramatically relative to the resources available to tackle them.¶ Of course, this does not mean that there are no more problems. Although much smaller, problems in health, education, malnutrition, air pollution, gender inequality, and trade remain large.¶ But realists should now embrace the view that the world is doing much better. Moreover, the scorecard shows us where the substantial challenges remain for a better 2050. We should guide our future attention not on the basis of the scariest stories or loudest pressure groups, but on objective assessments of where we can do the most good.

### LOAC

#### And the US is key to that

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 to its continued leadership abroad.

## WOT

### Turns K

**Terror attack turns the entire case---fear would cause public acquiescence to rights-violations and government crackdowns that outweigh the case by an order of magnitude**

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 110-1

Indeed, while the Bush administration bears the blame for these hor- rors, White House officials exploited a shift in public values after 9/11. When asked by Princeton Survey Research Associates in 1997 whether stopping terrorism required citizens to cede some civil liberties, less than one-t hird of Americans said yes. By the spring of 2002, that had grown to almost three- quarters. Public support for the government’s right to wire- tap phones and read people’s mail also grew exponentially. In fact, polling in the months after the attack showed Americans less concerned that the Bush administration was violating civil liberties than that **it wasn’t violating them enough**. What will happen the next time? It is, of course, impossible to predict the reaction to any particular attack. But in 2003, the Center for Public Integrity got a draft of something called the Domestic Security Enhance- ment Act, quickly dubbed Patriot II. According to the center’s executive director, Charles Lewis, **it expanded government power** five or **ten times as much as its predecessor**. One provision permitted the government to strip native-born Americans of their citizenship, allowing them to be indefinitely imprisoned without legal recourse if they were deemed to have provided any support—even nonviolent support—to groups designated as terrorist. After an outcry, the bill was shelved. But it offers a hint of what this administration—or any administration—might do if the United States were hit again. ¶ When the CIA recently tried to imagine how the world might look in 2020, it conjured four potential scenarios. One was called the “cycle of fear,” and it drastically inverted the assumption of security that C. Vann Woodward called central to America’s national character. The United States has been attacked again and the government has responded with “large- scale intrusive security measures.” In this dystopian future, two arms dealers, one with jihadist ties, text- message about a potential nuclear deal. One notes that terrorist networks have “turned into mini-s tates.” The other jokes about the global recession sparked by the latest attacks. And he muses about how terrorism has changed American life. “That new Patriot Act,” he writes, “went **way beyond anything imagined after 9/11**.” “The fear cycle generated by an increasing spread of WMD and terrorist attacks,” comments the CIA report, “once under way, would be one of the **hardest to break**.” And the more entrenched that fear cycle grows, the less free America will become. Which is why a new generation of American liberals must make the fight against this new totalitarianism their own.

### Hardline Key

**No root cause --- hardline key**

Chuck **Hawks 1**, AA from Santa Monica College and BS from the University of Oregon, How To Defeat Terrorism, http://www.chuckhawks.com/defeat\_terrorism.htm

But do the conditions that made non-violence a successful strategy in these three historical cases pertain to the present confrontation between the civilized world and international terrorism? In particular, do such conditions exist in the present confrontation between, on one side, the fundamentalist Muslim terrorist organization al Qaeda and their allies in the Taliban government of Afghanistan and, on the other side, the United States, the United Kingdom, and their allies in the civilized world? This is a question worth considerable thought and analysis, and I do not pretend to have all the answers. My formal degrees are in the field of political science (I particularly studied international affairs), and I have a modest reputation as an amateur historian, especially as regards 20th Century military history. I like to think that I also have a smidgen of intelligence, and some small talent for logical analysis. Whether I do, here are my observations about pacifism and the current war on terrorism. After some thought I have concluded that for pacifist tactics to succeed, at the minimum, the following conditions must pertain. One, the pacifist's opponents must be rational (capable of understanding the logic of the pacifist's position). Two, the opponents must have moral values and ideals that are not inimical to the pacifist's. Three, the opponents must respect basic human rights. And four, the pacifist's opponents must not necessarily equate non-violence with weakness. Looking at our historical pacifist models, Jesus was a rabbi saving souls and teaching people in the (Jewish) culture in which he was raised. Dr. King was a Christian minister leading a movement for the rights of his people in the (American) culture in which he was raised. And Gandhi was leading his people in their struggle for independence from the British (a rational and moral people with a long democratic tradition of self-rule). The fundamental ingredients for successful pacifism were in place in all three instances. Of the three historical examples, I am most familiar with the American Civil Rights movement of the 1950's and early 1960's, because it took place during my lifetime, and because I gave it my support. In that case, the American population was literate and well educated, basically rational, and had a long democratic tradition. Furthermore, all of the participants were Americans and were raised in the same culture, there was widespread respect for human rights, the Judeo/Christian ethic was the cultural norm, and virtually no one wanted violence. Also, in that case, the vast majority of Caucasian Americans had (and have) no desire to oppress Negro Americans. All of the conditions required for successful pacifism were indeed fulfilled. Unfortunately, at least one (and usually more) of the required conditions are always missing when opposing totaliarian regimes (due to the nature of totaliarian regimes). Nor can they be present in any struggle against international terrorism (the fundamental tenents of terrorism preclude points two and three). In fact, **none of the requisite conditions for successful pacifism are fufilled in the present struggle against** Islamic **terrorists**. Throughout history, pacifism and non-violence has encouraged those with a totalitarian bent (whether religious or secular) to ever-greater crimes against their own people, their neighbors, and the rest of humanity. They have historically interpreted it as weakness, which they invariably attempt to exploit for their own demented purposes. This is clear from the writings and statements of modern totalitarian leaders. For example: The vast majority of European Jews responded non-violently to the Nazi pogrom. They went peacefully to the concentration camps, and ultimately to their deaths, a fact that has puzzled historians for years. This pacifistic approach did nothing to slow down the "Final Solution," and in fact increased its efficiency. Which is the history behind the slogan popular in modern Israel: "Never again!" Another example: Non-violence was simply not a viable option when the forces of the Imperial Japanese Empire attacked the US, the UK, and their allies in December of 1941. Had the Western Allies not resisted with armed force, the Japanese would clearly have gone on to occupy, and exploit by force, all of Southeast Asia and the entire Pacific basin, as well as China. Had they not been opposed by armed force Germany, Japan, and the other Axis nations would have eventually built a power base that made them literally unstoppable. War was the only viable way to prevent this and, with 20-20 hindsight, clearly the correct decision. (Paradoxically, had the Axis succeeded in world domination, international terrorism would probably not be a problem today. Axis [state] terrorism would have systematically executed all of the dissidents in the occupied territories, and long since crushed the independent states of the Middle East. The entire region would be under the boot heel of the Axis, and the people there would be slaves. Terrorism is effective only where there are moral and innocent people to terrorize.) The United States of America had, until the events of 11 September 2001, largely ignored terrorism. This was especially true during the 8 years of the Clinton Administration. You could even make the argument that the terrorist acts of 11 September 2001 were, at least in part, the result of President Clinton's legacy of inaction. The Clinton Administration took no effective action when the al Qaeda terrorist organization attacked the American embassies in Kenya and Tanzania, killing 224 people, and again did nothing when al Qaeda attacked the United States Ship Cole. Both of those assaults were ipso-facto declarations of war, acts that historically require a declaration of war from the aggrieved state. But the Clinton Administration chose not to take decisive action. At the end of his administration, in a move cynically designed to garner Puerto Rican votes for Hillary Clinton's senate bid, President Clinton pardoned 16 terrorists convicted of bombing attacks against New York city, over the vociferous objections of the entire law enforcement community. President Clinton evidently believed that terrorists would leave America alone if America did not respond to, even forgave, terrorist provocation. Clearly, American restraint did not convince the al Qaeda terrorists to leave America alone. (Neither, for that matter, did America's repeated attempts to save Moslem people from violence and starvation in various parts of the world.) The leaders and members of al Qaeda did not become more amenable to reason, their ethics and morality did not improve, they steadfastly rejected the concept of human rights, and they did not abandon violence. (Unlikely in any case, as **their "culture" views** **pacifism as weakness**.) Instead, they were emboldened to greater acts of terrorism, which resulted in the suicide attacks on the World Trade Center and the Pentagon. These fanatics have stated that, If they could, they would kill everyone in America and every American anywhere in the world to achieve their goals. (Interestingly, this would include almost all American Muslims, who are not proper "fundamentalists" by al Qaeda standards.) The notorious al Qaeda leader Osama bin Laden, among others, has made this clear in his speeches and recent statements. So have the leaders of the totalitarian theocracy in Afghanistan known as the Taliban, who support al Qaeda and international terrorism. Personally, I have serious reservations about the practicality of any "war" against intangibles, whether poverty, drugs, or terrorism. But, one way or another, I am convinced that international terrorists and the regimes that support them must be rooted out and brought to justice--which means killed--because they will not stop killing us. (As I understand it, the theology of the Islamic terrorists promises them rewards in heaven for killing us.) I have reluctantly accepted the necessity for a broad based campaign on the economic, political, and military fronts against the terrorists themselves and the nation states that support them, as outlined by President Bush. No citizen of the civilized world should expect a quick victory over international terrorism. Understand that the terrorists who attacked the United States on 11 September 2001 have drawn us into a long series of wars. We have embarked on a process that will take many years to bring to a successful conclusion. Want it or not, the United States in particular and the Western democracies in general, are involved in a war to the death with these terrorists and their supporters. A war in which there are no real front lines, and in which the terrorist "fighters" would much rather attack defenseless civilians than engage our troops. Since terrorists have forced civilized people everywhere to be on the "front lines" of this battle, my first suggestion to decent people on the home front is to arm themselves. In the United States, federal and state governments should encourage those Americans who so desire to arm themselves, in accordance with our individual Constitutional right "to keep and bear arms." (That means to own and carry guns, without superfluous government restrictions on law-abiding citizens.) And I would suggest that the governments of the other democratic nations of the world ease their draconian restrictions on the private ownership of firearms (especially handguns). It is time for the leaders of democratic governments worldwide to trust their own citizens. Permit those people of the civilized world, who are willing to do so, to accept responsibility for their own safety, on the Israeli model. Islamic terrorists claim that they are willing to die to the last man for their cause; unfortunately, we must be ready and willing to help them do just that. On the home front, this has become a battle between fanatical terrorists fighting to die and decent people fighting to live. To paraphrase General Patton: Our job is not to die for our beliefs, it is to make the other poor bastard die for his.

**Perception of resolve is key to alter cost-benefit calculus for terrorists**

Evelyn **Gordon 10**, journalist living in Israel and the author of “The Deadly Price of Pursuing Peace,” West Bank Shows There Is a Military Solution to Terror, 12.14.2010, http://www.commentarymagazine.com/blogs/index.php/category/contentions/page/4,

The “expert” report Max cited yesterday, which declared Afghanistan unwinnable even while acknowledging progress in the war, reflects a broader problem: the claim that “there is no military solution to terror” has become virtually unchallenged dogma among Western intelligentsia. Yet as Israel’s experience in the West Bank shows, terrorist organizations can be defeated — if their opponents are willing to invest the requisite time and resources. In March 2002, Israel was at the height of a terrorist war begun in 2000 that ultimately claimed more victims — mainly civilians — than all the terror of the preceding 53 years combined. Every day saw multiple attacks, and a day without fatalities was rare. But then Israel launched a multi-year military campaign that steadily reduced Israeli fatalities from a peak of 450 in 2002 to 13 in 2007. Last month, Haaretz published two other statistics reflecting this success: the number of wanted terrorists in the West Bank, once in the hundreds, is now almost zero. And Israeli troop levels in the West Bank are lower than they have been since the first intifada began in 1987. Western bon ton likes to credit these achievements to Palestinian Prime Minister Salam Fayyad and his American-trained security forces. But in reality, the number of Israelis killed by West Bank terror in the year before May 2008, when Fayyad’s forces began deploying, was all of eight — virtually identical to last year’s five and this year’s six. Indeed, had the war not already been over, Israel wouldn’t have agreed to Fayyad’s plan. What produced this victory was the grunt work of counterterrorism: intelligence, arrests, interrogations, military operations, and, above all, enough boots on the ground long enough to make this possible. That wasn’t obvious in advance: as Haaretz reported, many senior Israel Defense Forces officers accepted the dogma that terrorist organizations can’t be defeated, because they have an infinite supply of new recruits. But then-Shin Bet security service chief Avi Dichter, who insisted that “the ‘terror barrel’ had a bottom,” proved correct. What Dichter understood was that while there may be millions of potential terrorist recruits, counterterrorism can dry up the supply of actual recruits by making terrorism a business that doesn’t pay. The more terrorists you arrest or kill, the more potential recruits decide that the likelihood of death or imprisonment has become too high to make terror an attractive proposition. Two articles, in 2007 and 2008, reveal how this dynamic works: Palestinian terrorists, once lionized, were now unmarriageable, because the near-certainty of Israeli retribution made marriage to a wanted man no life. As one father explained: “I wouldn’t want my daughter to marry one. I want her to have a good life, without having the army coming into her house all the time to arrest her while her husband escapes into the streets.” And therefore, the terrorists were quitting. Most terrorists aren’t die-hard fanatics, and non-fanatics respond to cost-benefit incentives. When terrorist organizations rule the roost, recruits will flock to their banner. But when the costs start outweighing the benefits, they will desert in droves. And then the “unwinnable” war is won.

### Law Enforcement

#### We’re law enforcement approach that ends hardline WOT --- best way to solve terrorism --- can’t solve root cause

Seth G. **Jones 8**, adjunct professor at Johns Hopkins University's School for Advanced International Studies; associate director of the International Security and Defense Policy Center at the RAND Corporation, specializing in counterinsurgency and counterterrorism. PhD and \*\* Martin C Libicki, Spent 12 years at the National Defense University. Senior management scientist at the RAND Corporation. Ph.D. in economics, M.A. in city and regional planning, University of California, Berkeley. How Terrorist Groups End: Lessons for Countering al Qa'ida, www.rand.org/pubs/research\_briefs/RB9351/index1.html

The United States cannot conduct an effective counterterrorism campaign against al Qa'ida or other terrorist groups without understanding how such groups end. While **it is clear that U.S. policymakers will need** to turn to **a range of policy instruments to conduct such campaigns — including careful police and intelligence work, military force**, political negotiations, and economic sanctions — what is less clear is how they should prioritize U.S. efforts.¶ A recent RAND research effort sheds light on this issue by investigating how terrorist groups have ended in the past. By analyzing a comprehensive roster of terrorist groups that existed worldwide between 1968 and 2006, the authors found that most groups ended because of operations carried out by local police or intelligence agencies or because they negotiated a settlement with their governments. Military force was rarely the primary reason a terrorist group ended, and few groups within this time frame achieved victory.¶ These findings suggest that the U.S. approach to countering al Qa'ida has focused far too much on the use of military force. Instead, **policing and intelligence should be the backbone of U.S. efforts.**¶ First Systematic Examination of the End of Terrorist Groups¶ This was the first systematic look at how terrorist groups end. The authors compiled and analyzed a data set of all terrorist groups between 1968 and 2006, drawn from a terrorism-incident database that RAND and the Memorial Institute for the Prevention of Terrorism jointly oversee. The authors used that data to identify the primary reason for the end of groups and to statistically analyze how economic conditions, regime type, size, ideology, and group goals affected their survival. They then conducted comparative case studies of specific terrorist groups to understand how they ended.¶ Of the 648 groups that were active at some point between 1968 and 2006, a total of 268 ended during that period. Another 136 groups splintered, and 244 remained active. As depicted in the figure, the authors found that most ended for one of two reasons: They were penetrated and eliminated by local police and intelligence agencies (40 percent), or they reached a peaceful political accommodation with their government (43 percent). Most terrorist groups that ended because of politics sought narrow policy goals. The narrower the goals, the more likely the group was to achieve them through political accommodation — and thus the more likely the government and terrorists were to reach a negotiated settlement.¶ How 268 Terrorist Groups Worldwide Ended, 1968–2006¶ How 268 Terrorist Groups Worldwide Ended, 1968-2006¶ In 10 percent of cases, terrorist groups ended because they achieved victory. Military force led to the end of terrorist groups in 7 percent of cases. The authors found that militaries tended to be most effective when used against terrorist groups engaged in insurgencies in which the groups were large, well armed, and well organized. But against most terrorist groups, military force was usually too blunt an instrument.¶ The analysis also found that¶ religiously motivated terrorist groups took longer to eliminate than other groups but rarely achieved their objectives; no religiously motivated group achieved victory during the period studied.¶ size significantly determined a group's fate. Groups exceeding 10,000 members were victorious more than 25 percent of the time, while victory was rare for groups below 1,000 members.¶ terrorist groups from upper-income countries are much more likely to be left-wing or nationalist and much less likely to be motivated by religion.¶ Police-Oriented Counterterrorism Rather Than a “War on Terrorism”¶ What does this mean for counterterrorism efforts against al Qa'ida? After September 11, 2001, U.S. strategy against al Qa'ida concentrated on the use of military force. Although the United States has employed nonmilitary instruments — cutting off terrorist financing or providing foreign assistance, for example — U.S. policymakers continue to refer to the strategy as a “war on terrorism.”¶ But military force has not undermined al Qa'ida. As of 2008, al Qa'ida has remained a strong and competent organization. **Its goal is intact**: to establish a pan-Islamic caliphate in the Middle East by uniting Muslims to fight infidels and overthrow West-friendly regimes. It continues to employ terrorism and has been **involved in more terrorist attacks** around the world in the years since September 11, 2001, than in prior years, though engaging in no successful attacks of a comparable magnitude to the attacks on New York and Washington.¶ Al Qa'ida's resilience should trigger a fundamental rethinking of U.S. strategy. Its goal of a pan-Islamic caliphate leaves **little room for a negotiated political settlement** with governments in the Middle East. A more effective U.S. approach would involve a two-front strategy:¶ Make policing and intelligence the backbone of U.S. efforts. Al Qa'ida consists of a network of individuals who need to be tracked and arrested. This requires careful involvement of the Central Intelligence Agency and Federal Bureau of Investigation, as well as their cooperation with foreign police and intelligence agencies.¶ Minimize the use of U.S. military force. In most operations against al Qa'ida, local military forces frequently have more legitimacy to operate and a better understanding of the operating environment than U.S. forces have. This means a light U.S. military footprint or none at all.¶ Key to this strategy is **replacing the war-on-terrorism orientation** with the kind of counterterrorism approach that is employed by most governments facing significant terrorist threats today. Calling the efforts a war on terrorism raises public expectations — both in the United States and elsewhere — that there is a battlefield solution. It also tends to legitimize the terrorists' view that they are conducting a jihad (holy war) against the United States and elevates them to the status of holy warriors. Terrorists should be perceived as criminals, not holy warriors.

### Statements

#### Statements --- argh!!!

Larry J. **Arbuckle 8**, Naval Postgraduate School, "The Deterrence of Nuclear Terrorism through an Attribution Capability", Thesis for master of science in defense analysis, approved by Professor Robert O'Connell, and Gordon McCormick, Chairman, Department of Defense Analysis, Naval Postgraduate School, June

However, there is evidence that a small number of terrorist organizations in recent history, and at least one presently, have nuclear ambitions. These groups include Al Qaeda, Aum Shinrikyo, and Chechen separatists (Bunn, Wier, and Friedman; 2005). Of these, Al Qaeda appears to have made the most serious attempts to obtain or otherwise develop a nuclear weapon. Demonstrating these intentions, in 2001 Osama Bin Laden, Ayman al Zawahiri, and two other al Qaeda operatives met with two Pakistani scientists to discuss weapons of mass destruction development (Kokoshin, 2006). Additionally, Al Qaeda has made significant efforts to justify the use of mass violence to its supporters. Sulaiman Abu Ghaith, an al Qaeda spokesman has stated that al Qaeda, “has the right to kill 4 million Americans – 2 million of them children,” in retaliation for deaths that al Qaeda links to the U.S. and its support of Israel (as cited in Bunn, Wier, and Friedman; 2005). Indeed Bin Laden received a fatwa in May 2003 from an extreme Saudi cleric authorizing the use of weapons of mass destruction against U.S. civilians (Bunn, Wier, and Friedman; 2005). Further evidence of intent is the following figure taken from al Qaeda documents seized in Afghanistan. **It depicts a workable design for a nuclear weapon.** Additionally, the text accompanying the design sketch includes some **fairly advanced weapons design parameters** (Boettcher & Arnesen, 2002). Clearly **maximizing the loss of life is key among al Qaeda’s goals**. Thus their use of conventional means of attack presently appears to be a **result of their current capabilities** and not a function of their pure preference (Western Europe, 2005).

#### Prefer empirics and public statements---the aff presumes they know terrorists motives better than they do

ELSHTAIN 2003 (Jean Bethke, Prof of Social and Political Ethics at U Chicago, Just War Against Terrorism, p. 94-95)

Those who do not argue outright that the United States is the author of its own destruction often profess mystification at the motives of the attackers, despite the fact that the attackers have told us repeatedly what their motives are. The Nation editorialized, “Why the attacks took place is still unclear.” Suddenly the far left is perplexed as well as isolationist: If we had not poked our nose in where it did not belong, maybe people would leave us alone. However, either we really do not know what drove the attackers—which requires that we ignore their words and those of Osama bin Laden—or we really do know what motivated the attackers—which also requires that we ignore their words and those of Osama bin Laden. Why? Because we cannot take the religious language seriously. Donald Kagan cites an example of the latter when he recalls the words of a fellow Yale professor who opined tha thte “underlying causes” fo the 9/11 attacks were “the desperate, angry, and bereaved” circumstances of the lives of “these suicide pilots,” who were responding to “offensive cultural messages” spread by the United States. There is considerable hubris on display in such assertions of certainly

about what drives terrorists, when doing so requires ignoring the terrorists’ own words. This scenario usually plays out like this: First, one professes ignorance of the real motives, although one can do so only if one ignores the words of the attackers, who have scarcely been secretive. Or second, one ignores the real motives because one knows better than the attackers themselves what their motives were. “What is striking about such statements is their arrogance,” writes Kagan. “They suggest that he enlightened commentator can penetrate the souls of the attackers and know their deepest motives…A far better guide might be the actual statements of the perpetrators.” Kagan is not alone in this observation. Tony Judt writes that Osama bin Laden’s stated motives are “to push the ‘infidel’ out of the Arabian peninsula, to punish the ‘Crusaders and the Jews,’ and to wreak revenge on Americans for their domination of Islamic space.” Judt cannot help noticing, however, that bin Laden “is not a spokesman for the downtrodden, much less those who seek just solutions to real dilemmas—he is cuttingly dismissive of the UN: ‘Muslims should not appeal to these atheist, temporal regimes.’” Not surprisingly, Salman Rushdie, the Muslim writer against whom a fatwa ordering his death was issued in 1989, makes the trenchant observation that the savaging of America by sections of the left…has been among the most unpleasant consequences of the terrorists’ attacks on the United States. “The problem with Americans is…”—“What America needs to understand…” There has been a lot of sanctimonious moral relativism around lately, usually prefaced by such phrases as these. A country which has just suffered the most devastating terrorist attack in history, a country in a state of deep mourning and horrible grief, is being told, heartlessly, that it is to blame for its own citizens’ deaths. The New York Times columnist Thomas Friedman expresses amazement at the ease with which some people abroad and at campus teach-ins now tell us what motivated the terrorists…Their deed was their note: we want to destroy America, starting with its military and financial centers. Which part of that sentence don’t people understand? Have you ever seen Osama bin Laden say, “I just want to see a smaller Israel in its pre-1967 borders,” or “I have no problem with America, it just needs to have a lower cultural and military profile in the Muslim world?” These terrorists aren’t out for a new kind of coexistence with us. They are out for our non-existence. None of this seems to have seeped into the “Yes, but…” crowd.