### Off

#### The aff is not topical --- introducing armed forces only refers to human troops, not weapons systems such as drones for TK --- prefer our interpretation because it’s based on textual analysis, legislative history, and intent of the WPR

Lorber 13 – Eric Lorber, J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University Department of Political Science. January 2013, "Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?" University of Pennsylvania Journal of Contsitutional Law, 15 U. Pa. J. Const. L. 961, lexis nexis

As is evident from a textual analysis, n177 an examination of the legislative history, n178 and the broad policy purposes behind the creation of the Act, n179 [\*990] "armed forces" refers to U.S. soldiers and members of the armed forces, not weapon systems or capabilities such as offensive cyber weapons. Section 1547 does not specifically define "armed forces," but it states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government." n180 While this definition pertains to the broader phrase "introduction of armed forces," the clear implication is that only members of the armed forces count for the purposes of the definition under the WPR. Though not dispositive, the term "member" connotes a human individual who is part of an organization. n181 Thus, it appears that the term "armed forces" means human members of the United States armed forces. However, there exist two potential complications with this reading. First, the language of the statute states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces." n182 By using inclusionary - as opposed to exclusionary - language, one might argue that the term "armed forces" could include more than members. This argument is unconvincing however, given that a core principle of statutory interpretation, expressio unius, suggests that expression of one thing (i.e., members) implies the exclusion of others (such as non-members constituting armed forces). n183 Second, the term "member" does not explicitly reference "humans," and so could arguably refer to individual units and beings that are part of a larger whole (e.g., wolves can be members of a pack). As a result, though a textual analysis suggests that "armed forces" refers to human members of the armed forces, such a conclusion is not determinative.¶ An examination of the legislative history also suggests that Congress clearly conceptualized "armed forces" as human members of the armed forces. For example, disputes over the term "armed forces" revolved around who could be considered members of the armed forces, not what constituted a member. Senator Thomas Eagleton, one of the Resolution's architects, proposed an amendment during the process providing that the Resolution cover military officers on loan to a civilian agency (such as the Central [\*991] Intelligence Agency). n184 This amendment was dropped after encountering pushback, n185 but the debate revolved around whether those military individuals on loan to the civilian agency were still members of the armed forces for the purposes of the WPR, suggesting that Congress considered the term to apply only to soldiers in the armed forces. Further, during the congressional hearings, the question of deployment of "armed forces" centered primarily on past U.S. deployment of troops to combat zones, n186 suggesting that Congress conceptualized "armed forces" to mean U.S. combat troops.¶ The broad purpose of the Resolution aimed to prevent the large-scale but unauthorized deployments of U.S. troops into hostilities. n187 While examining the broad purpose of a legislative act is increasingly relied upon only after examining the text and legislative history, here it provides further support for those two alternate interpretive sources. n188 As one scholar has noted, "the War Powers Resolution, for example, is concerned with sending U.S. troops into harm's way." n189 The historical context of the War Powers Resolution is also important in determining its broad purpose; as the resolutions submitted during the Vietnam War and in the lead-up to the passage of the WPR suggest, Congress was concerned about its ability to effectively regulate the President's deployments of large numbers of U.S. troops to Southeast Asia, n190 as well as prevent the President from authorizing troop incursions into countries in that region. n191 The WPR was a reaction to the President's continued deployments of these troops into combat zones, and as such suggests that Congress's broad purpose was to prevent the unconstrained deployment of U.S. personnel, not weapons, into hostilities.¶ This analysis suggests that, when defining the term "armed forces," Congress meant members of the armed forces who would be placed in [\*992] harm's way (i.e., into hostilities or imminent hostilities). Applied to offensive cyber operations, such a definition leads to the conclusion that the War Powers Resolution likely does not cover such activities. Worms, viruses, and kill switches are clearly not U.S. troops. Therefore, the key question regarding whether the WPR can govern cyber operations is not whether the operation is conducted independently or as part of a kinetic military operation. Rather, the key question is the delivery mechanism. For example, if military forces were deployed to launch the cyberattack, such an activity, if it were related to imminent hostilities with a foreign country, could trigger the WPR. This seems unlikely, however, for two reasons. First, it is unclear whether small-scale deployments where the soldiers are not participating or under threat of harm constitute the introduction of armed forces into hostilities under the War Powers Resolution. n192 Thus, individual operators deployed to plant viruses in particular enemy systems may not constitute armed forces introduced into hostilities or imminent hostilities. Second, such a tactical approach seems unlikely. If the target system is remote access, the military can attack it without placing personnel in harm's way. n193 If it is close access, there exist many other effective ways to target such systems. n194 As a result, unless U.S. troops are introduced into hostilities or imminent hostilities while deploying offensive cyber capabilities - which is highly unlikely - such operations will not trigger the War Powers Resolution.

#### Voter for precision---only our interpretation is in the context of war powers authority under the WPR --- that’s key to adequate preparation and policy analysis

### Off

#### The 1AC represents a strategy of lawfare - using the law as a means to legitimize and justify an ever-expanding and authoritarian system of violence.

John Morrissey 11, Lecturer in Political and Cultural Geography, National University of Ireland, Galway; has held visiting research fellowships at University College Cork, City University of New York, Virginia Tech and the University of Cambridge. Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror, Geopolitics, Volume 16, Issue 2, 2011

Foucault’s envisioning of a more governmentalized and securitized modernity, framed by a ubiquitous architecture of security, speaks on various levels to the contemporary US military’s efforts in the war on terror, but I want to mention three specifically, which I draw upon through the course of the paper. First, in the long war in the Middle East and Central Asia, the US military actively seeks to legally facilitate both the ‘circulation’ and ‘conduct’ of a target population: its own troops. This may not be commonly recognized in biopolitical critiques of the war on terror but, as will be seen later, the Judge Advocate General Corps has long been proactive in a ‘juridical’ form of warfare, or lawfare, that sees US troops as ‘technical-biopolitical’ objects of management whose ‘operational capabilities’ on the ground must be legally enabled. Secondly, as I have explored elsewhere, the US military’s ‘grand strategy of security’ in the war on terror — which includes a broad spectrum of tactics and technologies of security, including juridical techniques — has been relentlessly justified by a power/knowledge assemblage in Washington that has successfully scripted a neoliberal political economy argument for its global forward presence.’9 Securitizing economic volatility and threat and regulating a neoliberal world order for the good of the global economy are powerful discursive touchstones registered perennially on multiple forums in Washington — from the Pentagon to the war colleges, from IR and Strategic Studies policy institutes to the House and Senate Armed Services Committees — and the endgame is the legitimization of the military’s geopolitical and biopolitical technologies of power overseas,20 Finally, Foucault’s conceptualization of a ‘society of security’ is marked by an urge to ‘govern by contingency’, to ‘anticipate the aleatory’, to ‘allow for the evental’.2’ It is a ‘security society’ in which the very language of security is promissory, therapeutic and appealing to liberal improvement. The lawfare of the contemporary US military is precisely orientated to plan for the ‘evental’, to anticipate a 4 series of future events in its various ‘security zones’ — what the Pentagon terms ‘Areas of Responsibility’ or ‘AORs’ (see figure 1)•fl These AORs equate, in effect, to what Foucault calls “spaces of security”, comprising “a series of possible events” that must be securitized by inserting both “the temporal” and “the uncertain”. And it is through preemptive juridical securitization ‘beyond the battlefield’ that the US military anticipates and enables the necessary biopolitical modalities of power and management on the ground for any future interventionary action. AORs and the ‘milieu’ of security For CENTCOM Commander General David Petraeus, and the other five US regional commanders across the globe, the population’ of primary concern in their respective AORs is the US military personnel deployed therein. For Petraeus and his fellow commanders, US ground troops present perhaps less a collection of “juridical-political” subjects and more what Foucault calls “technical- political” objects of “management and government”.25 In effect, they are tasked with governing “spaces of security” in which “a series of uncertain elements” can unfold in what Foucault terms the “milieu”.26 What is at stake in the milieu’ is “the problem of circulation and causality”, which must be anticipated and pLanned for in terms of “a series of possible events” that need to “be regulated within a multivalent and transformable framework”.27 And the “technical problem” posed by the eighteenth-century town planners Foucault has in mind is precisely the same technical problem of 5 space, population and regulation that US military strategists and Judge Advocate General Corps (JAG) personnel have in the twenty-first century. For US military JAGs, their endeavours to legally securitize the AORs of their regional commanders are ultimately orientated to “fabricate, organize, and plan a milieu” even before ground troops are deployed (as in the case of the first action in the war on terror, which I return to later: the negotiation by CENTCOM JAGs of a Status of Forces Agreement with Uzbekistan in early October 2OO1).2 JAGs play a key role in legally conditioning the battlefield, in regulating the circulation of troops, in optimizing their operational capacities, and in sanctioning the privilege to kill. The JAG’s milieu is a “field of intervention”, in other words, in which they are seeking to “affect, precisely, a population”.29 To this end, securing the aleatory or the uncertain is key. As Michael Dillon argues, central to the securing of populations are the “sciences of the aleatory or the contingent” in which the “government of population” is achieved by the regulation of “statistics and probability”.30 As he points out elsewhere, you “cannot secure anything unless you know what it is”, and therefore securitization demands that “people, territory, and things are transformed into epistemic objects”.3’ And in planning the milieu of US ground forces overseas, JAGs translate regional AORs into legally-enabled grids upon which US military operations take place. This is part of the production of what Matt Hannah terms “mappable landscapes of expectation”;32 and to this end, the aleatory is anticipated by planning for the ‘evental’ in the promissory language of securitization.¶ The ontology of the event’ has recently garnered wide academic engagement. Randy Martin, for example, has underlined the evental discursive underpinnings of US military strategy in the war on terror; highlighting how the risk of future events results in ‘preemption’ being the tactic of their securitization.33 Naomi Klein has laid bare the powerful event-based logic of disaster capitalism’;34 while others have pointed out how an ascendant logic of premediation’. in which the future is already anticipated and mediated”. is a marked feature of the “post-9/1 I cultural landscape”.35 But it was Foucault who first cited the import of the evental’ in the realm of biopolitics. He points to the “anti-scarcity system” of seventeenth-century Europe as an early exemplar of a new ‘evental’ biopolitics in which “an event that could take place” is prevented before it “becomes a reality”.36 To this end, the figure of ‘population’ becomes both an ‘object’, “on which and towards which mechanisms are directed in order to have a particular effect on it”, but also a ‘subject’, “called upon to conduct itself in such and such a fashion”.37 Echoing Foucault, David Nally usefully argues that the emergence of the “era of bio-power” was facilitated by “the ability of ‘government’ to seize, manage and control individual bodies and whole populations”.38 And this is part of Michael Dillon’s argument about the “very operational heart of the security dispositif of the biopolitics of security”, which seeks to ‘strategize’, ‘secure’. ‘regulate’ and ‘manipulate’ the “circulation of species Iife”.3 For the US military, it is exactly the circulation and regulation of life that is central to its tactics of lawfare to juridically secure the necessary legal geographies and biopolitics of its overseas ground presence.

#### The impact is militarism - turns and outweighs the aff

Smith 2 – prof of phil @ U of South Florida

(Thomas, International Studies Quarterly 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, the Pentagon wields law with technical precision. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Rup- pert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shot- well, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating. The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombuds- men either. The article acknowledged that the JAG faces pressure to demonstrate that he can be a “force multiplier” who can “show the tactical and political soundness of his interpretation of the law” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade the focus has shifted visibly from restraining violence to legitimizing it. The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept” ~The Guardian, 2001!. Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law. As noted, humanitarian law is firmest in areas of marginal military utility. When opera- tional demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that civilian discrimination is “one of the least codified portions” of the law of war ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” muni- tions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collat- eral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack” ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!. Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding antici- pated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calcu- lated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.” Legal fine print, hand-in-hand with new technology, replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. The crowning irony is that NATO went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroy- ing the country’s infrastructure. Perhaps the most powerful justification was provided by law itself. War is often dressed up in patriotic abstractions—Periclean oratory, jingoistic newsreels, or heroic memorials. Bellum Americanum is cloaked in the stylized language of law. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. Most striking is the use of legal language to justify the erosion of noncombatant immunity. Hewing to the legal- isms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Har- vard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic word- play, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.” The Pentagon’s legal narrative is certainly detached from the carnage on the ground, but it also oversimplifies and even actively obscures the moral choices involved in aerial bombing. Lawyers and tacticians made very deliberate decisions about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians. While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design. Does the law of war reduce death and destruction? International law certainly has helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has mirrored wartime practice. On the ad bellum side, the erosion of right authority and just cause has eased the path toward war. Today, foreign offices rarely even bother with formal declara- tions of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its mem- bers have been extremely reluctant to brand states as aggressors. If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane. For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war” ~Woollacott, 1999!. “We’ve come to expect the immacu- late,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “Precision-guided munitions make it very much easier to go to war than it ever has been historically.” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do” ~Belsie, 1999!. Conclusion The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications. The aspirations of humanitarian law are sound. Rather, it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast. This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script. While the attack on the World Trade Center confirmed a thousand times over the illegality and inhu- manity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor. A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage. Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9 No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law. But these disputes have only underscored the ambiguities of human- itarian law. As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed. '

Our alternative is to shake out the rug from under the 1ac's mode of legal analysis - our critique must begin outside of the law, not on its terms.

Singer 84 - Associate Professor of Law (Joseph William Singer, Associate Professor of Law at Boston University, 1984, [“The Player and the Cards: Nihilism and Legal Theory,” Yale Law Journal (94 Yale L.J. 1)

What shall we do then about legal theory? I think we should abandon the idea that what we are supposed to be doing is applying or articulating a rational method that will tell us once and for all (or even for our generation) what we are supposed to believe and how we are supposed to live. We should no longer view the project of giving a "rational foundation" for law as a worthwhile endeavor. If morality and law are matters of conviction rather than logic, we have no reason to be ashamed that our deeply felt beliefs have no "basis" that can be demonstrated through a rational decision procedure or that we cannot prove them to be "true" or "right." Rorty has distinguished between two broad types of theory: systematic and edifying. n165 Systematic philosophers build systems of thought that they claim explain large bodies of material, guide theoretical development, and generate answers to difficult questions. Systematizers can be either normal or revolutionary philosophers. The normal systematizers work within established tradition; the revolutionary systematizers seek to replace the established paradigm with a new, better, or truer paradigm of thought. Both try to establish a framework that will set bounds on the legitimate content of discourse. Edifying philosophers, on the other hand, seek to shake the rug out from under existing normal or abnormal systems of thought. They seek to make us doubt the necessity and coherence of our views. They seek to free us from feeling that we have "gotten" the answer and that we no longer need to question ourselves about what we stand for. Edifying philosophers do not seek to induce people to give up their moral views. They do not [\*58] argue against profound political commitment. Rather, they strive to make us realize that our views are matters of commitment rather than knowledge. n166 Legal scholars can perform an edifying role by broadening the perceived scope of legitimate institutional alternatives. n167 One way to do this is to demonstrate the contingent and malleable nature of legal reasoning and legal institutions. The greatest service that legal theorists can provide is active criticism of the legal system. Criticism is initially reactive and destructive, rather than constructive. But our mistaken belief that our current ways of doing things are somehow natural or necessary hinders us from envisioning radical alternatives to what exists. To exercise our utopian imagination, it is helpful first to expose the structures of thought that limit our perception of what is possible. Judges rationalize their decisions as the results of reasoned elaboration of principles inherent in the legal system. Instead of choosing among available descriptions, theories, vocabularies, and course of action, the official who feels "bound" reasons from nonexistent "grounds" and hides from herself the fact that she is exercising power. n168 By systematically and constantly criticizing the rationalizations [\*59] of traditional legal reasoning, we can demonstrate, again and again, that a wider range of alternatives is available to us. I therefore advocate the persistent demonstration in all doctrinal fields that both the legal rules in force and the arguments that are presented to justify and criticize them are incoherent. n169 They are incoherent because they are constructed in ways that make it impossible for them to satisfy their own claims to determinacy, objectivity and neutrality. n170 Legal theory is at war with itself. This kind of criticism would be useful even if we could not imagine a satisfactory alternative to traditional legal theory. Such criticism reminds us that legal theory cannot answer the question of how we are going to live together. We are going to have to answer that question ourselves.

### Off

#### Text: The United States federal government should...

**Zenko 13** - Douglas Dillon Fellow (Reforming US Drone Policy, Micah, Council Special Report No. 65 January 2013)

The United States should -promote Track 1.5 or Track 2 discussions on armed drones, similar to dialogues with other countries on the principles and limits of weapons systems such as nuclear weapons or cyberwarfare; -create an international association of drone manufacturers that includes broad participation with emerging drone powers that could be modeled on similar organizations like the Nuclear Suppliers Group; -explicitly state which legal principles apply—and do not apply—to drone strikes and the procedural safeguards to ensure compliance to build broader international consensus; -begin discussions with emerging drone powers for a code of conduct to develop common principles for how armed drones should be used outside a state’s territory, which would address issues such as sovereignty, proportionality, distinction, and appropriate legal framework; and -host discussions in partnership with Israel to engage emerging drone makers on how to strengthen norms against selling weaponscapable systems.

#### Solves the aff.

**Zenko 13** - Douglas Dillon Fellow (Reforming US Drone Policy, Micah, Council Special Report No. 65 January 2013)

Although reforming U.S. drone strike policies will be difficult and will require sustained high-level attention to balance transparency with the need to protect sensitive intelligence sources and methods, it would serve U.S. national interests by ■■ allowing policymakers and diplomats to paint a more accurate portrayal of drones to counter the myths and misperceptions that currently remain unaddressed due to secrecy concerns; ■■ placing the use of drones as a counterterrorism tactic on a more legitimate and defensible footing with domestic and international audiences; ■■ increasing the likelihood that the United States will sustain the international tolerance and cooperation required to carry out future drone strikes, such as intelligence support and host-state basing rights; ■■ exerting a normative influence on the policies and actions of other states; and ■■ providing current and future U.S. administrations with the requisite political leverage to shape and promote responsible use of drones by other states and nonstate actors. As Obama administration officials have warned about the proliferation of drones, “If we want other nations to use these technologies responsibly, we must use them responsibly.”4

### Off

#### Targeted killing’s vital to counterterrorism---disrupts leadership and makes carrying out attacks impossible

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities -- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties.¶ Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership.¶ If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature.¶ Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

#### Constraining targeted killing’s role in the war on terror causes extinction

Louis Rene Beres 11, Professor of Political Science and International Law at Purdue, 2011, “After Osama bin Laden: Assassination, Terrorism, War, and International Law,” Case Western Reserve Journal of International Law, 44 Case W. Res. J. Int'l L. 93

Even after the U.S. assassination of Osama bin Laden, we are still left with the problem of demonstrating that assassination can be construed, at least under certain very limited circumstances, as an appropriate instance of anticipatory self-defense. Arguably, the enhanced permissibility of anticipatory self-defense that follows generally from the growing destructiveness of current weapons technologies in rogue hands may be paralleled by the enhanced permissibility of assassination as a particular strategy of preemption. Indeed, where assassination as anticipatory self-defense may actually prevent a nuclear or other highly destructive form of warfare, reasonableness dictates that it could represent distinctly, even especially, law-enforcing behavior.¶ For this to be the case, a number of particular conditions would need to be satisfied. First, the assassination itself would have to be limited to the greatest extent possible to those authoritative persons in the prospective attacking state. Second, the assassination would have to conform to all of the settled rules of warfare as they concern discrimination, proportionality, and military necessity. Third, the assassination would need to follow intelligence assessments that point, beyond a reasonable doubt, to preparations for unconventional or other forms of highly destructive warfare within the intended victim's state. Fourth, the assassination would need to be founded upon carefully calculated judgments that it would, in fact, prevent the intended aggression, and that it would do so with substantially less harm [\*114] to civilian populations than would all of the alternative forms of anticipatory self-defense.¶ Such an argument may appear manipulative and dangerous; permitting states to engage in what is normally illegal behavior under the convenient pretext of anticipatory self-defense. Yet, any blanket prohibition of assassination under international law could produce even greater harm, compelling threatened states to resort to large-scale warfare that could otherwise be avoided. Although it would surely be the best of all possible worlds if international legal norms could always be upheld without resort to assassination as anticipatory self-defense, the persisting dynamics of a decentralized system of international law may sometimes still require extraordinary methods of law-enforcement. n71¶ Let us suppose, for example, that a particular state determines that another state is planning a nuclear or chemical surprise attack upon its population centers. We may suppose, also, that carefully constructed intelligence assessments reveal that the assassination of selected key figures (or, perhaps, just one leadership figure) could prevent such an attack altogether. Balancing the expected harms of the principal alternative courses of action (assassination/no surprise attack v. no assassination/surprise attack), the selection of preemptive assassination could prove reasonable, life-saving, and cost-effective.¶ What of another, more common form of anticipatory self-defense? Might a conventional military strike against the prospective attacker's nuclear, biological or chemical weapons launchers and/or storage sites prove even more reasonable and cost-effective? A persuasive answer inevitably depends upon the particular tactical and strategic circumstances of the moment, and on the precise way in which these particular circumstances are configured.¶ But it is entirely conceivable that conventional military forms of preemption would generate tangibly greater harms than assassination, and possibly with no greater defensive benefit. This suggests that assassination should not be dismissed out of hand in all circumstances as a permissible form of anticipatory self-defense under international law. [\*115] ¶ What of those circumstances in which the threat to particular states would not involve higher-order (WMD) n72 military attacks? Could assassination also represent a permissible form of anticipatory self-defense under these circumstances? Subject to the above-stated conditions, the answer might still be "yes." The threat of chemical, biological or nuclear attack may surely enhance the legality of assassination as preemption, but it is by no means an essential precondition. A conventional military attack might still, after all, be enormously, even existentially, destructive. n73 Moreover, it could be followed, in certain circumstances, by unconventional attacks.

#### Nuclear terrorism is feasible---high risk of theft and attacks escalate

Vladimir Z. Dvorkin ‘12 Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability. BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order. All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

### Solvency

#### Obama wants to strike terrorists wherever he can

Xinhua, 9 ["U.S. targets terrorists "wherever they take root": Obama," news.xinhuanet.com/english/2009-10/07/content\_12189089.htm, accessed 9-22-13, mss]

The U.S. anti-terror efforts are not restricted in Afghanistan and Pakistan, and terrorists will be targeted "wherever they take root," U.S. President Barack Obama said Tuesday. "The United States and our partners have sent an unmistakable message: We will target al-Qaida wherever they take root," he said during a tour of the National Counterterrorism Center in McLean, Virginia, near Washington D.C.. "It should now be clear," he added. The president noted that terror threats to the United States not only come from Afghanistan and Pakistan, but from places around the world, including East Africa, Southeast Asia, Europe and the Persian Gulf. He said the United States is determined to fight terrorism "relentlessly." "We will not yield in our pursuit; and we are developing the capacity and the cooperation to deny a safe haven to any who threaten America and its allies."

#### No prez has used the WPR in the past 40 years - Obama would just take authorization from the AUMF.

#### Congress won’t enforce the WPR and the presidency won’t accept the plan

**Crook 12** [Fall, 2012, Case Western Reserve Journal of International Law, 45 Case W. Res. J. Int'l L., “Presidential Powers and Foreign Affairs: The War Powers Resolution at 40: Still Controversial: The War Powers Resolution--A Dim and Fading Legacy,” John R. Crook\*, arbitrator in NAFTA and other investment disputes and served on the Eritrea-Ethiopia Claims Commission, Vice-President of the American Society of International Law and former General Counsel of the Multinational Force and Observers, the peacekeeping force in the Sinai, teaches international arbitration at George Washington University Law School]

The War Powers Resolution is the product of a time when Congress was riding particularly high and the presidency was particularly weak. n6 That unusual array of circumstances has not been repeated. In the ensuing years, no administration has accepted the constitutionality of the Resolution's key provisions. n7 At the other end of Pennsylvania Avenue, Congress has not mustered the collective will to insist on full and timely compliance with the Resolution in a wide range of cases. n8 From time to time, the Resolution has offered both Republican and Democratic presidents' political opponents an avenue to attack their compliance with particular policies or actions. Nevertheless, Congress has not shown itself willing or able to perform the role it set out for itself in Section 5 of the Resolution. n9 [\*160]

### Drone Prolif – Norms

#### 1.) No impact for a decade.

Barry 13 - senior policy analyst at CIP, where he directs the TransBorder project [Tom Barry, Drones over the homeland How Politics, money and lack of oversight have sparked Drone Proliferation, and what we can do, International Policy Support, April 2013, http://www.ciponline.org/images/uploads/publications/IPR\_Drones\_over\_Homeland\_Final.pdf]

Due to a surge in U.S. military contracting since ¶ 2001, the United States is the world leader in ¶ drone production and deployment. Other nations, ¶ especially China, are also rapidly gaining a larger ¶ market share of the international drone market. ¶ The United States, however, will remain the dominant driver in drone manufacturing and deployment for at least another decade.

#### 2.) Drones empirically don’t cause arms races

Joshi and Stein ’13 [Shashank Joshi, Research Fellow at the Royal United Services Institute and a PhD candidate at the Department of Government, Harvard University, & Aaron Stein, Associate Fellow at the Royal United Services Institute, a researcher at the Istanbul-based Centre for Economics and Foreign Policy Studies and a PhD candidate at King’s College London, 2013, Survival: Global Politics and Strategy, Volume 55, Issue 5, “Emerging Drone Nations,” Taylor and Francis, accessed 10/12/13]

Just weeks after Nazi Germany began to use the V-1 missile to attack the United Kingdom in 1944, the United States began work on a pilotless bomber to attack targets deep inside German-held territory. The programme was beset with problems, and converted B-17 and B-24 bombers were only able to fly 13 unsuccessful test missions.1 Nevertheless, the emergence of long-range missile technology, as well as these early tests in pilotless and remotely piloted aircraft, paved the way for the introduction of modern unmanned aerial vehicles and remotely piloted air systems, collectively and more commonly referred to as drones.2 Beginning in the 1950s, the US Air Force began to experiment with drones for high-altitude reconnaissance of Soviet missile, nuclear and mil- itary facilities. As the programme matured, the air force tested an SR-71 Blackbird-type drone for high-speed flights over China, developed a drone for use in Vietnam and, eventually, created a larger platform that served as a test bed for many of the systems comprising the current Global Hawk, Predator and Reaper drones.3 Drones do not, therefore, represent a radically new technology. They are but one strand in the remarkable trajectory of airpower development since the Second World War. The idea of using self-guiding or, more commonly, remotely guided aircraft to minimise the risk to pilots, to collect intelligence and to destroy targets has been at the centre of every drone programme for the past six decades. Drones do not have, and have never had, a monopoly on these roles: manned aircraft, cruise missiles and special forces continue to be used in striking valuable targets in contested areas. Cruise missiles were used to target al-Qaeda in Yemen in 2009, and special forces to kill Osama bin Laden in Pakistan in 2011. Moreover, the great majority of drones around the world are neither armed, nor as large and capable as manned aircraft.4

#### 3.) US doesnt solve.

Alejandro Sueldo 12, J.D. candidate and Dean’s Fellow at the University of California, Berkeley, School of Law and a PhD candidate at the Department of War Studies at King’s College London of the University of London, 4/11/12, “The coming drone arms race,” http://dyn.politico.com/printstory.cfm?uuid=70B6B991-ECA7-4E5F-BE80-FD8F8A1B5E90

Of particular concern are the legal and policy challenges posed if other states imitate the U.S. targeted killing program. For Washington is setting a precedent whereby states can send drones, often over sovereign borders, to kill foreigners or their own citizens, who are deemed threats. ¶ Other states may also follow Washington’s example and develop their own criteria to define imminent threats and use drones to counter them. ¶ Washington will find it increasingly difficult to protest other nations’ targeted killing programs — particularly when the United States has helped define this lethal practice. U.S. opposition will prove especially difficult when other states justify targeted killings as a matter of domestic affairs. ¶ Should enough states follow the U.S. example, the practice of preemptively targeting and killing suspected threats may develop into customary international law. ¶ Such a norm, however, which requires consistent state practice arising out of a sense of legal obligation, now looks unlikely. While targeted killing policies are arguably executed by states citing a legal obligation to protect themselves from imminent threats, widespread state practice is still uncommon. ¶ But international law does not forbid drones. And given the lack of an international regime to control drones, state and non-state actors are free to determine their future use. ¶ This lack of international consensus about how to control drones stems from a serious contradiction in incentives. Though drones pose grave challenges, they also offer states lethal and non-lethal capabilities that are of great appeal. Because the potential for drone technology is virtually limitless, states are now unwilling to control how drones evolve.

#### No China Japan war

Sakuwa, Department of Political Science, Indiana University Bloomington, 2009

Kentaro, A not so dangerous dyad: China's rise and Sino–Japanese rivalry, International Relations of the Asia-Pacific, 9:3

First, if the states' national interests are not similar, in other words, if the rising nation is dissatisfied with the status quo which basically reflects the leading nation's interests, disputes are more likely to be intensified. The extent to which the rising nation benefits from the status quo international order is an important factor to determine the likelihood of armed conflict within the dyad. In the case of Sino–Japanese relationships, it is not easy to accurately evaluate interest similarity. With respect to Japanese interests regarding China, Japan's decision makers basically prefer the status quo in the Asian security framework, while they also increasingly move toward an independent security policy and a higher level of hedging against China.15 Japanese decision makers, particularly younger generation leaders, think that a non-democratic and more powerful China is essentially inimical to Japan's interests (Wan, 2003; Samuels, 2007b). However, **Japan hesitates to employ policies which challenge** **China**'s important interests (Goldstein, 2001). According to Samuels, Japan's current security discourse is pragmatic: while Japan seeks to hedge against China, **decision makers** generally **‘do not advocate an** **autonomous defense buildup**, so it is not likely that the Yoshida consensus [which supports an economic-centered strategy while relying on the U.S. in terms of national security] will be displaced entirely’ (Samuels, 2007a, p. 152).16 China, on the other hand, attempts to ‘re-gain’ the international great power status which it lost in the dynastic era. Important aims of China's diplomatic efforts include enhancing its own security and facilitating the rise to great power status at the same time. Reflecting these goals, Chinese diplomacy has concentrated on reassurance and a great power partnership as well as building up coercive power (Goldstein, 2001; Lampton, 2007). China potentially has interests in rising as a great power, but the **Chinese** **leadership realizes** that **radical change is counterproductive**. China's current strategic **priority is on** stable **economic development** for two reasons (Roy, 2005). First, China's military might depend on economic development, since the modernization effort mostly focuses on technological advancement in air and maritime forces. Second, as Lampton (2007) notes, Chinese Communist Party legitimacy depends on nationalism and economic success. In order to maintain stability in domestic politics, the administration must continue economic growth. For these two reasons, economic development is by far the most important priority among China's policy goals. Therefore, with respect to satisfaction with the status quo international order, China still maintains a positive posture. **Despite the fact** that Chinese and Japanese **long-term** potential **interests differ** (Japan seeks a more active role in regional security, and China attempts to ‘regain’ great power status), **China's** security **interests do not lie in** the **radical reformulation of the regional order** because Beijing's policy priorities are domestic stability and economic development.17 So far, China has benefited from the stable regional security framework to achieve remarkable economic development beginning in the late 1980s. **Japan** also **acknowledges** the **importance of economic cooperation with China**. For example, the Japan Business Federation (JBF or Keidanren), which has enormous impact on policy making in the administration led by the Liberal Democratic Party (LDP), has insisted on a stable and close diplomatic relationship with China. In 2007, the JBF issued an opinion paper titled ‘A Call for the Development and Promotion of Proactive External Economic Strategies’, in which the JBF supported promotion of further economic unification among Asian nations aiming at the establishment of the ‘East Asian (Economic) Community’. The JBF particularly emphasized the importance of further economic cooperation with China, as a ‘necessary step toward more institutionalized East Asian community’ (JBF, 2007). Policy makers also acknowledge the importance of a stable Sino–Japanese relationship. For instance, Prime Minister Fukuda Yasuo argued in his first policy speech in January 2008 that enhancing the bilateral relationship with China and deepening the ‘strategic-reciprocal relationship’ is one of Japan's important diplomatic goals. Economically, **the** two nations' **relationship is** essentially **good and** even **improving**. However, at the same time, the degrees to which each of the two states engages in economic interdependence are slightly different. First, Sino–Japanese **bilateral trade** has **steadily increased**. Figure 4 shows trends in the Sino–Japanese bilateral trade. In this decade, both imports to Japan and exports from Japan have increased. Also, the ratio between imports and exports has become more balanced in the 2000s. Also, in 2004, China became Japan's largest trade partner.18 Foreign direct investment (FDI) is also increasing. Japan's FDI to China has increased rapidly after a setback in the late 1990s and reached about 8,000 million USD in 2004 (Lam, 2005). **Economic interdependence between Japan and China has** thus **grown**. At least for now, both sides face strategic and domestic demands to keep economic cooperation growing further, and the dyadic relationship is positively affected by economic cooperation.

### Multilat

#### Signal arguments are wrong --- nations won’t perceive it

Douglas Kriner 10, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 81-2

First, in many cases congressional signals will likely **have** only a modest influence on the calculations of the target state at the conflict conduct phase. Uses of force involving the United States are different from most other uses of force occurring in the international system because of the tremendous asymmetric advantages in military capabilities that the United States enjoys over almost every adversary. By the time that the military policymaking process enters the conflict conduct phase, the target state's leader has already decided that his or her interests are best served by refusing to capitulate to American demands, even at the risk of almost certain tactical defeat at the hands of a superior military force. Having made this cost-benefit calculation, congressional signals during the course of a conflict should have only a modest impact on the target state leader's subsequent behavior at the conflict conduct phase." Moreover, the types of states whose leaders are most likely to make this calculation—weak states (including those harboring non-state actors who are the true target of a proposed use of force), failed states, and vulnerable dictatorships—are in many cases very different from most other members of the international community. For these actors, the costs of capitulating to American demands are so high that their cost-benefit calculations should be more impervious to congressional signals.

### Pakistan

#### Limiting TKs in Pakistan causes a shift to ground assaults---turns case

Richard Weitz 11, Senior Fellow and Director of the Center for Political-Military Analysis at the Hudson Institute, 1/2/11, “WHY UAVS HAVE BECOME THE ANTI-TERROR WEAPON OF CHOICE IN THE AFGHAN-PAK BORDER,” http://www.sldinfo.com/why-uavs-have-become-the-anti-terror-weapon-of-choice-in-the-afghan-pak-border/

Perhaps the most important argument in favor of using UAV strikes in northwest Pakistan and other terrorist havens is that alternative options are typically worse. The Pakistani military has made clear that it is neither willing nor capable of repressing the terrorists in the tribal regions. Although the controversial ceasefire accords Islamabad earlier negotiated with tribal leaders have formally collapsed, the Pakistani Army has repeatedly postponed announced plans to occupy North Waziristan, which is where the Afghan insurgents and the foreign fighters supporting them and al-Qaeda are concentrated. Such a move that would meet fierce resistance from the region’s population, which has traditionally enjoyed extensive autonomy. The recent massive floods have also forced the military to divert its assets to humanitarian purposes, especially helping the more than ten million displaced people driven from their homes. But the main reason for their not attacking the Afghan Taliban or its foreign allies based in Pakistan’s tribal areas is that doing so would result in their joining the Pakistani Taliban in its vicious fight with the Islamabad government. Yet, sending in U.S. combat troops on recurring raids or a protracted occupation of Pakistani territory would provoke widespread outrage in Pakistan and perhaps in other countries as well since the UN Security Council mandate for the NATO-led International Security Assistance Force (ISAF) in Afghanistan only authorizes military operations in Pakistan. On the one known occasion when U.S. Special Forces actually conducted a ground assault in the tribal areas in 2008, the Pakistanis reacted furiously. On September 3, 2008, a U.S. Special Forces team attacked a suspected terrorist base in Pakistan’s South Waziristan region, killing over a dozen people. These actions evoked strong Pakistani protests. Army Chief of Staff Gen. Ashfaq Kayani, who before November 2007 had led Pakistan’s Inter-Services Intelligence (ISI), issued a written statement denying that “any agreement or understanding [existed] with the coalition forces” [in Afghanistan] allowing them to strike inside Pakistan.” The general pledged to defend Pakistan’s sovereignty and territorial integrity “at all cost.” Prime Minister Yousaf Raza Gilani and President Asif Ali Zardari also criticized the U.S. ground operation on Pakistani territory. On September 16, 2008, the Pakistani army announced it would shoot any U.S. forces attempting to cross the Afghan-Pakistan border. On several occasions since then, Pakistani troops and militia have fired at what they believed to be American helicopters flying from Afghanistan to deploy Special Forces on their territory, though there is no conclusive evidence that the U.S. military has ever attempted another large-scale commando raid in Pakistan after the September 2008 incident. Further large-scale U.S. military operations into Pakistan could easily rally popular support behind the Taliban and al-Qaeda. It might even precipitate the collapse of the Islambad government and its replacement by a regime in nuclear-armed Pakistan that is less friendly to Washington. Given these alternatives, continuing the drone strikes appears to be the best of the limited options available to deal with a core problem, giving sanctuary to terrorists striking US and coalition forces in Afghanistan and beyond.

#### No Indo-Pak conflict- energy cooperation and new governance

Sam Tranum 6/25/13, MA from the University of Chicago in IR and a journalist covering energy and politics in South Asia, 6/25/13, "India-Pakistan Energy Cooperation Could Get Boost Under Sharif," World Politics Review, http://www.worldpoliticsreview.com/articles/13049/india-pakistan-energy-cooperation-could-get-boost-under-sharif

Pakistani and Indian officials met earlier this month to discuss cross-border energy cooperation, perhaps signaling that the new government in Islamabad aims to follow through on plans its predecessor spent years talking about. That would be good for both countries. ¶ Nawaz Sharif's Pakistan Muslim League-Nawaz (PML-N) party swept Pakistan's parliamentary election in May, and Sharif took over as prime minister early this month, pledging—among other things—to improve relations with India and address his country's crippling energy shortage. ¶ On June 11, the prime minister’s younger brother, Shahbaz Sharif, the head of government in Pakistan's largest province, Punjab, reportedly met officials from India's Ministry of Power and Ministry of Petroleum and Natural Gas. They talked about Pakistan importing electricity and natural gas from India. ¶ The meeting in itself is not unprecedented. During its five years in power, the previous government in Islamabad under the Pakistan People's Party (PPP) talked to Indian government officials and companies about importing gasoline, diesel, natural gas and electricity. India seemed willing to help Pakistan then, but nothing happened.¶ There are still factions on both sides of the border that oppose normalizing relations and will try to block efforts by Nawaz Sharif and Indian Prime Minister Manmohan Singh to work together on energy and other issues. But as the energy crisis in Pakistan grows increasingly acute, the pressure might overwhelm such opposition. ¶ Among the proposals on the table is a cross-border electricity transmission line with the capacity to transfer 500-1,000 megawatts of power from India to Pakistan. India is short of power and suffers regular planned and unplanned power cuts. But Pakistan is much worse off. ¶ In the fiscal year that ended March 31, the two-thirds of Indians with access to electricity faced an 8.7 percent supply-demand gap. The two-thirds or so of Pakistanis with access to electricity, meanwhile, faced a shortfall of about 30 percent and power cuts 10-13 hours a day, Pakistan’s Supreme Court was reportedly told earlier this month. ¶ Pakistan's power cuts have sparked sometimes-violent protests and slowed the country's economic growth. ¶ If implemented, the proposed transmission line would serve as a sign of goodwill and perhaps earn a small profit for Indian generators. But if 500-1,000 MW of power would help ease Pakistan's power shortage, it wouldn't solve the country’s energy problems. After all, Pakistan has about 22,000 MW of generating capacity, compared to 212,000 MW for India. ¶ Nonetheless, turning to India for power is part of a larger Pakistani strategy to buy more electricity from its neighbors. It imported about 70 MW from Iran last year, is building another 100-MW link and has plans for a 1,000-MW link. There is talk of bringing in 1,000 MW from Tajikistan via Afghanistan, too. ¶ Aside from power, there is also a proposal for an India-to-Pakistan natural gas pipeline. This would allow Pakistan to import either Indian natural gas or liquefied natural gas (LNG) from a third country delivered to one of India's LNG terminals and sent through its pipeline network to Pakistan. Despite years of effort, Pakistan has failed to build its own LNG terminal. ¶ But a natural gas pipeline is the least likely to materialize of the proposed energy cooperation efforts. India only meets about half of its natural gas needs from its own production and its limited LNG import capacity. And a drop in production from Reliance Industries’ massive KG-D6 field off India's east coast means India’s ability to satisfy its own LNG needs has been getting worse, not better. ¶ Still, a delegation from Indian state-controlled gas distribution company GAIL has reportedly offered to deliver to Pakistan 400 million cubic feet of gas per day. To put that in perspective, Pakistan—which uses gas for power generation, cooking, heating and fueling vehicles, among other things—is now surviving on domestic production of about 4 billion cubic feet per day. ¶ Potential profits and international politics may overshadow the fact that Indian consumers need this natural gas, too. Private and state-owned Indian companies may be willing to short their Indian customers if they can get a better offer from across the border. And officials in New Delhi may be willing to let them do so in the name of India-Pakistan confidence-building measures. ¶ Less controversial than the power and natural gas proposals is a plan for India to build a pipeline across the border to sell gasoline or diesel to Pakistan. Although India doesn't produce much crude oil, it is a refining hub: It imports more crude than it needs and turns the excess into gasoline, diesel and other products that it exports. Indian refiners would welcome a new market. ¶ This cross-border energy trade is seen by some as a test-run for India-Pakistan cooperation on the Turkmenistan-Afghanistan-Pakistan-India (TAPI) and Iran-Pakistan-India (IPI) natural gas pipeline projects. The odds at the moment are stacked against both projects. Instability in Afghanistan makes TAPI tough, while U.S. sanctions on Iran make Indian involvement in IPI doubtful. But these factors could change in the future. ¶ More immediately, India's willingness to help ease Pakistan's energy shortage might encourage Sharif's PML-N government to follow through on its predecessor's promise to grant India most favored nation trading status. This is something Indian companies want and many Pakistani businesses don't: They fear they will be overwhelmed by competition from their massive neighbor. ¶ Nevertheless, if India and Pakistan can work together on energy and increase trade, both countries would benefit. Pakistan would get energy to fuel its lagging economy, and India would get a new market for energy and other exports. As a side benefit, integrating their economies a bit more might help to normalize relations and make future conflicts less likely.

### 2NC

### Case

Thats a legalistic trick - will still use Article II powers.

Goldsmith 13 (Jack, Henry L. Shattuck Professor at Harvard Law School, served as Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, “Eight Thoughts on the Broad Reading of Article II Inherent in Bobby’s Conjecture,” May 28, 2013, <http://www.lawfareblog.com/2013/05/eight-thoughts-on-the-broad-reading-of-article-ii-inherent-in-bobbys-conjecture/#more-19381>)

Third, Ben asks: “[H]ow do we feel about what we might term a militarily active peace—that is, a peace in which drone strikes and special forces operations take place regularly, a peace that is so minimally different from warfare that nobody (except Bobby) even noticed that we had transitioned from wartime to peacetime?” As Ben implies, if Bobby is right, the Obama administration’s post-AUMF “peace” or “no more war” trope **should not be taken too seriously**. It would be little more than a (domestic law) legalistic trick to say that we are not at “war” if we are regularly exercising the use of force around the globe, albeit in pinpoint fashion, just because the President would be acting in self-defense under Article II rather than pursuant to an AUMF. We are currently engaged in numerous and manifold military and paramilitary and intelligence operations in **many countries outside Afghanistan** (see Mark Mazzetti’s book for a recent description). The scale and persistence of the operations means that many of them would amount to “armed conflicts” even if they were justified as self-defense. And with some caveats about Obama administration practice below, they should (when conducted by DOD) at a minimum trigger at least the reporting provisions (and perhaps more) under the War Powers Resolution. Fourth, the stealth self-defensive war that Bobby describes and that I think the administration envisions in a post-AUMF world is even less bounded than the AUMF-war in this sense: force can be used wherever a threatening group meets the (slippery-at-best and auto-interpreted) “imminent threat” threshold, as long as the nation in question consents or is unwilling or unable to prevent the threat. The Article II war, unlike the AUMF war, requires no nexus to al Qaeda or its associates. Fifth, if it continues at anything like its current scale in a post-AUMF world, war based on Article II would be in even more need of congressional oversight and transparency than the AUMF war – especially in light the unboundedness described above, the Armed Services Committee’s apparent cluelessness about how DOD interprets its authorities today, and the Obama-era innovations **of classified annexes** to War Powers Resolution reports and the potential exclusion of many drone attacks from the WPR framework altogether. The revised AUMF that Bobby, Ben, Matt, and I proposed was designed precisely to bring accountability and oversight to such an extra-AUMF war. We have been criticized for wanting to expand the “war.” That was not our intention, for we assumed that the “war” would continue beyond the AUMF in any event and aimed to bring more accountability and oversight to it. Whether one likes our proposal or not, the nation must find some framework that interjects Congress into reviewing and approving the forthcoming self-defensive extra-AUMF Article II war. (A good place to begin, and indeed a book devoted in large part to establishing a congressional legal framework to check unilateral self-defensive presidential uses of force, and excessive reliance on covert action, is Harold Koh’s The National Security Constitution.)

#### Punish them for reading a really general plan text

Sitkowski 6 (Andrzej, Independent Researcher and Consultant – United Nations, UN Peacekeeping: Myth and Reality, p. 14)

Non-use of force except in self-defense is the sole principle directly related to armed contingents and is the most ambiguous. According to the UN interpretation, self-defense includes armed response to forceful actions of the warring parties preventing the peacekeepers from discharging their mandate. It boils down to nothing less than a blanket authorization to use force in defense of the mandates, thus. But as if an effort to offset such a conclusion, the Secretariat pronounces every use of force other than in self-defense to constitute peace enforcement which is inconsistent with peacekeeping and should be avoided at any costs: "The logic of peacekeeping Hows from premises that are quite distinct from enforcement and the dynamics of the latter are incompatible with the political process that peacekeeping is intended to facilitate. To blur the distinction between the two can undermine the viability of peacekeeping operation and endanger its personnel."4 The distinction looks good as long it is not exposed to the logic of war, the only logic to which the warring parties normally subscribe. Is removing by force of an illegal roadblock to enable the progress of a UN convoy an act of self-defense against an obstruction in discharging a peacekeeping mandate or an offensive action in peace enforcement? The UN distinction between the defensive and offensive use of force is blurred at the outset.

#### The US will act on this ambiguity

Neack 7 (Laura, Professor of Political Science – Miami University (Ohio), *Security: States First, People Last*, p. 106)

Although our discussion has been about the use of military force, we still are on the topic of defense and deterrence rather than on the offensive use of force. It is, though, in some sense hard to dispute the old axiom that what appear as defensive measures to some appear as offensive and therefore threatening measures to others. This is part of the dilemma in the security dilemma. Sometimes countries embrace this ambiguity to enhance the danger of underestimating them, and sometimes countries attempt to dispel this ambiguity by adopting policies that are overtly transparent and nonthreatening.

#### Strong drone boosterism in Congress

Barry 13 - senior policy analyst at CIP, where he directs the TransBorder project [Tom Barry, Drones over the homeland How Politics, money and lack of oversight have sparked Drone Proliferation, and what we can do, International Policy Support, April 2013, http://www.ciponline.org/images/uploads/publications/IPR\_Drones\_over\_Homeland\_Final.pdf]

In practice, there’s more boosterism than effective oversight in the House Homeland Security ¶ Committee and its Subcommittee on Border and ¶ Maritime Security, which oversees DHS’s rush ¶ to deploy drones to keep the homeland secure. ¶ The same holds true for most of the more than ¶ one hundred other congressional committees that ¶ purportedly oversee the DHS and its budget.40¶ Since DHS’s creation, Congress has routinely ¶ approved annual and supplementary budgets for ¶ border security that have been higher than those ¶ requested by the president and DHS.

#### Congrress rubber stamps

Barry 13 - senior policy analyst at CIP, where he directs the TransBorder project [Tom Barry, Drones over the homeland How Politics, money and lack of oversight have sparked Drone Proliferation, and what we can do, International Policy Support, April 2013, http://www.ciponline.org/images/uploads/publications/IPR\_Drones\_over\_Homeland\_Final.pdf]

Since 2004, the DHS’s UAV program has drawn ¶ mounting concern and criticism from the government’s own oversight and research agencies, including the Congressional Research Service, the ¶ Government Accountability Office and the DHS’s ¶ own Office of Inspector General.43 These government entities have repeatedly raised questions ¶ about the cost-efficiency, strategic focus and ¶ performance of the homeland security drones. ¶ Yet, rather than subjecting DHS officials to sharp ¶ questioning, the congressional committees overseeing homeland security and border security operations have, for the most part, readily and often ¶ enthusiastically accepted the validity of undocumented assertions by testifying CBP officials. The ¶ House Subcommittee on Border and Maritime ¶ Security has been especially notorious for its lack ¶ of critical oversight. ¶ As part of the budgetary and oversight process, ¶ the House and Senate committees that oversee ¶ DHS have not insisted that CBP undertake costbenefit evaluations, institute performance measures, implement comparative evaluations of its ¶ high-tech border security initiatives, or document ¶ how its UAV program responds to realistic threat ¶ assessments. Instead of providing proper oversight and ensuring that CBP/OAM’s drone program is accountable and transparent, congressional members from both parties seem more intent ¶ on boosting drone purchases and drone deployment.

### CP

Counterplan soles the aff

Our Zenko evidence is a dillon fellow and qualled you should prefer him.

#### Text: The United States federal government should...

**Zenko 13** - Douglas Dillon Fellow (Reforming US Drone Policy, Micah, Council Special Report No. 65 January 2013)

The United States should -promote Track 1.5 or Track 2 discussions on armed drones

, similar to dialogues with other countries on the principles and limits of weapons systems such as nuclear weapons or cyberwarfare; -create an international association of drone manufacturers that includes broad participation with emerging drone powers

 that could be modeled on similar organizations like the Nuclear Suppliers Group

; -explicitly state which legal principles apply—and do not apply—to drone strikes and the procedural safeguards to ensure compliance to build broader international consensus;

-begin discussions with emerging drone powers for a code of conduct to develop common principles for how armed drones should be used outside a state’s territory,

which would address issues such as sovereignty, proportionality, distinction, and appropriate legal framework; and

-host discussions in partnership with Israel to engage emerging drone makers on how to strengthen norms against selling weaponscapable systems.

#### Solves the aff.

**Zenko 13** - Douglas Dillon Fellow (Reforming US Drone Policy, Micah, Council Special Report No. 65 January 2013)

Although reforming U.S. drone strike policies will be difficult and will require sustained high-level attention to balance transparency with the need to protect sensitive intelligence sources and methods, it would serve U.S. national interests by ■■ allowing policymakers and diplomats to paint a more accurate portrayal of drones to counter the myths and misperceptions that currently remain unaddressed due to secrecy concerns; ■■ placing the use of drones as a counterterrorism tactic on a more legitimate and defensible footing with domestic and international audiences; ■■ increasing the likelihood that the United States will sustain the international tolerance and cooperation required to carry out future drone strikes, such as intelligence support and host-state basing rights; ■■ exerting a normative influence on the policies and actions of other states; and ■■ providing current and future U.S. administrations with the requisite political leverage to shape and promote responsible use of drones by other states and nonstate actors. As Obama administration officials have warned about the proliferation of drones, “If we want other nations to use these technologies responsibly, we must use them responsibly.”4

#### no measurable difference between the plan and CP for allies

Anderson 09, Law Prof at American

(Kenneth, Targeted Killing in U.S. Counterterrorism Strategy and Law, www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\_counterterrorism\_anderson.pdf)

Similarly, very few people in the United States, regardless of political persuasion, would regard the Predator strike in Yemen on November 3, 2002—which killed six people, including a senior member of al Qaeda, Qaed Salim Sinan al-Harethi, in a vehicle on the open road—as anything other than a good thing, regardless of how one characterizes it legally. Yet the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions described it as a “clear case of extrajudicial killing.” The legal analysis followed that held by Amnesty International and many others—to wit, that it does not matter whether the targeted killing takes place in armed conflict or not, nor how the United States justifies it legally, because international human rights law continues to apply no matter what and to require that the governments involved seek to arrest, rather than to kill. A subsequent U.N. special rapporteur on extrajudicial, summary or arbitrary executions summarized his office’s view in 2004: “Empowering Governments to identify and kill ‘known terrorists’ places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative had been exhausted.”59 Once again, it is hard to see how targeted killing as a policy could survive in any form with such a legal characterization. Various European allies have been extremely hostile toward the practice. Swedish Foreign Minister Anna Lindh was among the most outspoken critics of the U.S. targeting of al-Harethi in November 2002. She described the operation as “a summary execution that violated human rights…Even terrorists must be treated according to international law. Otherwise any country can start executing those whom they consider terrorists.”60 The criticism is even stronger when the actor is Israel—which undertakes targeted killing in keeping with the peculiarly long-term, “mixed” war-security and intelligence-law enforcement nature of its struggle—and, incidentally, with far more procedural protections than the United States uses, including judicial review. Then the gloves come off completely in expressions of international hostility to the practice.61 To be clear, under the standards these groups are articulating, these practices are regarded as crimes by a sizable and influential part of the international community. This is so whether or not these acts are currently reachable by any particular tribunal. As the coercive interrogation debate shows, with Spain and other countries considering prosecutions in their own courts, the trend is toward an expansion of jurisdiction of such tribunals. And America’s claim that these are killings of combatants in an armed conflict governed by either self-defense or IHL does not cut much ice against the views of those who either reject the armed conflict claim outright or else claim that even in armed conflict, human rights standards will apply. American officials seem to believe that by appealing to the detailed and specific requirements of IHL on the formal and technical definition of combatancy as an apparent condition of finding a lawful target, they have done an especially good and rigorous parsing of the legal requirements. As far as the international law community is concerned, however, the combatancy standard is not some especially rigorous approach that shows how concerned a party is for international law. To the contrary, it is by definition a relaxation of the ordinary standard of international human rights law, including prohibitions on murder and extrajudicial killing—and it can only be justified by the existence of an armed conflict that meets the definitions of IHL treaties. At times it appears that the United States government has little idea how much its concession of formal requirements of combatancy concedes. Yet when the United States argues that it’s okay to target someone because he is a combatant, it effectively concedes that the conflict must meet the definition of an IHL conflict for such an attack to be legitimate. By contrast, what the United States needs, and its historic position has asserted, is a claim that self-defense has an existence as a doctrine apart from IHL armed conflict that can justify the use of force against an individual. The United States has long assumed, then-Legal Adviser to the State Department Abraham Sofaer stated in 1989, that the “inherent right of self defense potentially applies against any illegal use of force, and that it extends to any group or State that can properly be regarded as responsible for such activities.”62 To put the matter simply, the international law community does not accept targeted killings even against al Qaeda, even in a struggle directly devolving from September 11, even when that struggle is backed by U.N. Security Council resolutions authorizing force, even in the presence of a near-declaration of war by Congress in the form of the AUMF, and even given the widespread agreement that the U.S. was both within its inherent rights and authorized to undertake military action against the perpetrators of the attacks. If targeted killing in which the international community agreed so completely to a military response against terrorism constitutes extrajudicial execution, how would it be seen in situations down the road, after and beyond al Qaeda, and without the obvious condition of an IHL armed conflict and all these legitimating authorities? In the view of much of the international law community, a targeted killing can only be something other than an extrajudicial execution—that is, a murder—if • It takes place in an armed conflict; • The armed conflict is an act of self-defense within the meaning of the UN Charter, and • It is also an armed conflict within the meaning of IHL; and finally, • Even if it is an armed conflict under IHL, the circumstances must not permit application of international human rights law, which would require an attempt to arrest rather than targeting to kill. As a practical matter, these conditions would forbid all real-world targeted killings.

### Perm

#### The permutation is a tactic to legitimize the violence of the law---codifying status-quo policy sanitizes expanding state violence---their appeal to juridical legitimation results in malleable legal conventions that are ultimately meaningless

John Morrissey 11, Lecturer in Political and Cultural Geography, National University of Ireland, Galway; has held visiting research fellowships at University College Cork, City University of New York, Virginia Tech and the University of Cambridge. Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror, Geopolitics, Volume 16, Issue 2, 2011

Nearly two centuries ago, Prussian military strategist, Carl von Clausewitz, observed how war is merely a “continuation of political commerce” by “other means”.70 Today, the lawfare of the US military is a continuation of war by legal means. Indeed, for US Deputy Judge Advocate General, Major General Charles Dunlap, it “has become a key aspect of modern war”.71 For Dunlap and his colleagues in the JAG corps, the law is a “force multiplier”, as Harvard legal scholar, David Kennedy, explains: it “structures logistics, command, and control”; it “legitimates, and facilitates” violence; it “privileges killing”; it identifies legal “openings that can be made to seem persuasive”, promissory, necessary and indeed therapeutic; and, of course, it is “a communication tool” too because defining the battlefield is not only a matter of “privileging killing”, it is also a “rhetorical claim”.72 Viewed in this way, the law can be seen to in fact “contribute to the proliferation of violence rather than to its containment”, as Eyal Weizman has instructively shown in the case of recent Israeli lawfare in Gaza.73

In the US wars in Iraq, Afghanistan and broader war on terror, the Department of Defense has actively sought to legalize its use of biopolitical violence against all those deemed a threat. Harvey Rishikof, the former Chair of the Department of National Security Strategy at the National War College in Washington, recently underlined ‘juridical warfare’ (his preferred designation over ‘lawfare’) as a pivotal “legal instrument” for insurgents in the asymmetric war on terror.74 For Rishikof and his contemporaries, juridical warfare is always understood to mean the legal strategies of the weak ‘against’ the United States; it is never acknowledged as a legal strategy ‘of’ the United States. However, juridical warfare has been a proactive component of US military strategy overseas for some time, and since the September 11 attacks in New York and Washington in 2001, a 15 renewed focus on juridical warfare has occurred, with the JAG Corps playing a central role in reforming, prioritizing and mobilizing the law as an active player in the war on terror.75

Deputy Judge Advocate General, Major General Charles Dunlap, recently outlined some of the key concerns facing his corps and the broader US military; foremost of which is the imposing of unnecessary legal restraints on forward-deployed military personnel.76 For Dunlap, imposing legal restraints on the battlefield as a “matter of policy” merely “play[s] into the hands of those who would use [international law] to wage lawfare against us”.77 Dunlap’s counter-strategy is simply “adhering to the rule of law”, which “understands that sometimes the legitimate pursuit of military objectives will foreseeably – and inevitably – cause the death of noncombatants”; indeed, he implores that “this tenet of international law be thoroughly understood”.78 But ‘the’ rule of international law that Dunlap has in mind is merely a selective and suitably enabling set of malleable legal conventions that legitimate the unleashing of military violence.79 As David Kennedy illuminates so brilliantly in Of War and Law:

We need to remember what it means to say that compliance with international law “legitimates.” It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified”.80

The recent ‘special issue on juridical warfare’ in the US military’s flagship journal, Joint Force Quarterly, brought together a range of leading judge advocates, specialists in military law, and former legal counsels to the Chairman of the Joint Chiefs of Staff. All contributions addressed the question of “[w]hich international conventions govern the confinement and interrogation of terrorists and how”.81 The use of the term ‘terrorists’ instead of suspects sets the tone for the ensuing debate: in an impatient defense of ‘detention’, Colonel James Terry bemoans the “limitations inherent in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006” (which he underlines only address detainees at the US Naval Base at Guantanamo) and asserts that “requirements inherent in the war on terror will likely warrant expansion of habeas 16 corpus limitations”;82 considering ‘rendition’, Colonel Kevin Cieply asks the shocking question “[i]s rendition simply recourse to the beast at a necessary time”;83 Colonel Peter Cullen argues for the necessity of the “role of targeted killing in the campaign against terror”;84 Commander Brian Hoyt contends that it is “time to re-examine U.S. policy on the [international criminal] court, and it should be done through a strategic lens”;85 while Colonel James Terry furnishes an additional concluding essay with the stunningly instructive title ‘The International Criminal Court: A Concept Whose Time Has Not Come’.86 These rather chilling commentaries attest to one central concern of the JAG Corps and the broader military-political executive at the Pentagon: that enemies must not be allowed to exploit “real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting American military power”.87 And such thinking is entirely consistent with the defining National Defense Strategy of the Bush administration, which signalled the means to win the war on terror as follows: “we will defeat adversaries at the time, place, and in the manner of our choosing”.88

If US warfare in the war on terror is evidently underscored by a ‘manner of our choosing’ preference – both at the Pentagon and in the battlefield – this in turn prompts an especially proactive ‘juridical warfare’ that must be simultaneously pursued to legally capacitate, regulate and maximize any, and all, military operations. The 2005 National Defense Strategy underlined the challenge thus:

Many of the current legal arrangements that govern overseas posture date from an earlier era. Today, challenges are more diverse and complex, our prospective contingencies are more widely dispersed, and our international partners are more numerous. International agreements relevant to our posture must reflect these circumstances and support greater operational flexibility.89 It went on to underline its consequent key juridical tactic and what I argue is a critical weapon in the US military-legal arsenal in the war on terror: the securing of ‘Status of Forces Agreements’ – 17 to “provide legal protections” against “transfers of U.S. personnel to the International Criminal Court”.90

Aff is a form of weaponitis which serves as a cover for more insidious militaristic practices.

Trombly 12 (Dan, Associate Analyst @ Caerus Analytics, National Security/International Affairs Analyst, “The Drone War Does Not Take Place,” NOVEMBER 16, 2012, http://slouchingcolumbia.wordpress.com/2012/11/16/the-drone-war-does-not-take-place/)

I’ll try to make this a bit shorter than my usual fare on the subject, but let me be clear about something. As much as I and many others inadvertently use the term, there is no such thing as drone war. There is no nuclear war, no air war, no naval war. There isn’t really even irregular war. There’s just war. There is, of course, drone warfare, just as there is nuclear warfare, aerial warfare, and naval warfare. This is verging on pedantry, but the use of language does matter. The changing conduct and character of war should not be confused with its nature, as Colin Gray strives to remind us in so many of his writings. When we believe that some aspect of warfare changes the nature of war – whether we do so to despair its ethical descent or praise its technological marvels, or to try to objectively discern some new and irreversible reality – we lose sight of a logic that by and large endures in its political and conceptual character. Hence the title (with some, but not too much, apology to Baudrillard). There is no drone war, there is only the employment of drones in the various wars we fight under the misleading and conceptually noxious “War on Terror.” Why does this matter? To imbue a weapons system with the political properties of the policy employing it is fallacious, and to assume its mere presence institutes new political realities relies on a denial of facts and context. This remains the case with drones. The character of wars waged with drones is different – the warfare is different – but the nature of these wars do not change, and very often this argument obscures the wider military operations occurring. Long before the first drone strikes occurred in Somalia, America was very much at war there. Before their availability in that theater, the U.S. had deployed CIA and SOF assets to the region. It supported Ethiopia’s armies and it helped bankroll and coordinate proxy groups, whether they were Somali TFG units, militias, or private contractors. It bombarded select Somali targets with everything from naval guns to AC-130 gunships to conventional strike aircraft. It deployed JSOC teams to capture or kill Somalis. That at some point the U.S. acquired a new platform to conduct these strikes is not particularly relevant to the character of that war and even less to its nature. We sometimes assume drones inaugurate some new type of invincibility or some transcendental transformation of war as an enterprise of risk and mutual violence. We are incorrect to do so. The war in Somalia is certainly not risk free for the people who the U.S. employs or contracts to target these drones. It is not risk free for the militias, mercenaries, or military partners which follow up on the ground. Nor is it risk free for those who support the drones. Just ask Abu Talha al-Sudani, one of the key figures behind the 1998 U.S. Embassy bombings in Kenya and Tanzania, who sent operatives to case Camp Lemonier and launch a commando raid – one which looks, in retrospect, very much like the one that crippled Marine aviation at Camp Bastion recently – that might have killed a great many U.S. personnel on a base then and now critical to American operations in the Horn of Africa and Gulf of Aden. The existence of risk is an inherent product of an enemy whose will to fight we have not yet overcome. The degree of that inherent risk – whether it is negligible or great – is a product of relative military capabilities and war’s multifarious external contexts. Looked at through this lens, it’s not drones that reduce U.S. political and material risk, it’s the basic facts of the conflict. In the right context, most any kind of military technology can significantly mitigate risks. A 19th century ironclad fleet could shell the coast of a troublesome principality with basic impunity. When Dewey said, “You may fire when ready, Gridley,” at Manila Bay, according to most history and much legend he lost only one man – due to heatstroke! – while inflicting grievous casualties on his out-ranged and out-gunned Spanish foes. That some historians have suggested Dewey may have concealed a dozen casualties by fudging them in with desertions, which were in any case were a far greater problem than casualties since the Navy was still in the habit of employing foreign sailors expendable by the political standards of the day is even more telling. Yes, there are always risks and almost always casualties even in the most unfair fights, but just as U.S. policymakers wrote off Asian sailors, they write off the victims of death squads which hunt down the chippers, spotters, and informants in Pakistan or the contractors training Puntland’s anti-piracy forces. And no, not even the American spooks are untouchable, the fallen at Camp Chapman are testament to that. This is hardly unique to drones or today’s covert wars. The CIA’s secret air fleet in Indochina lost men, too, and the Hmong suffered mightily for their aid to the U.S. in the Laotian civil war. The fall of Lima Site 85, by virtue or demerit of policy, resonated little with the American public but deeply marks the intelligence community and those branches of the military engaging in clandestine action. The wars we wage in Pakistan, Yemen, and Somalia are not drone wars any more than our war in Laos was an air war simply because Operation Barrel Roll’s bombers elicit more attention than the much more vulnerable prop-driven spotting aircraft or Vang Pao’s men on the ground. There is a certain hubris in thinking we can limit war by limiting its most infamous weapons systems. The taboo and treaties against chemical weapons perhaps saved men (but not the Chinese at Wuhan, nor the Allied and innocents downwind of the SS John Harvey at Bari) from one of the Great War’s particular horrors, but they did nothing appreciable to check the kind of war the Great War was, or the hypersanguinary consequences of its sequel but a generation later. The Predators and Reapers could have never existed, and very likely the U.S. would still be seeking ways to carry out its war against al Qaeda and its affiliates under the auspices of the AUMF in all of today’s same theaters. More might die from rifles, Tomahawks, Bofors guns or Strike Eagles’ JDAMs than remotely-launched Griffins, and the tempo of strikes would abate. But the same fundamental problems – the opaque decisions to kill, the esoteric legal justifications for doing so, the obtuse objectives these further – would all remain. Were it not for the exaggerated and almost myopic focus on “killer robots,” the U.S. public would likely pay far less attention to the victims, excesses, and contradictions. But blaming drones qua drones for these problems, or fearing their proliferation at home, makes little more sense than blaming helicopters for Vietnam, or fearing airmobile assaults when DC MPD’s MD-500s buzz over my neighborhood. That concern that proliferation of a weapons system equates to proliferation of the outcomes associated with them, without regard to context, is equally misleading. Nobody in America should fear the expansion of the Chinese UAV fleet because, like the U.S. UAV fleet, it is merely going to expand their ability to do what similar aircraft were already doing. Any country with modern air defenses can make mincemeat of drone-only sorties, and for that reason China, which unlike Yemen and Pakistan would not consent to wanton U.S. bombing of its countryside, need not fear drones. For an enormous number of geographical, political, and military reasons, the U.S. ought fear the “drone war” coming home even less. Drones do not grant a country the ability to conduct the kind of wars we conduct against AQAM. The political leverage to build bases and clear airspaces, and the military and intelligence capabilities to mitigate an asymmetric countermeasure operation do. If another country gains that ability to conduct them against a smaller country, even, it is not because they lacked the ability to put weapons on planes, but because of the full tapestry of national power and military capabilities gave them such an ability. It was not asymmetry in basic technical ability that made the U.S. submarine blockade of Japan so much more effective than the Axis’s attempts to do the same against America’s shores, but the total scope of the assets in the field and context of their use. It was not because of precedent or moral equivalence, or lack thereof that the Axis could bomb Britain or lose the ability to do so, but because of the cumulative effect of military capabilities and the judgments guiding them. What might expand the battlefield of a “drone war” is much the same. America’s enemies do not refrain from attacking bases in CONUS or targeting dissidents in the U.S. (not that they have not before), they wait for an opportunity and practical reason to do so, and that has very little to do with drones in particular and even less the nature of the war itself. Fearing that the mere use of a weapons system determines the way in which our enemies will use it without regard to this context is not prophetic wisdom. It is quasi-Spenglerian hyperventilation that attributes the decision to use force to childlike mimesis rather than its fundamentally political purposes. Iran and Russia do not wait on drones to conduct extrajudicial targeted killings, and indeed drones would be of much less use to them in their own political contexts. Focusing on drones and the nature of targeted killings as some sort of inherent link ignores those contexts and ultimately does a disservice to understanding of wars past, present, and future, and by doing so, does little help – and possibly a great deal of harm – to understanding how to move forward.

### Alt

Exposing the law as violence is necessary to create space for rethinking that makes social relations outside violence possible

Neocleous 3

[Mark, Teaches politics @ Brunel, Imagining the state, Philadelphia: Open University Press, 6-7)

The last point should indicate to the reader that this is a polemical book about a polemical topic. As such, I should be clear about my intentions. If a hidden agenda seems nasty, then an exposed one looks downright impudent.13 Writers these days increasingly like to stand aside from the affray. This is nowhere more obvious than in books in which affray is a central issue-namely books on issues such as the state, power and capital. On the one hand, this is no doubt due to the fate of the academy in contemporary capitalism-academic research assessment exercises which seem to have knocked the political stuffing out of seemingly political writers (best not write anything too political about this political topic, in case it damages one's promotion prospects). On the other hand, it is also clearly connected to the demise of any coherence the Left once had. Writers on the Left appear to be happier to retreat into ever more exegetical work on text after text, with little sense as to the purpose of reading political writers in the first place. Or, worse, they have bought into the stunningly naive socio-political claim that we have moved into a world in which there is politics without enemies.4 (And if there are no enemies, then there is no ground for any fundamental disagreement and thus no real need to say anything interesting at all.) Too many intellectuals on the Left have thus developed an instrumental inability to think beyond the instructions and parameters provided for them by the state and one of its key ideological apparatuses - the university. So let me say that this book is written from outside the statist political imaginary (or at least as much as one can be outside it), and also against it. To write against the statist imaginary is thus intended as an act of resistance - though admittedly not the bravest act of resistance one might imagine, since the state aims to dominate the thought of even those who oppose it (indeed, one might say especially those who oppose it). Pierre Bourdieu has argued that `to endeavour to think the state is to risk either taking over, or being taken over by, the thought of the state','~ and as I argue in Chapter 2, as part of its administration of civil society the state aims to structure the way we view the world by generating the categories through which citizens come to imagine collective identity and thus their own political subjectivity. One of the implications of this is that the statist political imaginary has assisted the state in setting limits on the theoretical imagination, acting as a block on the possibility of conceiving of a society beyond the state.This is a book that tries to think the state without either taking over or being taken over by the thought of the state. It therefore rests on a different political imaginary, one which I mention here and return to only briefly at the very end of the book, which arises out of the tradition of the oppressed which teaches us that the `state of exception' in which we live is not the exception but the rule. As Walter Benjamin recognized, to write against the state of exception in this way is to aim to bring about a real state of emergency which imagines the end of the state, and thus an end to the possibility of fascism.

### 1NR

## CP

#### No scenario for lose nukes

Michael Clarke '13, PhD in Asian and International Studies and an Australian Research Council (ARC) Research Fellow at the Griffith Asia Institute, 4/17/13, "Pakistan and Nuclear Terrorism: How Real is the Threat?" Comparative Strategy, Vol. 32 No.2

\*\*C2= command and control system- ensures that the state's nuclear weapons will only be used according to the principles of its nuclear doctrine

This article demonstrates that while nuclear terrorism is indeed possible, there remain significant obstacles for terrorists to overcome in order to acquire sufficient fissile or radiological material from Pakistani sources. It also identifies the potential for terrorists to acquire fissile or radiological material due to problems at each level of Pakistan's nuclear complex. However, the potential for some of these problems to increase the likelihood of nuclear terrorism tends to be overstated. For example, it has been suggested that Pakistan's nuclear first use doctrine combined with a delegative C2 system could open a window of opportunity for terrorists to seize either an intact nuclear weapons or key components of nuclear weapons. This scenario, however, is improbable given that Pakistan appears on balance to have a more assertive C2 system and stores its nuclear weapons unassembled and dispersed across the country. Nonetheless, separate storage and dispersal could create more points of access for terrorists to acquire components of nuclear weapons, such as the AF&F mechanism or fissile cores.¶ In the Pakistani context, although the technical/scientific obstacles to nuclear terrorism detailed in the first section of this chapter remain, there are numerous question marks not only over the state's capacity to manage and secure nuclear material but also over the epistemic side of the equation. 95 There remain concerns about the potential for individuals employed in Pakistan's nuclear complex, and with specific technical/scientific knowledge regarding nuclear materials, either to leak such information to extremists or to closely collaborate with them. Although Pakistan has put in place a PRP to guard against such an occurrence it remains unclear as to how rigorously it is implemented. The threat stemming from the epistemic side of the equation may also be set to increase given Pakistan's proposed expansion of its nuclear power generation capacity, as such an expansion will require a large cadre of trained and qualified personnel.¶ Thus, much of the speculation and commentary about the potential for nuclear terrorism in Pakistan tends to emphasize scenarios in which hypothetical terrorists are aided and abetted in the acquisition of an intact nuclear weapon or fissile material by individuals employed in the nuclear complex or rogue elements of the military. This focus has tended to result in the downplaying of the real and complex barriers to terrorists acquiring intact weapons and fissile or radiological material.

## DA

### OV

#### Rapid response is key to warfighting – only unfettered executive deployment of armed forces can keep up

Royal 11 – fellow @ Institute of World Politics

(John Paul, “War Powers and the Age of Terrorism,” http://www.thepresidency.org/storage/Fellows2011/Royal-\_Final\_Paper.pdf)

The international system itself and national security challenges to the United States in particular, underwent rapid and significant change in the first decade of the twenty-first century. War can no longer be thought about strictly in the terms of the system and tradition created by the Treaty of Westphalia over three and a half centuries ago. Non-state actors now possess a level of destructiveness formerly enjoyed only by nation states. Global terrorism, coupled with the threat of weapons of mass destruction developed organically or obtained from rogue regimes, presents new challenges to U.S. national security and place innovative demands on the Constitution’s system of making war. In the past, as summarized in the 9/11 Commission Report, threats emerged due to hostile actions taken by enemy states and their ability to muster large enough forces to wage war: “Threats emerged slowly, often visibly, as weapons were forged, armies conscripted, and units trained and moved into place. Because large states were more powerful, they also had more to lose. They could be deterred" (National Commission 2004, 362). This mindset assumed that peace was the default state for American national security. Today however, we know that threats can emerge quickly. Terrorist organizations half-way around the world are able to wield weapons of unparalleled destructive power. These attacks are more difficult to detect and deter due to their unconventional and asymmetrical nature. In light of these new asymmetric threats and the resultant changes to the international system, peace can no longer be considered the default state of American national security. Many have argued that the Constitution permits the president to use unilateral action only in response to an imminent direct attack on the United States. In the emerging security environment described above, pre-emptive action taken by the executive branch may be needed more often than when nation-states were the principal threat to American national interests. Here again, the 9/11 Commission Report is instructive as it considers the possibility of pre-emptive force utilized over large geographic areas due to the diffuse nature of terrorist networks: In this sense, 9/11 has taught us that terrorism against American interests “over there” should be regarded just as we regard terrorism against America “over here.” In this sense, the American homeland is the planet (National Commission 2004, 362). Furthermore, the report explicitly describes the global nature of the threat and the global mission that must take place to address it. Its first strategic policy recommendation against terrorism states that the: U.S. government must identify and prioritize actual or potential terrorist sanctuaries. For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power (National Commission 2004, 367). Thus, fighting continues against terrorists in Afghanistan, Yemen, Iraq, Pakistan, the Philippines, and beyond, as we approach the tenth anniversary of the September 11, 2001 attacks. Proliferation of weapons of mass destruction (WMD), especially nuclear weapons, into the hands of these terrorists is the most dangerous threat to the United States. We know from the 9/11 Commission Report that Al Qaeda has attempted to make and obtain nuclear weapons for at least the past fifteen years. Al Qaeda considers the acquisition of weapons of mass destruction to be a religious obligation while “more than two dozen other terrorist groups are pursing CBRN [chemical, biological, radiological, and nuclear] materials” (National Commission 2004, 397). Considering these statements, rogue regimes that are openly hostile to the United States and have or seek to develop nuclear weapons capability such as North Korea and Iran, or extremely unstable nuclear countries such as Pakistan, pose a special threat to American national security interests. These nations were not necessarily a direct threat to the United States in the past. Now, however, due to proliferation of nuclear weapons and missile technology, they can inflict damage at considerably higher levels and magnitudes than in the past. In addition, these regimes may pursue proliferation of nuclear weapons and missile technology to other nations and to allied terrorist organizations. The United States must pursue condign punishment and appropriate, rapid action against hostile terrorist organizations, rogue nation states, and nuclear weapons proliferation threats in order to protect American interests both at home and abroad. Combating these threats are the “top national security priority for the United States...with the full support of Congress, both major political parties, the media, and the American people” (National Commission 2004, 361). Operations may take the form of pre-emptive and sustained action against those who have expressed hostility or declared war on the United States. Only the executive branch can effectively execute this mission, authorized by the 2001 AUMF. If the national consensus or the nature of the threat changes, Congress possesses the intrinsic power to rescind and limit these powers.

#### Targeted killings scramble terror networks –

Byman 12 - a professor in the Security Studies Program at Georgetown University and the research director of the Saban Center at Brookings. [Daniel Byman, “Do Targeted Killings Work?” Experts Answer, Council on Foreign Relations, 9/24/12, http://blogs.cfr.org/zenko/2012/09/24/ask-the-experts-do-targeted-killings-work/]

Targeted killings work—just not in all places and at all times. They can steadily attrite a terrorist group’s leadership and, over time, leaving it with fewer impressive leaders and fewer skilled personnel. Their biggest impact, however, is often in what the terrorist organization does not do. Leaders must spend their time hiding and changing locations in order to survive. They must curtail phone communications and avoid interacting with large groups of followers, all of which make them far less able to guide the organization, inspire followers, and enforce their will. Leaders often instigate witch-hunts in order to go after supposed traitors who provided the lethal intelligence, further reducing the group’s effectiveness.

#### Drones don’t cause anti-Americanism and reducing strikes doesn’t solve it---zero data supports their claims

Amitai Etzioni 13, professor of international relations at George Washington University, March/April 2013, “The Great Drone Debate,” Military Review, http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview\_20130430\_art004.pdf

Other critics argue that drones strikes engender much resentment among the local population and serve as a major recruitment tool for the terrorists, possibly radicalizing more individuals than they neutralize. This argument has been made especially in reference to Pakistan, where there were anti-American demonstrations following drones strikes, as well as in Yemen.44 However, such arguments do not take into account the fact that anti-American sentiment in these areas ran high before drone strikes took place and remained so during periods in which strikes were signiﬁcantly scaled back. Moreover, other developments—such as the release of an anti-Muslim movie trailer by an Egyptian Copt from California or the publication of incendiary cartoons by a Danish newspaper—led to much larger demonstrations. Hence stopping drone strikes—if they are otherwise justiﬁed, and especially given that they are a very effective and low-cost way to neutralize terrorist violence on the ground45—merely for public relations purposes seems imprudent.

#### Longterm studies prove effectiveness.

Price 2012 (Bryan C. former assistant professor in the Department of Social Sciences at the U.S. Military Academy and Director of the Combating Terrorism Center at West Point, “Targeting Top

Terrorists: How Leadership Decapitation Contributes to Counterterrorism”, International Security, Volume 4, Issue 36, Spring 2012, http://belfercenter.ksg.harvard.edu/files/Price.pdf, p. 43-44)

This article has advanced an argument that runs counter to the near scholarly¶ consensus that leadership decapitation has been ineffective at best and counterproductive at worst in the fight against terrorist groups.138 I argue that¶ terrorist groups are susceptible to decapitation because they have unique organizational characteristics (they are violent, clandestine, and values-based¶ organizations) that amplify the importance of leaders and make leadership¶ succession difficult. To provide evidence for this claim, I eschewed short-term¶ metrics and instead analyzed the effects of leadership decapitation on the mortality rate of terrorist groups over a longer period of time. My study yielded¶ six primary findings.¶ First, decapitated terrorist groups have a significantly higher mortality rate¶ than nondecapitated groups. Regardless of how I specified the duration of the¶ effect from leadership decapitation (i.e., whether I limited it to the year in¶ which decapitation occurred, limited it to two years, or allowed it to linger indefinitely), killing or capturing a terrorist leader increased the mortality rate of¶ the group. There is no guarantee, however, that organizational death will be¶ immediate; only 30 percent of decapitated groups (40 of 131) ended within two¶ years of losing their leader.¶ Second, the earlier leadership decapitation occurs in a terrorist group’s life¶ cycle, the greater the effect it will have on the group’s mortality rate. Additionally, the magnitude of this effect decreases over time. Killing or capturing¶ a terrorist leader in the first year of the group’s existence makes the group¶ more than eight times as likely to end than a nondecapitated group. The effects, however, diminish by half in the first ten years, and after approximately¶ twenty years, leadership decapitation may have no effect on the group’s mortality rate. This finding is in line with the conclusion of other scholars who argue that a terrorist group’s organizational capacity increases with age, making¶ it more durable with time.139¶ Third, all three methods of leadership decapitation in this study—killing,¶ capturing, or capturing and then killing the leader—significantly increase the¶ mortality rate of terrorist groups. The relative ranking of each method differs¶ according to how one specifies the duration of the decapitation effect, but even¶ then, the effect is statistically indistinguishable across all three methods.¶ Fourth, any type of leadership turnover, not just decapitation, increases the¶ mortality rate of terrorist groups. This is an important finding because states¶ may not have to kill or capture a leader to hasten the group’s demise.¶ Fifth, group size does not affect terrorist group duration. Smaller groups are¶ just as durable as larger groups, and groups of different size react similarly after losing a leader.¶ Sixth, contrary to findings in other studies,140 I found that religious terrorist¶ groups were less resilient and easier to destroy than nationalist groups following leadership decapitation. Although religious groups appear to be 80 percent¶ less likely to end than nationalist groups based on ideology alone, they were¶ almost five times as likely to end than nationalist groups after experiencing¶ leadership decapitation. I believe this is because of the important role leaders¶ of religious terrorist groups play in framing and interpreting organizational¶ goals and strategies.