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### Accountability

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

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

Effective accountability mechanisms constrain policymakers' freedom to choose to use force by increasing the costs of use-of-force decisions and imposing barriers on reaching use-of-force decisions. The accountability mechanisms discussed here, when effective, reduce the likelihood of resorting to force (1) through the threat of electoral sanctioning, which carries with it a demand that political leaders explain their resort to force; (2) by limiting policymakers to choosing force only in the manners authorized by the legislature; and (3) by requiring policymakers to adhere to both domestic and international law when resorting to force and demanding that their justifications for uses of force satisfy both domestic and international law. When these accountability mechanisms are ineffective, the barriers to using force are lowered and the use of force becomes more likely.¶ Use-of-force decisions that avoid accountability are problematic for both functional and normative reasons. Functionally, accountability avoidance yields increased risk-taking and increases the likelihood of policy failure. The constraints imposed by political, supervisory, fiscal, and legal accountability "make[] leaders reluctant to engage in foolhardy military expeditions... . If the caution about military adventure is translated into general risk-aversion when it comes to unnecessary military engagements, then there will likely be a distributional effect on the success rates of [democracies]." n205 Indeed, this result is predicted by the structural explanation of the democratic peace. It also explains why policies that rely on covert action - action that is necessarily less constrained by accountability mechanisms - carry an increased risk of failure. n206 Thus, although accountability avoidance seductively holds out the prospect of flexibility and freedom of action for policymakers, it may ultimately prove counterproductive.¶ In fact, policy failure associated with the overreliance on force - due at least in part to lowered barriers from drone-enabled accountability avoidance - may be occurring already. Airstrikes are deeply unpopular in both Yemen n207 and Pakistan, n208 and although the strikes have proven critical [\*421] to degrading al-Qaeda and associated forces in Pakistan, increased uses of force may be contributing to instability, the spread of militancy, and the failure of U.S. policy objectives there. n209 Similarly, the success of drone [\*422] strikes in Pakistan must be balanced against the costs associated with the increasingly contentious U.S.-Pakistani relationship, which is attributable at least in part to the number and intensity of drone strikes. n210 These costs include undermining the civilian Pakistani government and contributing to the closure of Pakistan to NATO supplies transiting to Afghanistan, n211 thus forcing the U.S. and NATO to rely instead on several repressive central Asian states. n212 Arguably the damage to U.S.-Pakistan relations and the destabilizing influence of U.S. operations in Yemen would be mitigated by fewer such operations - and there would be fewer U.S. operations in both Pakistan and Yemen if U.S. policymakers were more constrained by use-of-force accountability mechanisms.¶ From a normative perspective, the freedom of action that accountability avoidance facilitates represents the de facto concentration of authority to use force in the executive branch. While some argue that such concentration of authority is necessary or even pragmatic in the current international environment, 168 it is anathema to the U.S. constitutional system. Indeed, the founding generation’s fear of foolhardy military adventurism is one reason for the Constitution’s diffusion of use-of-force authority between the Congress and the President. 169 That generation recognized that a President vested with an unconstrained ability to go to war is more likely to lead the nation into war.

#### Judicial review is key to prevent mistakes – executive targeting decisions are inevitably flawed

Ahmad Chehab 12, Georgetown University Law Center, “RETRIEVING THE ROLE OF ACCOUNTABILITY IN THE TARGETED KILLINGS CONTEXT: A PROPOSAL FOR JUDICIAL REVIEW,” March 30 2012, abstract available at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572

The practical, pragmatic justification for the COAACC derives largely from considering social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147¶ Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153¶ Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making.¶ D. THE NEED FOR ACCOUNTABILITY CHECKS¶ To check the vices of groupthink and shortcomings of human judgment, the psychology literature emphasizes a focus on accountability mechanisms in which a better reasoned decision-making process can flourish.156 By serving as a constraint on behavior, “accountability functions as a critical norm-enforcement mechanism—the social psychological link between individual decision makers on the one hand and social systems on the other.”157 Such institutional review can channel recognition for the need by government decision-makers to be more self-critical in policy targeted killing designations, more willing to consider alternative points of view, and more willing to anticipate possible objections.158 Findings have also shown that ex ante awareness can lead to more reasoned judgment while also preventing tendentious and ideological inclinations (and political motivations incentivized and exploited by popular hysteria and fear).159¶ Requiring accounting in a formalized way prior to engaging in a targeted killing—by providing, for example, in camera review, limited declassification of information, explaining threat assessments outside the immediate circle of policy advisors, and securing meaningful judicial review via a COAACC-like tribunal—can promote a more reliable and informed deliberation in the executive branch. With process-based judicial review, the COAACC could effectively reorient the decision to target individuals abroad by examining key procedural aspects—particularly assessing the reliability of the “terrorist” designation—and can further incentivize national security policy-makers to engage in more carefully reasoned choices and evaluate available alternatives than when subject to little to no review.

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

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

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

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

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

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

#### Strengthened AQAP undermines the Saudi regime

Colonel Hassan Abosaq 12, US Army War College, master of strategic studies degree candidate, 2012, "The Implications of Unstable on Saudi Arabia," Strategy Research Project, www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA560581

AQAP has been vociferous in its opposition to the Saudi regime, and is likely to continue targeting the Kingdom, particularly its oil installations and members of the royal family. In August 2009, an AQAP member attempted to assassinate Prince Mohammed bin Naif, the Saudi Assistant Interior Minister for security affairs. The prince’s attacker was trained in and launched his attack from Yemen, confirming to the Saudis that instability in Yemen poses a security threat to Saudi Arabia. A strengthened AQAP in Yemen is certain to try to put pressure on Saudi Arabia and to strike Saudi targets. AQAP’s military chief, Qasin al-Raymi, warned the Saudi Leadership in July 2011 that they are still regarded as apostates. And he specifically placed King Abdullah, the late Crown Prince Sultan, Interior Minister Prince Naif, and his son Mohammed Bin Naif on the target list.21 In March 2010, Saudi Arabia foiled several planned attacks on oil installation with the arrest of more than 100 suspected al-Qaeda militants. The arrests included 47 Saudis, 51 Yemenis, a Somali, a Bangladeshi, and an Eritrean.22 The wider domestic strife in Yemen has provided AQAP with some breathing space. More worrisome for Saudi Arabia is the increased lawlessness within Yemen. Not only does this provide the space that al-Qaeda needs to regroup, train, recruit, but it also deflects the state resources away from counterterrorism operations. Saudi Arabia has for years been working to infiltrate al-Qaeda in its unstable neighbor to south, Yemen. Saudi Arabia has also been giving Yemen a great deal of assistance to counterterrorism and it is worrying to the Saudis to see all of that assistance diverted from the purposes for which it was intended. In June 2011, AQAP leaped into the security vacuum created by Yemen’s political volatility, and 63 al-Qaeda in the Arabian Peninsula fighters escaped from a Yemeni prison.23 This exemplifies how Yemeni instability emboldens this lethal al-Qaeda affiliate. As the Yemeni military consolidates its strength in an attempt to maintain state control and fight two insurgencies and oppress the protesters, AQAP has further expanded its safe haven in the country’s interior, further increasing their operational capacity. This organization has not only attacked police, foreigners, and diplomatic missions within the country, but also served as a logistic base for acts of terrorism abroad. Yemen also has become the haven for jihad militants not just from Yemen and Saudi Arabia, but from all over the world which includes some Arabs, Americans, Europeans, Africans and others. Al-Qaeda camps, where terrorists from all over the world train are also situated in Yemen. The growing anarchy and al-Qaeda presence could spill over into Saudi Arabia.

#### That destabilizes the Middle East

Anthony Cordesman 11, Arleigh A. Burke Chair in Strategy at CSIS, former director of intelligence assessment in the Office of the Secretary of Defense, former adjunct prof of national security studies at Georgetown, PhD from London University, Feb 26 2011, “Understanding Saudi Stability and Instability: A Very Different Nation,” http://csis.org/publication/understanding-saudi-stability-and-instability-very-different-nation

History scarcely means we can take Saudi stability for granted. Saudi Arabia is simply too critical to US strategic interests and the world. Saudi petroleum exports play a critical role in the stability and growth of a steadily more global economy, and the latest projections by the Department of Energy do not project any major reductions in the direct level of US dependence on oil imports through 2025.¶ Saudi Arabia is as important to the region’s security and stability as it is to the world’s economy. It is the key to the efforts of the Gulf Cooperation Council to create local defenses, and for US strategic cooperation with the Southern Gulf states. It plays a critical role as a counterbalance to a radical and more aggressive Iran, it is the source of the Arab League plan for a peace with Israel, and it has become a key partner in the war on terrorism. The US strategic posture in the Middle East depends on Saudi Arabia having a friendly and moderate regime.

#### Global nuke war

Primakov 9 [September, Yevgeny, President of the Chamber of Commerce and Industry of the Russian Federation; Member of the Russian Academy of Sciences; member of the Editorial Board of Russia in Global Affairs. This article is based on the scientific report for which the author was awarded the Lomonosov Gold Medal of the Russian Academy of Sciences in 2008, “The Middle East Problem in the Context of International Relations”]

The Middle East conflict is unparalleled in terms of its potential for spreading globally. During the Cold War, amid which the Arab-Israeli conflict evolved, the two opposing superpowers directly supported the conflicting parties: the Soviet Union supported Arab countries, while the United States supported Israel. On the one hand, the bipolar world order which existed at that time objectively played in favor of the escalation of the Middle East conflict into a global confrontation. On the other hand, the Soviet Union and the United States were not interested in such developments and they managed to keep the situation under control. The behavior of both superpowers in the course of all the wars in the Middle East proves that. In 1956, during the Anglo-French-Israeli military invasion of Egypt (which followed Cairo’s decision to nationalize the Suez Canal Company) the United States – contrary to the widespread belief in various countries, including Russia – not only refrained from supporting its allies but insistently pressed – along with the Soviet Union – for the cessation of the armed action. Washington feared that the tripartite aggression would undermine the positions of the West in the Arab world and would result in a direct clash with the Soviet Union. Fears that hostilities in the Middle East might acquire a global dimension could materialize also during the Six-Day War of 1967. On its eve, Moscow and Washington urged each other to cool down their “clients.” When the war began, both superpowers assured each other that they did not intend to get involved in the crisis militarily and that that they would make efforts at the United Nations to negotiate terms for a ceasefire. On July 5, the Chairman of the Soviet Government, Alexei Kosygin, who was authorized by the Politburo to conduct negotiations on behalf of the Soviet leadership, for the first time ever used a hot line for this purpose. After the USS *Liberty* was attacked by Israeli forces, which later claimed the attack was a case of mistaken identity, U.S. President Lyndon Johnson immediately notified Kosygin that the movement of the U.S. Navy in the Mediterranean Sea was only intended to help the crew of the attacked ship and to investigate the incident. The situation repeated itself during the hostilities of October 1973. Russian publications of those years argued that it was the Soviet Union that prevented U.S. military involvement in those events. In contrast, many U.S. authors claimed that a U.S. reaction thwarted Soviet plans to send troops to the Middle East. Neither statement is true. The atmosphere was really quite tense. Sentiments both in Washington and Moscow were in favor of interference, yet both capitals were far from taking real action. When U.S. troops were put on high alert, Henry Kissinger assured Soviet Ambassador Anatoly Dobrynin that this was done largely for domestic considerations and should not be seen by Moscow as a hostile act. In a private conversation with Dobrynin, President Richard Nixon said the same, adding that he might have overreacted but that this had been done amidst a hostile campaign against him over Watergate. Meanwhile, Kosygin and Foreign Minister Andrei Gromyko at a Politburo meeting in Moscow strongly rejected a proposal by Defense Minister Marshal Andrei Grechko to “demonstrate” Soviet military presence in Egypt in response to Israel’s refusal to comply with a UN Security Council resolution. Soviet leader Leonid Brezhnev took the side of Kosygin and Gromyko, saying that he was against any Soviet involvement in the conflict. The above suggests an unequivocal conclusion that control by the superpowers in the bipolar world did not allow the Middle East conflict to escalate into a global confrontation. After the end of the Cold War, some scholars and political observers concluded that a real threat of the Arab-Israeli conflict going beyond regional frameworks ceased to exist. However, in the 21st century this conclusionno longer conforms to the realit**y**. The U.S. military operation in Iraq has changed the balance of forces in the Middle East. The disappearance of the Iraqi counterbalance has brought Iran to the fore as a regional power claiming a direct role in various Middle East processes. I do not belong to those who believe that the Iranian leadership has already made a political decision to create nuclear weapons of its own. Yet Tehran seems to have set itself the goal of achieving a technological level that would let it make such a decision (the “Japanese model”) under unfavorable circumstances. Israel already possesses nuclear weapons and delivery vehicles. In such circumstances, the absence of a Middle East settlement opens a dangerous prospect ofa nuclear collision in the region, which would have catastrophic consequences for the whole world**.** The transition to a multipolar world has objectively strengthened the role of states and organizations that are directly involved in regional conflicts, which increases the latter’s danger and reduces the possibility of controlling them. This refers, above all, to the Middle East conflict. The coming of Barack Obama to the presidency has allayed fears that the United States could deliver a preventive strike against Iran (under George W. Bush, it was one of the most discussed topics in the United States). However, fears have increased that such a strike can be launched *Yevgeny Primakov* 1 3 2 RUSSIA IN GLOBAL AFFAIRS VOL. 7 • No. 3 • JULY – SEPTEMBER• 2009 by Israel, which would have unpredictable consequences for the region and beyond. It seems that President Obama’s position does not completely rule out such a possibility.

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

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

#### That causes nuke war with India

Bruce Riedel 9, senior fellow and director of the Brookings Intelligence Project, senior fellow in the Saban Center for Middle East Policy, served as a senior advisor to the last four U.S. presidents on South Asia and the Middle East, served in the CIA for 29 years, “Armageddon in Islamabad,” National Interest, Jul/Aug 2009, Issue 102, ebsco

The effects of an extremist takeover would not end at Pakistan's borders. A worsening conflict between Sunni and Shia could easily seep into the rest of the Muslim world.¶ Pakistan's influence in Afghanistan would deepen. The south and east of the country would be a virtual part of the Pakistani state. The commander of the faithful, Mullah Muhammad Omar, and his Quetta shura (ruling council) would emerge as the odds-on favorite to take over the area. The non-Pashtun majority in Afghanistan would certainly resist, but in the Pashtun belt across the south and east, the Afghan Taliban would be even stronger than it is now. Afghanistan would go back to looking much like it did pre-the American intervention in 2001, with a dominant Taliban backed by Pakistan fighting the Tajiks, Uzbeks and Shia backed by Iran, Russia and the central-Asian republics.¶ Afghanistan would become a battleground for influence between Pakistan and Iran, as Sunni-dominated Pakistan and Shia-dominated Iran would find a war for ideological dominance almost irresistible. Both states would also be tempted to meddle with each other's minorities--the Shia in Pakistan and Sunni in Iran, as well as both countries' Baluchi minority. Baluchistan, Pakistan's southwestern province that neighbors both Afghanistan and Iran, is already unstable on both sides of the border. It would become another area of conflict. The low-intensity insurgencies already burning in the border areas would become more severe with outsiders fueling the fires. As the Islamic Emirate of Pakistan suppressed its Shia minority, Tehran would be forced to sit and watch because of Pakistan's nuclear weapons. And so Iran would certainly accelerate its nuclear-weapons-development program but would be years, if not decades, behind its neighbor.¶ With many of the LET in power, a major mass-casualty attack on India like the November 2008 Mumbai bombings would be likely. And this time it could spark war. India has shown remarkable restraint over the last decade as the Pakistani army, militants in Pakistan or both have carried out provocations like the Kargil War in 1999, the attack on the Indian parliament in 2001 and the Mumbai raid last year. Of course, a big part of India's restraint is the lack of any good military option for retaliation that would avoid the risk of nuclear Armageddon. But if pressed hard enough, New Delhi may need to take some action. Blockading Karachi and demanding the closure of militant training camps might seem to be a way to increase pressure without firing the first shot but it carries a high risk of spiraling escalation. And of course any chance for a peace agreement in Kashmir would be dead. Violence in the region would rise. The new militant regime in Pakistan would increase support for the insurgency.

#### 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

A nuclear conflict in the subcontinent would have disastrous effects on the world as a whole. In a January 2010 paper published in Scientific American, climatology professors Alan Robock and Owen Brian Toon forecast the global repercussions of a regional nuclear war. Their results are strikingly similar to those of studies conducted in 1980 that conclude that a nuclear war between the United States and the Soviet Union would result in a catastrophic and prolonged nuclear winter, which could very well place the survival of the human race in jeopardy. In their study, Robock and Toon use computer models to simulate the effect of a nuclear exchange between India and Pakistan in which each were to use roughly half their existing arsenals (50 apiece). Since Indian and Pakistani nuclear devices are strategic rather than tactical, the likely targets would be major population centers. Owing to the population densities of urban centers in both nations, the number of direct casualties could climb as high as 20 million. ¶ The fallout of such an exchange would not merely be limited to the immediate area. First, the detonation of a large number of nuclear devices would propel as much as seven million metric tons of ash, soot, smoke, and debris as high as the lower stratosphere. Owing to their small size (less than a tenth of a micron) and a lack of precipitation at this altitude, ash particles would remain aloft for as long as a decade, during which time the world would remain perpetually overcast. Furthermore, these particles would soak up heat from the sun, generating intense heat in the upper atmosphere that would severely damage the earth’s ozone layer. The inability of sunlight to penetrate through the smoke and dust would lead to global cooling by as much as 2.3 degrees Fahrenheit. This shift in global temperature would lead to more drought, worldwide food shortages, and widespread political upheaval.

### Norms

#### Global drone acquisition is inevitable---demonstrating US compliance with strict legal limits is key to delegitimize abusive practices

Philip Alston 11, John Norton Pomeroy Professor of Law at the NYU School of Law, former UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “The CIA and Targeted Killings Beyond Borders,” 2011, 2 Harv. Nat'l Sec. J. 283, lexis

Philip Alston 11, John Norton Pomeroy Professor of Law at the NYU School of Law, former UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “The CIA and Targeted Killings Beyond Borders,” 2011, 2 Harv. Nat'l Sec. J. 283, lexis

Because the United States inevitably contributes disproportionately to the shaping of global regime rules, and because it is making more extensive overt use of targeted killings than other states, its approach will heavily influence emerging global norms. This is of particular relevance in relation to the use of drones. There are strong reasons to believe that a permissive policy on drone-fired targeted killings will come back to haunt the United States in a wide range of potential situations in the not too distant future.¶ In 2011, a senior official noted that while for the past two decades the United States and its allies had enjoyed "relatively exclusive access to sophisticated precision-strike technologies," that monopoly will soon come to an end. n605 In fact, in the case of drones, some 40 countries already possess the basic technology. Many of them, including Israel, Russia, Turkey, China, India, Iran, the United Kingdom, and France either have or are seeking drones that also have the capability to shoot laser-guided missiles. Overall, the United States accounts for less than one-third of worldwide investment in UAVs. n606 On "Defense Industry Day," August 22, 2010, the Iranian President unveiled a new drone with a range of 1,000 kilometers (620 miles) and capable of carrying four cruise missiles. n607 He referred to the drones as a "messenger of honor and human generosity and a saviour of mankind," but warned ominously that it can also be "a messenger of death for enemies of mankind." n608¶ To date, the United States has opted to maintain a relatively flexible and open-ended legal regime in relation to drones, in large part to [\*442] avoid setting precedents and restricting its own freedom of action. n609 But this policy seems to assume that other states will not acquire lethal drone technology, will not use it, or will not be able to rely upon the justifications invoked by the United States. These assumptions seem questionable. American commentators favoring a permissive approach to targeted killings abroad are generally very careful to add that such killings would under no circumstances be permitted within the United States. n610¶ Thus when the United States argues that targeted killings are legitimate when used in response to a transnational campaign of terror directed at it, it needs to bear in mind that other states can also claim to be so afflicted, even if the breadth of the respective terrorist threats is not comparable. Take Russia, for example, in relation to terrorists from the Caucasus. It has characterized its military operations in Chechnya since 1999 as a counter-terrorism operation and has deployed "seek and destroy" groups of army commandoes to "hunt down groups of insurgents." n611 It has been argued that the targeted killings that have resulted are justified because they are necessary to Russia's fight against terrorism. n612 Although [\*443] there are credible reports of targeted killings conducted outside of Chechnya, Russia has refused to acknowledge responsibility for, or otherwise justify, such killings. It has also refused to cooperate with any investigation or prosecution. n613¶ In 2006, the Russian Parliament passed a law permitting the Federal Security Service (FSB) to kill alleged terrorists overseas, if authorized to do so by the President. n614 The law defines terrorism and terrorist activity extremely broadly, including "practices of influencing the decisions of government, local self-government or international organizations by terrorizing the population or through other forms of illegal violent action," and also any "ideology of violence." n615¶ Under the law, there appears to be no restriction on the use of military force "to suppress international terrorist activity outside the Russian Federation." n616 The law requires the President to seek the endorsement of the Federation Council to use regular armed forces outside Russia, but the President may deploy FSB security forces at his own discretion. According to press accounts, at the time of the law's passage, "Russian legislators stressed that the law was designed to target terrorists hiding in failed States and that in other situations the security services would work with foreign intelligence services to pursue their goals." n617 There is no publicly available information about any procedural safeguards to ensure Russian targeted killings are lawful, the criteria for those who may be targeted, or accountability mechanisms for review of targeting operations. In adopting the legislation, Russian parliamentarians claimed that, "they were emulating Israeli and US actions in adopting a law [\*444] allowing the use of military and special forces outside the country's borders against external threats." n618¶ China is another case in point. It has consistently characterized unrest among its Uighur population as being driven by terrorist separatists. But Uighur activists living outside China are not so classified by other states. That means that China could invoke American policies on targeted killing to carry out a lethal attack against a Uighur activist living in Europe or the United States. The Chinese Foreign Ministry welcomed the killing of Osama bin Laden as "a milestone and a positive development for the international anti-terrorism efforts," adding ominously in reference to the Uighur situation that, "China has also been a victim of terrorism." n619 When a journalist asked how American practice in Pakistan compared to possible Chinese external action against a Uighur to a senior United States counter-terrorism official, the latter distinguished the situations from one another on the unconvincing grounds of Pakistan's special relationship with the United States. n620¶ A more realistic note was struck by Anne-Marie Slaughter after bin Laden's killing when she observed that "having a list of leaders that you are going to take out is very troubling morally, legally and in terms of precedent. If other countries decide to apply that principle to us, we're in trouble." n621 The conclusion to be drawn is that the United States might, in the not too distant future, need to rely on international legal norms to delegitimize the behavior of other states using lethal drone strikes. For that reason alone, it would seem prudent today to be contributing to the construction of a regime that strictly limits the circumstances in which one state can seek to kill an individual in another state without the latter's consent and without complying with the applicable rules of international [\*445] law. To the extent that the United States genuinely believes it is currently acting within the scope of those rules it needs to provide the evidence.

#### Credible external oversight is key---leads to international modeling and gives the US the leverage to prevent overuse

Omar S. Bashir 12, is a Ph.D. candidate in the Department of Politics at Princeton University and a graduate of the Department of Aeronautics and Astronautics at MIT, September 24th, 2012, "Who Watches the Drones?" Foreign Affairs,www.foreignaffairs.com/articles/138141/omar-s-bashir/who-watches-the-drones

Further, the U.S. counterterrorism chief John Brennan has noted that the administration is "establishing precedents that other nations may follow." But, for now, other countries have no reason to believe that the United States carries out its own targeted killing operations responsibly. Without a credible oversight program, those negative perceptions of U.S. behavior will fill the vacuum, and an anything-goes standard might be the result. U.S. denunciations of other countries' programs could come to ring hollow. ¶ If the United States did adopt an oversight system, those denunciations would carry more weight. So, too, would U.S. pressure on other states to adopt similar systems: just as suspicions grow when countries refuse nuclear inspection, foreign governments that turned down invitations to apply a proven system of oversight to their own drone campaigns would reveal their disregard for humanitarian concerns.

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

James Whibley 13, received a M.A. in International Relations from Victoria University of Wellington, New Zealand, February 6th, 2013 "The Proliferation of Drone Warfare: The Weakening of Norms and International Precedent," Georgetown Journal of International Affairs,journal.georgetown.edu/2013/02/06/the-proliferation-of-drone-warfare-the-weakening-of-norms-and-international-precedent-by-james-whibley/

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

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

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

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

#### Unrestrained drone use causes accidental drone wars globally---US restraint is key to solve

Alan W. Dowd 13, senior fellow at the Sagamore Institute for Policy Research, the American Security Council Foundation and the Fraser Institute, adjunct professor at Butler University, “Drone Wars: Risks and Warnings,” Parameters 42(4)/43(1) Winter-Spring 2013, http://www.strategicstudiesinstitute.army.mil/pubs/parameters/Issues/WinterSpring\_2013/1\_Article\_Dowd.pdf

Given their record and growing capabilities, it seems unlikely that UCAVs will ever be renounced entirely; however, perhaps the use of drones for lethal purposes can be curtailed or at least contained. It is important to recall that the United States has circumscribed its own military power in the past by drawing the line at certain technologies. The United States halted development of the neutron bomb in the 1970s and dismantled its neutron arsenal in the 2000s; agreed to forswear chemical weapons; and renounced biological warfare “for the sake of all mankind.”44¶ That brings us back to The New York Times’ portrait of the drone war. Washington must be mindful that the world is watching. This is not an argument in defense of international watchdogs tying America down. The UN secretariat may refuse to recognize America’s special role, but by turning to Washington whenever civil war breaks out, or nuclear weapons sprout up, or sea lanes are threatened, or natural disas- ters wreak havoc, or genocide is let loose, it is tacitly conceding that the United States is, well, special. Washington has every right to kill those who are trying to kill Americans. However, the brewing international backlash against the drone war reminds us that means and methods matter as much as ends. ¶ Error War¶ If these geo-political consequences of remote-control war do not get our attention, then the looming geo-strategic consequences should. If we make the argument that UCAV pilots are in the battlespace, then we are effectively saying that the battlespace is the entire earth. If that is the case, the unintended consequences could be dramatic.¶ First, if the battlespace is the entire earth, the enemy would seem to have the right to wage war on those places where UCAV operators are based. That’s a sobering thought, one few policymakers have contemplated.¶ Second, power-projecting nations are following America’s lead and developing their own drones to target their distant enemies by remote. An estimated 75 countries have drone programs underway.45 Many of these nations are less discriminating in employing military force than the United States—and less skillful. Indeed, drones may usher in a new age of accidental wars. If the best drones deployed by the best military crash more than any other aircraft in America’s fleet, imagine the acci- dent rate for mediocre drones deployed by mediocre militaries. And then imagine the international incidents this could trigger between, say, India and Pakistan; North and South Korea; Russia and the Baltics or Poland or Georgia; China and any number of its wary neighbors.

#### It also erodes strategic stability among great powers---causes spiraling escalation

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

#### A drone arms race is coming in East Asia---lack of norms causes territorial disputes to spiral out of control

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But there's a much bigger and more pernicious cycle in motion. The introduction of indigenous drones into Asia's strategic environment -- now made official by China's maiden unmanned provocation -- will bring with it additional sources of instability and escalation to the fiercely contested South and East China Seas. Even though no government in the region wants to participate in major power war, there is widespread and growing concern that military conflict could result from a minor incident that spirals out of control.¶ Unmanned systems could be just this trigger. They are less costly to produce and operate than their manned counterparts, meaning that we're likely to see more crowded skies and seas in the years ahead. UAVs also tend to encourage greater risk-taking, given that a pilot's life is not at risk. But being unmanned has its dangers: any number of software or communications failures could lead a mission awry. Combine all that with inexperienced operators and you have a perfect recipe for a mistake or miscalculation in an already tense strategic environment. ¶ The underlying problem is not just the drones themselves. Asia is in the midst of transitioning to a new warfighting regime with serious escalatory potential. China's military modernization is designed to deny adversaries freedom of maneuver over, on, and under the East and South China Seas. Although China argues that its strategy is primarily defensive, the capabilities it is choosing to acquire to create a "defensive" perimeter -- long-range ballistic and cruise missiles, aircraft carriers, submarines -- are acutely offensive in nature. During a serious crisis when tensions are high, China would have powerful incentives to use these capabilities, particularly missiles, before they were targeted by the United States or another adversary. The problem is that U.S. military plans and posture have the potential to be equally escalatory, as they would reportedly aim to "blind" an adversary -- disrupting or destroying command and control nodes at the beginning of a conflict.¶ At the same time, the increasingly unstable balance of military power in the Pacific is exacerbated by the (re)emergence of other regional actors with their own advanced military capabilities. Countries that have the ability and resources to embark on rapid modernization campaigns (e.g., Japan, South Korea, Indonesia) are well on the way. This means that in addition to two great powers vying for military advantage, the region features an increasingly complex set of overlapping military-technical competitions that are accelerating tensions, adding to uncertainty and undermining stability.¶ This dangerous military dynamic will only get worse as more disruptive military technologies appear, including the rapid diffusion of unmanned and increasingly autonomous aerial and submersible vehicles coupled with increasingly effective offensive cyberspace capabilities.¶ Of particular concern is not only the novelty of these new technologies, but the lack of well-established norms for their use in conflict.¶ Thankfully, the first interaction between a Chinese UAV and manned Japanese fighters passed without major incident. But it did raise serious questions that neither nation has likely considered in detail. What will constrain China's UAV incursions from becoming increasingly assertive and provocative? How will either nation respond in a scenario where an adversary downs a UAV? And what happens politically when a drone invariably falls out of the sky or "drifts off course" with both sides pointing fingers at one another? Of most concern, how would these matters be addressed during a crisis, with no precedents, in the context of a regional military regime in which actors have powerful incentives to strike first?¶ These are not just theoretical questions: Japan's Defense Ministry is reportedly looking into options for shooting down any unmanned drones that enter its territorial airspace.¶ Resolving these issues in a fraught strategic environment between two potential adversaries is difficult enough; the United States and China remain at loggerheads about U.S. Sensitive Reconnaissance Operations along China's periphery. But the problem is multiplying rapidly. The Chinese are running one of the most significant UAV programs in the world, a program that includes Reaper- style UAVs and Unmanned Combat Aerial Vehicles (UCAVs); Japan is seeking to acquire Global Hawks; the Republic of Korea is acquiring Global Hawks while also building their own indigenous UAV capabilities; Taiwan is choosing to develop indigenous UAVs instead of importing from abroad; Indonesia is seeking to build a UAV squadron; and Vietnam is planning to build an entire UAV factory.¶ One could take solace in Asia's ability to manage these gnarly sources of insecurity if the region had demonstrated similar competencies elsewhere. But nothing could be further from the case. It has now been more than a decade since the Association of Southeast Asian Nations (ASEAN) and China signed a declaration "to promote a peaceful, friendly and harmonious environment in the South China Sea," which was meant to be a precursor to a code of conduct for managing potential incidents, accidents, and crises at sea. But the parties are as far apart as ever, and that's on well-trodden issues of maritime security with decades of legal and operational precedent to build upon.¶ It's hard to be optimistic that the region will do better in an unmanned domain in which governments and militaries have little experience and where there remains a dearth of international norms, rules, and institutions from which to draw.

#### Causes US-Sino nuclear war

Max Fisher 11, foreign affairs writer and editor for the Atlantic, MA in security studies from Johns Hopkins, Oct 31 2011, “5 Most Likely Ways the U.S. and China Could Spark Accidental Nuclear War,” http://www.theatlantic.com/international/archive/2011/10/5-most-likely-ways-the-us-and-china-could-spark-accidental-nuclear-war/247616

Neither the U.S. nor China has any interest in any kind of war with one other, nuclear or non-nuclear. The greater risk is an accident. Here's how it would happen. First, an unforeseen event that sparks a small conflict or threat of conflict. Second, a rapid escalation that moves too fast for either side to defuse. And, third, a mutual misunderstanding of one another's intentions.¶ This three-part process can move so quickly that the best way to avert a nuclear war is for both sides to have absolute confidence that they understand when the other will and will not use a nuclear weapon. Without this, U.S. and Chinese policy-makers would have to guess -- perhaps with only a few minutes -- if and when the other side would go nuclear. This is especially scary because both sides have good reason to err on the side of assuming nuclear war. If you think there's a 50-50 chance that someone is about to lob a nuclear bomb at you, your incentive is to launch a preventative strike, just to be safe. This is especially true because you know the other side is thinking the exact same thing. In fact, even if you think the other side probably won't launch an ICBM your way, they actually might if they fear that you're misreading their intentions or if they fear that you might over-react; this means they have a greater incentive to launch a preemptive strike, which means that you have a greater incentive to launch a preemptive strike, in turn raising their incentives, and on and on until one tiny kernel of doubt can lead to a full-fledged war that nobody wants.¶ The U.S. and the Soviet Union faced similar problems, with one important difference: speed. During the first decades of the Cold War, nuclear bombs had to be delivered by sluggish bombers that could take hours to reach their targets and be recalled at any time. Escalation was much slower and the risks of it spiraling out of control were much lower. By the time that both countries developed the ICBMs that made global annihilation something that could happen within a matter of minutes, they'd also had a generation to sort out an extremely clear understanding of one another's nuclear policies. But the U.S. and China have no such luxury -- we inherited a world where total mutual destruction can happen as quickly as the time it takes to turn a key and push a button.¶ The U.S. has the world's second-largest nuclear arsenal with around 5,000 warheads (first-ranked Russia has more warheads but less capability for flinging them around the globe); China has only about 200, so the danger of accidental war would seem to disproportionately threaten China. But the greatest risk is probably to the states on China's periphery. The borders of East Asia are still not entirely settled; there are a number of small, disputed territories, many of them bordering China. But the biggest potential conflict points are on water: disputed naval borders, disputed islands, disputed shipping lanes, and disputed underwater energy reserves. These regional disputes have already led to a handful of small-scale naval skirmishes and diplomatic stand-offs. It's not difficult to foresee one of them spiraling out of control. But what if the country squaring off with China happens to have a defense treaty with the U.S.?¶ There's a near-infinite number of small-scale conflicts that could come up between the U.S. and China, and though none of them should escalate any higher than a few tough words between diplomats, it's the unpredictable events that are the most dangerous. In 1983 alone, the U.S. and Soviet Union almost went to war twice over bizarre and unforeseeable events. In September, the Soviet Union shot down a Korean airliner it mistook for a spy plane; first Soviet officials feared the U.S. had manufactured the incident as an excuse to start a war, then they refused to admit their error, nearly pushing the U.S. to actually start war. Two months later, Soviet spies misread an elaborate U.S. wargame (which the U.S. had unwisely kept secret) as preparations for an unannounced nuclear hit on Moscow, nearly leading them to launch a preemptive strike. In both cases, one of the things that ultimately diverted disaster was the fact that both sides clearly understood the others' red lines -- as long as they didn't cross them, they could remain confident there would be no nuclear war.¶ But the U.S. and China have not yet clarified their red lines for nuclear strikes. The kinds of bizarre, freak accidents that the U.S. and Soviet Union barely survived in 1983 might well bring today's two Pacific powers into conflict -- unless, of course, they can clarify their rules. Of the many ways that the U.S. and China could stumble into the nightmare scenario that neither wants, here are five of the most likely. Any one of these appears to be extremely unlikely in today's world. But that -- like the Soviet mishaps of the 1980s -- is exactly what makes them so dangerous.

### Plan

#### The United States federal government should create a statutory cause of action for damages for those unlawfully injured by targeted killing operations, their heirs, or their next friend.

### Solvency

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

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The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes.¶ Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large.¶ For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings.¶ Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat.¶ Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge.¶ Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.¶ Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed.

#### Cause of action creates a deterrent effect that makes officials think twice about drones---drawbacks of judicial review don’t apply

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At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I believe that virtually all of these concerns could be mitigated. ¶ For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. With respect to adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief, it’s difficult to see any pure Article III problem with such a suit for retrospective relief.¶ As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what the Supreme Court’s 1985 decision in Tennessee v. Garner20 contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, it demonstrates that judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances—albeit not always ideally—the government’s interest in secrecy with the detainee’s ability to contest the evidence against him.21 Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures,22 so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. And although the Guantánamo procedures have been developed by courts on an ad hoc basis (a process that has itself been criticized by some jurists), 23 Congress might also look to provisions it enacted in 1996 in creating the little-known Alien Terrorist Removal Court, especially 8 U.S.C. § 1534,24 as a model for such proceedings. ¶ More to the point, it should also follow that courts would be far more able as a practical matter to review the relevant questions in these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight—removed from the pressures of the moment and with the benefit of the dispassionate distance that judicial review provides. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc.¶ In addition to the substantive questions, it will also be much easier for courts to review the government’s own internal procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go a long way toward proving the lawfulness vel non of an individual strike.¶ As I mentioned before, there would still be a host of legal doctrines that would likely get in the way of such suits. Just to name a few, there is the present (albeit, in my view, unjustified) hostility to judicially inferred causes of actions under Bivens; the state secrets privilege;and sovereign and official immunity doctrines. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that immunity is constitutionally grounded),25 each of these concerns can be overcome by statute—as at least some of them arguably have been in the context of the express damages actions provided for under FISA. 26 So long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and immunity doctrines; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many—if not most—of these cases, these legal issues would be vitiated. Moreover, any concerns about exposing to liability government officers who acted in good faith and within the scope of their employment can be ameliorated by following the model of the Westfall Act, and substituting the United States as the proper defendant in any suit arising out of such an operation.27¶ Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists.¶ Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. Some might also object to this proposal as being unnecessary—that, given existing criminal laws and executive orders, there is already a sufficiently clear prohibition on unlawful strikes to render any such damages regime unnecessarily superfluous. ¶ At least as to this last objection, it bears emphasizing that the existing laws depend entirely upon the beneficence of the Executive Branch, since they assume both that the government will (1) willfully disclose details of unlawful operations rather than cover them up; and (2) prosecute its own in cases in which they cross the line. Given both prior practice and unconfirmed contemporary reports of targeted killing operations that appear to raise serious legality issues, such as “signature strikes,” it doesn’t seem too much of a stretch to doubt that these remedies will prove sufficient.¶ In addition, there are two enormous upsides to damages actions that, in my mind, make them a least-worst solution—even if they are deeply, fundamentally flawed:¶ First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability—and, as importantly, precedent—such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution may even compel at least some form of judicial process. 28 Compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to balance all of the relevant private, government, and legal interests at stake in such cases.¶ \* \* \*¶ In his concurrence in the Supreme Court’s famous decision in the Steel Seizure case, Justice Frankfurter suggested that “The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.”¶ 29 It seems to me, Mr. Chairman, that targeted killing operations by the Executive Branch present the legislature with two realistic choices: Congress could accept with minimal scrutiny the Executive Branch’s claims that these operations are carried out lawfully and with every relevant procedural safeguard to maximize their accuracy—and thereby open the door to the “unchecked disregard” of which Justice Frankfurter warned. Or Congress could require the government to defend those assertions in individual cases before a neutral magistrate invested with the independence guaranteed by the Constitution’s salary and tenure protections. So long as the government’s interests in secrecy are adequately protected in such proceedings, and so long as these operations really are consistent with the Constitution and laws of the United States, what does the government have to hide?

#### Ex post review creates a credible signal of compliance that restrains future executives

Kwame Holman 13, congressional correspondent for PBS NewsHour; citing Rosa Brooks, Prof of Law at Georgetown University Law Center, former Counselor to the Under Secretary of Defense for Policy, former senior advisor at the US Dept of State, “Congress Begins to Weigh In On Drone Strikes Policy,” http://www.pbs.org/newshour/rundown/2013/04/congress-begins-to-weigh-in-on-drone-strikes-policy.html

While some experts have argued for court oversight of drone strikes before they're carried out, Brooks sides with those who say that would be unwieldy and unworkable.¶ Brooks says however an administration that knows its strikes could face court review after the fact -- with possible damages assessed -- would be more responsible and careful about who it strikes and why.¶ "If Congress were to create a statutory cause of action for damages for those who had been killed in abusive or mistaken drone strikes, you would have a court that would review such strikes after the fact. [That would] create a pretty good mechanism that would frankly keep the executive branch as honest as we hope it is already and as we hope it will continue to be into administrations to come," Brooks said.¶ "It would be one of the approaches that would go a very long way toward reassuring both U.S. citizens and the world more generally that our policies are in compliance with rule of law norms."

#### Only judicial oversight can credibly verify compliance with the laws of war

Avery Plaw 7, Associate Prof of Political Science at the University of Massachusetts at Dartmouth, PhD in Political Science from McGill University, “Terminating Terror: The Legality, Ethics and Effectiveness of Targeting Terrorists,” Theoria: A Journal of Social and Political Theory, No. 114, War and Terror (December 2007), pp. 1-27

To summarize, the general policy of targeting terrorists appears to be defensible in principle in terms of legality, morality and effectiveness. However, some specific targetings have been indefensible and should be prevented from recurring. Critics focus on the indefensible cases and insist that these are best prevented by condemning the general policy. States which target terrorists and their defenders have insisted that self-defense provides a blanket justification for targeting operations. The result has been a stalemate over terrorist targeting harmful to both the prosecution of the war on terror and the credibility of international law. Yet neither advocates nor critics of targeting appear to have a viable strategy for resolving the impasse. A final issue which urgently demands attention, therefore, is whether there are any plausible prospects for a coherent and principled political compromise over the issue of targeting terrorists.¶ Conclusion: the Possibility of Principled Compromise ¶ This final section offers a brief case that there is room for a principled compromise between critics and advocates of targeting terrorists. The argument is by example—a short illustration of one promising possibility. It will not satisfy everyone, but I suggest that it has the potential to resolve the most compelling concerns on both sides.¶ The most telling issues raised by critics of targeting fall into three categories: (1) the imperative need to establish that targets are combatants; (2) the need in attacking combatants to respect the established laws of war; and (3) the overwhelming imperative to avoid civilian casualties. The first issue seems to demand an authoritative judicial determination that could only be answered by a competent court. The second issue requires the openly avowed and consistent implementation of targeting according to standards accepted in international law—a requirement whose fulfillment would best be assured through judicial oversight. The third issue calls for independent evaluation of operations to assure that standards of civilian protection are robustly upheld, a role that could be effectively performed by a court.

#### Courts allow verification without the costs of full disclosure

Avery Plaw 8, Associate Prof of Political Science at the University of Massachusetts at Dartmouth, PhD in Political Science from McGill University, “The Legality of Targeted Killing as an Instrument of War: The Case of Qaed Salim Sinan al-Harethi,” Prepared for the 5th Global Conference on War, Virtual War and Human Security, Budapest 2008

However, the analysis suggests two further points. The first point is that there is an urgent need for more extensive oversight of targeting operations. Since terrorists do not wear uniforms, it is difficulty for those outside the targeting government(s) to know when the targets are legitimate combatants under either of the last two legal paradigms. This concern is illustrated by the al-Harethi case in a number of ways. First, the legitimacy of the operation is at best suggested by the evidence publicly available. Moreover, it seems likely that the available evidence is incomplete – that is, that the state or states cooperating in the targeting have further material that is not available to the public. In addition, information essential to making a just determination includes not only targets’ past actions, but also current activities and, where they can be discerned, future plans, and the quality of evidence the state has on these latter subjects. Such information is typically not publicly available. It may be added that the available material on the al-Harethi targeting is extensive in comparison with other, more recent cases such as the US operations in Somalia in 2007. For these reasons it will often be difficult for those outside the targeting governments to come to a clear determination of the combat status of targets. There is therefore an urgent need for more extensive oversight of targeting operations. ¶ At the same time, targeting states can make a strong case against making all available evidence on future targets publicly available. To disseminate such information in advance could obviously tip off the target and scuttle the operation. Even after the fact, however, the governments may legitimately point out that making sensitive intelligence publicly available may threaten to expose sources and to hamper the continued accumulation of intelligence. In either case, the government may argue that it would be failing in its primary duty to protect its citizens. One possible means of reconciling the need for greater oversight and the need to protect key information would be the creation of independent and authoritative judicial bodies to review the combat status of potential targets in camera. (Plaw 2007: 23-5)¶ Second, there is an urgent need to clarify the criteria for the determination of legitimate targets, and more broadly which of the legal paradigms (or what combination thereof) properly applies to such cases. If the decisive argument in defense of the al-Harethi targeting is, as suggested above, an appeal to the self-defense framework, that would suggest some important limits to who could legitimately be targeted. For example, the condition of necessity would require evidence that further attacks were planned. The state would also have to be prepared to show that there was no alternative means to neutralize the threat posed by the terrorist target. Moreover, the state would have to be able to show that it had reason to believe that it could neutralize the terrorist without posing a disproportionate threat to civilians. These criteria look like they may have been met in the al-Harethi case, although it cannot be known be certainty, at least based on the information available. Again, this unavoidable uncertainty points to the urgent need for a credible and independent body, preferably a judicial body, to review such evidence. This is all the clearer in light of two issues that remain unresolved to date: whether a criterion of immediacy or imminence should be applied to such cases, and how exactly the pertinent criteria should be interpreted. Finally, the urgency of judicial oversight is clearer still because some recent targeting operations do not appear to have met even the criteria of necessity and proportionality. For example, an American targeting attack on 13 January 2006 in Damadola, Pakistan, killed 18 unintended victims. However, Ayman Zawahiri, the intended target of the attack, appears not to have even been present.

## 2AC

### Acct

#### Alt to drones is less force not more

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

Finally, a number of experts have argued that drone strikes are not only effec - tive but even morally required, because they cause fewer civilian casualties than air strikes or ground operations in combat zones. 67 Contrasting the relative precision of drone warfare to indiscriminate attacks such as the firebombing of Dresden during the Second World War, Henry A. Crumpton, former deputy chief of the CIA’s counterterrorism centre, concluded that drones are a morally superior, even humane, form of warfare. 68 Others have made the counterfactual argument: that far more US and allied troops and Afghan civilians would have been killed over time through enemy attacks and normal NATO ground and air operations if the high-level militants killed by the drone strikes had not been removed from the battlefield. 69 Referring either to real casualties or to casualties prevented by keeping hardened terrorists off the battlefield, many experts have argued that drones are more attractive, and morally defensible, than aerial bombardments or ground military operations.¶ On this point, the distinction between drone strikes inside and outside a theatre of active combat becomes relevant. One could plausibly argue that drone strikes are a more humane option for active theatres of war, where the alternatives— such as air strikes or ground operations—may kill more civilians. 70 In this respect, the Pentagon-run drone programme in Afghanistan might be morally justifiable if the alternatives—such as US air strikes or Afghan ground operations—were worse from the vantage point of non-combatant casualties. At least in the first instance, this is an empirical question. If it is true that drones kill fewer Afghan civilians than NATO air strikes, it would be hard to argue that air strikes should be employed in preference to drones in active theatres of war, although hard questions would remain about the procedures and standards for selecting targets for those strikes. 71 Yet this comparison breaks down when applied to the CIA-run drone programme operating in countries where the United States is not at war. In these cases, the comparison to normal war-fighting is fallacious: the alternative to drones in Pakistan, Yemen, Somalia and elsewhere is not American-led ground operations or air strikes. The US is not formally at war with any of these states and is not legally entitled to use ground forces or air strikes on their territory (though this has not stopped the US from launching periodic air strikes in the past). The realistic alternatives to drones in these cases range from diplomatic pressure to capacity-building to even covert operations, all of which were employed to some benefit prior to the Obama administration’s escalation of drone strikes in 2009. In countries such as Pakistan, Yemen and Somalia, a cost–benefit analysis of drones has to be measured against these plausible alternatives, not against options that are neither realistic nor legally permitted outside a war zone. In these cases, drones are likely to be found wanting. It is hard to argue, for example, that drone strikes will consistently be more effective and kill fewer civilians than carefully constructed covert operations against HVTs. It is also hard to argue that drone strikes consti - tute a durable or long-term strategy in countries where there is a pressing need for capacity-building, especially in policing and intelligence work. The cost–benefit analysis for drones in these cases needs to be measured against these less violent alternatives, not against extreme examples from wartime like the firebombing of Dresden.

### T---Restriction/General

#### We meet---plan restricts Presidential authority to construe the legal limits on targeted killing---assassination ban proves

Jonathan Ulrich 5, associate in the International Arbitration Group of White & Case, LLP, JD from the University of Virginia School of Law, “NOTE: The Gloves Were Never On: Defining the President's Authority to Order Targeted Killing in the War Against Terrorism,” 45 Va. J. Int'l L. 1029, lexis

The discretionary authority to construe the limits of the assassination ban remains in the hands of the president. He holds the power, moreover, to amend or revoke the Executive Order, and may do so without publicly disclosing that he has done so; since the Order addresses intelligence activities, any modifications may be classified information. n24 The placement of the prohibition within an executive order, therefore, effectively "guarantees that the authority to order assassination lies with the president alone." n25 Congress has similar authority to revise or repeal the Order - though its failure to do so, when coupled with the three unsuccessful attempts to legislate a ban, may be read as implicit authority for the president to retain targeted killing as a [\*1035] policy option. n26 Indeed, in recent years, there have been some efforts in Congress to lift the ban entirely. n27

#### The authority to authorize without judicial permission is a war powers authority---we restrict it---FISA proves

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

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

#### Restriction means a limit or qualification---it includes conditions

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### Restrictions can happen after the fact

ECHR 91,European Court of Human Rights, Decision in Ezelin v. France, 26 April 1991, http://www.bailii.org/eu/cases/ECHR/1991/29.html

The main question in issue concerns Article 11 (art. 11), which provides:¶ "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.¶ 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."¶ Notwithstanding its autonomous role and particular sphere of application, Article 11 (art. 11) must, in the present case, also be considered in the light of Article 10 (art. 10) (see the Young, James and Webster judgment of 13 August 1981, Series A no. 44, p. 23, § 57). The protection of personal opinions, secured by Article 10 (art. 10), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (art. 11).¶ A. Whether there was an interference with the exercise of the freedom of peaceful assembly¶ In the Government’s submission, Mr Ezelin had not suffered any interference with the exercise of his freedom of peaceful assembly and freedom of expression: he had been able to take part in the procession of 12 February 1983 unhindered and to express his convictions publicly, in his professional capacity and as he wished; he was reprimanded only after the event and on account of personal conduct deemed to be inconsistent with the obligations of his profession.¶ The Court does not accept this submission. The term "restrictions" in paragraph 2 of Article 11 (art. 11-2) - and of Article 10 (art. 10-2) - cannot be interpreted as not including measures - such as punitive measures - taken not before or during but after a meeting (cf. in particular, as regards Article 10 (art. 10), the Handyside judgment of 7 December 1976, Series A no. 24, p. 21, § 43, and the Müller and Others judgment of 24 May 1988, Series A no. 133, p. 19, § 28).

#### Authority is what the president may do not what the president can do

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

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

#### War powers authority is the President’s authority to wage war and conduct self defense

Manget 91 Fred F, Assistant General Counsel with the CIA, "Presidential War Powers", 1991, media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf

The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. " 3 ; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything required to wage war successfully. 3 H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means . "39 ¶ Thus, the Executive Branch's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.

### K

#### Norms disad

Robert Farley 11, assistant professor at the Patterson School of Diplomacy and International Commerce at the University of Kentucky, Over the Horizon: U.S. Drone Use Sets Global Precedent, October 12, http://www.worldpoliticsreview.com/articles/10311/over-the-horizon-u-s-drone-use-sets-global-precedent

What is undeniable, however, is that we face a drone race, which inevitably evokes the question of arms control. Because they vary widely in technical characteristics, appearance and even definition, drones are poor candidates for "traditional" arms control of the variety that places strict limits on number of vehicles constructed, fielded and so forth. Rather, to the extent that any regulation of drone warfare is likely, it will come through treaties limiting how drones are used. ¶ Such a treaty would require either deep concern on the part of the major powers that advances in drone capabilities threatened their interests and survival, or widespread revulsion among the global public against the practice of drone warfare. The latter is somewhat more likely than the former, as drone construction at this point seems unlikely to dominate state defense budgets to the same degree as battleships in the 1920s or nuclear weapons in the 1970s. However, for now, drones are used mainly to kill unpleasant people in places distant from media attention. So creating the public outrage necessary to force global elites to limit drone usage may also prove difficult, although the specter of "out of control robots" killing humans with impunity might change that. P.W. Singer, author of "Wired for War," argues that new robot technologies will require a new approach to the legal regulation of war. Robots, both in the sky and on the ground, not to mention in the sea, already have killing capabilities that rival those of humans. Any approach to legally managing drone warfare will likely come as part of a more general effort to regulate the operation of robots in war.¶ However, even in the unlikely event of global public outrage, any serious effort at regulating the use of drones will require U.S. acquiescence. Landmines are a remarkably unpopular form of weapon, but the United States continues to resist the Anti-Personnel Mine Ban Convention. If the United States sees unrestricted drone warfare as being to its advantage -- and it is likely to do so even if China, Russia and India develop similar drone capabilities -- then even global outrage may not be sufficient to make the U.S. budge on its position. This simply reaffirms the original point: Arms races don't just "happen," but rather are a direct, if unexpected outcome of state policy. Like it or not, the behavior of the United States right now is structuring how the world will think about, build and use drones for the foreseeable future. Given this, U.S. policymakers should perhaps devote a touch more attention to the precedent they're setting.

#### US intervention stems from a lack of clear strategy, not a desire for control---the aff is key to re-politicize war

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

Rethinking Global War¶ Western governments appear to portray some of the distinctive character - istics that Schmitt attributed to ‘motorized partisans’, in that the shift from narrowly strategic concepts of security to more abstract concerns reflects the fact that Western states have tended to fight free-floating and non-strategic wars of aggression without real enemies at the same time as professing to have the highest values and the absolute enmity that accompanies these. The government policy documents and critical frameworks of ‘global war’ have been so accepted that it is assumed that it is the strategic interests of Western actors that lie behind the often irrational policy responses, with ‘global war’ thereby being understood as merely the extension of instrumental struggles for control. This perspective seems unable to contemplate the possibility that it is the lack of a strategic desire for control that drives and defines ‘global’ war today.¶ Very few studies of the ‘war on terror’ start from a study of the Western actors themselves rather than from their declarations of intent with regard to the international sphere itself. This methodological framing inevitably makes assumptions about strategic interactions and grounded interests of domestic or international regulation and control, which are then revealed to explain the proliferation of enemies and the abstract and metaphysical discourse of the ‘war on terror’ (Chandler, 2009a). For its radical critics, the abstract, global discourse merely reveals the global intent of the hegemonizing designs of biopower or neoliberal empire, as critiques of liberal projections of power are ‘scaled up’ from the international to the global. Radical critics working within a broadly Foucauldian problematic have no problem grounding global war in the needs of neoliberal or biopolitical governance or US hegemonic designs. These critics have produced numer - ous frameworks, which seek to assert that global war is somehow inevitable, based on their view of the needs of late capitalism, late modernity, neoliberal - ism or biopolitical frameworks of rule or domination. From the declarations of global war and practices of military intervention, rationality, instrumentality and strategic interests are read in a variety of ways (Chandler, 2007). Global war is taken very much on its own terms, with the declarations of Western governments explaining and giving power to radical abstract theories of the global power and regulatory might of the new global order of domination, hegemony or empire.¶ The alternative reading of ‘global war’ rendered here seeks to clarify that the declarations of global war are a sign of the lack of political stakes and strategic structuring of the international sphere rather than frameworks for asserting global domination. We increasingly see Western diplomatic and military interventions presented as justified on the basis of value-based declarations, rather than in traditional terms of interest-based outcomes. This was as apparent in the wars of humanitarian intervention in Bosnia, Somalia and Kosovo – where there was no clarity of objectives and therefore little possibility of strategic planning in terms of the military intervention or the post-conflict political outcomes – as it is in the ‘war on terror’ campaigns, still ongoing, in Afghanistan and Iraq.¶ There would appear to be a direct relationship between the lack of strategic clarity shaping and structuring interventions and the lack of political stakes involved in their outcome. In fact, the globalization of security discourses seems to reflect the lack of political stakes rather than the urgency of the secu - rity threat or of the intervention. Since the end of the Cold War, the central problematic could well be grasped as one of withdrawal and the emptying of contestation from the international sphere rather than as intervention and the contestation for control. The disengagement of the USA and Russia from sub-Saharan Africa and the Balkans forms the backdrop to the policy debates about sharing responsibility for stability and the management of failed or failing states (see, for example, Deng et al., 1996). It is the lack of political stakes in the international sphere that has meant that the latter has become more open to ad hoc and arbitrary interventions as states and international institutions use the lack of strategic imperatives to construct their own mean - ing through intervention. As Zaki Laïdi (1998: 95) explains:¶ war is not waged necessarily to achieve predefined objectives, and it is in waging war that the motivation needed to continue it is found. In these cases – of which there are very many – war is no longer a continuation of politics by other means, as in Clausewitz’s classic model – but sometimes the initial expression of forms of activity or organization in search of meaning. . . . War becomes not the ultimate means to achieve an objective, but the most ‘efficient’ way of finding one. ¶ The lack of political stakes in the international sphere would appear to be the precondition for the globalization of security discourses and the ad hoc and often arbitrary decisions to go to ‘war’. In this sense, global wars reflect the fact that the international sphere has been reduced to little more than a vanity mirror for globalized actors who are freed from strategic necessities and whose concerns are no longer structured in the form of political struggles against ‘real enemies’. The mainstream critical approaches to global wars, with their heavy reliance on recycling the work of Foucault, Schmitt and Agamben, appear to invert this reality, portraying the use of military fire - power and the implosion of international law as a product of the high stakes involved in global struggle, rather than the lack of clear contestation involv - ing the strategic accommodation of diverse powers and interests.¶ Conclusion¶ International law evolved on the basis of the ever-present possibility of real war between real enemies. Today’s global wars of humanitarian intervention and the ‘war on terror’ appear to be bypassing or dismantling this frame - work of international order. Taken out of historical context, today’s period might seem to be analogous to that of the imperial and colonial wars of the last century, which evaded or undermined frameworks of international law, which sought to treat the enemy as a justus hostis – a legitimate opponent to be treated with reciprocal relations of equality. Such analogies have enabled critical theorists to read the present through past frameworks of strategic political contestation, explaining the lack of respect for international law and seemingly arbitrary and ad hoc use of military force on the basis of the high political stakes involved. Agamben’s argument that classical international law has dissipated into a ‘permanent state of exception’, suggesting that we are witnessing a global war machine – constructing the world in the image of the camp and reducing its enemies to bare life to be annihilated at will – appears to be given force by Guantánamo Bay, extraordinary rendition and Abu Ghraib.¶ Yet, once we go beyond the level of declarations of policy values and secu - rity stakes, the practices of Western militarism fit uneasily with the policy discourses and suggest a different dynamic: one where the lack of political stakes in the international sphere means that there is little connection between military intervention and strategic planning. In fact, as Laïdi suggests, it would be more useful to understand the projection of violence as a search for meaning and strategy rather than as an instrumental outcome. To take one leading example of the ‘unlimited’ nature of liberal global war: the treatment of terrorist suspects held at Guantánamo Bay, in legal suspension as ‘illegal combatants’ and denied Geneva Red Cross conventions and prisoner-of-war status. The ‘criminalization’ of the captives in Guantánamo Bay is not a case of reducing their status to criminals but the development of an exceptional legal category. In fact, far from criminalizing fundamentalist terrorists, the USA has politically glorified them, talking up their political importance.¶ It would appear that the designation of ‘illegal combatants’ could be under - stood as an ad hoc and arbitrary response to the lack of a clear strategic frame - work and ‘real enemy’. In this context, the concept of criminalization needs to be reconsidered. Guantánamo Bay can be seen instead as an attempt to create an enemy of special status. In fact, with reference to Agamben’s thesis, it would be better to understand the legal status of the ‘illegal combatants’ as sacralizing them rather than reducing them to the status of ‘bare life’. In act - ing in an exceptional way, the USA attempted to create a more coherent and potent image of the vaguely defined security threat.¶ This approach is very different, for example, from the framework of crimi - nalization used by the British government in the fight against Irish repub - licanism, where the withdrawal of prisoner-of-war status from republican prisoners was intended to delegitimize their struggle and was a strategic act of war. Ironically, whereas the criminalization of the republican struggle was an attempt to dehumanize the republicans – to justify unequal treatment of combatants – the criminalization of global terrorists has served to human - ize them in the sense of giving coherence, shape and meaning to a set of individuals with no clear internally generated sense of connection. Far from ‘denying the enemy the very quality of being human’, it would appear that the much-publicized abuses of the ‘war on terror’ stem from the Western inability to cohere a clear view of who the enemy are or of how they should be treated.¶ The policy frameworks of global war attempt to make sense of the implosion of the framework of international order at the same time as articulating the desire to recreate a framework of meaning through policy activity. However, these projections of Western power, even when expressed in coercive and militarized forms, appear to have little connection to strategic or instrumental projects of hegemony. The concept of ‘control’, articulated by authors such as Carl Schmitt and Faisal Devji, seems to be key to understanding the transi - tion from strategic frameworks of conflict to today’s unlimited (i.e. arbitrary) expressions of violence. Wars fought for control, with a socially grounded telluric character, are limited by the needs of instrumental rationality: the goals shape the means deployed. Today’s Western wars are fought in a non- strategic, non-instrumental framework, which lacks a clear relationship between means and ends and can therefore easily acquire a destabilizing and irrational character. To mistake the arbitrary and unlimited nature of violence and coercion without a clear strategic framework for a heightened desire for control fails to contextualize conflict in the social relations of today.

#### Perm---endorse the affirmative and the alt as two parallel political strategies

#### That solves best---the plan provides a new avenue for promoting skepticism and opposition to executive targeted killing

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, http://epress.anu.edu.au/war\_terror/mobile\_devices/ch15s11.html

It appears that, as Scheuerman has noted, it is too easy to assume that the liberal constitutional order is incapable of generating meaningful internal resistance to the unfolding counter-terrorism cycle.[151] The ‘relative autonomy’ of national and transnational legal processes from prevailing political winds opens up these processes as an avenue for activists to challenge the use of emergency powers and the apparently inevitable unfolding of the counter-terrorism cycle. This is not to underestimate the potency of the symbiosis between terror, repression and backlash. Nor is it to downplay the way in which the rhetoric of emergency and the distorting impact of counter-terrorism strategies can continue to dominate the government response to the terrorist threat. The views of the ‘civil libertarian pessimists’ as to the inevitable limits of the protection that legal processes can offer are not unfounded, being rooted in both history and contemporary events. They may however underestimate to some extent the ability of the new regime of human rights protection to generate some sort of ‘dampening’ effect.[152]¶ Conclusion¶ Over time, the UK experience has been that the counter-terrorism cycle of terror, panic and repression recurs again and again, with consequent negative results for civil liberties, the integrity of the law and suspect minorities. Interestingly, however, and perhaps contrary to some academic expectations, the HRA and ECHR have in the wake of 9/11 played a role in disrupting the repetition of the usual cycle of responses to terrorism. First, the existence of the HRA has very much restricted what the UK government has attempted to achieve using new anti-terrorist powers. It has forced the government to use ‘Convention-compliant’ routes. While these routes can readily be used to evade the requirements of the Convention, some real obstacles still remain in the path of the cycle. Second, the greater salience given to human rights discourse since the incorporation of the HRA, and in particular the symbolic impact of the Belmarsh decision, has galvanised political and media scepticism about the deployment of anti-terrorist powers.¶ It would be erroneous to argue that the HRA has fundamentally changed the political landscape. The UK government is still constantly pushing at the boundaries of what it can achieve within the constraints of the ECHR/HRA. Dorling has drawn an interesting contrast between Spain, the European country to suffer the worst terrorist attack since 9/11, and the UK. She notes that Spanish political office-holders remain committed to adhering to conventional human rights norms and the use of ordinary criminal law, while the UK government has in general been dismissive of human rights norms and attached to using its panoply of ever-expanding counter-terrorism powers.[153] However, the UK experience since 9/11 shows that the constraints imposed by legal processes that build in some commitment to human rights do have some teeth, even in ‘states of exception’. Legally-enforceable rights mechanisms are perhaps more durable than has been feared. Human rights may not prevent the siren song of ‘strict necessity’ from setting the course of state policy, but can play some role in impeding its traditional bulldozing progress.

#### Alt can’t mobilize opposition to drone warfare

Judah A. Druck 12, Editor of the Cornell Law Review, Nov 15 2012, “Droning On: The War Powers Resolution and the Numbing Effect of Technology-Driven Warfare,” Cornell Law Review Vol. 98, No. 1, pp. 209, http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf

The practical effects of this move toward a technology-driven, and therefore limited, proxy style of warfare are mixed. On the one hand, the removal of American soldiers from harm’s way is a clear benefit,124as is the reduced harm to the American public in general. For that, we should be thankful. But there is another effect that is less easy to identify: public apathy. By increasing the use of robotics and decreas-ing the probability of harm to American soldiers, modern warfare has “affect[ed] the way the public views and perceives war” by turning it into “the equivalent of sports fans watching war, rather than citizens sharing in its importance.”125 As a result, the American public has slowly fallen victim to the numbing effect of technology-driven war-fare; when the risks of harm to American soldiers abroad and civilians at home are diminished, so too is the public’s level of interest in for-eign military policy.126¶ In the political sphere, this effect snowballs into both an uncaring public not able (or willing) to effectively mobilize in order to chal-lenge presidential action and enforce the WPR, and a Congress whose own willingness to check presidential military action is heavily tied to public opinion.127Recall, for example, the case of the Mayaguez, where potentially unconstitutional action went unchecked because the mission was perceived to be a success.128 Yet we can imagine that most missions involving drone strikes will be “successful” in the eyes of the public: even if a strike misses a target, the only “loss” one needs to worry about is the cost of a wasted missile, and the ease of deploying another drone would likely provide a quick remedy. Given the politi-cal risks associated with making critical statements about military ac-tion, especially if that action results in success,129 we can expect even less congressional WPR enforcement as more military engagements are supported (or, at the very least, ignored) by the public. In this respect, the political reaction to the Mayaguez seems to provide an ex-ample of the rule, rather than the exception, in gauging political reac-tions within a technology-driven warfare regime.¶ Thus, when the public becomes more apathetic about foreign af-fairs as a result of the limited harms associated with technology-driven warfare, and Congress’s incentive to act consequently diminishes, the President is freed from any possible WPR constraints we might expect him to face, regardless of any potential legal issues.130 Perhaps unsur-prisingly, nearly all of the constitutionally problematic conflicts car-ried out by presidents involved smaller-scale military actions, rarely totaling more than a few thousand troops in direct contact with hos-tile forces.131 Conversely, conflicts that have included larger forces, which likely provided sufficient incentive for public scrutiny, have generally complied with domestic law.132The result is that as wars become more limited,133 unilateral pres-idential action will likely become even more unchecked as the triggers for WPR enforcement fade away. In contrast with the social and politi-cal backlash witnessed during the Civil War, World War I, the Vietnam War, and the Iraq War, contemporary military actions provide insuffi-cient incentive to prevent something as innocuous and limited as a drone strike. Simply put, technology-driven warfare is not conducive to the formation of a substantial check on presidential action.134

#### That turns the K---enables endless war

Andrew Bacevich 12, Prof of History and IR at Boston University, PhD in American Diplomatic History from Princeton, visiting fellow at the Kroc Institute for International Peace Studies at the University of Notre Dame, “The New American Way of War,” http://www.lrb.co.uk/blog/2012/02/13/andrew-bacevich/the-new-american-way-of-war/

For a democracy, waging endless war poses a challenge. There are essentially two ways to do it. The first is for the state to persuade the people that the country faces an existential threat. This is what the Bush administration attempted to do after 9/11, for a time with notable success. Scaremongering made possible the invasion of Iraq. Had Operation Iraqi Freedom produced the victory expected by its architects, scaremongering would probably have led in due course to Operation Iranian Freedom and Operation Syrian Freedom. But Iraq led to an outcome that Americans proved unwilling to underwrite.¶ The second way is for the state to insulate the people from war’s effects, thereby freeing itself from constraints. A people untouched (or seemingly untouched) by war are far less likely to care about it. Persuaded that they have no skin in the game, they will permit the state to do whatever it wishes to do. This is the approach the Obama administration is now pursuing: first through the expanded use of aerial drones for both intelligence gathering and ‘targeted’ assassination; and, second, through the expanded deployment of covert special operations forces around the world, such as the team that killed Osama bin Laden. The New York Times reported today that the head of the Special Operations Command ‘is seeking new authority to move his forces faster and outside of normal Pentagon deployment channels’.¶ Drones and special forces are the essential elements of a new American way of war, conducted largely in secret with minimal oversight or accountability and disregarding established concepts of sovereignty and international law. Bush’s critics charge him with being a warmonger. But Obama has surpassed his predecessor in shedding any remaining restraints on waging war.

#### Alt can’t eliminate war---it’s overly optimistic

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

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

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

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

#### Exec fiat is a voting issue---our authors take squo Prez policies as given which makes aff offense impossible---and there’s no comparative lit

Richard H. Pildes 13, J.D. candidate at NYU school of law, and Samuel Issacharoff, J.D. candidate at NYU school of law, June 1st, 2013, "Drones and the Dilemma of Modern Warfare,"lsr.nellco.org/cgi/viewcontent.cgi?article=1408&context=nyu\_plltwp

As with all use of lethal force, there must be procedures in place to maximize the likelihood of correct identification and minimize risk to innocents. In the absence of form al legal processes, sophisticated institutional entities engaged in repeated, sensitive actions – including the military – will gravitate toward their own internal analogues to legal process, even without the compulsion or shadow of formal judicial review. This is the role of bureaucratic legalism 63 in developing sustained institutional practices, even with the dim shadow of unclear legal commands. These forms of self- regulation are generated by programmatic needs to enable the entity’s own aims to be accomplished effectively; at times, that necessity will share an overlapping converge with humanitarian concerns to generate internal protocols or process-like protections that minimize the use of force and its collateral consequences, in contexts in which the use of force itself is otherwise justified. But because these process-oriented protections are not codified in statute or reflected in judicial decisions, they typically are too invisible to draw the eye of constitutional law scholars who survey these issues from much higher levels of generality.

#### Perm---do both---shields the link because all branches acting in concert would avoid backlash here and abroad

#### Internal fixes aren’t credible

Jack Goldsmith 13, Henry L. Shattuck Professor at Harvard Law School, May 1 2013, “How Obama Undermined the War on Terror,” <http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism>

As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

#### DOD shift is not seen as credible

Jack Goldsmith 13, Henry L. Shattuck Professor at Harvard Law School, May 1 2013, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism

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#### DOD shift reduces accountability

Deborah Pearlstein 13, Assistant Prof of Law at the Benjamin H Cardozo School of Law at Yeshiva University, Mar 20 2013, “Getting the CIA Out of the Drone Business,” http://opiniojuris.org/2013/03/20/getting-the-cia-out-of-the-drone-business/

All that said, the organizational shift, if it happens, won’t solve everything. While one might expect that DOD has better, more clearly settled process constraints on the front end, some suggest that congressional oversight of clandestine JSOC (the military’s Joint Special Operations Command) operations may be weaker than comparable oversight of CIA covert operations on the back end. If that’s the case, Congress should move to enhance the oversight role of the armed services committees to at least match the role played by the intelligence committees in keeping abreast of the activities of the CIA. But even on the intelligence side, back-end congressional oversight is fraught with limitations – involving sometimes only a handful of congressional leaders, sometimes with highly restricted expert staff engagement, and in all events, shrouded in secrecy. Congressional oversight is inadequate to constrain power in this area for the same reason that executive-branch-only constraints often fall short – political accountability is scarcely possible when policy is pursued in secret. Whether in CIA’s hands, or DOD’s, the problem of secrecy is the biggest hurdle to ensuring U.S. targeting operations are conducted legally. Until there is more transparency with the general public – transparency about who can be targeted, when, and under what legal authority – no institutional fix will work.

#### Drones trade off with other CIA ops

Jeremy Scahill 12, Puffin Foundation Writing Fellow at The Nation Institute, national security correspondent for The Nation magazine, Nov 14 2012, “The Petraeus Legacy: A Paramilitary CIA?” http://www.thenation.com/article/171247/petraeus-legacy-paramilitary-cia#

“I would not say that CIA has been taken over by the military, but I would say that the CIA has become more militarized,” Philip Giraldi, a retired career CIA case officer, told The Nation. “A considerable part of the CIA budget is now no longer spying; it’s supporting paramilitaries who work closely with JSOC to kill terrorists, and to run the drone program.” The CIA, he added, “is a killing machine now.”¶ As head of US Central Command in 2009, Petraeus issued execute orders that significantly broadened the ability of US forces to operate in a variety of countries, including Yemen, where US forces began conducting missile strikes later that year. During Petraeus’s short tenure at the CIA, drone strikes conducted by the agency, sometimes in conjunction with JSOC, escalated dramatically in Yemen; in his first month in office, he oversaw a series of strikes that killed three US citizens, including 16-year-old Abdulrahman Awlaki. In some cases, such as the raid that killed Osama bin Laden in Pakistan, commandos from the elite JSOC operated under the auspices of the CIA, so that the mission could be kept secret if it went wrong.¶ One current State Department liaison who has also worked extensively with JSOC describes the CIA as becoming “a mini-Special Operations Command that purports to be an intelligence agency.” For all the praise Petraeus won for his counterinsurgency strategy and the “surge” in Iraq, he says, his real legacy is as a “political tool,” an enabler of those within the national security apparatus who want to see a continuation of covert global mini-wars. Pointing to the “mystique that surrounds JSOC” and Adm. William McRaven, commander of the Special Operations Command, the liaison says, “Petraeus was trying to implement that kind of command climate at the CIA.”¶ “Petraeus wanted to be McRaven, and now that window has closed,” he said. “We are firmly in the age of McRaven. There is no other titular figure with the confidence of the president that is able to articulate strategies and hold their own in rooms where everyone else has the same or greater amount of intellectual heft. McRaven is everything that Petraeus is not.”¶ Retired Army Col. W. Patrick Lang, a former senior defense intelligence official, says that Petraeus’s arrogance—“smoothly concealed beneath the appearance of the warrior scholar”—made him deeply unpopular among the military’s high-ranking officers. Dismissing the media’s portrayal of Petraeus as a “super soldier” and great military leader as “phony bullshit,” Lang describes him as the product of a military promotion system that encourages generals to think of themselves as “divinely selected.” “In fact, he didn’t write the COIN manual, the surge was not the main thing in improving the situation in Iraq…. They sent him to Afghanistan to apply the COIN doctrine in the same glorious way he did in Iraq, and it hasn’t worked. So, if you look beneath the surface from all this stuff, it’s just a lot of hot air. There are great generals, but this guy is not one of them.” Arriving at the CIA, Lang says, Petraeus “wanted to drag them in the covert action direction and to be a major player.”¶ As for Petraeus’s future, the State Department liaison said, “There will be a lot of profits to be made by him and his immediate circle of advisers, as they’re given a soft landing, whether it’s in academia or within the nexus of the military-industrial complex.”¶ Giraldi, the former senior CIA officer, expressed concern that in these circumstances, the “CIA is going to forget how to spy.” He also noted the “long-term consequence” of the militarization of the CIA: “every bureaucracy in the world is best at protecting itself. So once the CIA becomes a paramilitary organization, there’s going to be in-built pressure to keep going in that direction. Because you’ll have people at the senior levels in the organization who have come up that way and are protective of what they see as their turf,” he told me. “That’s the big danger.”

#### Key to cyber-defense

Kevin Coleman 13, senior fellow with the Technolytics Institute, former chief strategist at Netscape, and an adviser on cyber warfare and security, 8/1/13, “Digital Conflict,” http://defensesystems.com/blogs/cyber-report/2013/08/cyber-intelligence.aspx

Cyber defense is gradually moving from a reactive to a proactive posture. Many observers have recognized this is absolutely required if we are to properly defend the massive information infrastructure that we have become so dependent on.¶ One question that comes up repeatedly is the growing need for cyber intelligence. Most organizations, besides those in the government/military intelligence community, concentrate on vulnerabilities and recently unleashed malware as a form of cyber intelligence. ¶ Cyber intelligence goes far beyond software and hardware vulnerabilities. While both are critical elements, many more are needed to paint an accurate and detailed picture of this threat environment. ¶ The Ponemon Institute released a new study that surveyed more than 700 respondents from 378 organizations. It found more organizations are moving toward what was termed "live threat intelligence.” I highlighted this expanded paradigm (near-real-time cyber intelligence) at the AFCEA Joint Warfighting conference. If you look at all the contributing factors that influence the cyber-threat environment, you will discover there are about 30 different categories directly associated with cyber intelligence. ¶ What we are seeing is a shift within the intelligence community to address the growing need for cyber intelligence. That means the Central Intelligence Agency may have to morph into something like a Cyber Intelligence Agency.¶ As we aggressively adopt new technologies, most of which are directly dependent on cyber communications, threats to this domain along with the growing number of activists, criminals, terrorists and rogue nation-states targeting this critical infrastructure will continue to grow. We have already seen a handful of universities develop degree programs addressing cyber intelligence.¶ As we are to keep pace with the growing threats of cyber aggression, we must increase the attention and resources devoted to cyber intelligence.

#### Nuke war

Tilford 12 Robert, Graduate US Army Airborne School, Ft. Benning, Georgia, "Cyber attackers could shut down the electric grid for the entire east coast" 2012, http://www.examiner.com/article/cyber-attackers-could-easily-shut-down-the-electric-grid-for-the-entire-east-coa

To make matters worse a cyber attack that can take out a civilian power grid, for example could also cripple the U.S. military.¶ The senator notes that is that the same power grids that supply cities and towns, stores and gas stations, cell towers and heart monitors also power “every military base in our country.”¶ “Although bases would be prepared to weather a short power outage with backup diesel generators, within hours, not days, fuel supplies would run out”, he said.¶ Which means military command and control centers could go dark.¶ Radar systems that detect air threats to our country would shut down completely.¶ “Communication between commanders and their troops would also go silent. And many weapons systems would be left without either fuel or electric power”, said Senator Grassley.¶ “So in a few short hours or days, the mightiest military in the world would be left scrambling to maintain base functions”, he said.¶ We contacted the Pentagon and officials confirmed the threat of a cyber attack is something very real.¶ Top national security officials—including the Chairman of the Joint Chiefs, the Director of the National Security Agency, the Secretary of Defense, and the CIA Director— have said, “preventing a cyber attack and improving the nation’s electric grids is among the most urgent priorities of our country” (source: Congressional Record).¶ So how serious is the Pentagon taking all this?¶ Enough to start, or end a war over it, for sure (see video: Pentagon declares war on cyber attacks http://www.youtube.com/watch?v=\_kVQrp\_D0kY&feature=relmfu ).¶ A cyber attack today against the US could very well be seen as an “Act of War” and could be met with a “full scale” US military response.¶ That could include the use of “nuclear weapons”, if authorized by the President.

### DA

#### No deference now

Deborah Pearlstein 11, Visiting Faculty Fellow at the University of Pennsylvania Law School, Associate Research Scholar at the Woodrow Wilson School of Public and International Affaires at Princeton, “After Deference: Formalizing the Judicial Power for Foreign Relations Law,” University of Pennsylvania Law Review Vol 159:783, https://www.law.upenn.edu/journals/lawreview/articles/volume159/issue3/Pearlstein159U.Pa.L.Rev.783(2011).pdf

Historically, most scholars have accepted with little question the notion that the Court will defer to executive views in core matters of foreign relations, particularly where matters of national security are concerned.4 Yet on descriptive and normative grounds, the events of the past decade have called the prevailing account into question. In treaty interpretation, the Court has invoked a Marbury-based insistence on asserting its own formal interpretive authority. As the court put it perhaps most dramatically in recent opinioins construing the Vienna Convention on Consular Relations: “If treaties are to be given effect as federal law under our legal system, determining their meaning as a matter of federal law ‘is emphatically the province and duty of the judicial department,’ headed by the ‘one supreme Court’ established by the constitution.”5 Likewise, in a series of decisions involving national security, the court has been anything but deferential to the executive’s interpretation of the relevant statute or treaty. In Rasul v. Bush,6 Hamdi v. Rumbsfeld,7 Hamdan v. Rumsfeld,8 and Boumediene v. Bush,9 the Court has swept aside vigorous arguments by the executive that it refrain from engagement on abstention or political question grounds. Moreover, the Court has scarcely noted any doctrinal tradition of interpretive “deference” on the meaning of the laws. While descriptive claims that the Court invariably defers to the President in foreign relations law interpretation have always been subject to challenge, the Court’s recent behavior has made this account increasingly untenable.10

#### Oversight stops arbitrariness but not flex

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Concerted efforts to shirk and deflect responsibility, moreover, provide an illuminating context in which to reconsider Vice President Dick Cheney's mantra, "The risks of inaction are far greater than the risk of action." n41 The risks of inaction, in Cheney's worldview, are the risks of being "strangled by law," n42 in Jack Goldsmith's phrase, of being hamstrung by due process of law and constitutional checks and balances. Cheney's warnings about the hazards of failing to act, therefore, suggest that the metaphor of a tradeoff between liberty and security is not as anti-dogmatic and anti-hysterical as one might have initially thought. Behind the associated images of balances and scales, we find in fact that a spurious urgency is being invoked to justify a psychological or ideological unwillingness to submit proposed policies to a nonpartisan and professionally conducted cost-benefit analysis. This is the ultimate paradox of the anti-liberal approach to national security. The misleading hypothesis of a tradeoff between liberty and security has been used, surreptitiously, to prevent the application of cost-benefit thinking to alternative proposals for managing [\*321] the risk of terrorism, including nuclear terrorism.¶ Cheney's maxim about the risks of inaction escapes being false only by being meaningless. Given the scarcity of resources, every action is an inaction; heightening security in one respect opens up security vulnerabilities along other dimensions. For example, assigning the majority of the CIA's Arabic speakers to Iraq means withdrawing them from other missions; if the attention of high-level officials is devoted to one problem, it will not be devoted to another.¶ And here is another familiar example. American intelligence agencies reportedly hesitate to hire native Farsi-or Pashto-or Arabic-speaking agents because the best-qualified candidates have relatives in Muslim countries, where reliable background checks are difficult to carry out. n43 This is a serious problem because only CIA and FBI agents fluent in these languages are capable of recruiting and handling informants. n44 This example, too, illustrates that the real tradeoffs in the war on terror do not involve a sacrifice of liberty for security, but rather a willingness to increase one risk in order to reduce another risk. In this case, American intelligence has to run the risk of hiring compromised personnel n45 in order to reduce the risk of failing to understand the enemy. The tradeoffs necessary in the war on terror, as I have been arguing, almost always involve this sort of gamble. The question is: who has the right to choose the set of security risks that we, as a country, would be better off running?¶ Policymakers misunderstand worst-case reasoning when they use it to hide from themselves and others the opportunity costs of their risky choices. The commission of this elementary fallacy by Vice President Cheney and other architects of the U.S. response to 9/11 has been extensively documented by Ron Suskind. n46 Allocating national-security resources without paying attention to opportunity costs is equivalent to spending binges under soft budget constraints, an arrangement notorious for its unwelcome consequences. One cannot reasonably multiply "the magnitude of possible harm from an attack" (for example, a nuclear sneak attack by al Qaeda using WMD supplied by Saddam Hussein) by the low "probability of such an attack" n47 and then conclude that one must act immediately to preempt that remote threat without [\*322] first scanning the horizon and inquiring about other low-probability catastrophic events that are equally likely to occur. One cannot say that a one-percent possibility of a terrifying Saddam-Osama WMD handoff justifies placing seventy percent of our national-security assets in Iraq. But this seems to be how the Bush administration actually "reasoned," perhaps because of its go-it-alone fantasies, as if scarce resources were not a problem. Or, perhaps those responsible for national security during the Bush years succumbed to commission bias, namely, the overpowering feeling, in the wake of a devastating attack, that inaction is intolerable. This uncontrollable urge to act is often experienced in emergencies, namely, in situations where decision makers need to do something but do not know what to do.¶ Among President Bush's many unfortunate bequests to President Obama is the desperate "readiness" problem that afflicts the American military, overstretched in Iraq and Afghanistan and therefore unprepared to meet a third crisis elsewhere in the world. This problem was a direct result of the Bush administration's failure to take scarcity of resources and opportunity costs into account. What secret and unaccountable executive action made possible, it turns out, was not flexible adaptation to the demands of the situation but rather profligacy, arbitrariness and a failure to set priorities in a semi-rational way. Defenders of the half-truth that the capacity to adapt is increased when rules are bent or broken seem to have a weak grasp of the elementary distinction between flexibility and arbitrariness.¶ The Founders, by contrast, understood quite well the difference between the flexible and the arbitrary. The ground rules for decision making that they built into the American constitutional structure were meant to maximize the first while minimizing the second. From their perspective, therefore, the question "Can there be too much power to fight terrorism?" is poorly formulated. The right question to ask is: can there be too much arbitrary executive action in the United States' armed struggle with al Qaeda, potentially wasting scarce resources that could be more usefully deployed in another way? And the answer to this second question is obviously "yes."

#### Judicial review enhances expert decision-making---game theory proves

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

#### Drones trade off with countering rogue states

Audrey Cronin 13, Distinguished Service Professor at the School of Public Policy, George Mason University, DPhil in IR from Oxford, “Why Drones Fail,” Foreign Affairs Vol 92 Issue 4, July/Aug 2013, ebsco

In this environment, it is understandable that Americans and the politicians they elect are drawn to drone strikes. But as with the fight against al Qaeda and the conservation of enemies, drones are undermining U.S. strategic goals as much as they are advancing them. For starters, devoting a large percentage of U.S. military and intelligence resources to the drone campaign carries an opportunity cost. The U.S. Air Force trained 350 drone pilots in 2011, compared with only 250 conventional fighter and bomber pilots trained that year. There are 16 drone operating and training sites across the United States, and a 17th is being planned. There are also 12 U.S. drone bases stationed abroad, often in politically sensitive areas. In an era of austerity, spending more time and money on drones means spending less on other capabilities -- and drones are not well suited for certain emerging threats.¶ Very easy to shoot down, drones require clear airspace in which to operate and would be nearly useless against enemies such as Iran or North Korea. They also rely on cyber-connections that are increasingly vulnerable. Take into account their high crash rates and extensive maintenance requirements, and drones start to look not much more cost effective than conventional aircraft.

#### Turns the DA

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These force planning contingencies should not be taken lightly. While the military balance measured against Iran and North Korea may seem to favor the United States and its allies when compared with the increasing capability of China, regarding these rogue states simply as lesser-included cases would be a mistake. RAND’s Project Air Force has conducted in-depth research on what they have defined as nuclear-armed regional adversaries: “countries that pursue policies that are at odds with the United States and its security partners, whose actions run counter to broadly accepted norms of state behavior, and whose size and military forces are not of the first magnitude.”[26] That research led to an important conclusion that deterring the use of nuclear weapons by either North Korea or a newly armed Iran “could be highly problematic in any plausible conflict situations…for the simple reason that adversary leaders may not believe that they will be any worse off having used nuclear weapons than if they were to forego their use.”[27]¶ The implications of the RAND findings for this paper and for building Air Force capabilities and capacities is that the United States military needs to offer high assurance that it can prevent these would-be adversaries from using nuclear weapons, rather than deter them, as is the case with China. This calls for a modern conventional military force that in contested airspace can hold at risk enemy command and control, WMD, and their delivery systems. It requires high-caliber reconnaissance-strike systems that can locate, pinpoint, and attack hardened fixed targets as well as identifying and attacking targets on the move. In perhaps the most important difference between planning a force to prevent, rather than deter, active defenses will be required to destroy delivery vehicles after their launch, but before they can strike regional bases and ports.