## 1AC – USC

### 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 Mid-East and Indo-Pak 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.

#### Mid-East conflict causes extinction

Russell 9 James, Senior Lecturer Department of National Security Affairs, Spring, “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” Security Studies Center Proliferation Papers, http://www.analyst-network.com/articles/141/StrategicStabilityReconsideredProspectsforEscalationandNuclearWarintheMiddleEast.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

#### Indo-pak causes extinction

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

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

#### 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 powers 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.

# 2AC

## Overreach

### Norms – China Rels AO

#### Plan’s key to China relations

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.

#### China relations solve every impact

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The evolution of Sino-U.S. relations over the next months, years, and decades has the potential to have a greater impact on global security and prosperity than any other bilateral or multilateral arrangement. In this sense, many analysts consider the US.-China diplomatic relationship to be the most influential in the world. Without question, strong and stable U.S. alliances provide the foundation for the protection and promotion of U.S. and global interests. Yet within that broad framework, the trajectory of U.S.-China relations will determine the success, or failure, of efforts to address the toughest global challenges: global financial stability, energy security and climate change, nonproliferation, and terrorism, among other pressing issues. Shepherding that trajectory in the most constructive direction possible must therefore be a priority for Washington and Beijing. Virtually no major global challenge can be met without U.S.-China cooperation. The uncertainty of that future trajectory and the "strategic mistrust" between leaders in Washington and Beijing necessarily concerns many experts and policymakers in both countries. Although some U.S. analysts see China as a strategic competitor—deliberately vying with the United States for energy resources, military superiority, and international political influence alike— analysis by the Center for Strategic and International Studies (CSIS) has generally found that China uses its soft power to pursue its own, largely economic, international agenda primarily to achieve its domestic objectives of economic growth and social stability.1 Although Beijing certainly has an eye on Washington, not all of its actions are undertaken as a counterpoint to the United States. In addition, CSIS research suggests that growing Chinese soft power in developing countries may have influenced recent U.S. decisions to engage more actively and reinvest in soft-power tools that have atrophied during the past decade. To the extent that there exists a competition between the United States and China, therefore, it may be mobilizing both countries to strengthen their ability to solve global problems. To be sure, U.S. and Chinese policy decisions toward the respective other power will be determined in large part by the choices that leaders make about their own nations interests at home and overseas, which in turn are shaped by their respective domestic contexts. Both parties must recognize—and accept—that the other will pursue a foreign policy approach that is in its own national interest. Yet, in a globalized world, challenges are increasingly transnational, and so too must be their solutions. As demonstrated by the rapid spread of SARS from China in 2003, pandemic flu can be spread rapidly through air and via international travel. Dust particulates from Asia settle in Lake Tahoe. An **economic downturn in one** country can and **does trigger a**n economic **slowdown** in another. These challenges can no longer be addressed by either containment or isolation. What constitutes the national interest today necessarily encompasses a broader and more complex set of considerations than it did in the past As a general principle, the United States seeks to promote its national interest while it simultaneously pursues what the CSIS Commission on Smart Power called in its November 2007 report the "global good."3 This approach is not always practical or achievable, of course. But neither is it pure benevolence. Instead, a strategic pursuit of the global good accrues concrete benefits for the United States (and others) in the form of building confidence, legitimacy, and political influence in key countries and regions around the world in ways that enable the United States to better confront global and transnational challenges. In short, the global good comprises those things that all people and governments want but have traditionally not been able to attain in the absence of U.S. leadership. Despite historical, cultural, and political differences between the United States and China, Beijing's newfound ability, owing to its recent economic successes, to contribute to the global good is a matter for common ground between the two countries. Today there is increasing recognition that no major global challenge can be addressed effectively, much less resolved, without the active engagement of—and cooperation between—the United States and China. The United States and China—the worlds first- and third-largest economies—are inextricably linked, a fact made ever more evident in the midst of the current global financial crisis. Weak demand in both the United States and China, previously the twin engines of global growth, has contributed to the global economic downturn and threatens to ignite simmering trade tensions between the two countries. Nowhere is the interconnectedness of the United States and China more clear than in international finance. China has $2 trillion worth of largely U.S. dollar-denominated foreign exchange reserves and is the world's largest holder—by far—of U.S. government debt. Former treasury secretary Henry M. Paulson and others have suggested that the structural imbalances created by this dynamic fueled the current economic crisis. Yet. China will almost certainly be called on to purchase the lion's share of new U.S. debt instruments issued in connection with the U.S. stimulus and recovery package. Secretary of State Hillary Rodham Clinton's February 23.2009, reassurance to Beijing that U.S. markets remain safe and her call for continued Chinese investment in the U.S. bond market as a means to help both countries, and the world, emerge from global recession underscored the shared interest—and central role—that both countries have in turning around the global economy quickly. Although China's considerable holdings of U.S. debt have been seen as a troubling problem, they are now being perceived as a necessary part of a global solution. Similarly, as the world’s two largest emitters of greenhouse gases, China and the United States share not only the collateral damage of energy-inefficient economic growth, b­­ut a primary responsibility to shape any ultimate global solutions to climate change. To date, cooperation has been elusive, owing as much to Washington's reluctance as to Beijing's intransigence. Painting China as the environmental bogeyman as an excuse for foot-dragging in policymaking is no longer an option; for its part, China, as the world's top polluter, must cease playing the developing-economy card. Yet energy security and climate change remain an area of genuine opportunity for joint achievement. Indeed, U.S.-China cooperation in this field is a sine qua non of any response to the energy and climate challenges. The sheer size of the Chinese economy means that collaboration with the United States could set the de facto global standards for etficiency and emissions in key economic sectors such as industry and transportation. Climate change also provides an area for cooperation in previously uncharted policy waters, as in emerging Arctic navigational and energy exploration opportunities. Washington and Beijing also share a deep and urgent interest in international peace and stability. The resumption of U.S.-China military contacts is a positive development. As two nuclear powers with worldwide economic and strategic interests, both countries want to minimize instability and enhance maritime security, as seen by parallel antipiracy missions in the waters otT Somalia. Joint efforts in support of United Nations peacekeeping, nonproliferation, and counterterrorism offer critical areas for bilateral and multilateral cooperation. Certainly, regional and global security institutions such as the Six-Party Talks concerning North Korea or the UN Security Council require the active engagement of both Washington and Beijing. Even more broadly, crisis management in geographic regions of mutual strategic interest like the Korean peninsula, Iran, or Burma require much more Sino-U.S. communication if the two countries are to avoid miscalculation and maximize opportunities to minimize human sutfering. Increasing the number of mid-level military-to-military exchanges would help in this regard. The United States and China could do more to cooperate on law enforcement to combat drug trafficking and organized crime in Western China. Afghanistan is competing with Burma as the main provider of narcotics to China; Washington could use its influence with the International Security Assistance Force in Kabul to develop a joint antinarcotics program. This could potentially build networks and joint capabilities that might be useful for U.S.-China cooperation on the issue of Pakistan. In addition, Washington should also encourage NATO-China cooperation along the Afghan border. Collaborating under the auspices of the Shanghai Cooperation Organization (SCO) might provide an additional framework for Beijing and Washington to address Central Asian security issues in a cooperative manner. 1he SCO, which includes Pakistan as an observer and will convene a multinational conference on Afghanistan in March 2009, has long made curbing narcoterrorism in Afghanistan a priority. In addition, the VS. Drug Enforcement Agency and the Chinese Anti-Narcotics Bureau should expand cooperation on interdiction and prosecution of heroin and meth traffickers. To be sure, there are a number of areas of serious divergence between Washington and Beijing. This should surprise no one. The United States has disagreements with even its allies. Two large powers with vastly dilferent histories, cultures, and political systems are bound to have challenges. History has shown, however, that the most effective way of addressing issues is for the U.S. and Chinese governments to engage in quiet diplomacy rather than public recrimination. In the U.S.-China context, there is often little to be gained—and much to be lost in terms of trust and respect—by a polarizing debate. Any differences, moreover, must not necessarily impede Sino-U.S. cooperation when both sides share strong mutual interests. I;. Scott Fitzgerald wrote that "the test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function."3 Effective policy toward China by the United States, and vice versa, will require this kind of dual-minded intelligence. Moreover, working together on areas of mutual and global interest will help promote strategic trust between China and the United States, facilitating possible cooperation in other areas. Even limited cooperation on specific areas will help construct additional mechanisms for bilateral communication on issues of irreconcilable disagreement. In fact, many of the toughest challenges in U.S.-China relations in recent years have been the result of unforeseen events, such as the accidental bombing of the Chinese embassy in Belgrade in May 1999 and the EP-3 reconnaissance plane collision in April 2001. Building trust and finding workable solutions to tough problems is the premise behind the Obama administrations foreign policy of smart power, as articulated by Secretary of State Clinton. Smart power is based on, as Secretary Clinton outlined in her confirmation hearing, the fundamental belief that 'We must use... the full range of tools at our disposal—diplomatic, economic, military, political and cultural—picking the right tool, or combination of tools, for each situation."' As the CS1S Commission on Smart Power noted in November 2007, "Smart Power is neither hard nor soft—it is the skillful combination of bothIt is an approach that underscores the necessity of a strong military, but also invests heavily in alliances, partnerships and institutions at all levels... .°5 As such, smart power necessarily mandates a major investment in a U.S.-China partnership on key issues. 'The concept enjoys broad support among the Chinese and American people and, by promoting the global good, it reaps concrete results around the world. There should be no expectation that Washington and Beijing will or should agree on all, or even most, questions. But the American and Chinese people should expect their leaders to come together on those vital issues that require their cooperation. U.S.-China partnership, though not inevitable, is indispensable.

## Allies

### AT: NATO Obsolete

#### NATO not obsolete

Charles A. Kupchan 13, D.Phil from Oxford in International Affairs, Professor of International Affairs at Georgetown, Whitney H. Shepardson Senior Fellow at the Council on Foreign Relations, 3/6/13, "Why is NATO still needed, even after the downfall of the Soviet Union?," http://www.cfr.org/nato/why-nato-still-needed-even-after-downfall-soviet-union/p30152

The North Atlantic Treaty Organization (NATO) is an international military alliance that was created to enable its members (the United States, Canada, and their European partners) to counter the threat posed by the Soviet Union. Alliances usually come to an end when the threat that led to their formation disappears. However, NATO defies the historical norm, not only surviving well beyond the Cold War's end, but also expanding its membership and broadening its mission.¶ NATO remains valuable to its members for a number of reasons. The expansion of the alliance has played an important role in consolidating stability and democracy in Central Europe, where members continue to look to NATO as a hedge against the return of a threat from Russia. In this respect, NATO and the European Union have been working in tandem to lock in a prosperous and secure Atlantic community.¶ Meanwhile, NATO has repeatedly demonstrated the utility of its integrated military capability. The alliance used force to end ethnic conflict in the Balkans and played a role in preserving the peace that followed. NATO has sustained a long-term presence in Afghanistan, helping to counter terrorism and prepare Afghans to take over responsibility for their own security. NATO also oversaw the mission in Libya that succeeded in stopping its civil war and removing the Qaddafi regime. All of these missions demonstrate NATO's utility and its contributions to the individual and collective welfare of its members, precisely why they continue to believe in the merits of membership.

### AT: EU Regionalism

#### NATO still has role in defending area, regional security institutions don’t fill in

Younghoon Moon 12/29/12, MPA candidate (2014) Columbia University - School of International and Public Affairs, "The Future of NATO," Harvard International Review, http://hir.harvard.edu/mobile-might/the-future-of-nato?page=0,2

NATO has a role to play in the twenty-first century. Europe’s security is far from assured even in its own neighborhood, and, until the European Union begins to take a more active role in its own defense, NATO remains the only force that can provide that security. Europe’s relationship with Russia is unlike Europe’s relationship with the Soviet Union, but Russia’s hostility to the newly installed defense system in Europe and opposition to former Soviet states’ signing the North Atlantic Treaty means that the Alliance will be vital for defending Europe’s security interests.¶ Whether NATO can play a global role is less certain. In the long run, the regionalization of the international security system will continue. Just as it does not make sense for the African Union to dispatch a military force to Kosovo, NATO’s out-of-area missions will be less justifiable in the future, since the Alliance is dominated by Western countries.¶ At the present moment, however, there are areas where NATO can have a global impact. Other regional bodies lack its ability to enforce security in their own regions. Such is the case with the African Union, which requested assistance from NATO in conducting its anti-piracy mission off the coast of Somalia. At the same time, if support for military intervention does not come from other quarters, few alternatives to NATO remain when a humanitarian operation under the auspices of the United Nations is called for.¶ Given these circumstances, whether NATO can be a serious contender in the post-Cold War order depends on how well it is financially and materially equipped. Military alliances have a comparative advantage over unilateral or ad hoc solutions: they come with ready-made command structures, encourage pooling of resources, confer greater legitimacy, and lessen the burden of each member.

#### Legitimacy is effective in context---regionalism fails

Nic Watkins 11/11/13, program associate at ISIS Europe with a Masters in Conflict Prevention, Peacebuilding and Security from Durham University, "The Sorry State of European Military Strength," http://www.atlantic-community.org/-/the-sorry-state-of-european-military-strength?redirect=http%3A%2F%2Fwww.atlantic-community.org%2Fyour-opinion%3Fp\_p\_id%3D101\_INSTANCE\_GES8xNFE98EL%26p\_p\_lifecycle%3D0%26p\_p\_state%3Dnormal%26p\_p\_mode%3Dview%26p\_p\_col\_id%3Daf-column-1-3%26p\_p\_col\_pos%3D3%26p\_p\_col\_count%3D8

For one moment indulge me and put aside the plethora of political and operational issues relating to EU Common Security and Defence Policy (CSDP) and just imagine a scenario in which the member states put aside their sovereignty concerns and their geo-political ambitions and committed to launching a large scale military operation. Do member states have the military capabilities to run an operation?¶ For all of CSDP ambitions there is one fundamental drawback, it's all talk and no ‘teeth', the EU members lacks fundamental military capability. The last few years have seen monumental reductions in military spending across Europe. Governments have passed much of this as tactical reshaping but it's hard to believe that all these reductions are solely strategically driven and have no relation to state belt tightening.¶ The blade of budget reductions has been chopping its way across the continent. Middle sized European countries have averaged cuts of between 10 and 15 percent. The Czech Republic reduced their defense budget by 10 percent in 2011 and Greek military spending dropped by 18 percent in 2010 and a further 19 percent in 2011. Several of the smallest countries reduced their military budgets by more than 20 percent including Latvia by 21 percent in 2009 and Lithuania by a whopping 36 percent in 2010. Between 2009 and 2011 European states discharged 160,000 soldiers and reduced military spending at a rate equivalent to removing the entire German military.¶ Many of these reductions have reduced further already limited capabilities. Massive reductions in already limited capabilities are leading to the EU becoming increasingly militarily irrelevant. Some may argue that cuts to minority powers don't limit CSDP capabilities as long as we have the ‘big boys' of military capability. The UK, Germany and France's militaries dwarf the rest of Europe. Historically they are the most active in projecting their military capabilities and at least one of them will be required to commit for any operation under the EU flag to be a success. Even amongst Europe's military ‘powerhouses' we see a similar trend.¶ The UK has cut its defense budget by 7.5 percent over four years, in reality the reduction is nearly 25 percent after budgetary calamities with updating the trident nuclear deterrent system. The Army 2020 review means Britain's professional army will number a mere 84,000 by 2020 leaving Britain only able to sustain a force one third smaller than the force it deployed to Iraq in 2003. Britain is also giving up the ability to fly planes off aircraft carriers for a decade. In August, France announced the reduction of a further 34000 troops reducing its military from 324,000 in 2008 to 242,000 by 2019. They have also slashed their orders of the new Rafale fighter.¶ It all paints a very bleak picture, made even worse when compared with US military capabilities; The EU figures appear to dwindle even further. The Americans spent approximately $645.7 billion on defense last year compared with $280.1 billion spend in Europe. The entire combined air forces of Cyprus, Lithuania, Austria, Czech Republic, Romania, Estonia, Ireland and Slovenia could comfortably fit on the US aircraft carrier John C. Stennis, whilst simultaneously the entire armies of Malta, Luxembourg and Estonia could be accommodated onboard. The US has more troops deployed in Japan and South Korea than Britain has soldiers. While Europeans talked up their efforts in Libya and Mali they were in fact heavily reliant on US support in the shape of intelligence, ammunition stocks, missiles, refueling and transport aircraft as well as drones.¶ Any considerations for the future direction of CSDP must be framed within current capabilities. It's unwise for CSDP supporters to talk of grandiose EU operations when they simply don't have the capabilities. It's possible the EU does not even have the capabilities to cover any strategic threats closer to home let alone partake in expansive CSDP missions. It certainly appears unlikely that Europeans will be able to sustain operations on multiple fronts.¶ Fortunately, none of this really matters, as CSDP is so wrangled in political issues, it's very unlikely to reach the stage of actually deploying and by that point it will be too late.

### AT: Warming Impact

#### No impact---mitigation and adaptation will solve---no tipping point or “1% risk” args

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

# Off-Case

## T

### 2AC T – WPA

#### The plan restricts armed conflict authority, which the AUMF is a subset of—we are a specific statute that applies to the AUMF—they are just a bad spec arg

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

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

#### C/I – “Statutory” means enacted by statute

Merriam Webster No Date

stat·u·to·ry adjective \ˈsta-chə-ˌtȯr-ē\

Definition of STATUTORY¶ 1: of or relating to statutes¶ 2: enacted, created, or regulated by statute <a statutory age limit>

#### That’s a law enacted by Congress

The Oxford Guide to the U.S. Government 12

(Oxford University Press via Oxford Reference, Georgetown Library)

statute¶ A statute is a written law enacted by a legislature. **A federal statute is a law enacted by Congress**. State statutes are enacted by state legislatures; those that violate the U.S. Constitution may be struck down by the Supreme Court if the issue is appealed to the Court.

#### 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

Their 1NC card, correctly underlined, says the aff is topical—the plan is a statute that establishes geographic limitations on the AUMF

Graham Cronogue 13, Duke University School of Law, J.D. expected; A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, DUKE JOURNAL OF COMPARATIVE and INTERNATIONAL LAW, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil

The AUMF’s broad “all necessary and appropriate force” language confers on the President complete Congressional authorization to wage war against the specified groups. First, the AUMF’s “all necessary and appropriate force” language mirrors that found in a declaration of war and, far from imposing any constraints, bolsters the President’s powers significantly.37 In Bas v. Tingy, the Court found that Congress could make narrow authorizations that are “limited in place, in objects, and in time.”38 Yet, the AUMF authorization is much broader than that typically found in a limited or quasi-war context where the President can only use certain armed forces against a specific type of target in a specified way.39 In the Quasi-War with France, for example, the President’s actions were limited to a specific place and type of enemy force.40 Indeed, the use of force was restricted to the high seas and armed French vessels.41 In these examples, the President was not authorized to use force in enemy ports or against many other members of the enemy’s military.42 In contrast, the AUMF does not explicitly limit where or what kind of force the President may use.43 Rather, it leaves this determination open to the President and merely names the class of targets.44 Second, the AUMF’s language illustrates congressional acquiescence or approval of broad presidential authority to use force. “[T]he enactment of legislation closely related to the question of the President’s authority in a particular case which evinces legislative intent to accord the President broad discretion may be considered to ‘invite’ ‘measures on independent presidential responsibility.’”45 The language in the AUMF is very similar to declarations of war and authorizations, in which presidents have exercised plenary power in determining the means and type of force.46 In these “perfect” wars, “all the members act[ed] under a general authority, and all the rights and consequences of war attach to their condition.”47 For instance, the Gulf of Tonkin Resolution allowed the President to “take all necessary measures” and was used as broad authority to wage combat and detain enemies.48 Similarly, the AUMF allows for the use of “all necessary and appropriate force.” Presidents have commonly exercised broad authority under similar grants of power, and Congress’s failure to act in limiting these powers here suggests acquiescence to this interpretation.49 More convincingly than in Dames & Moore, where Congress failed to object to executive action, there are numerous comments from the legislature that the President should have broad authority under the AUMF.50 Given these statements and Congress’s ample opportunity to limit the scope or type of force, Congress must have acquiesced to past executive practice and interpretation. Furthermore, the plurality in Hamdi also treated the AUMF as a broad authorization to use force.51 In upholding the President’s power to detain enemy combatants, the Court leaned heavily on the similarities between the current authorization and that of broad authorizations characteristic of full wars.52 The Court found that the President had many of the same powers usually granted to the President by war declarations.53 Then, it looked to past exercises of presidential power to find what actions Congress would have implicitly authorized.54 Specifically, the Court found that detention was as “fundamental and accepted an incident to war as to be an exercise of the ‘necessary and appropriate force’ Congress has authorized the President to use.”55 Given that the AUMF does not contain any specific limitation on the type of force and that the language describing this force is hashed in the extremely broad terms, the AUMF must grant the President significant authority to act. This authority is certainly still constrained by the laws of war and other independent constitutional checks on the Executive, but it appears that Congress delegated the President extremely broad powers. Finally, based on the plurality’s opinion in Hamdi, the exact scope of these powers will be interpreted in light of past actions by the Executive but still remains far from clear.56 D. Where? Another significant issue not addressed by the AUMF is where this “force” may be applied. Again, the text of the statute offers little guidance, as it does not mention any geographic limitation. The statute does confirm the existence of a threat to American citizens at home and abroad.57 Of course, one plausible reading is that there is no limitation whatsoever. Under this reading, if an organization that satisfies the 9/11 requirement is in the United States or in a foreign country, the President is always authorized to use force against that target. Given the President’s duty to protect Americans and the context in which the AUMF was passed, the AUMF seemingly authorizes force at home. The AUMF passed after an attack on American soil, and the United States seemed in a very real sense part of the theater of war. Furthermore, force under the AUMF is designed to “prevent any future acts of international terrorism against the United States” and its citizens at home.58 Since al-Qaeda could have small cells in the United States, a territorial limitation precluding force at home might hamstring this objective. Despite these factors, the plurality in Hamdi limited its holding to apply the AUMF to an American citizen captured in the traditional battlefield.59 However, it seems that the need to detain enemy combatants picked up on the foreign battlefield and prevent them from engaging in conflict is at least as strong as when the enemy is in the United States.60 Later, the Court in Padilla upheld the application of the AUMF to an American citizen captured on American soil, suggesting the AUMF should apply at home.61 The true difficulty with the AUMF’s geographical limitation comes when the organization or person is in another country. The AUMF does authorize actions against “nations,” so it clearly is not limited to domestic threats. However, what happens if the target is in a state that is not an eligible target? This issue implicates fundamental questions of sovereignty that have become especially important in the case of targeted killings in Pakistan and Yemen. Despite the importance of this issue, the AUMF remains silent on this point.

#### Even the most limited definition of “war powers authority” includes constitutional Commander-in-Chief powers – their other author

Colby P. Horowitz, their author, 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>

Justice Black’s majority opinion in Youngstown expressed a limited view of presidential war powers. This view has also been called a “formalist approach.”115 Justice Black stated that “[t]he President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.” Justice Black held that the seizure of the steel mills lacked express statutory authority, and there was no "act of Congress ... from which such a power [could] fairly be implied." 117¶ Justice Black also determined that the President had exceeded his constitutional powers. He explained that the President's Commander-in-Chief power was limited to the "theater of war," which did not include domestic production facilities.118 Additionally, the seizure did not fall under the Presiden't power to execute the laws, because Justice Black saw it as lawmaking and not execution.

## K

### 2AC Warism K – FW

#### 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.

#### 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: Securitization

#### 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.

### 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.

### 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**.

### Pacifism Alt Fails

#### Pacifism alternative fails---too optimistic and speculative

Brian Orend 6, Director of International Studies, and a Professor of Philosophy, at the University of Waterloo in Canada, "The Morality of War", Broadview Press, Google Books, p. 263

Summary¶ The goal of this chapter was to discuss and evaluate the pacifist alternative to just war theory. We described various pacifist arguments with considerable care and charity. But the arguments for TP. CP and DP are, in the final analysis, not as strong as those of just war theory. Pacifism, while well-intentioned seems, in effect, to reward aggression and to fail to take measures needed to protect people from aggression. Pacifism is also premised on an excessively optimistic view of the world. It does offer an alternative to armed resistance, but the success of this method historically seems deeply questionable. The method of systematic civil disobedience in the face of aggression remains essentially untried, for it has worked only in cases where the target was morally sensitive to begin with. When the target or aggressor is not sensitive, the result of this method is pure speculation. Pacifists hope it will work—and hope is a virtue—but this ultimately makes me wonder very seriously whether pacifism can actually be divorced from religion. It would seem that only under the warm blanket of religious faith could pacifism’s prospects, in our rough- and-tumble world, seem promising.

## CP

**2AC OLC CP**

**It’s a rubber stamp---plan’s key**

Ilya **Somin 11**, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/

But I am more skeptical than Balkin that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president **can almost always find** respectable lawyers within his administration who will tell him that **any policy he** really **wants** to undertake is constitutional. Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and from State Department Legal Adviser Harold Koh. Bush, of course, got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration **lawyers want to tell their political masters what they want to hear**. It also arises from the understandable fact that administrations tend to appoint people who **share the president’s** ideological **agenda and approach** to constitutional interpretation. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough consultation with executive branch lawyers can prevent the president from undertaking actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, for the foreseeable future, the main constraints on unconstitutional presidential activity **must come from** **outside executive branch** – that is, from Congress, the courts, and public opinion. These constraints are highly imperfect. But they do impose **genuine costs** on presidents who cross the line. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

**CP gets overruled and circumvented---data goes aff**

Bruce **Ackerman 11**, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

The problem is confirmed by Morrison’s very useful data analysis, which shows that **only thirteen percent** of OLC opinions have provided a more- or- less clear **“no”** to the White House during the past generation.34 Morrison’s data- set doesn’t include OLC’s unpublished opinions — which typically involve confidential matters involving national security. Since OLC is almost- certainly more deferential to the White House in these sensitive areas, the percentage of “no’s” would likely sink into the single- digits if these secret opinions could be included in Morrison’s data set.35 And remember, quantitative data can’t take into account the occasions on which the White House is **especially exigent in its** telephonic **demands**.36 ¶ \*\*\*TO FOOTNOTES\*\*\*¶ 36 Morrison is undoubtedly right in suggesting that stare decisis plays a restraining role in garden-variety cases. But he also notes that the OLC **overrules** (or substantially modifies) **its own decisions** in more than five percent of the opinions in his sample. See Alarmism, supra note P, at NTOP n.NPN. This is a significant percentage, given my focus on the likely way the OLC will function in **high-stress situations**. It indicates that stare decisis is by no means a rigid rule, and that the OLC **cannot** credibly **claim** that **its hands are tied** when the White House is **pressuring it to overrule** existing case- law to vindicate a high-priority presidential initiative. ¶ Similarly, Morrison is undoubtedly correct in suggesting that his data fails to reflect the fact that the OLC sometimes informally deflects the White House from a legally problematic initiative. See Alarmism, supra note P, at NTNV. But on high-priority initiatives, the White House **won’t** easily **take** an informal **“no” for an answer** — it will either push the OLC to write a formal opinion saying “yes” or it will **withdraw the issue** from its jurisdiction and rely on the WHC to uphold the legality of the President’s plan. As a consequence, I believe that Morrison’s data provides an overestimate, not an under-estimate, of likely OLC resistance: it fails to count unreported national security opinions (on which the OLC is probably extremely deferential), and this failure is not mitigated by its additional failure to detect informal modes of OLC resistance.

**No compliance**

Bruce **Ackerman 11**, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

To see why, consider that the relationship between the WHC and the OLC is utterly **mysterious** to most lawyers, let alone to most Americans. So imagine the scene when some future White House Counsel issues a legal opinion, rubberstamping the President’s latest power- grab, with the peroration: “Ever since Lloyd Cutler assumed the position as White House Counsel in NVTV, this office has, from to time, taken the lead in explaining the constitutional foundations for major presidential initiatives . . . .” ¶ Given **pervasive ignorance** dealing with Beltway arcana, this famous precedent will go a long way toward **legitimat**ing the White House decision to **cut out the OLC**. Instead of conceding impropriety, our hypothetical Counsel can summon up the great spirit of Lloyd Cutler in support of his leading role. After establishing his distinguished pedigree, Counsel can reinforce his claim to authority with a host of additional arguments: After all, there’s nothing in the Constitution that **requires** the **Pres**ident to prefer the OLC to the WHC. Article II simply tells the President to “take Care that the Laws be faithfully executed”69 — it doesn’t tell him where to get his legal advice. Moreover, as Morrison acknowledges, the OLC’s traditional role is principally based on e**x**ecutive **o**rder, not Congressional statutes.70 If the President prefers to treat his Counsel as a modern-day Cutler, **there can be no question** that the bureaucracy and military will follow his lead — at least until the courts enter into the field. ¶ Undoubtedly, the Cutler precedent won’t stifle all grumbling from Beltway cognoscenti.71 But it will make it **much tougher** to convince the generality of lawyerdom, as well as the broader public, that they are witnessing a dreadful act of legal usurpation — even if that’s precisely what is happening.72

#### OLC can’t solve and links to politics

Eric Posner 11, the Kirkland & Ellis Professor, University of Chicago Law School. “DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER 9/11 CONGRESS, THE COURTS AND THE OFFICE OF LEGAL COUNSEL” available at http://www.law.uchicago.edu/academics/publiclaw/index.html.

These two events neatly encapsulate the dilemma for OLC, and indeed all the president’s legal advisers. If OLC tries to block the president from acting in the way he sees fit, it takes the risk that he will disregard its advice and marginalize the institution. If OLC gives the president the advice that he wants to hear, it takes the risk that it will mislead him and fail to prepare him for adverse reactions from the courts, Congress, and the public. Can OLC constrain the executive? That is the position taken by many scholars, most notably Jack Goldsmith. 18 The underlying idea here is that even if Congress and the courts cannot constrain the executive, perhaps offices within the executive can. The opposite view, advanced by Bruce Ackerman, is that OLC is a rubber stamp. 19 I advocate a third view: OLC does not constrain the executive but enables him to accomplish goals that he would not otherwise be able to accomplish. It is more accurate to say that OLC enables than constrains. B. OLC as a Constraint on the Executive A number of scholars have argued that OLC can serve as an important constraint on executive power. I will argue that OLC cannot act as a constraint on executive power. Indeed, its only function is the opposite—as an “enabler” (as I will put it) or extender of executive power. A president must choose a course of action. He goes to OLC for advice. Ideally, OLC will provide him good advice as to the legality of the course of action. It will not provide him political advice and other relevant types of advice. The president wants to maximize his political advantage, 21 and so he will follow OLC’s advice only if the legal costs that OLC identifies are greater than the political benefits. On this theory, OLC will properly always give the president neutral advice, and the president will gratefully accept it although not necessarily follow it. If the story ended here, then it would be hard to see what the controversy over OLC could be about. As an adviser, it possesses no ability to constrain the executive. It merely provides doctrinal analysis, in this way, if it does its job properly, merely supplying predictions as to how other legal actors will react to the president’s proposed action. The executive can choose to ignore OLC’s advice, and so OLC cannot serve as a “constraint” on executive power in any meaningful sense. Instead, it merely conveys to the president information about the constraints on executive power that are imposed from outside the executive branch. However, there is an important twist that complicates the analysis. The president may choose to publicize OLC’s opinions. Naturally, the president will be tempted to publicize only favorable opinions. When Congress 22 claims that a policy is illegal, the president can respond that his lawyers advised him that the policy is legal. This response at least partially deflects blame from the president. There are two reasons for this. First, the Senate consented to the appointment of these lawyers; thus, if the lawyers gave bad advice, the Senate is partly to blame, and so the blame must be shared. Second, OLC lawyers likely care about their future prospects in the legal profession, which will turn in part on their ability to avoid scandals and to render plausible legal advice; they may also seek to maintain the office’s reputation. When OLC’s opinions are not merely private advice, but are used to justify actions, then OLC takes on a quasi-judicial function. Presidents are not obliged to publicize OLC’s opinions, but clearly they see an advantage to doing so, and they have in this way given OLC quasi-judicial status. But if the president publicizes OLC opinions, he takes a risk. The risk is that OLC will publicly advise him that an action is illegal. If OLC approval helps deflect blame from the president, then OLC disapproval will tend to concentrate blame on the president who ignores its advice. Congress and the public will note that after all the president is ignoring the advice of lawyers that he appointed and thus presumably he trusts, and this can only make the president look bad. To avoid such blame, the president may refrain from engaging in a politically advantageous action. In this way, OLC may be able to prevent the president from taking an action that he would otherwise prefer. At a minimum, OLC raises the political cost of the action. I have simplified greatly, but I believe that this basic logic has led some scholars to believe that OLC serves as a constraint on the president. But this is a mistake. OLC strengthens the president’s hand in some cases and weakens them in others; but overall it extends his power—it serves as enabler, not constraint. To see why, consider an example in which a president must choose an action that lies on a continuum. One might consider electronic surveillance. At one extreme, the president can engage in actions that are clearly lawful—for example, spying on criminal suspects after obtaining warrants from judges. At the other extreme, the president can engage in actions that are clearly unlawful—for example, spying on political opponents. OLC opinions will not affect Congress’s or the public’s reaction to either the obviously lawful or the obviously unlawful actions. But then there are middle cases. Consider a policy L, which is just barely legal, and a policy I, which is just barely illegal. The president would like to pursue policy L but fears that Congress and others will mistakenly believe that L is illegal. As a result, political opposition to L will be greater than it would be otherwise. In such a case, a favorable advisory opinion from a neutral legal body that has credibility with Congress will help the president. OLC’s approval of L would cause political opposition (to the extent that it is based on the mistaken belief that L is unlawful) to melt away. Thus, OLC enables the president to engage in policy L, when without OLC’s participation that might be impossible. True, OLC will not enable the president to engage in I, assuming OLC is neutral. And, indeed, OLC’s negative reaction to I may stiffen Congress’ resistance. However, the president will use OLC only because he believes that OLC will strengthen his hand on net. It might be useful to make this point using a little jargon. In order for OLC to serve its ex ante function of enabling the president to avoid confrontations with Congress in difficult cases, it must be able to say “no” to him ex post for barely illegal actions as well as “yes” to him for barely legal actions. It is wrong to consider an ex post no as a form of constraint because, ex ante, it enables the president to act in half of the difficult cases. OLC does not impose any independent constraint on the president, that is, any constraint that is separate from the constraint imposed by Congress. An analogy to contract law might be useful. People enter contracts because they enable them to do things ex ante by imposing constraints on them ex post. For example, a debtor can borrow money from a creditor only because a court will force the debtor to repay the money ex post. It would be strange to say that contract law imposes “constraints” on people because of ex post enforcement. In fact, contract law enables people to do things that they could not otherwise do—it extends their power. If it did not,people would not enter contracts. A question naturally arises about OLC’s incentives. I have assumed that OLC provides neutral advice—in the sense of trying to make accurate predictions as to how other agents like Congress and the courts would reaction to proposed actions. It is possible that OLC could be biased—either in favor of the president or against him. However, if OLC were biased against the president, he would stop asking it for advice (or would ask for its advice in private and then ignore it). This danger surely accounts for the fact that OLC jurisprudence is pro-executive. 23 But it would be just as dangerous for OLC to be excessively biased in favor of the president. If it were, it would mislead the president and lose its credibility with Congress, with the result that it could not help the president engage in L policies. So OLC must be neither excessively pro-president nor anti-president. If it can avoid these extremes, it will be an “enabler”; if it cannot, it will be ignored. In no circumstance could it be a “constraint.” If the OLC cannot constrain the president on net, why have people claimed that OLC can constrain the president? What is the source of this mistake? One possibility, which I have already noted, is that commentators might look only at one side of the problem. Scholars note that OLC may “prevent” the president from engaging in barely illegal actions without also acknowledging that it can do so only if at the same time it enables the president to engage in barely legal actions. This is simply a failure to look at the full picture. For example, in The Terror Presidency, Goldsmith argues that President Bush abandoned a scheme of warrantless wiretapping without authorization from the FISA court because OLC declared the scheme illegal, and top Justice Department officials threatened to resign unless Bush heeded OLC’s advice. 25 This seems like a clear example of constraint. But it is important to look at the whole picture. If OLC had approved the scheme, and subsequently executive branch agents in the NSA had been prosecuted and punished by the courts, then OLC’s credibility as a supplier of legal advice would have been destroyed. For the president, this would have been a bad outcome. As I have argued, a credible OLC helps the president accomplish his agenda in “barely legal” cases. Without taking into account those cases where OLC advice helps the president’s agenda ex post as well as the cases where OLC advice hurts the president’s agenda ex post, one cannot make an overall judgment about OLC’s ex ante effect on executive power. Another possible source of error is that scholars imagine that “neutral” advice will almost always prevent the president from engaging in preferred actions, while rarely enabling the president to engage in preferred actions. The implicit picture here is that a president will normally want to break the law, that under the proper interpretation of the Constitution and relevant standards the president can accomplish very little. So if OLC is infact neutral and the president does obey its advice, then it must constrain the president. But this theory cannot be right, either. If OLC constantly told the president that he cannot do what he wants to do, when infact Congress and other agents would not object to the preferred actions, then the president would stop asking OLC for advice. As noted above, for OLC to maintain its relevance, it cannot offer an abstract interpretation of the Constitution that is divorced from political realities; it has to be able to make realistic predictions as to how other legal agents will react to the president’s actions. This has led OLC to develop a pro-executive jurisprudence in line with the long-term evolution of executive power. If OLC tried to impose constraints other than those imposed by Congress and other institutions with political power, then the president would ignore it.

### AT: Transparency

#### TK transparency is infeasible and links to their NB

Eric Jensen 10/23, Professor at BYU Law School, formerly Chief of the Army's International Law Branch and Legal Advisor to US military forces in Iraq and Bosnia, "Guest Post: The Report of the UN Special Rapporteur for Extrajudicial Executions: Law or Advocacy?", 2013, justsecurity.org/2013/10/23/guest-jensen-un-report/

The Report goes on to state in the recommendations that States “must disclose the legal basis for the use of drones, operational responsibility, criteria for targeting, impact (including civilian casualties), and information about alleged violations, investigations, and prosecutions . . . Drone operators must not be placed within a chain of command that requires them to report within institutions that are unable to disclose their operations.”¶ The boldness of these statements, particularly when written as if they were actual legal requirements, is another example of the Special Rapporteur overstating the law. The Report quotes no law as the basis for these assertions, probably because there doesn’t appear to be any. There have been many calls for increased transparency in drone operations from many different sources, and the United States has responded by increasing transparency in small degrees. But these changes have been done as a matter of policy, not as a matter of law. Requiring a State to disclose such information ahead of an attack would be truly revolutionary.¶ Consider any other weapon system. What other weapon or tactic does the law require such transparency? Is there some element in each nation’s defense ministry where all military attacks are controlled and this element discloses to the public targeting criteria and decisions? Is there any other weapon system where targeteers are placed in an unclassified information environment before they can use the weapon? Of course such situations do not exist and are certainly not required as a matter of law. Either drones are somehow so fundamentally different than every other weapon system in the military arsenal or the Report is misstating the law.¶ Further, as with the Report’s conclusions on co-belligerency, if the Report’s incorrect assertions were right, the unintended consequences of such a rule would be serious. Assume that the United States was required to disclose its targeting criteria, including the circumstances when the rules of engagement would and would not allow for an attack to take place. Every potential target would ensure that they were continuously in a position to be untargetable, while still engaging in hostile actions. Similar steps are already taken as potential targets often surround themselves with civilians in an effort to immunize themselves from attack. Such actions are specifically violative of the law of armed conflict, or international humanitarian law, as it is often called.

## DA

### 2AC Iran DA

#### Talks are failing now---Obama will veto sanctions, or they’re inevitable because of US Treasury circumvention

Sara Rajabova 12-28, December 28th, 2013, "U.S. not likely to impose new sanctions on Iran: expert," www.azernews.az/analysis/62959.html

There is a struggle between the White House and Congress, for a while, on imposing new sanctions on Iran if it fails to conclude a nuclear agreement with world powers.¶ The U.S. Congress introduced legislation on new sanctions on Iran last week, which was sharply criticized by the Iranian officials.¶ However, the U.S. President Barack Obama urged the Congress to refrain from imposing new sanctions against Iran, saying these sanctions could scuttle the negotiations.¶ Obama warned he would veto a bill imposing new sanctions on Iran, because it could sink a final deal over Tehran's nuclear program. He said he would support tougher sanctions later if Iran violates the agreement.¶ The author of book "The Evolution of Macroeconomic Theory and Policy", professor of economics at U.S. Northeastern University, Kamran Dadkhah shared his views on this issue with AzerNews.¶ Dadkhah said currently, there is little chance of imposing new significant sanctions on Iran.¶ "Even the bill introduced in the U.S. Senate imposes sanctions if Iran violates the deal reached in Geneva or if it is expired with no long-term agreement. The proponents of the bill argue that this is a clear signal to Iran and will strengthen the hand of the president in negotiations. Iranians have said that such a move would be against the spirit of negotiations and could cause them to abandon the process altogether. Indeed, should this bill pass, President Rohani's team of negotiators would be under pressure from domestic opponents of negotiations to withdraw; hence President Obama has threatened to veto the bill. But the U.S. Treasury has a freehand to strengthen financial sanctions," Dadkhah said.¶ He noted that the American oil companies are reluctant to contact Iran and other oil companies would wait for a strong signal before getting serious.¶ "In the meantime, the Pentagon is investigating Anham FZCO, a large military supplier, for moving supplies through Iran to Afghanistan. In sum, the new sanctions will not be imposed till it is obvious that no long term accord would be reached, but in the meantime existing crucial sanctions will be enforced vigorously," Dadkhah said.¶ He noted that such sanctions would give excuse to the hardliners in Iran to accuse the West of insincerity and the Rohani government of capitulation. Dadkhah said even without new sanctions, the negotiations aren't progressing that much, and the failure of the two rounds of technical negotiations supports the idea.

**Plan boosts Obama’s capital**

Douglas **Kriner 10**, Assistant Profess of Political Science at Boston University, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 59-60

Presidents and politicos alike have long recognized Congress's ability to reduce the political costs that the White House risks incurring by pursuing a major military initiative. While declarations of war are all but extinct in the contemporary period, Congress has repeatedly moved to authorize presidential military deployments and consequently to tie its own institutional prestige to the conduct and ultimate success of a military campaign. Such authorizing legislation, even if it fails to pass both chambers, creates a sense of **shared legislative-executive responsibility** for a military action's success and provides the president with **considerable political support** for his chosen policy course.34 Indeed, the desire for this political cover—and not for the constitutional sanction a congressional authorization affords—has historically motivated presidents to seek Congress's blessing for military endeavors. For example, both the elder and younger Bush requested legislative approval for their wars against Iraq, while assiduously maintaining that they possessed sufficient independent authority as commander in chief to order the invasions unilaterally.35 This fundamental tension is readily apparent in the elder Bush's signing statement to HJ Res 77, which authorized military action against Saddam Hussein in January of 1991. While the president expressed his gratitude for the statement of congressional support, he insisted that the resolution was not needed to authorize military action in Iraq. "As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution."36

#### Regardless of PC, Obama has no credibility which wrecks his agenda

Keith Koffler 10/11, who covered the White House as a reporter for CongressDaily and Roll Call, is editor of the website White House Dossier, "Obama's crisis of credibility", 2013, www.politico.com/story/2013/10/obamas-crisis-of-credibility-98153.html

President Barack Obama is like a novice flier thrust into the cockpit of a 747. He’s pushing buttons, flipping switches and radioing air traffic control, but nothing’s happening. The plane is just slowly descending on its own, and while it may or may not crash, it at least doesn’t appear to be headed to any particularly useful destination.¶ Obama’s ineffectiveness, always a hallmark of his presidency, has reached a new cruising altitude this year. Not even a year into his second term, he looks like a lame duck and quacks like a lame duck. You guessed it — he’s a lame duck.¶ On the world stage, despite Obama’s exertions, Iran’s centrifuges are still spinning, the Israelis and Palestinians remain far apart, Bashar Assad is still in power, the Taliban are gaining strength and Iraq is gripped by renewed violence.¶ At home, none of Obama’s agenda has passed this year. Republicans aren’t bowing to him in the battle of the budget, and much of the GOP seems uninterested in House Speaker John Boehner’s vision of some new grand bargain with the president.¶ Obama has something worse on his hands than being hated. All presidents get hated. But Obama is being ignored. And that’s because he has no credibility.¶ A president enters office having earned a certain stock of political capital just for getting elected. He then spends it down, moving his agenda forward, until he collects a fresh supply by getting reelected.¶ But political capital is only the intangible substrate that gives a president his might. His presidency must also be nourished by credibility — a sense he can be trusted, relied upon and feared — to make things happen.¶ A president enters office with a measure of credibility. After all, he seemed at least trustworthy enough to get elected. But unlike political capital, credibility must be built in office. Otherwise, it is squandered.¶ Obama has used every credibility-busting method available to eviscerate any sense that he can be counted on. He’s dissimulated, proven his unreliability, ruled arbitrarily and turned the White House into a Chicago-style political boiler room. His credibility has been sapped with his political opponents, a public that thinks him incompetent, our allies, who don’t trust him, and, even worse, our enemies, who don’t fear him.¶ There’s not going to be any grand bargain on the budget this year. Republicans are not only miles from the president ideologically — they’re not going to trust him with holding up his end of the bargain. If they had a president they thought they could do business with, their spines might be weakening more quickly in the current budget impasse and they would be looking for an exit.¶ There are the unkept promises like closing Guantanamo, halving the deficit during his first term and bringing unemployment down below 8 percent as a result of the 2009 stimulus. Then there are the moments when one has to conclude that Obama could not have possibly been telling the truth.¶ His contention when selling Obamacare that people would be able to keep their insurance and their doctors is not simply “turning out” to be wrong. That some people would lose either their doctors or their insurance is an obvious result of a properly functioning Affordable Care Act. He could not possibly have known so little about his signature program that he didn’t foresee such a possibility.¶ Last year, the independent Politifact.com rated Obama’s vow to pass health care reform that reduces premiums for the average family by $2,500 a “promise broken,” suggesting that premiums might in fact go up slightly. Obama’s claim that Obamacare reduces the deficit is also probably wrong. In an article published Wednesday, Charles Blahous, the Republican-appointed Medicare Public Trustee, notes that he has estimated Obamacare would add $340 billion to federal deficits in its first decade, and that recent evidence suggests the tally is likely to be higher. But certainly Obama has performed a sleight of hand, since budget savings used to “pay for” Obamacare can no longer be used to subtract from the deficit.¶ Meanwhile, Republicans can’t trust the president to abide by any deal he might sign since he has a record of picking and choosing which laws to enforce. He stopped enforcing the Defense of Marriage Act before it was declared unconstitutional. Having not gotten the “Dream Act” out of Congress, he wrote it himself, choosing not to send certain children of illegal immigrants back to their native countries. He attacked Libya without the consent of Congress.¶ Sapping his credibility further is willingness to harbor and express vicious contempt for his ideological opposites, whom he variously describes as terrorists, “extremists,” and “enemies.” Behaving like a Chicago ward boss is not going to advance his agenda very far on Capitol Hill.¶ Obama’s failure to enforce his “red line” with Syria on the use of chemical weapons and punt the matter to a dubious weapons destruction process is only the latest example of his inconstancy. The president failed to maintain a needed troop presence in Iraq, resulting in disastrous and sustained violence that is wasting our efforts there; he tarried in supporting a potential Iranian uprising; he dumped a stalwart U.S. ally, Egypt, into the hands of the Muslim Brotherhood; he said Assad had to go, and then Assad didn’t go; he broke his promise to Hispanic voters to move immigration reform during his first term; and he dropped an additional $400 million in revenue on the table to blow up a potentially massive 2011 budget bargain with Republicans.¶ The only thing Obama can truly be counted on is to make his tee time on Saturdays, though the government shutdown has temporarily cramped his golf game.¶ During his first year in office, Ronald Reagan crushed an illegal strike by air traffic controllers by firing them all, defying charges that he was a union-busting thug and that planes would soon be dropping out of the sky. It was a moment that convinced observers at home and abroad that Reagan was not to be taken lightly, that he was a serious man of his word, and that he was to be respected and even feared. And so he got things done.¶ Obama has never shown similar fortitude to the world for the simple reason that he lacks it. Obama is not to be feared, or even trusted. And that’s a fatal flaw in a president.

#### Laundry list of income and healthcare fights pound the agenda

Jules Witcover 1/1, Chicago Tribune, "After a fruitless year in Washington, New Year's blues ahead", 2014, www.chicagotribune.com/news/columnists/sns-201312311630--tms--poltodayctnyq-a20140101-20140101,0,2474617.column

Dampening down administration pleasure that a budget compromise was reached through the rare bipartisan teamwork of Republican Paul Ryan in the House and Democrat Patty Murray in the Senate, the opposition party has renewed and sustained its pushback against Obamacare.¶ The White House had hoped to pivot from this exhausting fight to such objectives as immigration reform and another try at stiffer gun controls. Instead, Obama must count on a more robust public response to the health care program, not at all guaranteed, to clear the political playing field.¶ Also, while trying to fire up lower-income support with a proposal to boost the federal minimum wage, the White House must attempt to extend long-term unemployment benefits to more than a million hard-strapped jobless beneficiaries who now face a cutoff.¶ Prominent economists warn that if Congress fails to extend those benefits, it will only hamper the still-struggling recovery. Nevertheless, the political universe seems mired again in the old ideological class warfare: the Republicans as beneficent creators of largess against the Democrats as extravagant redistributors of it to a nation of moochers.¶ It's a sad rerun of the final weeks of the 2012 presidential campaign, in which Mitt Romney sealed his doom with his witless declaration that the votes of "47 percent of Americans" were beyond his reach. The theme that they had been bought off by Democratic handouts through various social safety programs echoes again in the current debate.¶ Added to the old GOP insistence that Big Brother government has no right to require Americans to buy health insurance they don't want, more persuasive argument has blossomed that bureaucratic incompetence botched the heart of the Obama's domestic agenda.¶ Visions of a businessman's efficiency dance in the imaginations of the Republican faithful, if only one of their own were in charge. Yet, had they won the last election, Obamacare probably would be dead and buried by now, Romney having disavowed the law that was based, ironically, on his own health-care reform as Massachusetts governor.¶ In the midst of all this second-term gloom, the Democratic administration has sought to find political refuge and new energy by focusing on income inequality. The phenomenon is seen glaringly in the booming stock market and skyrocketing profits for big business, which is thriving on higher productivity from fewer workers, and its reluctance to hire more.¶ But the Democrats' effort to address this key issue also facilitates the old Republican ideological bromide of "socialistic" redistribution of wealth, which would make every conscientious attempt to heat up the economy sound like heated-up Karl Marx. Which apparently will be fine to the likes of the rabble-rousing Texas Sen. Ted Cruz and his merry tea party band, who are more than willing to fire up "class warfare" rhetoric.¶ In all, the outlook for Obama's fifth presidential year is neither bright nor hopeful for any positive resolution of current divisions, at least until the midterm congressional elections in November. Then, either one-party control will return on Capitol Hill, one way or the other, or divided government will likely slog on for the final two years of an Obama presidency born more of hope than of achievable aspirations.

#### Winner’s win

Hirsh 13 Michael, chief correspondent for National Journal; citing Ornstein, a political scientist and scholar at the American Enterprise Institute and Bensel, gov’t prof at Cornell, "There's No Such Thing as Political Capital", 2/7, [www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207](http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

### AT: Impact

#### Negotiations won’t solve war

Mark Hibbs 12-30, Berlin-based senior associate in Carnegie’s Nuclear Policy Program, December 30th, 2013, "A Year of Too-Great Expectations for Iran," carnegieendowment.org/2013/12/30/year-of-too-great-expectations-for-iran/gxbv

If all goes according to plan, sometime during 2014 Iran will sign a comprehensive final agreement to end a nuclear crisis that, over the course of a decade, has threatened to escalate into a war in the Middle East. But in light of the unresolved issues that must be addressed, it would be unwise to bet that events will unfold as planned. Unrealistic because it squarely put Iran and the powers on a road to end the crisis through diplomacy.¶ The deal calls for Tehran and the powers to negotiate the “final step” of a two-stage agreement inside six months. In the best case, the two sides will with determination quickly negotiate that final step. Iran will demonstrate to the International Atomic Energy Agency (IAEA) that its nuclear program is wholly dedicated to peaceful uses and agree to verified limits on its sensitive nuclear activities for a considerable period of time. In exchange, sanctions against Iran will be lifted.¶ An effective final deal could emerge. But Iran and the West will continue to have major differences whether or not there is a final nuclear pact. Residual mutual suspicion is significant, and the United States and Iran have competing hardwired security commitments in the region. The United States will not pivot away from Israel and the Arab states in the Persian Gulf, and Iran will not abandon the Alawites in Syria and push Hezbollah to renounce force. The November deal will not lead to a transformation of the West’s relations with Iran, and the act of signing a deal will not mean Washington and Tehran have somehow overcome their multiple fundamental differences and become partners, as some observers either hope or fear.¶ The Clock Is Ticking¶ U.S. Secretary of State John Kerry knew what he was talking about when he announced in Geneva that the initial step of the Iran nuclear deal had been agreed to and warned that “now the really hard part begins.” The Joint Plan of Action says that Iran and the powers “aim to conclude” the final agreement in “no more than one year.” But the issues that remain to be resolved and the amount of work that needs to be done could delay agreement on the final step for many months.¶ The main problem is not that Iran will refuse to implement what it agreed to in the initial deal. It will almost certainly stop producing and installing more uranium-enrichment centrifuges, limit that enrichment to no more than 5 percent U-235 (enriching to higher levels would bring Iran closer to weapons-grade material), and convert its enriched uranium gas inventory to less-threatening oxide. It is also likely to halt essential work on the Arak heavy-water reactor project, where Iran is developing the capability to produce plutonium, which can be used for making nuclear weapons.¶ Tehran has every incentive to comply with these measures. Were it to cheat, Iran’s adversaries, convinced that Iran cannot be trusted, would be vindicated and would gain leverage to add sanctions or use force. Iran knows this.¶ Instead, the potential showstoppers looming before the parties concern matters that the negotiation of the final step itself must resolve. Crucially, the Joint Plan of Action left open how Iran, the powers, and the IAEA would resolve two critical matters: unanswered questions about sensitive and potentially embarrassing past and possibly recent Iranian nuclear activities, and unfulfilled demands by the UN Security Council that Iran suspend its uranium-enrichment program. Since 2006, Tehran has refused to comply with the Security Council’s suspension orders, and since 2008, it has refused to address allegations leveled by the IAEA that point to nuclear weapons research and development by Iran.¶ The Joint Plan of Action is deliberately vague about how to handle these issues, not because Western diplomats were naive but in part because the powers intended the initial deal to build confidence. That means that groundbreaking and dealmaking were paramount, inviting bold statements, not nitty-gritty outlines. Also leading to this outcome is the fact that when the United States revved up the negotiation this fall in direct bilateral talks with Iran, what was originally a four-step road map became a two-step process featuring an initial step and a final step, with the fine print of steps two and three in the original scheme left to be worked out.

# 1AR

## Case

### Disease Impact

#### Extinction---no burnout

**Torrey and Yolken 5** E. Fuller and Robert H, Directors Stanley Medical Research Institute, 2005, Beasts of the Earth: Animals, Humans and Disease, pp. 5-6

The outcome of this marriage, however, is not as clearly defined as it was once thought to be. For many years, it was believed that microbes and human slowly learn to live with each other as microbes evolve toward a benign coexistence wit their hosts. Thus, the bacterium that causes syphilis was thought to be extremely virulent when it initially spread among humans in the sixteenth century, then to have slowly become less virulent over the following three centuries. This reassuring view of microbial history has recently been challenged by Paul Ewald and others, who have questioned whether microbes do necessarily evolve toward long-term accommodation with their hosts. Under certain circumstances, Ewald argues, “Natural selection may…favor the evolution of extreme harmfulness if the exploitation that damages the host [i.e. disease] enhances the ability of the harmful variant to compete with a more benign pathogen.” The outcome of such a “marriage” may thus be the murder of one spouse by the other. In eschatological terms, this view argues that a microbe such as HIV or SARS virus may be truly capable of **eradicating the human race**.

## CP

### AT: Transparency Solves

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

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

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

### AT: Soft Law

#### Hard law is key to legal certainty---Congress key

Gregory Shaffer 11, Professor of Law, University of Minnesota Law School, and Mark Pollack, Professor of Political Science and Jean Monnet Chair, Temple University., Sept, ARTICLE: HARD VERSUS SOFT LAW IN INTERNATIONAL SECURITY, 52 B.C. L. Rev 1147

To effect specific policy goals, state and private actors increasingly turn to legal instruments that are harder or softer in manners that best align with such proposals. n79 These variations in precision, obligation, and third-party delegation can be used strategically to advance both international and domestic policy goals. Much of the existing literature examines the relative strengths and weaknesses of hard and soft law for the states that make it. It is important, for our purposes, to address these purported advantages in order to assess the implications of the interaction of hard and soft law on each other.¶ Hard law as an institutional form features a number of advantages. n80 Hard law instruments, for example, allow states to commit themselves more credibly to international agreements by increasing the costs of reneging. They do so by imposing legal sanctions or by raising the costs to a state's reputation where the state has acted in violation of its legal commitments. n81 In addition, hard law treaties may have the advantage of creating direct legal effects in national jurisdictions, again increasing the incentives for compliance. n82 They may solve problems of incomplete contracting by creating mechanisms for the interpretation and elaboration of legal commitments over time, n83 including through the use of dispute settlement bodies such as courts. n84 In different ways, they thus permit states to monitor, clarify, and enforce their commitments. Hard law, as a result, can create more legal certainty. States, as well as private actors working with and through state representatives, [\*1163] should use hard law where "the benefits of cooperation are great but the potential for opportunism and its costs are high." n85

### 1AR XT---Veto

#### Obama will veto sanctions

RFE 12-20, Radio Free Europe Radio Liberty, December 20th, 2013, "Obama To Veto Any New Iran Sanctions ," www.rferl.org/content/iran-us/25206705.html

The White House has vowed that President Barack Obama will veto any legislation imposing new U.S. sanctions on Iran. The threat was issued December 19 after 26 senators - or more than one-quarter of the Senate - introduced new Iranian sanctions legislation.¶ The measure, backed by 13 Republicans and 13 lawmakers from Obama's Democratic Party, would impose sanctions if the Islamic republic violates the interim nuclear agreement with world powers reached in November, or if no final long-term deal is reached to curb Iranian nuclear activities.¶ Entitled the "Nuclear Weapon Free Iran Act," the proposed law would seek to further restrict Iranian oil exports and target Iranian mining, engineering, and construction industries.¶ It was not immediately clear when, or if, the measure will come to a vote in Congress. Lawmakers are due to begin a holiday recess this week until early 2014, and new Iranian sanctions are opposed by the Obama administration and many in Congress.¶ White House spokesman Jay Carney called the bill unnecessary and possibly harmful, saying it could undermine negotiations currently under way with Iran.¶ Carney added that Washington could impose new sanctions quickly if the international negotiations with Iran collapse. The spokesman said most Americans support the current effort to reach a diplomatic settlement with Tehran over the Iranian nuclear program.¶ The Senate legislation was introduced as experts from Iran and the six world powers resumed nuclear talks in Geneva.¶ In these discussions, experts are trying to determine the details of lifting sanctions against Iran, and what specifically Iran must do to demonstrate it is suspending parts of its nuclear program.¶ Under the November agreement, Iran stands to receive billions of dollars worth of relief from Western economic sanctions. The sanctions are seen has having crippled the Iranian economy, impacting millions of ordinary Iranians, and forcing the reduction of Iranian oil exports, a key revenue source.¶ In return for the sanctions relief, Iran has agreed to curb some nuclear work, including limiting uranium enrichment to five percent purity -- well below the threshold needed to make a nuclear weapon -- and to "neutralize" stockpiles of uranium that have been enriched to 20 percent purity, or close to weapons-grade.¶ The agreement has been given a time-frame of six months to allow negotiators to craft a more permanent settlement.¶ Iran denies any effort to make a nuclear bomb, saying its atomic program is for power production and civilian uses only.¶ Earlier this month, Iran halted the international talks after the United States blacklisted a further 19 companies and individuals under existing sanctions. Tehran said the move was against the spirit of the interim deal.¶ However, progress was reported during a December 9-12 meeting in Vienna between Iran and representatives of the six powers -- the United States, Russia, China, Britain, France, and Germany.