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## A2AD – Harvard

**Emerging A2AD threats and growing obsolescence of the CVW make carriers vulnerable and soaring costs cause budget rollback**

**Goure 13** - vice president at the Lexington Institute in Arlington, Virginia, where he specializes in national security <Daniel. “Drones to The Rescue!” September 2013. <http://www.usni.org/magazines/proceedings/2013-09/drones-rescue>>

The issue is important because, as anyone who has been following the recent budgetary developments in Washington knows, the future of the carrier is under increasing stress. Critics have contended that the Navy’s longstanding strategy of building the Fleet around a core of 11 nuclear aircraft carriers is becoming too expensive, and that the concept has been unable to keep pace with the rapidly growing array of threats from potential adversaries. And with the retirement of aging aircraft systems such as the A-6 and the S-3, some say the overall striking power of the carrier air wing has declined.Indeed, Secretary of Defense Chuck Hagel disclosed on 31 July that one of the largest potential spending cuts that a “strategic choices and management review” panel suggested earlier this year was to reduce the number of carrier strike groups from the current 11 to a new level of only eight or nine. “The basic tradeoff is between capacity . . . and our ability to modernize weapons systems and to maintain our military’s technological edge,” the secretary said. It’s here that the X-47B’s mid-July milestone was especially significant. The drone was developed as part of the Navy’s effort to design and test a UAV-centered unmanned combat air system. During the week that the Bush demonstration was being conducted, the Navy invited four defense contractors to submit preliminary design studies for an unmanned carrier-launched airborne surveillance and strike system, known as UCLASS. The Navy’s hope is to conduct an open competition in Fiscal Year 2014 that will result in the deployment of an operational system by FY 20.¶ The key performance parameters set out in the Navy’s invitation answered several lingering questions about the operational concept for UCLASS. The system’s primary role will be to conduct long-distance intelligence-gathering, surveillance, and reconnaissance (ISR), and to improve targeting. According to published documents, the UCLASS system must be able to conduct two unrefueled orbits at 600 nautical miles or one unrefueled orbit at 1,200 nautical miles. In lightly contested environments, it must be able to conduct strike missions out to 2,000 nautical miles. The drone must be able to lift a 3,000-pound payload, made up primarily of sensors but including 1,000 pounds of air-to-surface weapons such as the 500-pound Joint Direct Attack Munitions (JDAMS) and the Small Diameter Bomb II. Even with such capabilities, contractors will have to keep the price-tag for UCLASS under $150 million, not including items such as sensor packages, weapons, spare parts, and training.¶ The modest performance parameters indicate that, despite the potential, once the UCLASS system gets off the ground, the Navy will take a cautious, step-by-step approach. The focus on the ISR and light-attack missions means that UCLASS drones do not require high speed, extreme agility, or even stealth features. This, in turn, will simplify design and production and, in a time of growing austerity, reduce cost. Just as important, the UCLASS will fill a significant void in carrier-based long-endurance/long-distance ISR, essentially doubling the duration of these operations. The limited air-to-ground capability envisioned for the UCLASS drone means that it will supplement—but not replace—the primary strike force of the carrier air wing, the F/A-18 E/F (and soon the F-35C as well).¶ As currently envisioned, the new system will be only a small step toward defining the carrier air wing of the future. But if it succeeds and is expanded, UCLASS—and the systems that follow it—could prove to be important elements in the debate over future missions for the modern aircraft carrier and how many CVNs to retain in the Fleet.¶ It’s been a long time since there was a serious discussion about the future of the aircraft carrier. Yet, with growing frequency and intensity, Navy strategists (and periodicals such as Proceedings ) have been questioning the central place given to the CVN in Navy strategy and shipbuilding plan The issue that has drawn the greatest attention is how vulnerable critics say the aircraft carrier has become in the face of a number of emerging threats. China has developed new antiship ballistic missiles with guided warheads, which seem designed to target large naval vessels such as carriers. 2 And potential U.S. adversaries have acquired a raft of new weapons for anti-access and area-denial (A2/AD) operations, from manned aircraft and sea-skimming cruise-missiles that can be delivered from land, sea, or air to diesel-electric submarines. Taken together, the critics contend, these will place the United States’ entire surface Navy at greater risk and force the carrier strike group to take additional protective measures that could include operating farther from hostile shores or even restricting overall offense operations significantly. ¶ A second issue, which has gained greater prominence in the face of congressional calls for deep defense spending cuts, is the cost of naval aviation—from building and maintaining aircraft carriers to deploying their air wings and supporting vessels. The soaring cost overruns and construction delays in the production of the USS Gerald R. Ford (CVN-78), the first of a new class of Navy super-carriers, have raised concerns both within the Navy and on Capitol Hill. 4 At the same time, the cost of the carrier air wing is rising visibly even though it is shrinking in size. 5 Navy leadership and a number of outside experts have offered a spirited defense of the Ford -class carriers. 6¶ The third challenge—and the most central for the future of the UCLASS drone and its successors—is that of making sure that the future carrier air wing (CVW) is effective. Early assessments of the potential for UAVs to enhance the utility of the carrier air wing focused on the value of their greater range and persistence. 7 As Representative J. Randy Forbes (R-VA), chairman of the House Armed Services subcommittee on seapower and projection forces, has argued, the issues of reach and persistence remain the most serious weaknesses of the CVW—particularly in the face of the Obama administration’s new, more intense focus on Asia.¶ [T]he long distances in the region, combined with A2/AD challenges, raise questions about the future strike power of the Carrier Air-Wing (CVW). As we posture our forces, is the planned CVW of the 2020s structured to meet the range, persistence, stealth, ISR, and payload demands that will be required to operate in this theater? 8

**Causes conflict with China over the SCS and Senkaku Islands**

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A recent query from a colleague asked a very simple question: If America’s AirSea Battle (ASB) was ever called into service against China’s anti-access/area denial strategy (A2/AD), who wins?¶ Yikes. The simple answer, without making loyal Diplomat readers suffer through a 10,000 word academic slog is… no one.¶ But first, allow me to back track a bit. One key aspect of both ideas that gets lost in the mix is in what situations conflict could occur and the possible escalatory nature of such a conflict. When it comes to a potential showdown between ASB and A2/AD, the devil is truly in the details. While pundits love asking and analyzing what weapons could be deployed and how they would be used, the situation in which such weapons come into play and what happens next is equally important. Context in a situation like this matters.¶ Let us consider for a moment the possible flashpoints in which U.S. and Chinese forces could clash. The two that come to mind would be some sort of escalatory crisis over the Senkaku/Diaoyu Islands or a situation involving territorial tensions in the South China Sea.¶ Of the two, the greatest chance of conflict — albeit remote despite current tensions — would be some sort of China-Japan conflict in the East China Sea. The most likely scenario would involve an accidental collision of maritime vessels or aircraft. Diplomatic efforts fail and for some reason, someone escalates matters and attempts to either land troops on the disputed islands or shooting accidently begins. In such a scenario, let’s assume American forces come to Japan’s aid.¶ So what happens next? Making predictions on such a scenario is nearly impossible, but we can draw some conclusions from the writings of Chinese and American scholars on the subject. ¶ When considering China’s A2/AD strategy, one popular theory is that China would go all in – launching massive saturation missile strikes on American and Japanese bases to gain the advantage and attain victory quickly. Missiles of various ranges and capabilities could be launched on allied airfields early to negate any advantage in technology or training. Anti-ship weapons would be used in mass to cripple naval forces – cruise and ballistic missiles specifically. Sea mines and submarines could be positioned around the disputed islands in an effort to deter reinforcements from deploying to the area. Anti-satellite weapons could be employed to blind allied forces and damage vital C4ISR, and cyber weapons could be utilized to gain the upper hand.¶ Many Chinese strategists even make the argument that it is to Beijing’s advantage to attack first, in mass and with overwhelming force – a Chinese missile-centric “shock and awe” if you will.¶ How would America and its allies respond? Again, making such predictions is difficult and much would depend on who struck first. If we assume a Chinese opening assault, first and foremost, American and allied forces would attempt to retain access to sea lines of communication (SLOC) and the ability to move forces into the area of dispute in order to bring overwhelming military power to bear.¶ Defense against Chinese missiles could prove a challenge if the number of missiles employed in offensive operations was greater than the number of interceptors available. American forces — if intelligence assets could detect an impending launch — could attempt a preemptive strike on Chinese conventional missile forces. They could also employ cyber strikes against the guidance and navigation systems of such weapons, in order to avoid escalating the situation by attacking the Chinese mainland. U.S. military planners would also seek to degrade Chinese command and control systems in an effort to blind the ability of PLA forces to conduct operations in any sort of synergizedway.

**A2AD capabilities give China an assymetric advantage over the US – causes first strike and escalation**

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The first article, from the good folks over at Breaking Defense, discusses the well-worn subject in defense circles revolving around China striking U.S. forces first in a possible conflict—namely a massive conventional strike (most scholars argue by missiles of various types). The scary part according to the piece: “Because China believes it is much weaker than the United States, they are more likely to launch a massive preemptive strike in a crisis.” Yikes.¶ The second article is brought to us by distinguished University of Pennsylvania Professor Avery Goldstein courtesy of Foreign Affairs. Goldstein explains that “For at least the next decade, while China remains relatively weak compared to the United States, there is a real danger that Beijing and Washington will find themselves in a crisis that could quickly escalate to military conflict.”¶ Some heavy stuff for sure. To be fair to both pieces, I would encourage Flashpoints readers to look at the finer points of both articles—there is a lot to absorb beyond these few points I bring to your attention. ¶ Indeed, the idea of escalation and preemptive strikes by China has been discussed in various circles for several years now. For numerous reasons that scholars consider, such as history, the current nature of military technology or the various arguments made by Chinese academics advocating such a military posture, many feel that it would be very much in Beijing's interests to strike hard and decisively. In an interview I conducted with noted scholar Roger Cliff last year, he explained that many U.S. air bases that are close to China have few hardened facilities to protect themselves from a missile strike. This makes them sitting ducks in a conflict. ¶ But what conditions would compel China to strike? Not any easy question to answer for sure.¶ It seems very few are asking the question of motivation for such an attack—or the repercussions that would follow.¶ It’s one thing to speculate about such ideas, but it’s not so easy to develop an actual model that has Beijing dreaming up a cost-benefit analysis concluding that a strike on American forces is in its national interest. With two-way trade between China and America at over half a trillion dollars per year, robust cultural ties, and most of China’s sea lines of communication (SLOCs) open to strike by the American navy (such that transporting much needed natural resources by sea is a tricky enterprise), there seems to be plenty of incentive to think twice. Yet, because of what many argue are growing tensions in the U.S.-China relationship, people like myself are forced to consider such nightmare scenarios.¶ So let us broadly consider for a moment that China does decide to strike: how would America respond? In a word: robustly.¶ Americans might not be able to do things like draw up budgets on time, or not come perilously close to defaulting on the national debt, but one thing China can count on is that Americans will rally around the good old red, white and blue in times of national emergency, especially when attacked by a foreign power.¶ We must also consider that if a crisis did break out between the U.S. and China, both sides would have a new domain to strike in, one with the possibility of doing tremendous damage with some measure of deniability: cyber. One could imagine a scenario where if a crisis began to brew, Beijing would launch a preemptive cyber-strike on an important U.S. target or attack something of marginal value to send a message or demonstrate resolve. In the 21st century, there is no need to fire a shot across your enemy's bow or a missile to send your message – a well-placed piece of malware could carry your message with an even more sobering effect.¶ There is also this question of Chinese self-perceived weakness compared to U.S. forces. It is clear that Beijing rightly understands that in the near-term it can’t match American forces in a direct, symmetrical matchup. No matter, that is why Beijing has embraced an A2/AD strategy. Developing weapons such as anti-ship ballistic missiles gives Beijing an asymmetric advantage; one U.S. forces can’t take lightly anymore.

#### That goes nuclear

**Kulacki 12**, Gregory, Senior Analyst & China Project Manager for the Global Security Program at the Union of Concerned Scientists, “The Risk of Nuclear War with China,” 9/21, <http://www.huffingtonpost.com/gregory-kulacki/the-risk-of-nuclear-war-w_b_1903336.html>

Last week two separate studies warned that China and the United States are pursuing military strategies and implementing defense policies that could lead to a nuclear war. John Lewis and Xue Litai of Stanford University concluded a detailed exposition of China's nuclear war plans with a very sober warning. "Both sides, clinging to incongruous assessments, run the risk of provoking unanticipated escalation to nuclear war by seeking a quick victory or tactical advantages in a conventional conflict. This dilemma is not only real, but perilous." Thomas Christensen of Princeton expressed concern about the same problem; the possibility that a conventional military conflict between the United States and China could end in a nuclear exchange. "For example, if strikes by the United States on China's conventional coercive capabilities or their critical command and control nodes and supporting infrastructure were to appear in Beijing as a conventional attack on its nuclear retaliatory capability or as a precursor to a nuclear first strike, even a China that generally adheres to a No-First-Use posture might escalate to the nuclear level." Neither study suggests that the military or political leadership of China or the United States intends to resort to nuclear weapons in the event of a military conflict. China's commitment not to be the first to use nuclear weapons "at any time under any circumstances" is drilled into the officers and soldiers of China's strategic missile forces. A classified text used to train those forces, The Science of Second Artillery Operations, unambiguously instructs, "In accord with our national principle not to be the first to use nuclear weapons under any circumstances, the Second Artillery's strategic nuclear forces can carry out a retaliatory nuclear attack against the enemy, following the command of the 'high leadership,' only after the enemy has first attacked us with nuclear weapons." Although the United States is unwilling to make a similar commitment, U.S. superiority in conventional weapons and overall military capabilities makes it unlikely the United States would consider using nuclear weapons for any purpose other than preventing a Chinese nuclear attack on the United States. The most recent U.S. Nuclear Posture Review, in an effort to deemphasize the role of nuclear weapons in U.S. defense policy, declared that the "fundamental role of U.S. nuclear weapons...is to deter a nuclear attack on the United States, our allies and partners." The risk of a nuclear war with China lies in the potential for misunderstanding or miscommunication during a conventional conflict. China's current strategy for employing its conventional and nuclear missile forces during a future conflict with the United States is self-consciously designed to create uncertainty, with the expectation that uncertainty will restrain U.S. military action. Unfortunately, China's strategy could also precipitate a large-scale U.S. attack on China's missile forces. There are several Chinese military policies that might confuse U.S. decision-makers in a time of war. Some Chinese conventional missiles are located on the same missile bases as Chinese nuclear missiles. Some Chinese missiles, particularly the DF-21, can be armed with either a conventional or a nuclear warhead. Chinese conventional war plans call for long-range "strategic" conventional missile strikes at key enemy targets, including U.S. military bases on allied soil and the continental United States. If this were not confusing enough already, The Science of Second Artillery Operations contains a section on "lowering the nuclear threshold" that details procedures for alerting China's nuclear forces in a crisis for the express purpose of forcing a halt to an enemy's conventional attacks on a select group of targets, such as Chinese nuclear power plants, large dams and civilian population centers. Although the Science of Second Artillery Operations unambiguously states that if alerting China's nuclear missile forces fails to halt conventional enemy attacks China will hold firm to its "no first use" commitment, U.S. decision-makers might not believe it. Indeed, U.S. interlocutors have repeatedly told their Chinese counterparts that they do not find China's "no first use" pledge credible. The combination of these factors makes a nuclear exchange between the United States and China not only plausible, but also probable if the two countries were to become embroiled in a military conflict. As Lewis and Xue explain, "If, in a time of high tension, the Chinese command authorized a conventional missile attack as an act of preemptive self-defense, the enemy and its allies could not know if the incoming missiles were conventional or nuclear. In a worst-case scenario, a Chinese first-strike conventional attack could spark retaliation that destroys Chinese nuclear assets, creating a situation in which escalation to full-scale nuclear war would not just be possible, but even likely." The Obama administration is "rebalancing" U.S. military forces in response to perceived relative increases in Chinese military capabilities. China sees this so-called "pivot" to Asia, especially when pared with new U.S. military strategies such as "Air-Sea Battle," as a policy of containment. Both sides downplay the risks of conflict, but they also see each other as potential adversaries, and are hedging their diplomatic bets with expensive investments in new military hardware, including new technologies that will expand the conflict into cyberspace and outer space. Territorial disputes between China and U.S. allies, rising nationalist sentiment in the region, and the potential for domestic political instability within China could produce any number of casussen belli that could trigger the conventional conflict that carries the risk of ending in a nuclear war.

**Iran’s developing A2AD capabilities to close the Strait of Hormuz – causes oil price spikes and economic collapse**

**Isenberg 12**, David, adjunct scholar with the Cato Institute, a US Navy veteran, and the author of the book, Shadow Force: Private Security Contractors in Iraq [“Iran well prepared for the worst,” January 31st, <http://www.atimes.com/atimes/Middle_East/NA31Ak02.html>]

According to the report published by the Center for Strategic and Budgetary Assessments (CSBA), "Iran, in particular, has been investing in new capabilities that could be used to deter, delay or prevent effective US military operations in the Persian Gulf. Iran's acquisitions of weapons that it could use to deny access to the Gulf, control the flow of oil and gas from the region, and conduct acts of aggression or coercion, are of grave concern to the United States and its security partners." The report, "Outside-In: Operating from Range to Defeat Iran's Anti-Access and Area-Denial Threats" [1] notes that Iran has been preparing for a possible military confrontation with the United States for decades. Instead of engaging in a direct military competition, which would be pitting its weaknesses against US strengths, Iran has developed an asymmetric "hybrid" A2/AD strategy that mixes advanced technology with guerilla tactics to deny US forces basing access and maritime freedom of maneuver. Even if Iran did not disrupt Gulf maritime traffic for long, it could still have a devastating impact. A recent report by the International Monetary Fund (IMF) found that Iran's closure of the Strait of Hormuz would "neutralize a large part of current OPEC [Organization of Petroleum Exporting Countries] spare capacity," saying "alternative routes exist, but only for a tiny fraction of the amounts shipped through the strait, and they may take some time to operationalize while transportation costs would rise significantly." "A blockade of the Strait of Hormuz would constitute, and be perceived by markets to presage, sharply heightened global geopolitical tension involving a much larger and unprecedented disruption," it said. The IMF said that "supply disruption would likely have a large effect on prices, not only reflecting relatively insensitive supply and demand in the short run but also the current state of oil market buffers". "A halt of Iran's exports to OECD [Organization for Economic Cooperation and Development] economies without offset from other sources would likely trigger an initial oil price increase of around 20-30% (about US$20-30 a barrel currently), with other producers or emergency stock releases likely providing some offset over time," the report showed. It stressed that "a Strait of Hormuz closure could trigger a much larger price spike, including by limiting offsetting supplies from other producers in the region". "**If you could cut off oil flow for even several weeks the global economy would be in depression.** That would be a serious price to pay; it is a sobering thought," according to Patrick Cronin, a senior advisor at the Center for a New American Security, a Washington DC think-tank.

#### Oil shocks cause war

**Roberts 04** (Paul, Regular Contributor to Harpers and NYT Magazine, “The End of Oil: On The Edge of a Perilous New World”, p. 93-94)

The obsessive focus on oil is hardly surprising, given the stakes. In the fast-moving world of oil politics, oil is not simply a source of world power, but a medium for that power as well, a substance whose huge importance enmeshes companies, communities, and entire nations in a taut global web that is sensitive to the smallest of vibrations. A single oil "event" — a pipeline explosion in Iraq, political unrest in Venezuela, a bellicose exchange between the Russian and Saudi oil ministers — sends shockwaves through the world energy order, pushes prices up or down, and sets off tectonic shifts in global wealth and power. Each day that the Saudi-Russian spat kept oil supplies high and prices low, the big oil exporters were losing hundreds of millions of dollars and, perhaps, moving closer to financial and political disaster — while the big consuming nations enjoyed what amounted to a massive tax break. Yet in the volatile world of oil, the tide could quickly turn. A few months later, as anxieties over a second Iraq war drove prices up to forty dollars, the oil tide abruptly changed directions, transferring tens of billions of dollars from the economies of the United States, Japan, and Europe to the national banks in Riyadh, Caracas, Kuwait City, and Baghdad, and threatening to strangle whatever was left of the global economic recovery. So embedded has oil become in today's political and economic spheres that the big industrial governments now watch the oil markets as closely as they once watched the spread of communism — and with good reason: six of the last seven global recessions have been preceded by spikes in the price of oil, and fear is growing among economists and policymakers that, in today's growth-dependent, energy-intensive global economy, oil price volatility itself may eventually pose more risk to prosperity and stability and simple survival than terrorism or even war.

**Economic collapse leads to extinction**

**Kemp 10**

Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

**Best studies prove growth solves conflict**

Jedidiah **Royal 10**, Director of Cooperative Threat Reduction at the U.S. Department of Defense, “Economic Integration, Economic Signalling And The Problem Of Economic Crises”, in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215

Second, on a dyadic level. Copeland's (1996. 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession lends to amplify the extent to which international and external conflicts self-rein force each other. (Blombcrj! & Hess. 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg. Hess. & Weerapana, 2004). which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995), and Blombcrg. Mess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999). and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics arr greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force.

**Drones make carriers cost-effective – keeps carriers around by making them valuable**

**Goure 13** - vice president at the Lexington Institute in Arlington, Virginia, where he specializes in national security <Daniel. “Drones to The Rescue!” September 2013. <http://www.usni.org/magazines/proceedings/2013-09/drones-rescue>>

The current budget squeeze has revived the debate about whether to reduce the number of the Navy’s aircraft carriers, but the prospective addition of unmanned aerial vehicles to the flattop’s arsenal will make the ships even more valuable in coming years.¶ When the X-47B Salty Dog 502 became the first drone to land on an aircraft carrier in July, Navy officials properly hailed the event as a technological milestone. Not only did the unmanned aerial vehicle (UAV) catapult from the flight deck of the USS George H. W. Bush (CVN-77) and successfully perform touch-and-go exercises and two landings, catching the tailhook wire with precision, but it did all of that autonomously, using its own robot “brain” of complex algorithms without need of a human drone operator as most other UAVs require. “It’s not often you get a chance to see the future, but that is what we got today,” Secretary of the Navy Ray Mabus declared after the demonstration.¶ But the success of the X-47B landing marked more than just a technological achievement; it also injected a new element into the recently revived strategic debate over how many aircraft carriers the Navy will need in coming years. As part of an advanced surveillance-and-strike system that the Navy is developing, drones will soon be able to conduct long-range, ’round-the-clock intelligence-gathering missions and aerial attacks that will make carriers cheaper to build, less costly to operate, and far more effective, and will spawn radical changes in the way the Navy uses them. As a result, the addition of the drone to the naval aviation carrier force may prove to be a major factor in saving the flattop from becoming an endangered species.¶ The issue is important because, as anyone who has been following the recent budgetary developments in Washington knows, the future of the carrier is under increasing stress. Critics have contended that the Navy’s longstanding strategy of building the Fleet around a core of 11 nuclear aircraft carriers is becoming too expensive, and that the concept has been unable to keep pace with the rapidly growing array of threats from potential adversaries. And with the retirement of aging aircraft systems such as the A-6 and the S-3, some say the overall striking power of the carrier air wing has declined.¶ Indeed, Secretary of Defense Chuck Hagel disclosed on 31 July that one of the largest potential spending cuts that a “strategic choices and management review” panel suggested earlier this year was to reduce the number of carrier strike groups from the current 11 to a new level of only eight or nine. “The basic tradeoff is between capacity . . . and our ability to modernize weapons systems and to maintain our military’s technological edge,” the secretary said.¶ It’s here that the X-47B’s mid-July milestone was especially significant. The drone was developed as part of the Navy’s effort to design and test a UAV-centered unmanned combat air system. During the week that the Bush demonstration was being conducted, the Navy invited four defense contractors to submit preliminary design studies for an unmanned carrier-launched airborne surveillance and strike system, known as UCLASS. The Navy’s hope is to conduct an open competition in Fiscal Year 2014 that will result in the deployment of an operational system by FY 20.¶ The key performance parameters set out in the Navy’s invitation answered several lingering questions about the operational concept for UCLASS. The system’s primary role will be to conduct long-distance intelligence-gathering, surveillance, and reconnaissance (ISR), and to improve targeting. According to published documents, the UCLASS system must be able to conduct two unrefueled orbits at 600 nautical miles or one unrefueled orbit at 1,200 nautical miles. In lightly contested environments, it must be able to conduct strike missions out to 2,000 nautical miles. The drone must be able to lift a 3,000-pound payload, made up primarily of sensors but including 1,000 pounds of air-to-surface weapons such as the 500-pound Joint Direct Attack Munitions (JDAMS) and the Small Diameter Bomb II. Even with such capabilities, contractors will have to keep the price-tag for UCLASS under $150 million, not including items such as sensor packages, weapons, spare parts, and training.¶ The modest performance parameters indicate that, despite the potential, once the UCLASS system gets off the ground, the Navy will take a cautious, step-by-step approach. The focus on the ISR and light-attack missions means that UCLASS drones do not require high speed, extreme agility, or even stealth features. This, in turn, will simplify design and production and, in a time of growing austerity, reduce cost. Just as important, the UCLASS will fill a significant void in carrier-based long-endurance/long-distance ISR, essentially doubling the duration of these operations. The limited air-to-ground capability envisioned for the UCLASS drone means that it will supplement—but not replace—the primary strike force of the carrier air wing, the F/A-18 E/F (and soon the F-35C as well).¶ As currently envisioned, the new system will be only a small step toward defining the carrier air wing of the future. But if it succeeds and is expanded, UCLASS—and the systems that follow it—could prove to be important elements in the debate over future missions for the modern aircraft carrier and how many CVNs to retain in the Fleet.¶ It’s been a long time since there was a serious discussion about the future of the aircraft carrier. Yet, with growing frequency and intensity, Navy strategists (and periodicals such as Proceedings ) have been questioning the central place given to the CVN in Navy strategy and shipbuilding plans. 1¶ The issue that has drawn the greatest attention is how vulnerable critics say the aircraft carrier has become in the face of a number of emerging threats. China has developed new antiship ballistic missiles with guided warheads, which seem designed to target large naval vessels such as carriers. 2 And potential U.S. adversaries have acquired a raft of new weapons for anti-access and area-denial (A2/AD) operations, from manned aircraft and sea-skimming cruise-missiles that can be delivered from land, sea, or air to diesel-electric submarines. Taken together, the critics contend, these will place the United States’ entire surface Navy at greater risk and force the carrier strike group to take additional protective measures that could include operating farther from hostile shores or even restricting overall offense operations significantly. 3¶ A second issue, which has gained greater prominence in the face of congressional calls for deep defense spending cuts, is the cost of naval aviation—from building and maintaining aircraft carriers to deploying their air wings and supporting vessels. The soaring cost overruns and construction delays in the production of the USS Gerald R. Ford (CVN-78), the first of a new class of Navy super-carriers, have raised concerns both within the Navy and on Capitol Hill. 4 At the same time, the cost of the carrier air wing is rising visibly even though it is shrinking in size. 5 Navy leadership and a number of outside experts have offered a spirited defense of the Ford -class carriers. 6¶ The third challenge—and the most central for the future of the UCLASS drone and its successors—is that of making sure that the future carrier air wing (CVW) is effective. Early assessments of the potential for UAVs to enhance the utility of the carrier air wing focused on the value of their greater range and persistence. 7 As Representative J. Randy Forbes (R-VA), chairman of the House Armed Services subcommittee on seapower and projection forces, has argued, the issues of reach and persistence remain the most serious weaknesses of the CVW—particularly in the face of the Obama administration’s new, more intense focus on Asia.¶ [T]he long distances in the region, combined with A2/AD challenges, raise questions about the future strike power of the Carrier Air-Wing (CVW). As we posture our forces, is the planned CVW of the 2020s structured to meet the range, persistence, stealth, ISR, and payload demands that will be required to operate in this theater? 8¶ The CVW of the near-future also is in flux. The F/A-18 E/F will play a significant role in both air-to-air and air-to-ground missions for the next several decades. The F-35C, long styled as the eventual centerpiece of the air wing, soon will be deployed. The EF-18G Growler is on the decks and will be upgraded with the Next-Generation Jammer. The Navy plans to acquire 75 E-2D Advanced Hawkeyes, which provide a leap forward in airborne ISR and networked fire control, but production of these is slowing. Finally, the MH-60R will provide a substantial increase in the CVW’s antisubmarine warfare capabilities.¶ Yet, if UCLASS is to be anything more than a show horse, it must pull its weight in the continuing evolution of the CVW. This means that its designers will have to address some of the challenges facing the carrier and the air wing and also set the stage for exploiting the full potential of the new Ford -class CVN.¶ The Navy’s invitation to contractors clearly is designed to produce a UCLASS drone system that will be a workhorse for the CVW. In its ISR role, UCLASS will significantly expand the carrier strike group’s ability to see, assess, and respond to threats. This is of particular importance in the context of the Asia-Pacific pivot as well as the proliferation of longer-range antiship missiles. Equally important, UCLASS will make it possible for a single air wing to conduct ’round-the-clock air and maritime surveillance. Finally, in its light-attack role, UCLASS will expand both the reach and flexibility of the air wing, allowing the more capable F/A-18 E/Fs and F-35s to be employed where their advanced features are most appropriate. The ability of the UCLASS to loiter while carrying heavier weapons than a Hellfire missile will be especially valuable in low-intensity conflicts, where exquisite precision strikes have become the norm. 9¶ Flexibility will be another important attribute for the winning UCLASS design. Given rapid advances in sensors, weapons, and networking, the UCLASS needs to have inherent flexibility and some room for growth to allow the carrier air wings to experiment with it and incorporate lessons learned from the system’s initial employment.¶ Over the longer-term, for the current challenges to the continuation of the aircraft carrier as the Navy’s primary ship, designers of the UCLASS will have to integrate the new program into the operational policies of the carrier air wing and exploit the inherent strengths of the Ford -class CVNs. In his speech marking the successful carrier landing of the X-47B, Navy Secretary Mabus suggested how unmanned systems will address all three of the challenges to the aircraft carrier.¶ The operational unmanned aircraft that will follow it will radically change the way presence and combat power is delivered from aircraft carriers by conducting surveillance and strike missions at extreme distances and over very long periods of time. With this advanced technology, we will put fewer sailors and Marines in harm’s way, and we will push the area of potential action even farther from the decks of our ships.¶ And it’s more efficient. Because unmanned carrier aircraft do not require flights to maintain pilot proficiency, they will deploy only for operational missions, saving fuel costs and extending the service life of the aircraft.¶ Not only will future carrier air wings be more combat- effective, they will cost less to build, and having less- expensive airframes means we can build more and use them differently, like developing swarm tactics and performing maneuvers that require more G-force than a human body can withstand.

**Specifically, drones are key to make carriers A2AD resistant by enhancing range of attack and flexibility**

**Goure 13**, Daniel, vice president at the Lexington Institute, “Drones to the Rescue,” September, http://www.usni.org/magazines/proceedings/2013-09/drones-rescue

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## South Asia/Lashkar-e-Taiba - Harvard

**Safe havens provide the LeT freedom of movement to create world-class training camps and support activities – they use first-rate infrastructure to recruit foreign fighters**

**Tankel 13**, Stephen, assistant professor at American University and a nonresident scholar at the Carnegie Endowment in the South Asia Program, “Lashkar-e-Taiba Capable of Threatening U.S. Homeland,” June 12th, http://carnegieendowment.org/2013/06/12/lashkar-e-taiba-capable-of-threatening-u.s.-homeland/g9z7#

The safe haven LeT enjoys within Pakistan has provided it the freedom of movement necessary to develop capabilities and capacity that enable it to threaten the United States. At the same time, its integration with the Pakistani state raises questions as to whether LeT leaders would risk their group’s position to execute such an attack. The following focuses on a LeT-led operation against the U.S. homeland. It is important to note, however, that the primary threat to U.S. citizens from LeT terrorist attacks remains in South Asia, either unilaterally as was the case with the 2008 Mumbai attacks or via operations executed in concert with the Indian Mujahideen.3 Further, LeT could act as part of a consortium, meaning it need not take the lead role in an attack in order for its capabilities to be used against the U.S. homeland. CAPABILITIES TO LAUNCH AN LET-LED ATTACK AGAINST THE U.S. LeT’s training camps in Pakistan remain open and the group boasts a stable of men who can provide instruction in small-unit commando tactics, reconnaissance, counter-intelligence and the construction and use of explosive devices. The group has transnational networks stretching across South Asia, the Persian Gulf and Europe, with a particularly strong connection to the United Kingdom, and reach into the U.S. and Canada. LeT operates a robust above-ground infrastructure that, combined with investments in legitimate enterprises in Pakistan and fundraising networks abroad, has enabled it to operate independent of direct ISI financial support. While it continues to enjoy reach-back capability into the Pakistani military and ISI, LeT also has leveraged its financial resources and operational freedom to develop an educated cadre among its membership. Collectively, these individuals amplify technical, training, and planning capabilities. Training Apparatus Soldiers on secondment from the military trained many of LeT’s trainers, and some of them took early retirement to join the group. As a result, LeT militants and trainers are considered to be among the most tactically adept and its bomb-makers to be among the best in the region.4 Its own camps continue to operate in Pakistan-administered Kashmir, Mansehra, and elsewhere in Pakistan. As LeT has deepened its collaboration with other outfits**,** cross-pollination among trainers and trainees has occurred. At the same time, LeT does not enjoy historically strong ties with other groups in the region and actually suffers from a deficit of trust with some of them. This should not discount the possibility that LeT trainers or camps might be used to prepare militants from another group for attacks against the U.S. However, the focus here is on the group’s capabilities to plan, prepare, and execute a unilateral terrorist attack. LeT’s own training traditionally begins with the Daura-e-Suffa, which focuses on imbuing religious principles, including the obligatory nature of jihad, as well as proselytizing. It lasts approximately three weeks, is often conducted at the group’s compound in Muridke and includes lectures by senior leaders. This is followed by the Daura-e-Aama, which consists of lectures, additional religious indoctrination and prayer, physical training, and some introductory weapons drills. It also lasts about three weeks and is typically conducted in Pakistan-administered Kashmir. A small number of those who go through the Daura-e-Suffa and Daura-e-Aama advance to the Daura-e-Khasa, which takes place at a higher elevation in Mansehra. This lasts approximately two to three months and includes physical training, guerrilla warfare tactics, survival techniques, firing different types of light weapons, and instruction on the use of hand grenades, rocket launchers, and mortars. These time frames are not fixed and militants may train for considerably longer as well as skipping the initial Daura-e-Suffa and Daura-e-Amma in some instances.5 LeT also runs a bevy of specialized programs providing instruction on a range of skills. In addition to maritime training for those who operate at sea and commando training for individuals who will undertake fidayeen attacks, these include instruction on counter-intelligence, IED construction, sabotage and surveillance, conducting reconnaissance, communicating in code, and the use of sophisticated communication technologies.6 The focus on support activities such as reconnaissance and communication is crucial to LeT’s capability to execute complex operations abroad, as evidenced by the 2008 Mumbai attacks.7 Attack Planning Capabilities LeT is a patient organization, known to perform surveillance of targets for the purpose of creating target packages that it could use in the future. For example, the 2008 Mumbai attacks began with surveillance of the Taj Mahal Hotel conducted two years prior and with no immediate attack in mind. David Headley, the Pakistani-American who undertook reconnaissance for the attacks, made multiple trips to Mumbai, conducting extensive surveillance of multiple targets. This included taking photographs and making video recordings. He was taught how to use a GPS and plotted out the future terrorists’ movements around Mumbai, bringing that GPS with the coordinates back to Pakistan so the attackers could practice. LeT’s close relationship with the Pakistani military enabled it to pull in a member of the navy to help plan the maritime insertion.8 The final operation also revealed several smart tactical decisions. Splitting the attackers into small teams made it more difficult to intercept all of them and also created the sense of a larger attack force. Exploding IED’s away from the attack sites contributed to the confusion. LeT used Voice over Internet Protocol (VoIP) during the Mumbai attacks and this made it more difficult (though clearly not impossible) to intercept its communications.9 According to Indian officials, LeT operatives based there now communicate almost exclusively with their handlers in Pakistan via VoIP or other technological means that are difficult to monitor. Notably, the group historically has focused significant resources on building up its technological capabilities, including sending members for graduate work in the field of Information Technology. This raises questions about LeT’s capability to engage in clandestine communications with transnational operatives. Its significant financial assets likely enable the group to invest in sophisticated programs and to experiment with various technologies.10 Transnational Networks LeT’s transnational networks stretch across South Asia, the Gulf and into Europe and North America. These are used primarily for fundraising and to support its regional operations, including attacks against India. However, LeT operatives have been known to operate in a number of European countries that participate in the Visa Waiver Program.11 Thus, it is believed to be capable of talent-spotting, recruiting, and vetting radicalized Westerners. LeT’s use of social media geared toward English-speaking audiences suggest the group also is attempting to position itself as a destination of choice for Westerners, especially members of the Pakistani diaspora in the U.S. and Europe, interested in associating with jihadist groups.12 It must be noted that LeT historically has used Western operatives to support its own operations in South Asia. Nevertheless, networks or operatives used for support purposes can be re-directed to support terrorist attacks. There are several notable examples of LeT foreign operatives suspected of supporting al-Qaeda-led attacks, though it is unclear whether the Pakistan-based LeT leadership sanctioned these activities.13 The one example of the group using one of its operatives to launch an attack against a Western country occurred in 2002-2003. Sajid Mir, who is responsible for managing LeT’s overseas operatives and oversaw the planning and execution of the 2008 Mumbai attacks, directed a French convert to Islam based in Paris to travel to Australia, where he was to assist an LeT-trained local to execute a terrorist attack.14 It is unclear from the open source whether the LeT-trained local in Australia was directed to execute the attack by LeT leaders or if he germinated the idea and reached out to the organization for assistance. If the latter, it is also not clear if the entire LeT leadership sanctioned deploying the Paris-based operative to assist or if Sajid Mir was acting independently or on behalf of a faction within the group. Thus, the operation illustrates not only LeT’s capacity to project power far beyond South Asia, but also the difficulty of determining the dynamics behind the decision to do so. Training Westerners Pakistanis constitute the majority of those trained in LeT camps, but the group has a history of training foreigners too.15 After the U.S. counterattack against Afghanistan destroyed the training infrastructure there, LeT stepped in to train local militants as well as foreigners who pre-9/11 would have trained in al-Qaeda camps, but now were looking for other avenues of instruction.16 Since the mid-1990s, LeT has provided training to Indian Muslims for attacks against their own country, a practice that continues today. Some of these men have executed attacks on LeT’s behalf, providing the group with plausible deniability, while others have proffered logistical support to Pakistani members of LeT who infiltrated India to carry out operations. Still others are associated with various indigenous jihadist networks, most notably the Indian Mujahideen, or have settled into life in India, essentially becoming sleeper agents the authorities fear could be activated at another time.17 LeT has long had a policy of training Westerners. The majority of them are members of the Pakistani and Kashmir diasporas in the U.K., but the group has been training Americans since 2000.18 The first Americans known to have trained with LeT were from Virginia and were part of a coterie of would-be jihadists that ultimately became known as the Virginia Jihad Network. Sajid Mir, the commander in charge of overseas operatives, arranged for several of them to provide assistance to a British Let operative who traveled to the U.S. on multiple occasions from 2002-2003 to procure military gear for the group. Although the men clearly were used in a support capacity, one concern about such networks is that their purpose can change over time. Indeed, Sajid Mir also asked two of the trainees to undertake missions involving information gathering as well as the dissemination of propaganda.19 One of them told the FBI in 2004 that he was asked specifically to perform surveillance on a chemical plant in Maryland.20 Precisely what LeT or elements within it planned to do with this information is unknown, though they clearly were interested in both surveillance and expanding the group’s networks in the U.S. In 2005, two men from Atlanta Georgia with ties to the ‘Toronto 18’ as well as to a British Pakistani who acted as a talent spotter for LeT identified possible targets for a terrorist attack in the U.S. 21 A month later the duo traveled to Washington, DC, where they shot video recordings of possible targets, including the U.S. Capitol; the headquarters building of the World Bank; the Masonic Temple in Alexandria, Virginia; and a group of large fuel storage tanks near a highway in northern Virginia.22 One of the men traveled to Pakistan later that year intending to study in a madrasa and then train with LeT.23 He arrived the week after the London Underground bombings that occurred on July 7th and was unable to realize his ambitions, possibly owing to the heightened security environment in Pakistan where two of the London bombers had trained. Notably, at least one of them is believed to have spent a night at Muridke, though there is no open source evidence suggesting LeT had any direct involvement in the 7/7 attacks.24 LeT has trained others living in America since then, none more famous than Daood Gilani, who took the name David Coleman Headley in 2006 to help facilitate his reconnaissance trips in Mumbai and elsewhere for the group. He joined LeT in February 2002, participating in the Daura-e-Suffa that month. In August 2002 he went through the Daura-e-Aama and then in April 2003 the Daura-e-Khasa, LeT’s three-month guerrilla warfare training program. More specialized trainings followed, and in 2006 he began conducting reconnaissance in India that ultimately led to the 2008 Mumbai attacks. Headley was trained and handled jointly by LeT and Pakistani intelligence, and used in a support capacity. However, without his contributions in terms of reconnaissance, it is unlikely the 2008 Mumbai attacks would have been as operationally successful. Notably, despite his access to America and Americans, LeT used Headley overwhelming for operations against India. (Headley’s involvement in an aborted plot against Denmark is discussed below.) Given the benefits Headley provided to the group, it is reasonable to assume LeT may have increased its efforts to recruit and train other Westerners or to find ways for Pakistani members to acquire citizenship or residency in Western countries. For example, in September 2011, the Federal Bureau of Investigation arrested Jubair Ahmad, a 24 year-old Pakistani immigrant living in Woodbridge, Virginia. Ahmed received religious training from LeT as a teenager, and later attended its basic training camp while living in Pakistan, before entering the U.S. in 2007 with other members of his family. After moving to the U.S. he provided material support to LeT, producing and distributing propaganda.25 As should be clear, LeT has all of the tools necessary to strike the homeland. The group’s instructors are very proficient for a non-state actor, it has developed an array of sophisticated training programs and it enjoys significantly more freedom to conduct those programs than other groups in the region. LeT’s transnational networks enable it to identify and vet possible Western recruits, including Americans or citizens from visa waiver countries in Europe. The group also has the operational space as well as the organizational wherewithal to build relationships in the Pakistani diaspora community. A cautious and calculating organization, LeT primarily has used its overseas operatives to support operations in South Asia. The danger of LeT’s training apparatus and transnational networks, however, is that they can be redirected toward international attacks. As the 2008 Mumbai attacks demonstrated, given enough time and space to plan, LeT is capable of inflicting significant and spectacular damage once it decides to do so.

**Drones deter foreign fighters – that’s the biggest threat to the US**

Cilluffo, 12 -- George Washington University Homeland Security Policy Institute director [Frank, previously served as special assistant to the president for homeland security under George W. Bush, "Open Relationship: The United States is Doing Something Right in the War on Terror," Foreign Policy, www.foreignpolicy.com/articles/2012/02/15/open\_relationship, accessed 8-19-13, mss]

But first, let's remember why this phenomenon matters. Foreign fighters, especially those emanating from the West, bolster terrorist and insurgent factions within conflict zones. Foreign fighters, as well as the bridge figures who recruit them, inspire, radicalize, and motivate individuals to the jihadi cause. Foreign fighters serve key operational and propaganda functions -- in essence, they provide both effect and affect. Their role makes them a threat to Western policy objectives. Together, their ability to return home, their Western passports, and their familiarity with potential targets they may select to attack make them a direct threat to Western security. There is no shortage of examples of Westerners who trained in the FATA and then went on to execute (or attempt to execute) attacks against the West. Consider Najibullah Zazi, who planned to bomb the New York City subway but was thwarted by U.S. law enforcement and intelligence officials. Or Faisal Shahzad, the so-called Times Square bomber, whose car bomb fortunately fizzled. Or Mohammad Sidique Khan, the ringleader of the 7/7 homicide/suicide bombings that killed more than 50 and wounded over 700 in London in 2005. Or Eric Breininger, a young German national featured in propaganda videos of the Islamic Jihad Union, who was ultimately killed in Waziristan. And the list goes on. It's definitely good news that there may be a drop in the number of Western foreign fighters traveling to the FATA, but it should come as no surprise. First and foremost, military actions -- including the use of drones -- have made the environment less hospitable for those traveling to it. These military activities have had significant operational effects on al Qaeda (and associated entities) by disrupting pipelines to the region, activities of key facilitators, and training camps. The challenge now is to continue, consolidate, and solidify these gains. Recent U.S. and allied military successes undoubtedly serve also as a strong deterrent. Think of it as suppressive fire: The more time al Qaeda and its ilk spend looking over their shoulders, the less time they have to train, plot, and execute terrorist attacks. And with al Qaeda senior leaders on their back heels, now is the time to exploit this unique window of counterterrorism opportunity by maintaining, if not accelerating, the operational tempo.

**Drones destroy key safe havens**

CRT, 6 [Country Reports on Terrorism, annual report published by the U.S. Department of State, "Chapter 3 -- Terrorist Safe Havens," 4-28-6, www.state.gov/j/ct/rls/crt/2005/, accessed 8-19-13, mss]

Physical safe havens provide security for many senior terrorist leaders, allowing them to plan and to inspire acts of terrorism around the world. The presence of terrorist safe havens in a nation or region is not necessarily related to state sponsorship of terrorism. In most instances cited in this chapter, areas or communities serve as terrorist safe havens despite the government’s best efforts to prevent this. Denying terrorists safe haven plays a major role in undermining terrorists’ capacity to operate effectively, and thus forms a key element of U.S. counterterrorism strategy as well as the cornerstone of UN Security Council Resolution 1373 that was adopted in September 2001. UNSCR 1373 specifically targets terrorists’ ability to move across international borders and find safe haven, to solicit and move funds, and to acquire weapons; it also calls on states that do not have laws criminalizing terrorist activity and support to enact such laws.

**Drones prevent terrorist training and recruitment – destroys their operational effectiveness**

Young, 13 -- Harvard International Review associate staff [Alex, “A Defense of Drones,” Harvard International Review, 2-25-13, http://hir.harvard.edu/a-defense-of-drones]

Critics also claim that eliminating only the senior leaders of terrorist organizations does not make significant progress in eradicating the group as a whole. This argument falls short on two fronts. First, killing the leaders of Al Qaeda, the Taliban, and similar networks does hinder their operations: decapitating terrorist groups interrupts their planning, recruitment, and execution of attacks – not necessarily because each leader is irreplaceably vital to the success of the group (although some are), but because the threat of death from the skies shifts the strategic calculations of living leaders, changing the actions of the group. The Los Angeles Times of March 22nd, 2009, quoting an anonymous counterterrorism official, reported that Al Qaeda leaders are wondering who's next to be killed in a drone strike and have started hunting down people inside al Qaeda who they think are responsible for collaborating with the US on drone strike planning. The threat of drone strikes sows divisive suspicion inside enemy groups and distracts them from accomplishing their objectives. Moreover, drone strikes have disrupted al Qaeda’s system for training new recruits. The Times of London reports that in 2009, Al Qaeda leaders decided to abandon their traditional training camps because bringing new members to a central location offered too easy a target for drone strikes. Foreign Policy emphasized this trend on November 2nd, 2012, arguing that, “destroying communication centers, training camps and vehicles undermines the operational effectiveness of al-Qaeda and the Taliban, and quotes from operatives of the Pakistan-based Haqqani Network reveal that drones have forced them into a ‘jungle existence’ where they fear for the lives on a daily basis.” The threat of death from the skies has forced extremist organizations to become more scattered. More importantly, though, drone strikes do not only kill top leaders; they target their militant followers as well. The New America Foundation, a think tank that maintains a database of statistics on drone strikes, reports that between 2004 and 2012, drones killed between 1,489 and 2,605 enemy combatants in Pakistan. Given that Al Qaeda, the Pakistani Taliban, and the various other organizations operating in the region combined do not possibly have more than 1,500 senior leaders, it follows that many, if not most, of those killed were low-level or mid-level members – in many cases, individuals who would have carried out attacks. The Los Angeles Times explains that, “the Predator campaign has depleted [Al Qaeda’s] operational tier. Many of the dead are longtime loyalists who had worked alongside Bin Laden […] They are being replaced by less experienced recruits.” Drones decimate terrorist organizations at all levels; the idea that these strikes only kill senior officials is a myth. The Obama Administration shows no signs of slowing down its drone war. A drone strike killed two prominent Al Qaeda members in South Waziristan on January 3rd, and four more on January 10th. Contrary to common criticisms of drone warfare, though, this continued use of unmanned airstrikes is absolutely a good course of action from the CIA and the White House. Drone warfare has proved to be a step forward, not backward, in the United States’ struggle to subdue international terrorist organizations. Unmanned airstrikes are highly accurate and effective at disrupting terrorism; drones are and must remain an integral part of the War on Terror.

**Retaliation ensures extinction**

Ayson 10 - Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington (Robert, July. “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects.” Studies in Conflict & Terrorism, Vol. 33, Issue 7. InformaWorld.)

But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, bothRussia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability.

**Fragile peace between India and Pakistan now – LeT attacks destroy it**

**PTI 13**, Press Trust of India, “Lashkar-e-Taiba is one of the most potent terrorist groups in South Asia: US,” April 10th, http://www.ndtv.com/article/world/lashkar-e-taiba-is-one-of-the-most-potent-terrorist-groups-in-south-asia-us-352182

Beyond the direct impact of these attacks, there is a significant danger that another major terrorist attack could destabilise the "fragile peace" between India and Pakistan, Mr Locklear told the Senators. "Should the perpetrators of such an attack be linked back to Pakistan - as was the case in the 2008 attack - the Indian government may face domestic pressure to respond and the resulting spiral of escalation could be rapid. For those reasons, and more importantly to protect innocent lives, we and our partners in the US Government engage regularly with the Indians and Pakistanis to avert such a crisis," he said in his prepared remarks. India's relationship with Pakistan has gradually improved in recent years, thanks to a series of confidence building measures, growing economic ties and the absence of large-scale destabilising incidents, the PACOM Commander said. "However, we remain concerned that the progress could be quickly undone by a major terrorist attack," he said. "Both sides maintain modern, trained militaries underpinned by demonstrated nuclear capabilities. A major war on the subcontinent is not likely, but could be catastrophic to both sides, as well as the region," Mr Locklear said.

**That causes war – goes nuclear**

**Zarate 11**, Juan C, senior adviser at the Center for Strategic and International Studies, was deputy assistant to the president and deputy national security adviser for combating terrorism from 2005 to 2009, “An alarming South Asia powder keg,” February 20th, http://www.washingtonpost.com/wp-dyn/content/article/2011/02/18/AR2011021805662.html

In 1914, a terrorist assassinated Archduke Franz Ferdinand in Sarajevo - unleashing geopolitical forces and World War I. Today, while the United States rightly worries about al-Qaeda targeting the homeland, the most dangerous threat may be another terrorist flash point on the horizon. Lashkar-i-Taiba holds the match that could spark a conflagration between nuclear-armed historic rivals India and Pakistan. Lashkar-i-Taiba is a Frankenstein's monster of the Pakistani government's creation 20 years ago. It has diverse financial networks and well-trained and well-armed cadres that have struck Indian targets from Mumbai to Kabul. It collaborates with the witches' brew of terrorist groups in Pakistan, including al-Qaeda, and has demonstrated global jihadist ambitions. It is merely a matter of time before Lashkar-i-Taiba attacks again. Significant terrorist attacks in India, against Parliament in 2001 and in Mumbai in 2008, brought India and Pakistan to the brink of war. The countries remain deeply distrustful of each other. Another major strike against Indian targets in today's tinderbox environment could lead to a broader, more devastating conflict. The United States should be directing political and diplomatic capital to prevent such a conflagration. The meeting between Indian and Pakistani officials in Bhutan this month - their first high-level sit-down since last summer - set the stage for restarting serious talks on the thorny issue of Kashmir. Washington has only so much time. Indian officials are increasingly dissatisfied with Pakistan's attempts to constrain Lashkar-i-Taiba and remain convinced that Pakistani intelligence supports the group. An Indian intelligence report concluded last year that Pakistan's Inter-Services Intelligence Directorate was involved in the 2008 Mumbai attacks, and late last year the Indian government raised security levels in anticipation of strikes. India is unlikely to show restraint in the event of another attack. Lashkar-i-Taiba may also feel emboldened since the assassination in early January of a moderate Punjabi governor muted Pakistani moderates and underscored the weakness of the government in Islamabad. The group does not want peace talks to resume, so it might act to derail progress. Elements of the group may see conflict with India as in their interest, especially after months of unrest in Kashmir. And the Pakistani government may not be able to control the monster it created. A war in South Asia would be disastrous not just for the United States. In addition to the human devastation, it would destroy efforts to bring stability to the region and to disrupt terrorist havens in western Pakistan. Many of the 140,000 Pakistani troops fighting militants in the west would be redeployed east to battle Indian ground forces. This would effectively convert tribal areas bordering Afghanistan into a playing field for militants. Worse, the Pakistani government might be induced to make common cause with Lashkar-i-Taiba, launching a proxy fight against India. Such a war would also fuel even more destructive violent extremism within Pakistan. In the worst-case scenario, an attack could lead to a nuclear war between India and Pakistan. India's superior conventional forces threaten Pakistan, and Islamabad could resort to nuclear weapons were a serious conflict to erupt. Indeed, The Post reported that Pakistan's nuclear weapons and capabilities are set to surpass those of India.

**extinction**

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

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

## Barnes – Harvard

#### Text: The United States Congress should revise Public Law 107-40 require the President to establish a specific list of terrorist organizations that suffice to trigger the use of military force with the provision that the President can propose to add new groups to the list.

#### Presidential use of drone strikes is on its last straw, reform of the AUMF stops court strikedown

**Barnes 13** [Beau, International Parliamentary Fellow as staff to a congressional candidate for the Mercy Corps, honor graduate of Lewis and Clark College where he focused on National Security Law and Policy/International Law, joint-degree student at Boston University Law School and the Fletcher School of Law and Diplomacy, where he focuses on national security law and policy, “The War On Terror Has Changed – Now The Rules Should, Too,” 5-16 <http://cognoscenti.wbur.org/2013/05/16/authorization-for-use-of-military-force-beau-barnes>]

The law that forms the foundation of the war on terror is almost obsolete, undermining the legal basis of U.S. counterterrorism operations. On Thursday, the Senate Armed Services Committee will take a long-overdue first step to fix this problem, a development we should all applaud.¶ On September 14, 2001, Congress passed the Authorization for Use of Military Force (AUMF), authorizing “all necessary and appropriate force against those nations, organizations, or persons” behind the 9/11 attacks. Over a decade later, al-Qaida, the group that perpetrated the attacks, is on the ropes. But other armed groups – like the Haqqani Network, al-Shabab, and al-Qaida in the Islamic Maghreb – have become targets of the Obama administration’s worldwide counterterrorism efforts. The statute’s explicit reference to the 9/11 attacks, however, means it can’t authorize military action against groups with only superficial links to al-Qaida. In the wake of 9/11, the AUMF provided legal authority and demonstrated congressional support for the U.S. invasion of Afghanistan. But the Bush administration soon abandoned the AUMF, justifying the war on terror on the basis of the president’s inherent constitutional powers as commander-in-chief. These interpretations were soon discredited, both in the court of public opinion and in actual courts, with the Supreme Court repeatedly chastising the Bush administration’s legal approach to counterterrorism.¶ In a laudable attempt to bring U.S. counterterrorism policy back within the rule of law, the Obama administration has invoked the AUMF as the basis for its global “targeted killing” operations, known by most simply as “drone strikes.” But, like its predecessor, this administration has also stretched the law to serve its purposes, and is currently contemplating even more implausible interpretations of the AUMF. The president and his legal team are pushing us closer to a place where every terrorist is a member of al-Qaida.¶ How we justify counterterrorism operations is not just a question for the lawyers – it’s a policy choice with far-reaching domestic and international implications. Military might and covert operations alone can’t win the global struggle against al-Qaida and its ideological comrades-in-arms. We need credible arguments too, both to secure support from potential partners and undermine extremist justifications. As former Defense Department general counsel Jeh Johnson argued, “we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.” The administration has already read nearly all meaning out of the legal concepts of “imminence” and “hostilities” — another far-fetched legal interpretation might be the last straw for the administration’s legitimacy in the arena of counterterrorism. Alternatives to the AUMF exist, but they’re not good. Relying on inherent presidential power runs into considerable legal and political difficulties. Legally, this approach would risk intervention by a Supreme Court with a willingness to strike down excessive claims of executive power. Politically, it would be difficult to sustain for a president who ran for office largely on the promise of repudiating Bush-era legal excesses.¶ A rationale base d on the international law of self-defense is similarly unappealing. Although the Obama administration maintains that the AUMF “does not authorize military force against anyone the Executive labels a ‘terrorist,’” using this legal argument would lead to precisely that result, usurping Congress’s constitutionally provided role in national security policy. Since the United States plays an important role in setting norms of international conduct, our government should not claim legal rights that it is not prepared to see proliferate around the globe. UN officials recognize that the Obama administration’s “expansive and open-ended interpretation of the right to self-defense threatens to destroy the prohibition on the use of armed force.” CIA director John Brennan noted in 2012 that U.S. drone strikes “are establishing precedents that other nations may follow” – a concern that is already materializing.¶ With international armed groups unlikely to disappear any time soon, one option rises above the rest: it’s time for a new AUMF. President Obama is understandably reluctant to legally entrench President Bush’s war on terror, but a properly drafted law could provide legitimacy to existing operations and constrain future presidents. Indeed, our concern shouldn’t be a new counterterrorism statute, but what happens in its absence.¶ A new AUMF should not provide a blanket authorization to kill anyone the president considers an enemy. Instead, it should create a framework for continued counterterrorism operations that addresses which groups are valid targets, the circumstances under which they can be targeted, and where such operations can occur. Unlike the current AUMF, a new law should include an expiration date, but not be legally tied to any specific event

#### Current AUMF criteria means theres no executive authority to strike emerging threats – the plan is key

**Chesney et al 13** <Benjamin Wittes is a senior fellow in governance studies at the Brookings Institution and codirector of the Harvard Law School–Brookings Project on Law and Security. Matthew Waxman is a professor of law at Columbia Law School and an adjunct senior fellow at the Council on Foreign Relations. He previously served as principal deputy director of policy planning (2005–7) and acting director of policy planning (2007) at the US Department of State. He also served as deputy assistant secretary of defense for detainee affairs (2004–5), director for contingency planning and international justice at the National Security Council (2002–3), and special assistant to National Security Adviser Condoleezza Rice (2001–2). He is a graduate of Yale College and Yale Law School. Jack Goldsmith is the Henry L. Shattuck Professor of Law at Harvard University. Former assistant attorney general, Office of Legal Counsel, Goldsmith holds a JD from Yale Law School, a BA and an MA from Oxford University. Robert Chesney is a professor at the University of Texas School of Law, a nonresident senior fellow of the Brookings Institution, and a distinguished scholar at the Robert S. Strauss Center for International Security and Law. “Is the "War on Terror" Lawful?” February 25, 2013. http://www.hoover.org/publications/defining-ideas/article/141091>

Since September 18, 2001, a joint resolution of Congress known as the Authorization to Use Military Force (AUMF) has served as the primary legal foundation for the “war on terror.” In this essay we explain why the AUMF is increasingly obsolete, why the nation will probably need a new legal foundation for next-generation terrorist threats, what the options are for this new legal foundation, and which option we think is best. ¶ The AUMF authorizes the president to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, . . . .” The authorization of “force” in the AUMF is the main legal basis for the president’s power to detain and target members of al Qaeda and The Taliban. In addition, since September 11, Congress, two presidential administrations, and the lower federal courts have interpreted the “force” authorized by the AUMF to extend to members or substantial supporters of the Taliban and al Qaeda, and associated forces.¶ The main reason the AUMF is becoming obsolete is that the conflict it describes – which on its face is one against the perpetrators of the September 11 attacks and those who harbor them – is growing less salient as U.S. and allied actions degrade the core of Al Qaeda and the U.S. military draws down its forces fighting the Taliban in Afghanistan. At the same time that the original objects of the AUMF are dying off, newer terrorist groups that threaten the United States and its interests are emerging around the globe. Some of the terrorist groups have substantial ties to al Qaeda and thus can be brought within the AUMF by interpretation.¶ For example, the President has been able to use force against al Qaeda in the Arabian Peninsula (“AQAP”), a terrorist organization in Yemen, because it is a supporter or associated force of al Qaeda. But this interpretive move is increasingly difficult as newer threatening groups emerge with dimmer ties, if any, to al Qaeda. As a result, we are reaching the end point of statutory authority for the President to meet terrorist threats.¶ We should emphasize at the outI kno set that we do not claim that the increasingly obsolete AUMF demands immediate amendment or alteration. We do not make this claim because we lack access to classified information that would indicate the full nature of the terrorist threats the nation faces, or their connection to al Qaeda, or the nation’s ability to meet the threat given current legal authorities.¶ We also recognize that any new force authorizations carry significant strategic and political consequences beyond their immediate operational consequences. We nonetheless believe strongly – based on public materials and conversations with government officials – that the AUMF’s usefulness is running out, and that this trend will continue and will demand attention, in the medium term if not in the short term. Our aim is to contribute to the conversation the nation will one day have about a renewed AUMF by explaining why we think one will be necessary and the possible shape it might take.¶ Part I of this paper explains in more detail why the AUMF is becoming obsolete and argues that the nation needs a new legal foundation for next-generation terrorist threats. Part II then describes the basic options for this new legal foundation, ranging from the President’s Article II powers alone to a variety of statutory approaches, and discusses the pros and cons of each option, and the one we prefer. Part III analyzes additional factors Congress should consider in any such framework.¶ I. ¶ The Growing Problem of Extra-AUMF Threats and the Need for a New Statutory Framework¶ In this Part we explain why the AUMF is growing obsolete and why a combination of law enforcement and Article II authorities, standing alone, is not an adequate substitute.¶ 1. The Growing Obsolescence of the AUMF¶ The September 2001 AUMF provides for the use of force against the entity responsible for the 9/11 attacks, as well as those harboring that entity. It has been clear from the beginning that the AUMF encompasses al Qaeda and the Afghan Taliban, respectively. This was the right focus in late 2001, and for a considerable period thereafter. But for three reasons, this focus is increasingly mismatched to the threat environment facing the United States. ¶ First, the original al Qaeda network has been substantially degraded by the success of the United States and its allies in killing or capturing the network’s leaders and key personnel. That is not to say that al Qaeda no longer poses a significant threat to the United States, of course. The information available in the public record suggests that it does, and thus nothing we say below should be read to suggest that force is no longer needed to address the threat al Qaeda poses. Our point is simply that the original al Qaeda network is no longer the preeminent operational threat to the homeland that it once was.¶ Second, the Afghan Taliban are growing increasingly marginal to the AUMF. As noted above, the AUMF extended to the Taliban because of the safe harbor they provided to al Qaeda. That rationale makes far less sense a dozen years later, with the remnants of al Qaeda long-since relocated to Pakistan’s FATA region. This issue has gone largely unremarked in the interim because U.S. and coalition forces all along have been locked in hostilities with the Afghan Taliban, and thus no occasion to reassess the AUMF nexus has ever arisen.¶ Such an occasion may well loom on the horizon, however, as the United States draws down in Afghanistan with increasing rapidity. To be sure, the United State no doubt will continue to support the Afghan government in its efforts to tamp down insurgency, and it also will likely continue to mount counterterrorism operations within Afghanistan. It may even be the case that at some future point, the Taliban will again provide safe harbor to what remains of al Qaeda, thereby at least arguably reviving their AUMF nexus. But for the time being, the days of direct combat engagement with the Afghan Taliban appear to be numbered. ¶ If the decline of the original al Qaeda network and the decline of U.S. interest in the Afghan Taliban were the only considerations, one might applaud rather than fret over the declining relevance of the AUMF. There is, however, a third consideration: significant new threats are emerging, ones that are not easily shoehorned into the current AUMF framework.¶ To a considerable extent, the new threats stem from the fragmentation of al Qaeda itself. In this sense, the problem with the original AUMF is not so much that its primary focus is on al Qaeda, but rather that it is increasingly difficult to determine with clarity which groups and individuals in al Qaeda’s orbit are sufficiently tied to the core so as to fall within the AUMF. And given the gravity of the threat that some of these groups and individuals may pose on an independent basis, it also is increasingly odd to premise the legal framework for using force against them on a chain of reasoning that requires a detour through the original, core al Qaeda organi zation.¶ ¶ The fragmentation process has several elements. First, entities that at least arguably originated as mere regional cells of the core network have established a substantial degree of organizational and operational independence, even while maintaining some degree of correspondence with al Qaeda’s leaders. Al Qaeda in the Arabian Peninsula (AQAP) is a good example. Al Qaeda in Iraq (AQI) arguably fits this description as well, though in that case one might point to a substantial degree of strategic independence as well.¶ Second, entities that originated as independent, indigenous organizations have to varying degrees established formal ties to al Qaeda, often rebranding themselves in the process. Al Qaeda in the Islamic Maghreb (AQIM), formerly known as the Salafist Group for Call and Combat, illustrates this path. Al Shabaab in Somalia arguably does as well. And then there are circumstances (such as the ones currently unfolding in Mali, Libya, and Syria) in which it is not entirely clear where the organizational lines lie among (i) armed groups that work in concert with or even at the direction of one of the aforementioned al Qaeda affiliates; (ii) armed groups that are sympathetic and in communication with al Qaeda; and (iii) armed groups that are wholly-independent of al Qaeda yet also stem from the same larger milieu of Salafist extremists.¶ This situation – which one of us has described as the emergence of “extra-AUMF” threats – poses a significant problem insofar as counterterrorism policy rests on the AUMF for its legal justification. In some circumstances it remains easy to make the case for a nexus to the original al Qaeda network and hence to the AUMF. But in a growing number of circumstances, drawing the requisite connection to the AUMF requires an increasingly complex daisy chain of associations – a task that is likely to be very difficult (and hence subject to debate) in some cases, and downright impossible in others.¶ The emergence of this problem should come as no surprise. It has been nearly a dozen years since the AUMF’s passage, and circumstances have evolved considerably since then. It was inevitable that threats would emerge that might not fit easily or at all within its scope. The question is whether Congress should do anything about this situation, and if so precisely what.

**Even if it doesn’t happen domestically backlash to secrecy causes allied kickout and rollback internationally**

**Zenko 13**, Micah, Fellow in the Center for Preventive Action at the Council on Foreign Relations “Reforming U.S. Drone Strike Policies,” January 2013, Council Special Report No. 65

Over the past decade, the use of unmanned aerial systems—commonly referred to as drones—by the U.S. government has expanded exponentially in scope, location, and frequency. From September 2001 to April 2012, the U.S. military increased its drone inventory from ﬁfty to seventy-ﬁve hundred—of which approximately 5 percent can be armed. Yet despite the unprecedented escalation of its ﬂeet and missions, the U.S. government has not provided a clear explanation of how drone strikes in nonbattleﬁeld settings are coordinated with broader foreign policy objectives, the scope of legitimate targets, and the legal framework. Drones are critical counterterrorism tools that advance U.S. interests around the globe, but this lack of transparency threatens to limit U.S. freedom of action and risks proliferation of armed drone technology without the requisite normative framework. Existing practices carry two major risks for U.S. interests that are likely to grow over time. The ﬁrst comes from operational restrictions on drones due to domestic and international pressure. In the United States, the public and policymakers are increasingly uneasy with limited transparency for targeted killings. If the present trajectory continues, drones may share the fate of Bush-era enhanced interrogation techniques and warrantless wiretapping—the unpopularity and illegality of which eventually caused the policy’s demise. Internationally, objections from host states and other counterterrorism partners could also severely circumscribe drones’ effectiveness. Host states have grown frustrated with U.S. drone policy, while opposition by nonhost partners could impose additional restrictions on the use of drones. Reforming U.S. drone strike policies can do much to allay concerns internationally by ensuring that targeted killings are defensible under international legal regimes that the United States itself helped establish, and by allowing U.S. officials to openly address concerns and counter misinformation. The second major risk is that of proliferation. Over the next decade, the U.S. near-monopoly on drone strikes will erode as more countries develop and hone this capability. The advantages and effectiveness of drones in attacking hard-to-reach and time-sensitive targets are compelling many countries to indigenously develop or explore purchasing unmanned aerial systems. In this uncharted territory, U.S. policy pro- vides a powerful precedent for other states and nonstate actors that will increasingly deploy drones with potentially dangerous ramiﬁcations. Reforming its practices could allow the United States to regain moral authority in dealings with other states and credibly engage with the international community to shape norms for responsible drone use. The current trajectory of U.S. drone strike policies is unsustainable. Without reform from within, drones risk becoming an unregulated, unaccountable vehicle for states to deploy lethal force with impunity. Consequently, the United States should more fully explain and reform aspects of its policies on drone strikes in nonbattleﬁeld settings by ending the controversial practice of “signature strikes”; limiting targeted killings to leaders of transnational terrorist organizations and individuals with direct involvement in past or ongoing plots against the United States and its allies; and clarifying rules of the road for drone strikes in nonbattleﬁeld settings. Given that the United States is currently the only country—other than the United Kingdom in the tra- ditional battleﬁeld of Afghanistan and perhaps Israel—to use drones to attack the sovereign territory of another country, it has a unique opportunity and responsibility to engage relevant international actors and shape development of a normative framework for acceptable use of drones. 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 inter- national 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.

#### A specific, public list of terrorist organizations allows flexibility and CT effectiveness while effectively limiting presidential power

**Barnes 12 -** J.D. Candidate, Boston University School of Law **¶** <Beau, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2150874>>

1. Object¶ The object – who is the enemy—is perhaps the most difficult issue to¶ address.184 Finding an adequate solution must still address the threat from¶ Al Qaeda, while at the same time acknowledging both that Al Qaeda has¶ evolved into a diffuse, networked organization and that other terrorist¶ organizations now pose equal or greater threats than Al Qaeda.185 Merely¶ stating that a person or group constitutes part of an “associated force” of¶ Al Qaeda should not be sufficient to authorize military force.186 Congress¶ should adopt a hybrid approach in this circumstance, establishing a¶ specific list of organizations that would fall under a new AUMF.¶ Subsequently, if the President felt another organization should be added¶ to the list, he could propose this to Congress through an expedited¶ procedure. This would allow Congress to maintain a workable definition¶ of the enemy and provide the president with flexibility, while also¶ preventing ipso facto targeting determinations by the Executive Branch.¶ Because not all terrorist organizations are the same, and some pose little¶ or no threat to the United States, the fact of classification as a terrorist¶ group alone should not suffice to trigger the use of military force.187 Put¶ differently, classification as a “Foreign Terrorist Organization” would be¶ necessary but not sufficient for a renewed AUMF to apply.188 The¶ Executive Branch does not currently argue that the AUMF covers all of¶ the organizations on the Foreign Terrorist Organization list. Through¶ hearings and testimony, Congress should establish which terrorist¶ organizations merit the authorization of continuing military force.189 Recent legislation addressing the Lord’s Resistance Army—which¶ operates across South Sudan, the Central African Republic, the¶ Democratic Republic of the Congo, and northern Uganda190—could serve¶ as a model. Although not an explicit authorization for the use of military¶ force, Congress specifically legislated to “eliminate the threat posed by¶ the Lord’s Resistance Army.”191 Congress could undoubtedly direct¶ similar attention to other terrorist organizations.192¶ “Persons” should be addressed in a similar fashion—on a selective¶ and continuing basis by Congress. It will be a rare case in which an¶ individual who has no affiliation with a larger terrorist group poses a¶ significant threat to U.S. national security, but current policy nevertheless shows that individual designations are feasible.193 A policy¶ of selective individual designation would also allow policy flexibility in¶ the event that the President wishes to separate a dangerous individual¶ from a more benign organization.194¶ “Nations” should not be included in the new AUMF. If another¶ attack against the United States or its allies calls for an operation of a¶ scale similar to that in Afghanistan in October of 2001, Congress should¶ authorize that military action specifically. An armed conflict with a¶ country poses far too many risks for the Executive Branch to do so alone.¶ Within the specific context of the target of the AUMF, Congress¶ should address the process due to U.S. citizens under the Constitution. It¶ is not clear that U.S. citizens fighting in an armed conflict against the¶ United States need to be provided heightened process—judicial or¶ executive or other—before targeting decisions are made, but Congress¶ should nonetheless publicly describe the process that will be followed¶ when a U.S. citizen is involved.195 In a democracy such decisions are best made in the public eye.196 The recent successful targeting of Anwar¶ al-Awlaki, a U.S. citizen affiliated with Al Qaeda in the Arabian¶ Peninsula and operating in Yemen, demonstrated the American public’s¶ considerable skepticism toward military operations against U.S.¶ citizens.197 Even if an increased level of process is ultimately decided¶ upon, such a step would not overly burden the Executive Branch, as very¶ few U.S. citizens are part of terrorist groups in armed conflict with the¶ United States.198¶ Some would challenge the basis of public determinations about¶ organizational targets, but there is no reason that such a step would¶ impart any tactical advantage to a terrorist organization. Indeed, although¶ legal definitions and targeting determinations are not as clear today, it¶ seems logical that any terrorist organization targeted by the United States¶ knows it is being targeted. Furthermore, providing a regular review¶ process whereby the President proposes new groups for Congress to¶ include, as well as a defined sunset clause on each authorization, would¶ encourage those terrorist groups that have goals not actually at odds with¶ U.S. national interests to make their intentions known.199¶ Any approach to reauthorizing the AUMF should identify which¶ specific “incidents of warfare” it contemplates.200 Uncertainty regarding¶ the extent of authority diminishes the potential for military success; those¶ charged with fighting the global armed conflict against terrorist groups¶ should know precisely what is authorized. Moreover, policy clarity is a¶ virtue in a democracy, allowing the citizenry to more effectively monitor¶ the actions of its military. The reauthorized AUMF should specifically¶ include authorization for both detention and the lethal use of force, as¶ well as clear standards for both. These standards, discussing, for¶ example, how targeting decisions are made, should be public and¶ describe the differences in their application to U.S. citizens and noncitizens.¶ 201 The government need not disclose the specific weaponry¶ employed or tactics used, but it should indicate when lethal force will be¶ used against a threat that is not strictly imminent. To monitor potential¶ abuses, internal executive branch oversight should be intensified,¶ empowering either an independent board or inspector general to¶ investigate abuses of targeting authority. In the detention context,¶ meaningful review should be available for those detained; the word of¶ the Executive Branch alone should not be sufficient to render an¶ individual detainable.¶ Arguments will likely be made that disclosing targeting methods will¶ empower terrorists. It is unlikely, however, that those targeted today are¶ unaware of that fact. Clarity would also be a virtue, allowing those “on¶ the fence” to distance themselves from targetable terrorist groups.¶ Moreover, such a tactical disadvantage, assuming it is borne out in¶ reality, is a cost that should be accepted when the State targets its own¶ citizens.

#### Despite AUMF collapse global targeted killing is inevitable - Congressional action is key to legitimacy and allied support for counter-terror

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[Beau, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2150874, accessed 10-2-13, mss]

The AUMF must inevitably expire because it is expressly linked to the September 11, 2001, attacks against the United States. Moreover, because of the impending downfall of Al Qaeda as we know it, the statute’s demise will come more quickly than most assume. Although the United States still faces myriad terrorist threats, the threat from Al Qaeda itself—the “core” group actually responsible for 9/11—is dissipating. So long as a substantial terrorist threat continues, however, the United States will require a framework within which to combat terrorist organizations and activities. Consequently, Congress should enact a new statute that supersedes the AUMF and addresses the major legal and constitutional issues relating to the use of force by the President that have arisen since the September 11 attacks and will persist in the foreseeable future. A. The AUMF’s Inevitable Expiration Although it is difficult to determine exactly when the AUMF will become obsolete, the mere fact that a precise date is unclear should not lead to the conclusion that the AUMF will be perpetually valid. Al Qaeda, the organization responsible for the September 11, 2001, attacks is considered by some to have been already rendered “operationally ineffective”102 and “crumpled at its core.”103 Moreover, even if Al Qaeda continues to possess the ability to threaten the United States,104 not all terrorist organizations currently possess a meaningful link to Al Qaeda, rendering the AUMF already insufficient in certain circumstances. Indeed, individuals from across the political spectrum have recognized that the AUMF’s focus on those involved in “the terrorist attacks that occurred on September 11, 2001” is outdated and no longer addresses the breadth of threats facing the United States.105 At a certain point, the terrorist groups that threaten the United States targets will no longer have a plausible or sufficiently direct link to the September 11, 2001, attacks.106 This shift has likely already occurred. Former Attorney General Michael Mukasey, writing recently in support of efforts to reaffirm the original AUMF, noted that currently “there are organizations, including the Pakistani Taliban, that are arguably not within its reach.”107 It is similarly unclear if the AUMF extends to organizations like Al Qaeda in the Arabian Penninsula, whose formation as a group—and connection to Al Qaeda’s “core”—postdates 9/11 and is indirect at best.108 Former State Department Legal Adviser John Bellinger has argued that the Obama Administration’s reliance on the AUMF for its targeted killing and detention operations is “legally risky” because “[s]hould our military or intelligence agencies wish to target or detain a terrorist who is not part of al-Qaeda, they would lack the legal authority to do so, unless the administration expands (and the federal courts uphold) its legal justification.”109 Indeed, “[c]ircumstances alone . . . will put enormous pressure on—and ultimately render obsolete—the legal framework we currently employ to justify these operations.”110 While the court of public opinion seems to have accepted the AUMF’s inevitable expiration, courts of law appear poised to accept this argument as well. Justice O’Connor’s plurality opinion in Hamdi admitted that the AUMF granted “the authority to detain for the duration of the relevant conflict.”111 She also suggested, however, that that authority would terminate at some point, based on “the practical circumstances of [this] conflict,” which may be “entirely unlike those of the conflicts that informed the development of the law of war.”112 Justice Kennedy’s opinion in Boumediene also hinted that the future contours of the war on terror might force the Court to revisit the extent of the conflict.113 Lower federal courts have already started to ask some of the questions about the duration of the AUMF’s authority, which the Supreme Court has left unaddressed to date.114 The Obama Administration has notably disagreed with these assessments, arguing that the AUMF “is still a viable authorization today.”115 The administration’s position, however, appears contradictory, as it has simultaneously described the limited reach of the AUMF as “encompass[ing] only those groups or people with a link to the terrorist attacks on 9/11, or associated forces”116 and celebrated the functional neutralization of Al Qaeda as a continuing threat to U.S. national security.117 The administration’s position, however, remains in the minority. Notwithstanding the administration’s continuing fealty to the 2001 statute, as pressures build to address these issues, the “temporal vitality”118 of the AUMF will continue to be challenged. The successful targeting of those responsible for the attacks of September 11, 2001, will ensure that the AUMF’s vitality will not be indefinite. Moreover, even if one rejects as overly optimistic the position that Al Qaeda is currently or will soon be incapable of threatening the United States, the AUMF is already insufficient to reach many terrorist organizations. Assuming a robust Al Qaeda for the indefinite future does not change the disconnected status of certain terrorist groups; as much as it might wish to the contrary, Al Qaeda does not control all Islamist terrorism.119 B. The Consequences of Failing to Reauthorize The AUMF’s inevitable expiration, brought about by the increasingly tenuous link between current U.S. military and covert operations and those who perpetrated the September 11 attacks, leaves few good options for the Obama Administration. Unless Congress soon reauthorizes military force in the struggle against international terrorists, the administration will face difficult policy decisions. Congress, however, shows no signs of recognizing the AUMF’s limited lifespan or a willingness to meaningfully re-write the statute. In light of this reticence, one choice would be for the Obama Administration to acknowledge the AUMF’s limited scope and, on that basis, forego detention operations and targeted killings against non-Al Qaeda-related terrorists. For both strategic and political reasons, this is extremely unlikely, especially with a president in office who has already shown a willingness to defy legal criticism and aggressively target terrorists around the globe.120 120 John B. Bellinger III, Will Drone Strikes Become Obama’s Guantanamo?, WASH. POST, Oct. 2, 2011, http://www.washingtonpost.com/opinions/will-drone-strikes-becomeobamas- guantanamo/2011/09/30/gIQA0ReIGL\_story.html (“[T]he U.S. legal position may not satisfy the rest of the world. No other government has said publicly that it agrees with the U.S. policy or legal rationale for drones.”). Another option would be for the Executive Branch to acknowledge the absence of legal authority, but continue targeted killings nonetheless. For obvious reasons, this option is problematic and unlikely to occur. Therefore, the more likely result is that the Executive Branch, grappling with the absence of explicit legal authority for a critical policy, would need to make increasingly strained legal arguments to support its actions.121 Thus, the Obama Administration will soon be forced to rationalize ongoing operations under existing legal authorities, which, I argue below, will have significant harmful consequences for the United States. Indeed, the administration faces a Catch-22—its efforts to destroy Al Qaeda as a functioning organization will lead directly to the vitiation of the AUMF. The administration is “starting with a result and finding the legal and policy justifications for it,” which often leads to poor policy formulation.122 Potential legal rationales would perforce rest on exceedingly strained legal arguments based on the AUMF itself, the President’s Commander in Chief powers, or the international law of self- defense.123 Besides the inherent damage to U.S. credibility attendant to unconvincing legal rationales, each alternative option would prove legally fragile, destabilizing to the international political order, or both. 1. Effect on Domestic Law and Policy Congress’s failure to reauthorize military force would lead to bad domestic law and even worse national security policy. First, a legal rationale based on the AUMF itself will increasingly be difficult to sustain. Fewer and fewer terrorists will have any plausible connection to the September 11 attacks or Al Qaeda, and arguments for finding those connections are already logically attenuated. The definition of those individuals who may lawfully be targeted and detained could be expanded incrementally from the current definition, defining more and more groups as Al Qaeda’s “co-belligerents” and “associated forces.”124 But this approach, apart from its obvious logical weakness, would likely be rejected by the courts at some point.125 The policy of the United States should not be to continue to rely on the September 18, 2001, AUMF. Second, basing U.S. counterterrorism efforts on the President’s constitutional authority as Commander in Chief is legally unstable, and therefore unsound national security policy, because a combination of legal difficulties and political considerations make it unlikely that such a rationale could be sustained. This type of strategy would likely run afoul of the courts and risk destabilizing judicial intervention,126 because the Supreme Court has shown a willingness to step in and assert a more proactive role to strike down excessive claims of presidential authority.127 Politically, using an overly robust theory of the Commander in Chief’s powers to justify counterterrorism efforts would, ultimately, be difficult to sustain. President Obama, who ran for office in large part on the promise of repudiating the excesses of the Bush Administration, and indeed any president, would likely face political pressure to reject the claims of executive authority made “politically toxic” by the writings of John Yoo.128 Because of the likely judicial resistance and political difficulties, claiming increased executive authority to prosecute the armed conflict against Al Qaeda would prove a specious and ultimately futile legal strategy. Simply put, forcing the Supreme Court to intervene and overrule the Executive’s national security policy is anathema to good public policy. In such a world, U.S. national security policy would lack stability—confounding cooperation with allies and hindering negotiations with adversaries. There are, of course, many situations where the president’s position as Commander in Chief provides entirely uncontroversial authority for military actions against terrorists. In 1998, President Clinton ordered cruise missile strikes against Al Qaeda-related targets in Afghanistan and Sudan in response to the embassy bombings in Kenya and Tanzania. In 1986, President Reagan ordered air strikes against Libyan targets after U.S. intelligence linked the bombing of a Berlin discotheque to Libyan operatives.129 Executive authority to launch these operations without congressional approval was not seriously questioned, and no congressional approval was sought.130 To be sure, many of the targeted killing operations carried out today fall squarely within the precedent of past practice supplied by these and other valid exercises of presidential authority. Notwithstanding disagreement about the scope of Congress’s and the president’s “war powers,” few would disagree with the proposition that the president needs no authorization to act in selfdefense on behalf of the country. However, it is equally clear that not all terrorists pose such a threat to the United States, and thus the Commander in Chief cannot justify all counterterrorism operations as “self-defense.” A third option would be to conduct all counterterrorism operations as covert operations under the aegis of Title 50.131 Although the CIA typically carries out such “Title 50 operations,” the separate roles of the military and intelligence community have become blurred in recent years.132 The president must make a “finding” to authorize such operations,133 which are conducted in secret to provide deniability for the U.S. Government.134 Relying entirely on covert counterterrorism operations, however, would suffer from several critical deficiencies. First, even invoking the cloak of “Title 50,” it is “far from obvious” that covert operations are legal without supporting authority.135 In other words, Title 50 operations, mostly carried out by the CIA, likely also require “sufficient domestic law foundation in terms of either an AUMF or a legitimate claim of inherent constitutional authority for the use of force under Article II.”136 Second, covert operations are by definition kept out of public view, making it difficult to subject them to typical democratic review. In light of “the democratic deficit that already plagues the nation in the legal war on terror,”137 further distancing counterterrorism operations from democratic oversight would exacerbate this problem.138 Indeed, congressional oversight of covert operations—which, presumably, operates with full information—is already considered insufficient by many.139 By operating entirely on a covert basis, “the Executive can initiate more conflict than the public might otherwise [be] willing to support.”140 137 Derek Jinks & Neal Kumar Katyal, Disregarding Foreign Relations Law, 116 YALE L.J. 1230, 1276–77 (2007) (noting that **the “presidential netherworld**” where “the President has been acting **without the explicit support of the legislature**” “**is bad for the reputation of the U**nited **S**tates, as well as for our deliberative democracy”). See also Samuel Issacharoff, Political Safeguards in Democracies at War, 29 OXFORD J. LEGAL. STUD. 189, 198 (2009) (“The ‘war on terror’ therefore presents a particularly worrisome situation: it can be fought clandestinely, it does not require broad-scale troop mobilizations, and it can be financed essentially off the books by deficit spending. These features also enable asymmetric wars to be fought without political accountability and broad-based consent, moving far beyond the enhanced executive power necessary to and expected during the conduct of traditional wars.”). 138 Jon D. Michaels, Beyond Accountability: The Constitutional, Democratic, and Strategic Problems with Privatizing War, 82 WASH. U. L.Q. 1001, 1078 (2004) (“[T]he legitimacy of military policymaking depends not just on broad congressional involvement, but also on democratic input and popular consent.”). 139 See Jennifer D. Kibbe, Conducting Shadow Wars, 5 J. NAT’L SECURITY L. & POL’Y 373, 383 (2012) (emphasizing that “the critical question is whether intelligence, and specifically covert action, issues are receiving appropriate congressional oversight”). 140 Michaels, supra note 138, at 1077. The democratic deficit vis-à-vis covert operations is not a new theory; it has surfaced as a significant problem in U.S. foreign policy, most prominently during the Iran-Contra affair. See HOUSE SELECT COMM. TO INVESTIGATE COVERT ARMS TRANSACTIONS WITH IRAN AND SENATE SELECT. COMM. ON SECRET MILITARY ASSISTANCE TO IRAN AND THE NICARAGUAN OPPOSITION, REPORT OF THE CONGRESSIONAL COMMS. INVESTIGATING THE IRAN-CONTRA AFFAIR, S. REP. NO. 216, H.R. REP. NO. 433, 100th Cong., 1st Sess. 11 (1987), available at http://ia 600301.us.archive.org/19/items/reportofcongress87unit/reportofcongress87unit.pdf (“The Administration’s departure from democratic processes created the conditions for policy failure, and led to contradictions which undermined the credibility of the United States.”). In a world without a valid AUMF, the United States could base its continued worldwide counterterrorism operations on various alternative domestic legal authorities. All of these alternative bases, however, carry with them significant costs—detrimental to U.S. security and democracy. The foreign and national security policy of the United States should rest on “a comprehensive legal regime to support its actions, one that [has] the blessings of Congress and to which a court would defer as the collective judgment of the American political system about a novel set of problems.”141 **Only then can the President’s efforts be sustained and legitimate.**

[Matt note: footnote 120, 137-140 included]

#### Executive trust deficit means only congressional action can create legitimacy

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[Jack, J.D. from Yale Law School, former legal adviser to the General Counsel of the Department of Defense, former United States Assistant Attorney General, leading the Office of Legal Counsel in the Department of Justice, United States Senate Committee on Armed Services Hearing on “Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force," 5-16-13, www.lawfareblog.com/wp-content/uploads/2013/05/Goldsmith\_05-16-13.pdf, accessed 9-28-13, mss]

On September 14, 2001, Congress passed the Authorization for the Use of Military Force. The AUMF, as it is called, authorized the President “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” The AUMF focused on entities responsible for 9/11. In the Fall of 2001 those entities, including al Qaeda, were located primarily in Afghanistan. In the last dozen years, al Qaeda has undergone what Professor Robert Chesney describes as an “extraordinary process of simultaneous decimation, diffusion, and fragmentation, one upshot of which has been the proliferation of loosely-related regional groups that have varying degrees of connection to the remaining core al Qaeda leadership.”1 The Executive branch expanded the kinetic and intelligence war beyond Afghanistan to other places around the globe against al Qaeda affiliates that were not in existence on 9/11, much less responsible for the 9/11 attacks. Both legal and organizational innovations accompanied and made possible the expansion of the war. On the legal side, the Executive branch interpreted the AUMF to extend to organizations associated or affiliated with al Qaeda, under the theory that they are co-belligerents. It also interpreted the AUMF – which, unlike some prior congressional approvals of military force, lacks geographical limitation – to authorize force in many nations outside Afghanistan where affiliated or associated al Qaeda forces are found. 2 On the organizational side, both the CIA and the Defense Department changed quite a lot. The CIA became committed to targeted killing via unmanned aerial vehicles, or “drones”, and reorganized its intelligence mission to support drone warfare. And the Defense Department’s Joint Special Operations Forces (JSOC) grew rapidly and engaged in an expanded array of stealth operations (including but not limited to drone fire operations) and intelligence missions (including human intelligence missions) needed to support these operations. These innovations have undergirded a mostly officially secret geographical expansion of the “war on terrorism” since the Fall of 2001. This Committee presumably knows the details of this “shadow war,” including its lethal force elements and any rendition, proxy detention, proxy force, and related elements. But U.S. citizens know very few details, at least from official U.S. government channels, because the operations are highly classified and often covert. Presidential Reports under the War Powers Resolutions were designed to ensure that Congress and the American people were aware of presidential expansions of war. But these Reports now regularly contain classified annexes, and they do not purport to cover CIA operations in any event. As a result, the American people know about the shadow war primarily through journalistic accounts. These accounts report that the United States has since 9/11 engaged in military or paramilitary operations in at least a dozen countries, and probably a much higher number.3 President Obama proclaimed in his second inaugural address that a “decade of war is now ending.”4 It does appear that heavy-footprint war against the Taliban in Afghanistan is winding down. Two former senior legal officials in the Obama administration have given speeches that some interpret to indicate that the shadow war outside Afghanistan is also winding down or will end soon. 5 I do not know the intelligence basis for these speeches. I nonetheless do not believe the shadow war will end any time soon. Consider a few recent news reports. The United States has engaged in over a dozen drone strikes this year in Pakistan and Yemen; it is expanding its drone capabilities in North Africa to address the growing Islamist (including al Qaeda affiliate) threats there; JSOC now has boots on the ground in Mali (among many other places); the United States is training Syrian opposition forces; U.S. Special Operations Command is planning to significantly increase its presence in Africa, Asia and Latin America; the Obama administration is debating whether the AUMF extends to Ansar al-Sharia in Libya and the al-Nusra Front in Syria; it is also debating whether the AUMF extends not just to associates of al Qaeda, but also to “associates of associates.”6 These and similar reports suggest that the shadow war against Islamist terrorist threats is morphing but not winding down. I will proceed on this assumption – an assumption I believe is implicit in most of the questions this Committee asked the panelists to address. II. Why Congress Must Engage Congress’s main engagement with the shadow war is the AUMF, which is nearly a dozen years old. It is long past time for Congress as a body to scrutinize the shadow war fought pursuant to the AUMF and to clarify publicly its legal basis and proper oversight mechanisms. The AUMF is out of date in two ways. First, through a series of Executive branch interpretations, each legitimate in itself, the AUMF is now deemed to authorize a war that is quite different from the one Congress contemplated a dozen years ago. As Senator Durbin recently said, “I don’t believe many, if any, of us believed when we voted for [the AUMF] that we were voting for the longest war in the history of the United States and putting a stamp of approval on a war policy against terrorism that, 10 years plus later, we’re still using.”7 To the extent Senator Durbin’s views are widely shared, Congress should determine whether it approves of the shadow war being fought pursuant to the AUMF, including the method by which the AUMF conflict expands. Second, emerging al Qaeda-inspired Islamist terrorist organizations are increasingly difficult to fit within the AUMF. Michael Leiter, the former Director of the National Counterterrorism Center, recently testified: “With the continued evolution of the terror threat and most notably its increasing distance from the 9/11 attacks and core al Qa’ida, I believe it is the time to re‐evaluate the AUMF to better fit today’s threat landscape.” 8 Similarly, an unnamed senior Obama administration official recently told the Washington Post that “[t]he farther we get away from 9/11 and what this legislation was initially focused upon . . . we can see from both a theoretical but also a practical standpoint that groups that have arisen or morphed become more difficult to fit in.” The official added that the waning relevance of the AUMF is “requiring a whole policy and legal look.”9 **That** policy and **legal look should not only take place** in secret **within the Executive** branch. It should also take place in Congress and in public. Another reason why Congress should now engage is that its authorizing and oversight processes are outdated. The CIA component of the shadow war is conducted pursuant to a very thin legal framework for covert action that was not designed to be a central legitimating tool for warfare and that contains open-ended reporting requirements and no identified substantive constraints. Congress should determine whether this framework suffices for modern stealth warfare, and if not, how it should be changed. Congress should similarly consider his Committee’s even-less-specified oversight mechanisms for Defense Department operations. I am told that the members of this Committee are satisfied with these mechanisms. But the mechanisms are mostly grounded in secret custom, not public law, and the American people cannot assess them and thus cannot know whether to have confidence in them. This last consideration points to another reason why Congress should engage: the shadow war is unnecessarily – and, increasingly, **self-defeatingly** – secretive. There are growing indications, and complaints, that our heavy reliance on drones is a strategic failure. This is obviously a vital issue for the nation, but it cannot be debated intelligently in public because our drone operations are classified. More broadly, **excessive Executive branch secrecy is weakening trust in the administration’s conduct** of the shadow war. **A good deal of the misplaced concern about drone s**trikes in the homeland against Americans **has resulted from the administration’s stilted explanations about** the **legal limits** and secret processes for killing U.S. citizen al Qaeda suspects. These stilted explanations, in turn, are driven by the requirements of classified information and covert action. Excessive secrecy also underlies growing mistrust and doubts – at home, and abroad – about the administration’s claims about the rate of civilian casualties, the soundness of its legal analyses, and the quality of its internal deliberations. **Congress** can and **should help the Executive** branch **bring the shadow war out of the shadows**, even if it makes the conduct of the war harder abroad.

#### Drones are most effective at counter-terrorism- disrupt key operations, decapitate leaders, and destroys safe havens, specialists, and training

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[Daniel, Brookings Institution Saban Center for Middle East Policy Senior Fellow, "Why Drones Work," Foreign Affairs, July/August 2013, http://www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman, accessed 8-28-13, mss]

Despite President Barack Obama’s recent call to reduce the United States’ reliance on drones, they will likely remain his administration’s weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused. Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage. So drone warfare is here to stay, and it is likely to expand in the years to come as other countries’ capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid. NOBODY DOES IT BETTER The Obama administration relies on drones for one simple reason: they work. According to data compiled by the New America Foundation, since Obama has been in the White House, U.S. drones have killed an estimated 3,300 al Qaeda, Taliban, and other jihadist operatives in Pakistan and Yemen. That number includes over 50 senior leaders of al Qaeda and the Taliban -- top figures who are not easily replaced. In 2010, Osama bin Laden warned his chief aide, Atiyah Abd al-Rahman, who was later killed by a drone strike in the Waziristan region of Pakistan in 2011, that when experienced leaders are eliminated, the result is “the rise of lower leaders who are not as experienced as the former leaders” and who are prone to errors and miscalculations. And drones also hurt terrorist organizations when they eliminate operatives who are lower down on the food chain but who boast special skills: passport forgers, bomb makers, recruiters, and fundraisers. Drones have also undercut terrorists’ ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to “maintain complete silence of all wireless contacts” and “avoid gathering in open areas.” Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda’s command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders.

#### Foreign intelligence is key to effective drone strategies- that prevents large-scale attacks

Cilluffo, 11 -- George Washington University Homeland Security Policy Institute director [Frank, "After bin Laden the Threat Remains: Drones, CIA and SOF Still the Only Game in Town," 5-2-11, HSPI Commentary 22, www.gwumc.edu/hspi/policy/commentary022\_after\_bin\_laden.cfm, accessed 8-19-13, mss]

In May 2009, just four months into his tenure as the Director of the Central Intelligence Agency, Panetta assessed the situation this way: “Very frankly, [drone strikes are] the **only game in town** in terms of confronting or trying to disrupt the al Qaeda leadership.” That same year, Petraeus highlighted the imperative behind applying “a lot of pressure” while arguing that “for us, a terrorist is a terrorist, whether he operates on this side of the border or that side of the border.” Today, their assessments remain as valid (if not more so) than they were two years ago. American drone strikes, in conjunction with countless clandestine operations carried out by the CIA, US Special Forces teams (and the Pakistani military), have placed unrelenting pressure on al Qaeda, its offshoots, and fellow-travelers. Although admittedly imperfect and perhaps at times heavy-handed, these reconnaissance and strike missions have served our national interests and helped shield us from harm. In effect, these missions have provided suppressive fire against a concert of jihadi terrorists that now includes not only al Qaeda, but the Haqqani network, Lashkar-e-Tayyiba, Tehrik-e Taliban Pakistan, Harkat-ul-Jihad-al-Islami, and the Islamic Movement of Uzbekistan. This suppressive fire has degraded the performance of these jihadists, limiting their wherewithal to organize, plan, and carry out the large-scale mass-casualty attacks for which they yearn. Yet, suppressive fire is only effective for the duration of the fire. **Let up, and the terrorists will quickly regain** their **lost capabilities and recover the** operational **time and space** they need **to go** back **on the offensive**. Now is certainly not the time to let up. Nevertheless, strike missions are not a panacea and should not be taken lightly. For more than twenty years, the US has worked to cultivate relationships with foreign intelligence services, police, and militaries to aid in the fight against global terrorists. Although these efforts have met with limited success, they must continue. The difficult situation we face today would be far worse if we had not undertaken such — and it would quickly deteriorate if we were to walk away now. The dearth of capable, stable, and trustworthy partners in the FATA region means we will be increasingly forced to rely on these and other unconventional tools of statecraft. Islamabad remains unable to exercise the writ of government over much of its territory (or bureaucracy). Under these circumstances, history teaches us that governments also lack the ability to prevent their soil, citizens, and resources from being usurped. Thus the US must maintain its political flexibility and tactical maneuverability. The US must maintain its ability to carry out unconventional reconnaissance and paramilitary missions. This represents a critical, and increasingly important argument — for Pakistan is not an isolated case. In Yemen, in Somalia, in Sudan — and in a growing list of other un- and undergoverned nation-states we are witness to a similar pattern. In the world’s most dangerous places, the US has few partners and fewer options. At the same time, we face a continued threat from those who would do us grave harm. Under these conditions, and with the capability and moral imperative to protect our citizens, the United States must reject demands to curtail the use of drones, CIA, or Special Forces. When it comes to disrupting the activities of jihadi terrorists, these foils remain the only game in town — their value again demonstrated last night. Today, we owe a debt of gratitude to those nameless, faceless individuals who pilot the drones, collect and analyze the intelligence, and when called upon carry out the paramilitary missions. As we move forward, I hope we continue to provide them with the tools, resources, and room to maneuver necessary to do their jobs as well as they have in the last twenty-four hours.

# 2AC

## 2AC Restrict/Authority – Circumvention (0:50)

#### Restrictions exist even if the executive overrides them

Mortenson 11 (Assistant Professor, University of Michigan Law School, University of Chicago Law Review, Winter 2011, Retrieved 6/1/2013 from Lexis/Nexis, rwg, Julian Davis)

His second claim, at best, obscures deep ambiguity. It is certainly true that FDR "became more creative" in leveraging explicit exceptions contained in the Neutrality Acts and related statutes as his efforts to help the future Allies intensified (III, p 297). And the applicability of those exceptions has been sharply questioned, a complicated problem that space here does not suffice to address. n72 But as David Barron and Martin Lederman have exhaustively detailed in well-known work that Yoo does not cite, this focused use of explicit statutory exceptions demonstrates a President perforce acknowledging the constraining effect of congressional restrictions--even in purely internal deliberations. n73 Indeed, FDR rejected advice from both the vice president and the secretary of the interior that he simply disregard the statutes (III, p 297). n74 Nor was this cheap talk: FDR's choice to use exceptions rather [\*402] than simply ignore the statute had real costs for his policies. He sent less weaponry, worse equipment, and fewer troops to assist the United Kingdom--and he did so through far more convoluted mechanisms--than would have been the case had he simply ignored the statutory framework. n75 These were serious consequences in a time of global cataclysm, yet Yoo views this entire episode as evidence of a constitutional power to override congressional restrictions.

#### CI – restrictions include transparently narrowing targeting criteria

**Waxman 13** - law professor at Columbia Law School, where he co-chairs the Roger Hertog Program on Law and National Security. He is also Adjunct Senior Fellow for Law and Foreign Policy at the Council on Foreign Relations and a member of the Hoover Institution Task Force on National Security and Law. He previously served in senior policy positions at the State Department, Defense Department, and National Security Council. After graduating from Yale Law School, he clerked for Judge Joel M. Flaum of the U.S. Court of Appeals and Supreme Court Justice David H. Souter<Matthew. “AUMF Reform: A Response to Brooks and Others” March 15, 2013. <http://www.lawfareblog.com/2013/03/aumf-reform-a-response-to-brooks-and-others/>>

Brooks raises some important concerns, including that new statutory authorities to use force against terrorist threats will contribute to mission creep and a strategically unwise expansion of unilateral military action — that it will substitute poorly for, rather than generate and incorporate, sound strategic thinking about costs and benefits of military action. We share, as Brooks notes, those concerns, and that is in part why we reject proposals that simply expand the 2001 AUMF. Instead, we recommend that any new statutory framework include substantive restrictions (such as narrow targeting criteria, defined more specifically than the current AUMF and executive branch pronouncements, that hew to international self-defense law and the law of armed conflict) and institutional checks (such as mandated transparency, auditing, and periodic assessment requirements). It’s critical that any new legislative authority include such limitations and checks to address some of the past decades’ lessons. Brooks and other readers have reasonably questioned how effectively such restrictions will function, but we think they can serve as important constraints that improve policymaking.

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

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

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

## 2AC Self-Restraint CP

#### Congress key to prevent shift to *jus ad bellum*- goes nuclear

Barnes, 12 -- J.D. Candidate, Boston University School of Law

[Beau, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2150874, accessed 9-19-13, mss]

In a world without a valid AUMF, the United States could base its continued worldwide counterterrorism operations on various alternative domestic legal authorities. All of these alternative bases, however, carry with them significant costs—detrimental to U.S. security and democracy. The foreign and national security policy of the United States should rest on “a comprehensive legal regime to support its actions, one that [has] the blessings of Congress and to which a court would defer as the collective judgment of the American political system about a novel set of problems.”141 Only then can the President’s efforts be sustained and legitimate. 2. Effect on the International Law of Self-Defense A failure to reauthorize military force would lead to significant negative consequences on the international level as well. Denying the Executive Branch the authority to carry out military operations in the armed conflict against Al Qaeda would force the President to find authorization elsewhere, most likely in the international law of selfdefense— the jus ad bellum.142 Finding sufficient legal authority for the United States’s ongoing counterterrorism operations in the international law of self-defense, however, is problematic for several reasons. As a preliminary matter, relying on this rationale usurps Congress’s role in regulating the contours of U.S. foreign and national security policy. If the Executive Branch can assert “self-defense against a continuing threat” to target and detain terrorists worldwide, it will almost always be able to find such a threat.143 Indeed, the Obama Administration’s broad understanding of the concept of “imminence” illustrates the danger of allowing the executive to rely on a self-defense authorization alone.144 This approach also would inevitably lead to dangerous “slippery slopes.” Once the President authorizes a targeted killing of an individual who does not pose an imminent threat in the strict law enforcement sense of “imminence,”145 there are few potential targets that would be off-limits to the Executive Branch. Overly malleable concepts are not the proper bases for the consistent use of military force in a democracy. Although the Obama Administration has disclaimed this manner of broad authority because the AUMF “does not authorize military force against anyone the Executive labels a ‘terrorist,’”146 relying solely on the international law of self defense would likely lead to precisely such a result. The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, **the result would be chaos**.”148

#### Links to politics

Hallowell ’13 [Billy Hallowell, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>, KB]

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

## 2AC CIR

**Obamacare thumped**

Schaper 10/22, Arthur, Canada Free Press, “What Republicans Have Gained Following the Shutdown,” 10/22, http://canadafreepress.com/index.php/article/58738

President Obama has wasted what political capital by holding the line against defunding, then delaying Obamacare’s individual mandate and refusing to repeal the medical device tax, which Republicans and Democrats in Congress oppose. Even Minnesota’s US Senator Al Franken has sponsored a non-binding resolution to repeal the tax. President Obama may have “won” the shutdown fight in the short term, but he has not beaten down the anti-establishment rebellion in the House or the US Senate. President Obama entered his second term with slightly less political capital than George W. Bush in 2004. While Bush won slightly less of the popular vote, he took away more electoral votes than he had won in 2000. Bush stumped to privatize social security, and he failed; yet when he lost both chambers of Congress in 2006, he still managed to instigate a troop surge in 2007. President Obama is saddled with his own legacy, the Affordable Care Act, which even his own leader-colleagues have called “unacceptable” due to its poor rollout. Former Press Secretary John Gibbs also called the Obamacare Medicare exchanges for what they were: disastrous. While the media will portray Obama as the undivided winner, in the long run the Republican Party has asserted new muscle, taking its cues from its radical, grassroots origins. Instead of agreeing to spend $50 billion over budget as opposed to $100 billion, the TEA Party caucus has forced Washington legislators to cut spending.

#### Won’t pass – shutdown killed it

NBC Politics 10/21/13 ("Did Shutdown 'Poison the well' For Immigration Reform")

Prospects for a comprehensive immigration reform bill remain cloudy after a bruising shutdown fight for Republicans that left hard feelings in Washington even as activists continue to push their cause. ¶ “The president’s actions and attitude over the past couple of weeks have certainly poisoned the well and made it harder to work together on any issue,” said a GOP leadership aide asked about the chances of major immigration legislation making it to the White House. ¶ Republican leaders say they remain committed to fixing the nation’s broken immigration system. But, as the dust settles from the shutdown mess, both sides say that the time isn’t exactly optimal for a Kumbaya moment. ¶ “There will definitely have to be a cooling off period,” said Marshall Fitz, the director of immigration policy for the progressive Center for American Progress. Republicans hold "a sense of, ‘Yes, we lost, but we won’t back down,'” he said. "It certainly feels like the fever has not broken.”

**Plan is bipartisan**

**Brooks 13** -law professor at Georgetown University and a Schwartz senior fellow at the New America Foundation. She served as a counselor to the U.S. defense undersecretary for policy from 2009 to 2011 and previously served as a senior advisor at the U.S. State Department. <Rosa. “Mission Creep in the War on Terror” March 14, 2013. <http://www.isidewith.com/article/mission-creep-in-the-war-on-terror>>

That's not surprising: As the targets of U.S. drone strikes have expanded from senior Taliban and al Qaeda operatives to a far broader range of individuals with only the most tenuous links to al Qaeda, the administration's legal arguments for targeted killings have grown ever more tortured and complex. In particular, it's gotten progressively more difficult for officials to avoid blushing while claiming that U.S. drone policy is fully consistent with Congress's 2001 Authorization for Use of Military Force (AUMF), which authorizes force only against those who bear some responsibility for the 9/11 attacks.¶ With Option 3 -- lie, lie, lie -- off the table, and fudging and obfuscation growing harder to comfortably sustain, the thoughts of administration officials turn naturally to Option 2: change the law. Thus, as the Washington Post reported last weekend, some administration officials are apparently considering asking Congress for a new, improved "AUMF 2.0," one that would place U.S. drone policy on firmer legal footing.¶ Just who is behind this notion is unclear, but the idea of a revised AUMF has been gaining considerable bipartisan traction outside the administration. In a recent Hoover Institution publication, for instance, Bobby Chesney, who served in the Obama Justice Department, teams up with Brookings's Ben Wittes and Bush administration veterans Jack Goldsmith and Matt Waxman to argue for a revised AUMF -- one that can provide "a new legal foundation for next-generation terrorist threats."

#### Budget and Obamacare thump the DA

The Atlantic Wire 10/24/13 (Allie Jones, writer for The Atlantic, "The Slim Chance for Immigration Reform")

President Obama made a short speech on Thursday morning at the White House to officially call for Congress to pass comprehensive immigration reform. Though the Senate has already passed a bipartisan bill addressing immigration, conservatives in the House have no intention of touching it. House Speaker John Boehner doesn't necessarily oppose negotiating on immigration, but it's unlikely that he will force a vote in the House on it. Obama [insisted](http://blogs.marketwatch.com/capitolreport/2013/10/24/president-obamas-comments-on-immigration-live-blog/) this morning, "Let’s see if we can get this done. And let’s see if we can get it done this year."¶ Most pundits would tell you that immigration reform [won't get done this year or next year.](http://www.theatlanticwire.com/politics/2013/10/could-immigration-reform-still-happen/70705/) The House GOP is still obsessed with Obamacare; Boehner [was tweeting about the health care law](http://blogs.marketwatch.com/capitolreport/2013/10/24/president-obamas-comments-on-immigration-live-blog/) during Obama's speech. Beyond that, Congress needs to reach a budget agreement sooner than it needs to pass immigration reform. As Republican Rep. Aaron Schock said [last week](http://www.theatlanticwire.com/politics/2013/10/could-immigration-reform-still-happen/70705/), "I know the president has said, well, gee, now this is the time to talk about immigration reform. He ain't gonna get a willing partner in the House until he actually gets serious about ... his plan to deal with the debt."

#### PC fails

Hernandez 10/24/13 (Sandra, Writer for the Los Angeles Times, "Is Obama's Call for Immigration Reform Really Helpful?")

After months of being relegated to the back of the legislative line, [immigration reform](http://www.latimes.com/topic/politics/migration/immigration-reform-legislation-%282013%29-EVGAP00073.topic) is back in the spotlight. On Thursday, President [Obama](http://www.latimes.com/topic/politics/government/barack-obama-PEPLT007408.topic) gave a speech urging the Republican-led House to move quickly to fix the nation’s dysfunctional immigration system.¶ But is Obama’s speech likely to help or hurt such efforts in the House? According to some [GOP](http://www.latimes.com/topic/politics/parties-movements/republican-party-ORGOV0000004.topic) conservatives and [tea party](http://www.latimes.com/topic/politics/tea-party-movement-ORCIG000068.topic) members, the more the president talks about the need to overhaul the immigration system, the dimmer the chances a compromise bill will be passed in the House.¶ Why? The logic goes something like this: Anything that Obama says about immigration reform only deepens partisan divisions in the House. Moreover, his speech was little more than an effort to steal the spotlight from moderate Republicans who are working hard to find a way forward.

#### PC theory is wrong – winners win

Hirsh 13 – National Journal chief correspondent, citing various political scientists

[Michael, former Newsweek senior correspondent, "There’s No Such Thing as Political Capital," National Journal, 2-9-13, www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207, accessed 2-8-13, mss]

The idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get itwrong. On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through. Most of **this** talk **will have** no bearing on what actually happens over the next four years. Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen. What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.” As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The **political tectonics** have **shift**ed **dramatically** in very little time. Whole new possibilities exist now that didn’t a few weeks ago. Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all. The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, **political capital** is a concept that **misleads** far more than it enlightens. **It is** **distortionary**. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history. Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger. But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “**Winning wins.”** In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote. Some **political scientists** **who study** the elusive calculus of **how to pass legislation** and run successful presidencies **say** that **political capital is**, at best, **an empty concept**, and that **almost nothing in** the **academic literature** successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. **Winning** on one issue often **changes the** **calculation** for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where **the conventional wisdom is that president is not going to get what he wants**, and [they]he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. **It’s a bandwagon effect**.” ALL THE WAY WITH LBJ Sometimes, a clever practitioner of power can get more done just because [they’re]he’s aggressive and knows the hallways of Congress well. Texas A&M’s Edwards is right to say that the outcome of the 1964 election, Lyndon Johnson’s landslide victory over Barry Goldwater, was one of the few that conveyed a mandate. But one of the main reasons for that mandate (in addition to Goldwater’s ineptitude as a candidate) was President Johnson’s masterful use of power leading up to that election, and his ability to get far more done than anyone thought possible, given his limited political capital. In the newest volume in his exhaustive study of LBJ, The Passage of Power, historian Robert Caro recalls Johnson getting cautionary advice after he assumed the presidency from the assassinated John F. Kennedy in late 1963. Don’t focus on a long-stalled civil-rights bill, advisers told him, because it might jeopardize Southern lawmakers’ support for a tax cut and appropriations bills the president needed. “One of the wise, practical people around the table [said that] the presidency has only a certain amount of coinage to expend, and you oughtn’t to expend it on this,” Caro writes. (Coinage, of course, was what political capital was called in those days.) Johnson replied, “Well, what the hell’s the presidency for?” Johnson didn’t worry about coinage, and he got the Civil Rights Act enacted, along with much else: Medicare, a tax cut, antipoverty programs. He appeared to understand not just the ways of Congress but also the way to maximize the momentum he possessed in the lingering mood of national grief and determination by picking the right issues, as Caro records. “Momentum is not a mysterious mistress,” LBJ said. “It is a controllable fact of political life.” Johnson had the skill and wherewithal to realize that, at that moment of history, he could have unlimited coinage if he handled the politics right. He did. (At least until Vietnam, that is.)

#### Doesn’t solve the workforce

Wood May 10th 2013

Daniel B., Immigration reform too late to fix one big problem, studies say, Christian Science Monitor, http://www.csmonitor.com/USA/Politics/2013/0510/Immigration-reform-too-late-to-fix-one-big-problem-studies-say

Two recent studies suggest that the immigration reform bill now making its way through the US Senate may not be able to solve one of the core long-term challenges it seeks to fix. Beyond the weighty issues of border security and a path to citizenship for undocumented immigrants, the reform bill also targets America’s migrant labor system, which both workers’ rights groups and the agricultural industry say is broken. Agricultural businesses say there is not enough flexibility in the system to meet their employment needs, while workers say they can be trapped in unfair conditions. Both sides say the reform measure, while not perfect, is an improvement. Yet the two recent studies suggest that economic and demographic trends in Mexico are already changing the dynamics of the American migrant-worker system. In the longer term, the increasing urbanization and prosperity of the Mexican middle class will dramatically diminish the abundant, very cheap Mexican farm labor that has flooded across the southern border for decades to harvest the crops of America. “The longstanding assumption that the region has an endless supply of less-educated workers headed for the US is becoming less and less accurate when it comes to Mexico; and in the years ahead, it is also likely to become less accurate first for El Salvador and then Guatemala,” says the executive summary of the report released Monday by the Migration Policy Institute and the Woodrow Wilson International Center for Scholars. The second study agrees with the first and connects the trend directly to issues at the heart of immigration reform. “This [trend] means that immigration policy will cease to be a solution to the US farm labor problem in the long run and probably sooner. In fact, we already may be witnessing the start of a new era in which farmers will have to adapt to labor scarcity by switching to less labor-intensive crops, technologies, and labor management practices,” according to the University of California study released in March.

**No extinction from bioweapons**

**O’Neill 04 –** (Brendan, 8-19 “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm)

David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.

## 2AC K Generic

Debates about legal questions of national security inculcate agency and decision making – that’s key to activism

Laura K. Donohue, Associate Professor of Law, Georgetown Law, 4/11/13, National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

#### Their strategy has no way to deal with people who like killing, amounting to simple appeasement that guarantees more suffering and death – prefer ev in the context of IR

Hanson 2004

Victor Davis, Professor of Classical Studies at CSU Fresno, City Journal, Spring, <http://www.city->journal.org/html/14\_2\_the\_fruits.html

The twentieth century should have taught the citizens of liberal democracies the catastrophic consequences of placating tyrants. British and French restraint over the occupation of the Rhineland, the Anschluss, the absorption of the Czech Sudetenland, and the incorporation of Bohemia and Moravia did not win gratitude but rather Hitler’s contempt for their weakness. Fifty million dead, the Holocaust, and the near destruction of European civilization were the wages of “appeasement”—a term that early-1930s liberals proudly embraced as far more enlightened than the old idea of “deterrence” and “military readiness.” So too did Western excuses for the Russians’ violation of guarantees of free elections in postwar Eastern Europe, China, and Southeast Asia only embolden the Soviet Union. What eventually contained Stalinism was the Truman Doctrine, NATO, and nuclear deterrence—not the United Nations—and what destroyed its legacy was Ronald Reagan’s assertiveness, not Jimmy Carter’s accommodation or Richard Nixon’s détente. As long ago as the fourth century b.c., Demosthenes warned how complacency and self-delusion among an affluent and free Athenian people allowed a Macedonian thug like Philip II to end some four centuries of Greek liberty—and in a mere 20 years of creeping aggrandizement down the Greek peninsula. Thereafter, these historical lessons should have been clear to citizens of any liberal society: we must neither presume that comfort and security are our birthrights and are guaranteed without constant sacrifice and vigilance, nor expect that peoples outside the purview of bourgeois liberalism share our commitment to reason, tolerance, and enlightened self-interest. Most important, military deterrence and the willingness to use force against evil in its infancy usually end up, in the terrible arithmetic of war, saving more lives than they cost. All this can be a hard lesson to relearn each generation, especially now that we contend with the sirens of the mall, Oprah, and latte. Our affluence and leisure are as antithetical to the use of force as rural life and relative poverty once were catalysts for muscular action. The age-old lure of appeasement—perhaps they will cease with this latest concession, perhaps we provoked our enemies, perhaps demonstrations of our future good intentions will win their approval—was never more evident than in the recent Spanish elections, when an affluent European electorate, reeling from the horrific terrorist attack of 3/11, swept from power the pro-U.S. center-right government on the grounds that the mass murders were more the fault of the United States for dragging Spain into the effort to remove fascists and implant democracy in Iraq than of the primordial al-Qaidist culprits, who long ago promised the Western and Christian Iberians ruin for the Crusades and the Reconquista.

#### Turns the K - war leads to dehumanization and social exclusion

**Maiese, 03** [Michelle, research staff at the Conflict Research Consortium, July, The Beyond Intractability Project: Guy Burgess and Heidi Burgess” http://www.beyondintractability.org/essay/dehumanization/]

Dehumanization is a psychological process whereby opponents view each other as less than human and thus not deserving of moral consideration. Jews in the eyes of Nazis and Tutsis in the eyes of Hutus (in the Rwandan genocide) are but two examples. Protracted conflict strains relationships and makes it difficult for parties to recognize that they are part of a shared human community. Such conditions often lead to feelings of intense hatred and alienation among conflicting parties. The more severe the conflict, the more the psychological distance between groups will widen. Eventually, this can result in moral exclusion. Those excluded are typically viewed as inferior, evil, or criminal.[1] We typically think that all people have some basic human rights that should not be violated. Innocent people should not be murdered, raped, or tortured. Rather, international law suggests that they should be treated justly and fairly, with dignity and respect. They deserve to have their basic needs met, and to have some freedom to make autonomous decisions. In times of war, parties must take care to protect the lives of innocent civilians on the opposing side. Even those guilty of breaking the law should receive a fair trial, and should not be subject to any sort of cruel or unusual punishment. However, for individuals viewed as outside the scope of morality and justice, "the concepts of deserving basic needs and fair treatment do not apply and can seem irrelevant."[2] Any harm that befalls such individuals seems warranted, and perhaps even morally justified. Those excluded from the scope of morality are typically perceived as psychologically distant, expendable, and deserving of treatment that would not be acceptable for those included in one's moral community. Common criteria for exclusion include ideology, skin color, and cognitive capacity. We typically dehumanize those whom we perceive as a threat to our well-being or values.[3] Psychologically, it is necessary to categorize one's enemy as sub-human in order to legitimize increased violence or justify the violation of basic human rights. Moral exclusion reduces restraints against harming or exploiting certain groups of people. In severe cases, dehumanization makes the violation of generally accepted norms of behavior regarding one's fellow man seem reasonable, or even necessary

#### States will always act to preserve security – we should save ourselves

Mearsheimer ‘1 (John Mearsheimer, R. Wendell Harrison Distinguished Service Professor of political science at the University of Chicago and co-director of the Program on International Security Policy, The Tragedy of Great Power Politics, 2001, p. 30-32)

The first assumption is that the international system is anarchic, which does not mean that it is chaotic or riven by disorder. It is easy to draw that conclusion, since realism depicts a world characterized by security competition and war. By itself, however, the realist notion of anarchy has nothing to do with conflict; it is an ordering principle, which says that the system comprises independent states that have no central authority above them.4 Sovereignty, in other words, inheres in states because there is no higher ruling body in the international system.5 There is no “government over governments.”6 The second assumption is that great powers inherently possess some offensive military capability, which gives them the wherewithal to hurt and possibly destroy each other. States are potentially dangerous to each other, although some states have more military might than others and are therefore more dangerous. A state’s military power is usually identified with the particular weaponry at its disposal, although even if there were no weapons, the individuals in those states could still use their feet and hands to attack the population of another state. After all, for every neck, there are two hands to choke it. The third assumption is that states can never be certain about other states’ intentions. Specifically, no state can be sure that another state will not use its offensive military capability to attack the first state. This is not to say that states necessarily have hostile intentions. Indeed, all of the states in the system may be reliably benign, but it is impossible to be sure of that judgment because intentions are impossible to divine with 100 percent certainty.7 There are many possible causes of aggression, and no state can be sure that another state is not motivated by one of them.8 Furthermore, intentions can change quickly, so a state’s intentions can be benign one day and hostile the next. Uncertainty about intentions is unavoidable, which means that states can never be sure that other states do not have offensive intentions to go along with their offensive capabilities. The fourth assumption is that survival is the primary goal of great powers. Specifically, states seek to maintain their territorial integrity and the autonomy of their domestic political order. Survival dominates other motives because, once a state is conquered, it is unlikely to be in a position to pursue other aims. Soviet leader Josef Stalin put the point well during a war scare in 1927: “We can and must build socialism in the [Soviet Union]. But in order to do so we first of all have to exist.”9 States can and do pursue other goals, of course, but security is their most important objective. The fifth assumption is that great powers are rational actors. They are aware of their external environment and they think strategically about how to survive in it. In particular, they consider the preferences of other states and how their own behavior is likely to affect the behavior of those other states, and how the behavior of those other states is likely to affect their own strategy for survival. Moreover, states pay attention to the long term as well as the immediate consequences of their actions. As emphasized, none of these assumptions alone dictates that great powers as a general rule *should* behave aggressively toward each other. There is surely the possibility that some state might have hostile intentions, but the only assumption dealing with a specific motive that is common to all states says that their principal objective is to survive, which by itself is a rather harmless goal. Nevertheless, when the five assumptions are married together, they create powerful incentives for great powers to think and act offensively with regard to each other. In particular, three general patterns of behavior result: fear, self-help, and power maximization.

## Case

**Daskal and Vladek are wrong – reforming the AUMF is key to legitimacy and the perception of presidential constraint**

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Jennifer and Steve prefer a combination of the current AUMF and Article II. They think that such an approach will be more limited or cabined than the one we propose. I am skeptical. As the administration’s “associates of associates” gambit suggests, and as the history of the past dozen years shows, and as the unilateral opening of the Niger base implies, Executive branch lawyers have many tricks up their sleeves for secret expansion of the AUMF. Especially if these AUMF authorities are deployed only for targeting, they will likely never be reviewed by a court. Jennifer’s and Steve’s limitation of statutory authorities to the current AUMF is thus not a recipe for ending armed conflict – it is, in light of the realities of ever-present threats, a recipe for continued armed conflict via secret and ever-more-tenuous expansions of the AUMF. (I am a bit surprised about the ease with which Steve and Jennifer conclude that AQAP is covered by the current AUMF, so perhaps they, like the administration, embrace a relatively open-ended interpretation of the AUMF; but I note, for reasons stated in our piece, that such interpretive expansions of the AUMF are not a stable solution and are increasingly illegitimate.) Moreover, I agree with Steve and Jennifer that Article II is a possible solution to terrorist threats; but I also believe, as we said in our piece, that “presidential action based on statutory authority has more political and legal legitimacy than action based on Article II alone.” In addition, Steve’s and Jennifer’s proposal would include none of the clarifying (or potentially narrowing) interventions by Congress that our proposal contains. Nor would their proposal contain the accountability mechanisms that we propose, including the relatively robust and public and deliberate administrative process for adding threatening new groups (as opposed to the secret and ad hoc way they are added now), and much “more thorough ex post reporting and auditing” than is currently the case.¶ Steve and Jennifer say that “a key—and possibly principal—objective of the CGWW proposal is to provide authority to this and future presidents to detain terrorism suspects without charge.” That is simply untrue. Our essay discusses detention and targeting under a new AUMF, it notes that statutory authority is probably needed for any medium-to-long-term detention of persons who pose extra-AUMF threats, and it acknowledges that statutory authority is an advantage for a “future administration [that] might regard such detention as necessary in some circumstances.” But we did not wade in to the thorny issue of whether new detentions are necessary, or when detention as opposed to targeting is preferred, or the possible relationship between the unavailability of detention and enhanced rates of targeting, and how that tradeoff should be managed. These are all hard issues on which Ben, Bobby, Matt and I probably disagree. But there are many legitimacy and democracy-enhancing benefits to our proposal over the current one even if Congress authorizes only targeting (as opposed to detention) authority, or even if Congress gives the President detention authority and he (like President Obama) declines to use it. Detention is not the only thing, and is not the most important thing, at stake in this debate.¶ Other points on which we think Steve and Jennifer misinterpret or mischaracterize or misunderstand our argument: (1) they say that we propose, “in effect, a paradigm shift: from defensive uses of force in response to an imminent terrorist threat to offensive uses of force to preempt such threats from even arising” – but actually, quite the opposite, our proposed definitions of targetable groups are expressly limited to those who have committed a belligerent act against the United States or who present an “imminent threat”; (2) they describe our proposal as “an expansion of statutory authorities to use military force” – but given the possibility of extending the AUMF to “associates of associates,” and the likelihood that such expansion, if limited to targeting, would never be subject to judicial review, and that it would lack any of the limiting or accountability mechanisms we propose, we think that our proposal is more cabined, and certainly more legitimate, than the trajectory of current law that Jennifer and Steve embrace; (3) they say that we advocate “open-ended and permanent declaration of armed conflict,” but in fact we argued for authorities that contain express and stricter substantive and temporal limits than the the unilateral executive branch expansions of the AUMF combined with unilateral Article II authorities that they prefer; and (4) they criticize our accountability proposals (sunsets, limiting targeting categories, enhanced reporting and review, etc.) as ineffective, but they do not explain why they think the current methods for expanding the AUMF via interpretation, and of unilateral executive decisions deciding who can be targeted, are better.