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#### Restrictions on executive war powers DO NOTHING for the state of political legal exception we live in and only gives further justification for violent intervention on the basis of legality

Dyzenhaus 05

(David, is a professor of Law and Philosophy at the University of Toronto, and a Fellow of the Royal Society of Canada, “Schmitt v. Dicey: Are States of Emergency Inside or Outside the Legal Order?” Cardozo Law Review 27)

Rossiter had in mind Lincoln's actions during the Civil War, including the proclamation by which Lincoln, without the prior authority of Congress, suspended habeas corpus. n35 Lincoln, he said, subscribed to a theory that in a time of emergency, the President could assume whatever legislative, executive, and judicial powers he thought necessary to preserve the nation, and could in the process break the "fundamental laws of the nation, if such a step were unavoidable." n36 This power included one ratified by the Supreme Court: "an almost unrestrained power to act toward insurrectionary citizens as if they were enemies of the United States, and thus place them outside the protection of the Constitution." Rossiter's difficulties here illustrate rather than solve the tensions inherent in the idea of constitutional dictatorship. On the one hand, he wants to assert that emergency rule in a liberal democracy can be constitutional in nature. "Constitutional" implies restraints and limits in accordance not only with law, but with fundamental laws. These laws are not the constitution that is in place for ordinary times; rather, they are the laws that govern the management of exceptional times - the eleven criteria that he developed for constitutional dictatorship. The criteria are either put within the discretion of the dictator - they are judgments about necessity - or are couched as limits that should be enshrined either in the constitution or in legislation. However, Rossiter does not properly address the fact that judgments about necessity are for the dictator to make, which means that these criteria are not limits or constraints but merely factors about which the dictator will have to decide. Other criteria look more like genuine limits. Moreover, they are limits that could be constitutionally enshrined - for example, the second criterion, which requires that the person who makes the decision that there is an emergency should not be the person who assumes dictatorial powers. Yet, as we have seen, Rossiter's foremost example of the modern constitutional dictator, Lincoln, not only gave himself dictatorial powers but, Rossiter supposes, had no choice but to do this. Moreover, if these criteria are constitutionally enshrined, so that part of the constitution is devoted to the rules that govern the time when the rest of the constitution might be suspended, they still form part of the constitution. So, no less than the ordinary constitution, what we can think of as the exceptional or emergency constitution - the constitution that governs the state of emergency - is subject to suspension should the dictator deem this necessary. This explains why, on the other hand, Rossiter equated emergency rule with potentially unlimited dictatorship, with Locke's idea of prerogative. And Rossiter said, "whatever the theory, in moments of extreme national emergency the facts have always been with ... John Locke." So Rossiter at one and the same time sees constitutional dictatorship as unconstrained in nature and as constrainable by principles - his eleven criteria. The upshot is that "constitutional" turns out not to mean what we usually take it to mean; rather, it is a misleading name for the hope that the person who assumes dictatorial powers does so because of a good faith evaluation that this is really necessary and with the honest and steadfast intention to return to the ordinary way of doing things as soon as possible. Giorgio Agamben is thus right to remark that the bid by modern theorists of constitutional dictatorship to rely on the tradition of Roman dictatorship is misleading. n39 They rely on that tradition in an effort to show that dictatorship is constitutional or law-governed. But in fact they show that dictatorship is in principle absolute - the dictator is subject to whatever limits he deems necessary, which means to no limits at all. As H.L.A. Hart described the sovereign within the tradition of legal positivism, the dictator is an uncommanded commander. n40 He [\*2015] operates within a black hole, in Agamben's words, "an emptiness of law." n41 Agamben thus suggests that the real analogue to the contemporary state of emergency is not the Roman dictatorship but the institution of iustitium, in which the law is used to produce a "juridical void" - a total suspension of law. n42 And in coming to this conclusion, Agamben sides with Carl Schmitt, his principal interlocutor in his book. However, it is important to see that Schmitt's understanding of the state of exception is not quite a legal black hole, a juridically produced void. Rather, it is a space beyond law, a space which is revealed when law recedes, leaving the state, represented by the sovereign, to act. In substance, there might seem to be little difference between a legal black hole and space beyond law since neither is controlled by the rule of law. But there is a difference in that nearly all liberal legal theorists find the idea of a space beyond law antithetical, even if they suppose that law can be used to produce a legal void. This is so especially if such theorists want to claim for the sake of legitimacy that law is playing a role, even if it is the case that the role law plays is to suspend the rule of law. Schmitt would have regarded such claims as an attempt to cling to the wreckage of liberal conceptions of the rule of law brought about by any attempt to respond to emergencies through the law. They represent a vain effort to banish the exception from legal order. Because liberals cannot countenance the idea of politics uncontrolled by law, they place a veneer of legality on the political, which allows the executive to do what it wants while claiming the legitimacy of the rule of law. We have seen that Rossiter presents a prominent example which supports Schmitt's view, and as I will now show, it is a depressing fact that much recent post 9/11 work on emergencies is also supportive of Schmitt's view. II. Responding to 9/11 For example, Bruce Ackerman in his essay, The Emergency Constitution, n43 starts by claiming that we need "new constitutional concepts" in order to avoid the downward spiral in protection of civil liberties that occurs when politicians enact laws that become increasingly repressive with each new terrorist attack. n44 We need, he says, to rescue the concept of "emergency powers ... from fascist thinkers like Carl Schmitt, who used it as a battering ram against liberal [\*2016] democracy." n45 Because Ackerman does not think that judges are likely to do, or can do, better than they have in the past at containing the executive during an emergency, he proposes mainly the creative design of constitutional checks and balances to ensure, as did the Roman dictatorship, against the normalization of the state of emergency. Judges should not be regarded as "miraculous saviors of our threatened heritage of freedom." n46 Hence, it is better to rely on a system of political incentives and disincentives, a "political economy" that will prevent abuse of emergency powers. He calls his first device the "supramajoritarian escalator" n48 - basically the requirement that a declaration of a state of emergency requires legislative endorsement within a very short time, and thereafter has to be renewed at short intervals, with each renewal requiring the approval of a larger majority of legislators. The idea is that it will become increasingly easy with time for even a small minority of legislators to bring the emergency to an end, thus decreasing the opportunities for executive abuse of power. n49 The second device requires the executive to share security intelligence with legislative committees and that a majority of the seats on these committees belong to the opposition party. Ackerman does see some role for courts. They will have a macro role should the executive flout the constitutional devices. While he recognizes both that the executive might simply assert the necessity to suspend the emergency constitution and that this assertion might enjoy popular support, he supposes that if the courts declare that the executive is violating the constitution, this will give the public pause and thus will decrease incentives on the executive to evade the constitution. n51 In addition, the courts will have a micro role in supervising what he regards as the inevitable process of detaining suspects without trial for the period of the emergency. Suspects should be brought to court and some explanation should be given of the grounds of their detention, not so that they can contest it - a matter which Ackerman does not regard as practicable - but in order both to give the suspects a public identity so that they do not disappear and to provide a basis for compensation once the emergency is over in case the executive turns out to have fabricated [\*2017] its reasons. He also wishes to maintain a constitutional prohibition on torture, which he thinks can be enforced by requiring regular visits by lawyers. Not only is the judicial role limited, but it is clear that Ackerman does not see the courts as having much to do with preventing a period of "sheer lawlessness." n53 Even within the section on the judiciary, he says that the real restraint on the executive will be the knowledge that the supramajoritarian escalator might bring the emergency to an end, whereupon the detainees will be released if there is no hard evidence to justify detaining them. In sum, according to Ackerman, judges have at best a minimal role to play during a state of emergency. We cannot really escape from the fact that a state of emergency is a legally created black hole, a lawless void. It is subject to external constraints, controls on the executive located at the constitutional level and policed by the legislature. But internally, the rule of law does next to no work; all that we can reasonably hope for is decency. But once one has conceded that internally a state of emergency is more or less a legal black hole because the rule of law, as policed by judges, has no or little purchase, it becomes difficult to understand how external legal constraints, the constitutionally entrenched devices, can play the role Ackerman sets out. Recall that Ackerman accepts that the reason we should not give judges more than a minimal role is the history of judicial failure to uphold the rule of law during emergencies in the face of executive assertions of a necessity to operate outside of law's rule. For that reason, he constructs a political economy to constrain emergency powers. But that political economy still has to be located in law in order to be enforceable, which means that Ackerman cannot help but rely on judges. But why should we accept his claim that we can rely on judges when the executive asserts the necessity of suspending the exceptional constitution, the constitution for the state of emergency, when one of his premises is that we cannot so rely? Far from rescuing the concept of emergency powers from Schmitt, Ackerman's devices for an emergency constitution, an attempt to update Rossiter's model of constitutional dictatorship, fails for the same reasons that Rossiter's model fails. Even as they attempt to respond to Schmitt's challenge, they seem to prove the claim that Schmitt made in late Weimar that law cannot effectively enshrine a distinction between constitutional dictatorship and dictatorship. They appear to be vain attempts to find a role for law while at the same time conceding that law has no role. Of course, this last claim trades on an ambiguity in the idea of the rule of law between, on the one hand, the rule of law, understood as the rule of substantive principles, and, on the other, rule by law, where as long as there is a legal warrant for what government does, government will be considered to be in compliance with the rule of law. Only if one holds to a fairly substantive or thick conception of the rule of law will one think that there is a point on a continuum of legality where rule by law ceases to be in accordance with the rule of law. Ackerman's argument for rule by law, by the law of the emergency constitution, might not answer Schmitt's challenge. But at least it attempts to avoid dignifying the legal void with the title of rule of law, even as it tries to use law to govern what it deems ungovernable by law. The same cannot be said of those responses to 9/11 that seem to suggest that legal black holes are not in tension with the rule of law, as long as they are properly created. While it is relatively rare to find a position that articulates so stark a view, it is quite common to find positions that are comfortable with grey holes, as long as these are properly created. A grey hole is a legal space in which there are some legal constraints on executive action - it is not a lawless void - but the constraints are so insubstantial that they pretty well permit government to do as it pleases. And since such grey holes permit government to have its cake and eat it too, to seem to be governing not only by law but in accordance with the rule of law, they and their endorsement by judges and academics might be even more dangerous from the perspective of the substantive conception of the rule of law than true black holes.

#### Our alternative is to recognize the necessity of the opposition. Sovereignty necessarily functions in exception to the law. This exception is necessary to avoid the universal violence of the Law and the affirmative.

Rasch 2k

(William. "Conflict as a Vocation: Carl Schmitt and the Possibility of Politics." Theory Culture Society 17.1)

It is not difficult to see that the polemical elevation of sovereignty over the rule of law replicates a lively historical opposition, one that can be perhaps best evoked by that happy pair, Hobbes and Locke. Within the liberal tradition, the rule of law invokes reason and calculability in its battles against the arbitrary and potentially despotic whim of an unrestrained sovereign. The legitimacy of the sovereign is thus replaced by a legality that claims to provide its own immanent and unforced legitimacy. Predictable and universally accessible reason - the normative validity of an "uncorked consensus", to use the words of a prominent modern exponent - gently usurps, so it is claimed, the place that would otherwise be occupied by a cynical, pragmatic utilitarianism and the tyranny of a dark, incalculable will. The rule of law brings all the comforts of an uncontroversial, rule-based, normative security as if legality preceded by way of simple logical derivation, abolishing above all the necessity of decisions. Schmitt clearly will have none of this and in various writings attempts to expose what he considers to be the two-fold fallacy of the liberal position. As we have seen, if taken at its word, legality, or the rule of law, is seen by Schmitt to be impotent; it can neither legitimize nor effectively defend itself against determined enemies in times of crisis. Were law truly the opposite of force, it would cease to exist. But this self-description is deceptive, for if judged by its deeds, the same liberal regime that enunciates the self-evidence validity of universal norms strives to enact a universal consensus that is, indeed, far from uncorked. The rule of law inevitably reveals itself, precisely during moments of crisis, as the force of law, perhaps, not every bit as violent and "irrational" as the arbitrary tyrant, but nonetheless compelling and irresistible - indeed, necessarily so. Thus, Schmitt would argue the distinction between "decision", "force" and sovereignty", on the one hand, and the "rule of law", on the other, is based on a blithe and simple illusion. What agitates Schmitt is not the force, but the deception. More precisely, what agitates Schmitt is what he perceives to be the elimination of politics in the name of a higher legal or moral order. In its claim to a universal, normative, rule-bound validity, the liberal sleight-of-hand reveals itself to be not the opposite of force, but a force that outlaws opposition. In resurrecting the notion of sovereignty, therefore, Schmitt sees himself as one who rescues a legitimate notion of politics. Of course, this rescue attempt is itself political, a battle over the correct definition of politics. That is, we are not merely dealing with a logical problem, and not merely dealing with a desire to provide constitutional mechanisms that would prevent the self-dissolution of the constitution. Rather, we are dealing with a contest between a particularist notion of politics, in which individual conflicts can be resolved, but in which antagonism as a structure and reservoir of possible future conflicts is never destroyed, versus politics as the historical unfolding and pacific expansion of the universal morality. To evoke the long shadows of an ongoing contemporary debate, we are dealing with the difference between a politics of dissensus and a politics of consensus. Whereas the latter ideology entails an explicit or implicit belief in the "highest good" that can be rationally discerned and achieved, a "right regime", to use Leo Strauss's term, or the "just society" that hopes to actualize aspects of the City of God here on earth, the former stresses the necessity of determining a workable order where no single order bears the mantle of necessity, in fact, where all order is contingent, hence imperfect, and thus seeks to make the best of an inherently contradictory world by erecting structures that minimize self-inflicted damage. In Schmitt's eyes, the elements of such a structure must be the manifold of sovereign states. The liberal says there can only be one world-wide sovereign, the sovereignty of a universal moral and legal order. Schmitt counters with a plurality of equal sovereigns, for only in this way, he believes, can the economic and moral extinction of politics be prevented. Politics, on this view, is not the means by which the universally acknowledged good is actualized, but the mechanism that negotiates and limits disputes in the absence of any universally acknowledged good. Politics exists, in other words, because the just society does not.

#### This requires the unchecked authority of the executive to respond to the exception.

Nagan and Haddad 12

(Winston and Aitza, "Sovereignty in Theory and Practice." San Diego International Law Journal 13)

Although Schmitt was German, his ideas about sovereignty, and the political exception have had influence on the American theory and practice of sovereignty. Carl Schmitt was a philosophic theorist of sovereignty during the Third Reich. n375 His ideas about sovereignty and its above the law placement in the political culture of the State have important parallels in the developing discourse in the United States about the scope of presidential authority and power. His views have attracted the attention of American theorists. Schmitt developed his view of sovereignty on the concept described as "the exception". n376 This idea suggests that the sovereign or executive may invoke the idea of exceptional powers which are distinct from the general theory of the State. In Schmitt's view, the normal condition of the functions of the theory of a State, rides with the existence of the idea of the "exception." The exception is in effect intrinsic to the idea of a normal State. In his view, [\*487] the normal legal order of a State depends on the existence of an exception. n377 The exception is based on the continuing existence of an existential threat to the State and it is the sovereign that must decide on the exception. n378 In short, the political life of a State comprises allies and enemies. For the purpose of Statecraft, "an enemy exists only when at least potentially, one fighting collectivity of people confronts another similar collectivity." n379 In this sense, the political reality of the State always confronts the issue of the survival of the group. This reality is explained as follows. The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping. \*\*\* As an ever present possibility [war] is the leading presupposition which determines in a characteristic way human action and thinking and hereby creates a specifically political behavior.\*\*\* A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction between friend and enemy and hence a world without politics. n380 Schmitt's view bases the supremacy of the exception on the supremacy of politics and power. n381 Thus, the exception, as rooted in the competence of the executive, is not dependent on law for its authority but on the conditions of power and conflict, which are implicitly pre-legal. n382 The central idea is that in an emergency, the power to decide based on the exception accepts its normal superiority over law on the basis that the suspension of the law is justified by the pre-legal right to self-preservation. n383 Schmitt's view is a powerful justification for the exercise of extraordinary powers, which he regards as ordinary, by executive authority. This is a tempting view for executive officers but it may not be an adequate explanation of the interplay of power, legitimacy, and the constitutional foundations of a rule of law State. In a later section, we draw on insights from the New Haven School, which deals empirically with the problem of power and the problem of constituting authority using the methods of contextual mapping. Nonetheless, Schmitt's view provides support for theorists who seek to enlarge executive power on the unitary presidency theory.

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#### Text: The Executive branch of the United States should publically establish transparency standards outlining its legal rationale for its target killing policy, including the standards and procedures for target selection.

#### CP resolves drone legitimacy and resentment

Daskal 13

Jennifer Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165

4. Procedural Requirements¶ Currently, officials in the executive branch carry out all such ex ante review of out-of-battlefield targeting and detention decisions, reportedly with the involvement of the President, but without any binding and publicly articulated standards governing the exercise of these authorities. n163 All ex post review of targeting is also done internally within the executive branch. There is no public accounting, or even acknowledgment, of most strikes, their success and error rates, or the extent of any collateral damage. Whereas the Department of Defense provides solatia or condolence payments to Afghan civilians who are killed or injured as a result of military actions in Afghanistan (and formerly did so in Iraq), there is no equivalent effort in areas outside the active conflict zone. n164¶ Meanwhile, the degree of ex post review of detention decisions depends on the location of detention as opposed to the location of capture. Thus, [\*1219] Guantanamo detainees are entitled to habeas review, but detainees held in Afghanistan are not, even if they were captured far away and brought to Afghanistan to be detained. n165¶ Enhanced ex ante and ex post procedural protections for both detention and targeting, coupled with transparency as to the standards and processes employed, serve several important functions: they can minimize error and abuse by creating time for advance reflection, correct erroneous deprivations of liberty, create endogenous incentives to avoid mistake or abuse, and increase the legitimacy of state action.¶ a. Ex Ante Procedures¶ Three key considerations should guide the development of ex ante procedures. First, any procedural requirements must reasonably respond to the need for secrecy in certain operations. Secrecy concerns cannot, for example, justify the lack of transparency as to the substantive targeting standards being employed. There is, however, a legitimate need for the state to protect its sources and methods and to maintain an element of surprise in an attack or capture operation. Second, contrary to oft-repeated rhetoric about the ticking time bomb, few, if any, capture or kill operations outside a zone of active conflict occur in situations of true exigency. n166 Rather, there is often the time and need for advance planning. In fact, advance planning is often necessary to minimize damage to one's own troops and nearby civilians. n167 Third, the procedures and standards employed must be transparent and sufficiently credible to achieve the desired legitimacy gains.¶ These considerations suggest the value of an independent, formalized, ex ante review system. Possible models include the Foreign Intelligence [\*1220] Surveillance Court (FISC), n168 or a FISC-like entity composed of military and intelligence officials and military lawyers, in the mode of an executive branch review board. n169¶ Created by the Foreign Intelligence Surveillance Act (FISA) in 1978, n170 the FISC grants ex parte orders for electronic surveillance and physical searches, among other actions, based on a finding that a "significant purpose" of the surveillance is to collect "foreign intelligence information." n171 The Attorney General can grant emergency authorizations without court approval, subject to a requirement that he notify the court of the emergency authorization and seek subsequent judicial authorization within seven days. n172 The FISC also approves procedures related to the use and dissemination of collected information. By statute, heightened restrictions apply to the use and dissemination of information concerning U.S. persons. n173 Notably, the process has been extraordinarily successful in protecting extremely sensitive sources and methods. To date, there has never been an unauthorized disclosure of an application to or order from the FISC court.¶ An ex parte review system for targeting and detention outside zones of active hostility could operate in a similar way. Judges or the review board would approve selected targets and general procedures and standards, while still giving operators wide rein to implement the orders according to the approved standards. Specifically, the court or review board would determine whether the targets meet the substantive requirements and would [\*1221] evaluate the overarching procedures for making least harmful means-determinations, but would leave target identification and time-sensitive decisionmaking to the operators. n174¶ Moreover, there should be a mechanism for emergency authorizations at the behest of the Secretary of Defense or the Director of National Intelligence. Such a mechanism already exists for electronic surveillance conducted pursuant to FISA. n175 These authorizations would respond to situations in which there is reason to believe that the targeted individual poses an imminent, specific threat, and in which there is insufficient time to seek and obtain approval by a court or review panel as will likely be the case in instances of true imminence justifying the targeting of persons who do not meet the standards applicable to operational leaders. As required under FISA, the reviewing court or executive branch review board should be notified that such an emergency authorization has been issued; it should be time-limited; and the operational decisionmakers should have to seek court or review board approval (or review, if the strike has already taken place) as soon as practicable but at most within seven days. n176¶ Finally, and critically, given the stakes in any application namely, the deprivation of life someone should be appointed to represent the potential target's interests and put together the most compelling case that the individual is not who he is assumed to be or does not meet the targeting criteria.¶ The objections to such a proposal are many. In the context of proposed courts to review the targeting of U.S. citizens, for example, some have argued that such review would serve merely to institutionalize, legitimize, and expand the use of targeted drone strikes. n177 But this ignores the reality of their continued use and expansion and imagines a world in which targeted [\*1222] killings of operational leaders of an enemy organization outside a zone of active conflict is categorically prohibited (an approach I reject n178). If states are going to use this extraordinary power (and they will), there ought to be a clear and transparent set of applicable standards and mechanisms in place to ensure thorough and careful review of targeted-killing decisions. The formalization of review procedures along with clear, binding standards will help to avoid ad hoc decisionmaking and will ensure consistency across administrations and time.¶ Some also condemn the ex parte nature of such reviews. n179 But again, this critique fails to consider the likely alternative: an equally secret process in which targeting decisions are made without any formalized or institutionalized review process and no clarity as to the standards being employed. Institutionalizing a court or review board will not solve the secrecy issue, but it will lead to enhanced scrutiny of decisionmaking, particularly if a quasi-adversarial model is adopted, in which an official is obligated to act as advocate for the potential target.¶ That said, there is a reasonable fear that any such court or review board will simply defer. In this vein, FISC's high approval rate is cited as evidence that reviewing courts or review boards will do little more than rubber-stamp the Executive's targeting decisions. n180 But the high approval rates only tell part of the story. In many cases, the mere requirement of justifying an application before a court or other independent review board can serve as an internal check, creating endogenous incentives to comply with the statutory requirements and limit the breadth of executive action. n181 Even if this system does little more than increase the attention paid to the stated requirements and expand the circle of persons reviewing the factual basis for the application, those features in and of themselves can lead to increased reflection and restraint.¶ Additional accountability mechanisms, such as civil or criminal sanctions in the event of material misrepresentations or omissions, the granting of far-reaching authority to the relevant Inspectors General, and meaningful ex post review by Article III courts, n182 are also needed to help further minimize abuse.¶ Conversely, some object to the use of courts or court-like review as stymying executive power in wartime, and interfering with the President's Article II powers. n183 According to this view, it is dangerous and potentially unconstitutional to require the President's wartime targeting decisions to be subject to additional reviews. These concerns, however, can be dealt with through emergency authorization mechanisms, the possibility of a presidential override, and design details that protect against ex ante review of operational decisionmaking. The adoption of an Article II review board, rather than an Article III-FISC model, further addresses some of the constitutional concerns.¶ Some also have warned that there may be no "case or controversy" for an Article III, FISC-like court to review, further suggesting a preference for an Article II review board. n184 That said, similar concerns have been raised with respect to FISA and rejected. n185 Drawing heavily on an analogy to courts' roles in issuing ordinary warrants, the Justice Department's Office of Legal Counsel concluded at the time of enactment that a case and controversy existed, even though the FISA applications are made ex parte. n186 [\*1224] Here, the judges would be issuing a warrant to kill rather than surveil. While this is significant, it should not fundamentally alter the legal analysis. n187 As the Supreme Court has ruled, killing is a type of seizure. n188 The judges would be issuing a warrant for the most extreme type of seizure. n189¶ It is also important to emphasize that a reviewing court or review board would not be "selecting" targets, but determining whether the targets chosen by executive branch officials met substantive requirements much as courts do all the time when applying the law to the facts. Press accounts indicate that the United States maintains lists of persons subject to capture or kill operations lists created in advance of specific targeting operations and reportedly subject to significant internal deliberation, including by the President himself. n190 A court or review board could be incorporated into the existing ex ante decisionmaking process in a manner that would avoid interference with the conduct of specific operations reviewing the target lists but leaving the operational details to the operators. As suggested above, emergency approval mechanisms could and should be available to deal with exceptional cases where ex ante approval is not possible.¶ Additional details will need to be addressed, including the temporal limits of the court's or review board's authorizations. For some high-level operatives, inclusion on a target list would presumably be valid for some set period of [\*1225] time, subject to specific renewal requirements. Authorizations based on a specific, imminent threat, by comparison, would need to be strictly time-limited, and tailored to the specifics of the threat, consistent with what courts regularly do when they issue warrants.¶ In the absence of such a system, the President ought to, at a minimum, issue an executive order establishing a transparent set of standards and procedures for identifying targets of lethal killing and detention operations outside a zone of active hostilities. n192 To enhance legitimacy, the procedures should include target list reviews and disposition plans by the top official in each of the agencies with a stake in the outcome the Secretary of Defense, the Director of the CIA, the Secretary of State, the Director of Homeland Security, and the Director of National Intelligence, with either the Secretary of Defense, Director of National Intelligence, or President himself, responsible for final sign-off. n193 In all cases, decisions should be unanimous, or, in the absence of consensus, elevated to the President of the United States. n194 Additional details will need to be worked out, including critical questions about the standard of proof that applies. Given the stakes, a clear and convincing evidentiary standard is warranted. n195¶ While this proposal is obviously geared toward the United States, the same principles should apply for all states engaged in targeting operations. n196 States would ideally subject such determinations to independent review or, alternatively, clearly articulate the standards and procedures for their decisionmaking, thus enhancing accountability.¶ b. Ex Post Review¶ For targeted-killing operations, ex post reviews serve only limited purposes. They obviously cannot restore the target's life. But retrospective review either by a FISC-like court or review board can serve to identify errors or overreaching and thereby help avoid future mistakes. This can, and ideally would, be supplemented by the adoption of an additional Article III damages mechanism. n197 At a minimum, the relevant Inspectors General should engage in regular and extensive reviews of targeted-killing operations. Such post hoc analysis helps to set standards and controls that then get incorporated into ex ante decisionmaking. In fact, post hoc review can often serve as a more meaningful and often more searching inquiry into the legitimacy of targeting decisions. Even the mere knowledge that an ex post review will occur can help to protect against rash ex ante decisionmaking, thereby providing a self-correcting mechanism.¶ Ex post review should also be accompanied by the establishment of a solatia and condolence payment system for activities that occur outside the active zone of hostilities. Extension of such a system beyond Afghanistan and Iraq would help mitigate resentment caused by civilian deaths or injuries and would promote better accounting of the civilian costs of targeting operations. n198

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#### Iran sanctions are at the top of the docket – Obama is spending capital to persuade Democrats to sustain a veto

Lobe, 12-27

Reporter for Inter Press Service(Jim, “Iran sanctions bill: Big test of Israel lobby power”

<http://www.arabamericannews.com/news/index.php?mod=article&cat=World&article=8046>)

WASHINGTON - This week’s introduction by a bipartisan group of 26 senators of a new sanctions bill against Iran could result in the biggest test of the political clout of the Israel lobby here in decades.¶ The White House, which says the bill could well derail ongoing negotiations between Iran and the U.S. and five other powers over Tehran’s nuclear program and destroy the international coalition behind the existing sanctions regime, has already warned that it will veto the bill if it passes Congress in its present form.¶ The new bill, co-sponsored by two of Congress’s biggest beneficiaries of campaign contributions by political action committees closely linked to the powerful American Israel Public Affairs Committee (AIPAC), would impose sweeping new sanctions against Tehran if it fails either to comply with the interim deal it struck last month in Geneva with the P5+1 (U.S., Britain, France, Russia, China plus Germany) or reach a comprehensive accord with the great powers within one year.¶ To be acceptable, however, such an accord, according to the bill, would require Iran to effectively dismantle virtually its entire nuclear program, including any enrichment of uranium on its own soil, as demanded by Israeli Prime Minister Benjamin Netanyahu.¶ The government of President Hassan Rouhani has warned repeatedly that such a demand is a deal-breaker, and even Secretary of State John Kerry has said that a zero-enrichment position is a non-starter.¶ The bill, the Nuclear Weapon Free Iran Act, also calls for Washington to provide military and other support to Israel if its government “is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program.”¶ The introduction of the bill last week by Republican Sen. Mark Kirk and Democratic Sen. Robert Menendez followed unsuccessful efforts by both men to get some sanctions legislation passed since the Geneva accord was signed Nov. 24.¶ Kirk at first tried to move legislation that would have imposed new sanctions immediately in direct contradiction to a pledge by the P5+1 in the Geneva accord to forgo any new sanctions for the six-month life of the agreement in exchange for, among other things, enhanced international inspections of Iran’s nuclear facilities and a freeze on most of its nuclear program.¶ Unable to make headway, Kirk then worked with Menendez to draw up the new bill which, because of its prospective application, would not, according to them, violate the agreement. They had initially planned to attach it to a defense bill before the holiday recess. But the Democratic leadership, which controls the calendar, refused to go along.¶ Their hope now is to pass it – either as a free-standing measure or as an amendment to another must-pass bill after Congress reconvenes Jan. 6.¶ To highlight its bipartisan support, the two sponsors gathered a dozen other senators from each party to co-sponsor it.¶ Republicans, many of whom reflexively oppose President Barack Obama’s positions on any issue and whose core constituencies include Christian Zionists, are almost certain to support the bill by an overwhelming margin. If the bill gets to the floor, the main battle will thus take place within the Democratic majority.¶ The latter find themselves torn between, on the one hand, their loyalty to Obama and their fear that new sanctions will indeed derail negotiations and thus make war more likely, and, on the other, their general antipathy for Iran and the influence exerted by AIPAC and associated groups as a result of the questionable perception that Israel’s security is uppermost in the minds of Jewish voters and campaign contributors (who, by some estimates, provide as much as 40 percent of political donations to Democrats in national campaigns).¶ The administration clearly hopes the Democratic leadership will prevent the bill from coming to a vote, but, if it does, persuading most of the Democrats who have already endorsed the bill to change their minds will be an uphill fight. If the bill passes, the administration will have to muster 34 senators of the 100 senators to sustain a veto – a difficult but not impossible task, according to Congressional sources.¶ That battle has already been joined. Against the 13 Democratic senators who signed onto the Kirk-Menendez bill, 10 Democratic Senate committee chairs urged Majority Leader Harry Reid, who controls the upper chamber’s calendar, to forestall any new sanctions legislation.

#### Obama’s strategy is working but failure scuttles the nuclear deal

Merry 1-1

Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy (Robert, “Obama may buck the Israel lobby on Iran” Washington Times, factiva)

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.”¶ For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House.¶ With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.¶ It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.¶ However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.¶ Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.”¶ While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”¶ That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.¶ That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.¶ 2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.¶ AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.¶ Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.¶ If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### The plan causes an inter-branch fight – saps PC and derails his agenda

Kriner 10

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea." While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6° In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failedperhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq. When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### That causes a US-Iran war and Iranian prolif

WORLD TRIBUNE 11-13

[Obama said to suspend Iran sanctions without informing Congress, http://www.worldtribune.com/2013/11/13/obama-said-to-suspend-iran-sanctions-without-informing-congress/]

The administration has also pressured Congress to suspend plans for new sanctions legislation against Iran. The sources said the White House effort has encountered resistance from both Democrats and Republicans, particularly those in the defense and foreign affairs committees.¶ “I urge the White House and the Senate to learn from the lessons of the past and not offer sanctions relief in return for the false hopes and empty promises of the Iranian regime,” Rep. Ileana Ros-Lehtinen, chairwoman of the House Middle East and North Africa Subcommittee, said. “Instead, new rounds of sanctions must be implemented to gain further leverage because any misstep in calculations at this juncture will have devastating and irreversible consequences that will be difficult to correct retroactively.”¶ On Nov. 12, the White House warned that additional sanctions on Iran would mean war with the United States. White House press secretary Jay Carney, in remarks meant to intensify pressure on Congress, said sanctions would end the prospect of any diplomatic solution to Iran’s crisis. ¶ “The American people do not want a march to war,” Carney said. “It is important to understand that if pursuing a resolution diplomatically is disallowed or ruled out, what options then do we and our allies have to prevent Iran from acquiring a nuclear weapon?”¶ Still, the Senate Banking Committee has agreed to delay any vote on sanctions legislation until a briefing by Secretary of State John Kerry on Nov. 13. The sources said Kerry was expected to brief the committee on the P5+1 talks in Geneva that almost led to an agreement with Teheran.¶ “The secretary will be clear that putting new sanctions in place would be a mistake,” State Department spokeswoman Jen Psaki said on Nov. 12. “We are still determining if there’s a diplomatic path forward. What we are asking for right now is a pause, a temporary pause, in sanctions.”

#### Iran war escalates

White 11

July/August 2011 (Jeffrey—defense fellow at the Washington Institute for Near East Policy, What Would War With Iran Look Like, National Interest, p. http://www.the-american-interest.com/article-bd.cfm?piece=982)

A U.S.-Iranian war would probably not be fought by the United States and Iran alone. Each would have partners or allies, both willing and not-so-willing. Pre-conflict commitments, longstanding relationships, the course of operations and other factors would place the United States and Iran at the center of more or less structured coalitions of the marginally willing. A Western coalition could consist of the United States and most of its traditional allies (but very likely not Turkey, based on the evolution of Turkish politics) in addition to some Persian Gulf states, Jordan and perhaps Egypt, depending on where its revolution takes it. Much would depend on whether U.S. leaders could persuade others to go along, which would mean convincing them that U.S. forces could shield them from Iranian and Iranian-proxy retaliation, or at least substantially weaken its effects. Coalition warfare would present a number of challenges to the U.S. government. Overall, it would lend legitimacy to the action, but it would also constrict U.S. freedom of action, perhaps by limiting the scope and intensity of military operations. There would thus be tension between the desire for a small coalition of the capable for operational and security purposes and a broader coalition that would include marginally useful allies to maximize legitimacy. The U.S. administration would probably not welcome Israeli participation. But if Israel were directly attacked by Iran or its allies, Washington would find it difficult to keep Israel out—as it did during the 1991 Gulf War. That would complicate the U.S. ability to manage its coalition, although it would not necessarily break it apart. Iranian diplomacy and information operations would seek to exploit Israeli participation to the fullest. Iran would have its own coalition. Hizballah in particular could act at Iran’s behest both by attacking Israel directly and by using its asymmetric and irregular warfare capabilities to expand the conflict and complicate the maintenance of the U.S. coalition. The escalation of the Hizballah-Israel conflict could draw in Syria and Hamas; Hamas in particular could feel compelled to respond to an Iranian request for assistance. Some or all of these satellite actors might choose to leave Iran to its fate, especially if initial U.S. strikes seemed devastating to the point of decisive. But their involvement would spread the conflict to the entire eastern Mediterranean and perhaps beyond, complicating both U.S. military operations and coalition diplomacy.

## Terror

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

Byman 2013

(Daniel L., Research Director of Saban Center for Middle East Policy, “Why Drones Work: The Case for Washington's Weapon of Choice”, Foreign Affairs, July/August 2013, <http://www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman>)

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.

#### Ex ante judicial review makes effective drone ops impossible---even limiting the court to vetting names in advance compromises the timelines of operations

Oliphant 12

James Oliphant 13, Deputy Editor, the National Journal, J.D. from the Ohio State University Morrill College of Law, 5/30/13, “Vetting the Kill List,” National Journal, <http://www.nationaljournal.com/magazine/vetting-the-kill-list-20130404>

Civil libertarians and even hawks such as former Rep. Jane Harman of California, who served on the House Intelligence Committee, have suggested creating a court modeled on the one that signs off on federal wiretaps of suspected foreign agents. The Foreign Intelligence Surveillance Court in Washington operates in secret and requires the government to make a case before approving a tap. Harman and other proponents say such a body could review names on the “kill list” and weigh in on whether they merit inclusion based on the White House’s criteria for targeting potential threats. Robert Gates, the former Defense secretary, also favors such an approach.¶ But even among supporters, no consensus exists on what questions a drone court would actually review or even whether its scrutiny would come before or after a strike. The most problematic scenario involves any sort of preoperational clearance. Possible windows for action open and shut in a matter of hours. The kill lists are constantly being revised and updated. Even many of those who argue for some sort of oversight mechanism, such as University of Texas law professor Robert Chesney, don’t believe a judge should be involved when it comes to “pulling the trigger.”¶ Still, Chesney says such a court could still vet the names on the list in advance to ensure the administration is following its own guidelines for a strike: the target is connected to al-Qaida; he poses some threat of “imminent” harm; and the government is operating within its legal authority. “Whether and when to fire is a totally separate question,” Chesney says. (He notes that there’s a range of disagreement over how the administration classifies an “imminent” threat and whether a judge would be qualified to make that determination.)¶ But even that small degree of oversight, warns Gregory McNeal, a counterterrorism expert at Pepperdine University, risks throwing sand in the gears by extending the timeline of an op. And to McNeal, this point leads directly to the larger issue of accountability—or, to use the Washington synonym, blame. Judges, he says, simply aren’t ever going to be equipped to identify and navigate the variables involved in a drone strike.¶ Jeh Johnson, formerly the Obama administration’s top lawyer at the Pentagon, expressed his discomfort with court-based oversight in a speech last month at Fordham University. Questions of feasibility and imminence, he said, “are up-to-the-minute, real-time assessments.” More important, Johnson emphasized, “we want military and national security officials to continually assess and reassess these two questions up until the last minute of the operation.”¶ Given that reality, shifting the responsibility of a sign-off to a set of federal judges, who are unelected and serve for life, would allow the White House to escape the consequences of its actions, or more crucially, perhaps its failure to act if a target slips out of harm’s way and then masterminds an attack. Military decisions are, at heart, political ones, McNeal says, and they are rightly made by the branch of government whose top official, the president, faces voters. (A case in point: Republicans suffered at the ballot box in 2006 and 2008 as a result of the public’s displeasure with the Iraq war.) “If you’re a politician,” McNeal says of a drone court, “this is great. Because you aren’t on the hook for anything.”¶ By and large, federal judges don’t want to be in this position. They worry about damaging the integrity of the bench. Retired Judge James Robertson, who served on the U.S. Appeals Court in Washington, argued in The Washington Post that the Constitution forbids the judiciary from issuing advisory opinions. “Federal courts rule on specific disputes between adversary parties,” he wrote. “They do not make or approve policy; that job is reserved to Congress and the executive.” The FISA court is a different animal, because approving surveillance is related to Fourth Amendment protections on search warrants.

#### No impact to blowback – effectiveness of violence is declining

Wilner 10

(Alex S. Wilner, Center for Security Studies, ETH Zurich, Swiss Federal Institute of Technology, Targeted Killings in Afghanistan: Measuring Coercion and Deterrence in Counterterrorism and Counterinsurgency, Studies in Conflict & Terrorism, Vol. 33 No. 4, 09 Mar 2010, http://dx.doi.org/10.1080/10576100903582543)

Generally, overall violence increased following the targeted eliminations (Figure 2). This was especially so with the Dadullah case. On the surface, these are unanticipated developments.74 The literature on targeted killings suggests that eliminations should result in a general diminishment of violence. In their quantitative analysis of Israel’s campaign of targeted killings between 2000 and 2004, Mohammed Hafez and Joseph Hatfield provide similar findings. They conclude that “targeted assassinations have no significant impact on rates of Palestinian violence.”75 That both this and the Hafez/Hatfield study find trends that contradict theoretical expectations would suggest that certain components of the literature on targeted killings need to be substantially revised. However, a closer examination of the Afghan data does corroborate the literature’s most basic theoretical principle: targeted killings influence the type of violence terrorists are capable of planning effectively and forces them to conduct less-preferred forms of activity.¶ Violent, non-state organizations have coercive preferences. The Taliban is no exception. The type of violence they engage in rests as much on the impact they are trying to have as it does on their capacity and capability to muster efforts toward particular goals. To that end, suicide attacks are the Taliban’s preferred tactic—they are the most effective form of violence, provide the greatest consequence (both in kill ratios and psychological effect), can be directed against hard targets, are difficult to detect, stop, and mitigate, and have a proven track record of killing Coalition and Afghan soldiers. Suicide bombings are also the most sophisticated type of violence to plan, the most difficult to organize effectively, and take a considerable amount of time, energy, and expertise to mount successfully. Improvised Explosive Devices (IED) are the Taliban’s second most preferred tactic—they have proven deadly against Afghan National Police (ANP) and other lightly armored ISAF/NATO and Afghan National Army (ANA) personnel carriers, they are cheaply constructed, and provide a deadly concentrated explosive blast. IEDs are also less sophisticated than suicide bombs and are easier to organize effectively. They offer less control, however, cannot be consistently directed against particular targets, can be detected and diffused more easily than suicide bombs, their detonation can be mitigated with proper armor, and they are all too often triggered by civilians. Small arms and rocket fire (SA/R) is the Taliban’s least preferred tactic—it is most effective against soft targets, Afghan and international officials, lightly armed ANP forces, and when used in complex ambushes. However, SA/R attacks against security forces can be easily mitigated and usually result in a disproportionately high rate of Taliban casualties. Likewise, Taliban SA/R attacks are usually successfully repelled and the heavy concentration of gunmen in one location can be easily attacked with aerial support. Furthermore, Taliban rocket fire is crude, uncontrolled, and ineffective. In sum, SA/R attacks are the least sophisticated type of violence and the easiest to organize yet provide the worst results.¶ With these Taliban preferences in mind, the aggregate data on overall levels of violence reveal a number of expected findings. After the targeted killings, for instance, suicide bombings dropped by over 30 percent, from a total of 43 before, to 29 after, the targeted eliminations. This is in keeping with the degree of difficulty, amount of time and expertise, and level of leadership that is required to coordinate effective suicide bombings. It is also plausible that the decrease in suicide attacks spurred a rise in less-sophisticated forms of violence, with IEDs increasing by 6 percent and SA/R attacks by roughly 15 percent following the four targeted attacks.76 As leaders and facilitators were eliminated, the Taliban began using less-sophisticated forms of violence that required less energy, expertise, and time to organize effectively. This shift resonates with elements outlined in the literature on targeted killings: as organizations succumb to the effects of a protracted campaign of elimination, their overall ability to operate at a high level of sophistication decreases and the selection and use of less formidable forms of violence increases.¶ Overall levels of violence, however, are only a minor part of the analysis. The data also reveal changes in Taliban professionalism following the targeted killings. For the two most sophisticated forms of violence (IEDs and suicide attacks), the aggregate data suggest a decrease in professionalism and an increase in failure rates. After the eliminations, IED failure rates rose precipitously from 20 to roughly 35 percent. This is a considerable change in proficiency. Suicide bombing success rates also dropped (by a less impressive though no less important five percentage points) following the strikes. Both are theoretically expected findings (Figure 3). Finally, the data also suggest that the targeted killings influenced the selection of targets. For instance, in terms of known target selection for suicide bombers, the aggregate data reveal that following the eliminations, soft targets were more often selected (as a percentage of all target selection) after the leadership strikes (Figure 4). As leaders where killed, remaining forces selected less formidable targets to attack, like Afghan government officials, civil-society actors, and off-duty police commanders, rather than hardened, military actors.

**No impact to bioterror**

**Mueller 10**

[John, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies and a Professor of Political Science at The Ohio State University, A.B. from the University of Chicago, M.A. and Ph.D. @ UCLA, Atomic Obsession – Nuclear Alarmism from Hiroshima to Al-Qaeda, Oxford University Press]

Properly developed and deployed, biological weapons could potentially, if thus far only in theory, kill hundreds of thousands, perhaps even millions, of people. The discussion remains **theoretical** because biological weapons have scarcely ever been used. For the most destructive results, they need to be **dispersed** in very **low-altitude** aerosol clouds. Since aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed **near nose level**. Moreover, **90 percent** of the microorganisms are likely to **die** during the process of aerosolization, while their effectiveness could be reduced still further by **sunlight**, **smog**, **humidity**, and **temperature changes**. Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term **storage** of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organisms have a **limited lifetime**. Such weapons can take days or **weeks** to have **full effect**, during which time they can be **countered** with medical and civil defense measures. In the summary judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties-as an aerosol that could be inhaled-requires a delivery system of **enormous sophistication**, and **even then** effective dispersal could **easily be disrupted** by unfavorable environmental and meteorological conditions.

#### No nuclear terror- lack of resources, expertise, facilities, and certainty

Stalcup ‘12

[Travis C. Stalcup is a George and Barbara Bush Fellow at the George H.W. Bush School of Government and Public Service at Texas A&M University. <http://journal.georgetown.edu/2012/09/11/a-better-plan-for-port-security-by-travis-stalcup/> ETB]

However, the most competent and well-financed terrorists groups would face difficulty in mustering the resources, expertise and facilities to enrich nuclear material in meaningful quantities. Randomized spot checks would create doubt that an attack using shipping containers would succeed. Even if a terrorist group were to obtain nuclear material or a weapon, it is unlikely that it would expend the vast resources required to deliver it on such an uncertain operation. The uncertainty created by spot checks in addition to the enormous technical and financial obstacles a terrorist group faces would serve to deter.

## Drone Prolif

### 1NC No Modeling

#### Drone prolif now AND US restrictions don’t solve

Anderson 10 (Kenneth Anderson is a law professor at Washington College of Law, American University, a research fellow of the Hoover Institution at Stanford University and a Non-Resident Visiting Fellow at the Brookings Institution, April 10th 2010, “Acquiring UAV Technology”, http://www.volokh.com/2010/04/09/acquiring-uav-technology/, AB)

I’ve noticed a number of posts and comments around the blogosphere on the spread of UAV technology. Which indeed is happening; many states are developing and deploying UAVs of various kinds. The WCL National Security Law Brief blog, for example, notes that India is now acquiring weaponized UAVs: India is reportedly preparing to have “killer” unmanned aerial vehicles (UAVs) in response to possible threats from Pakistan and China. Until now India has denied the use of armed UAVs, but they did use UAVs that can detect incoming missile attacks or border incursions. The importance of obtaining armed UAVs grew enormously after the recent attack on paramilitary forces in Chhattisgarh that killed 75 security personnel. Sources reveal that the Indian Air Force (IAF) has been in contact with Israeli arms suppliers in New Delhi recently. The IAF is looking to operate Israeli Harop armed UAVs from 2011 onwards, and other units of the armed forces will follow. I’ve also read comments various places suggesting that increased use of drone technologies by the United States causes other countries to follow suit, or to develop or acquire similar technologies. In some cases, the dangling implication is that if the US would not get involved in such technologies, others would not follow suit. In some relatively rare cases of weapons technologies, the US refraining from undertaking the R&D, or stopping short of a deployable weapon, might induce others not to build the same weapon. Perhaps the best example is the US stopping its development of blinding laser antipersonnel weapons in the 1990s; if others, particularly the Chinese, have developed them to a deployable weapon, I’m not aware of it. The US stopped partly in relation to a developing international campaign, modeled on the landmines ban campaign, but mostly because of a strong sense of revulsion and pushback by US line officers. Moreover, there was a strong sense that such a weapon (somewhat like chemical weapons) would be not deeply useful on a battlefield – but would be tremendously threatening as a pure terrorism weapon against civilians. In any case, the technologies involved would be advanced for R&D, construction, maintenance, and deployment, at least for a while. The situation is altogether different in the case of UAVs. The biggest reason is that the flying-around part of UAVs – the avionics and control of a drone aircraft in flight – is not particularly high technology at all. It is in range of pretty much any functioning state military that flies anything at all. The same for the weaponry, if all you’re looking to do is fire a missile, such as an anti-tank missile like the Hellfire. It’s not high technology, it is well within the reach of pretty much any state military. Iran? Without thinking twice. Burma? Sure. Zimbabwe? If it really wanted to, probably. So it doesn’t make any substantial difference whether or not the US deploys UAVs, not in relation to a decision by other states to deploy their own. The US decision to use and deploy UAVs does not drive others’ decisions one way or the other. They make that decision in nearly all cases – Iran perhaps being an exception in wanting to be able to show that they can use them in or over the Iraqi border – in relation to their particular security perceptions. Many states have reasons to want to have UAVs, for surveillance as well as use of force. It is not as a counter or defense to the US use of UAVs. The real issue is not flying the plane or putting a missile on it. The question is the sensor technology (and related communication links) – for two reasons. One is the ability to identify the target; the other is to determine the level, acceptable or not, of collateral damage in relation to the target. That’s the technologically difficult part. And yet it is not something important to very many of the militaries that might want to use UAVs, because not that many are going to be worried about the use of UAVs for discrete, targeted killing. Not so discrete and not so targeted will be just fine – and that does not require super-advanced technology. China might decide that it wants an advanced assassination platform that would depend on such sensors, and in any case be interested in investing in such technology for many reasons – but that is not going to describe Iran or very many other places that are capable of deploying and using weaponized UAVs. Iran, for example, won’t have super advanced sensor technology (unless China sells it to them), but they will have UAVs. (The attached weaponry follows the same pattern. Most countries will find a Hellfire type missile just fine. The US will continue to develop smaller weapons finally capable of a single person hit. Few others will develop it, partly because they don’t care and partly because its effectiveness depends on advanced sensors that they are not likely to have.) Robots are broadly defined by three characteristics – computation, sensor inputs, and gross movement. Movement in the case of a weaponized robot includes both movement and the use of its weapon – meaning, flying the UAV and firing a weapon. The first of those, flying the UAV, is available widely; primitive weapons are available widely as well, and so is the fundamental computational power. Sensors are much, much more difficult – but only to the extent that a party cares about discretion in targeting. But it is not the case that they are making these decisions on account of US decisions about UAVs; UAVs are useful for many other reasons for many other parties, all on their own.

### AT Boyle

#### Surveillance drones independently cause escalation – aff can’t solve –1AC author

Read pink

Boyle 13

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

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

### 1NC No Drone Wars

#### No risk of drone wars

Singh 12

Joseph Singh 12, researcher at the Center for a New American Security, 8/13/12, “Betting Against a Drone Arms Race,” <http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2eSvaZnfQ>

In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology. ¶ Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team. ¶ Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones. ¶ What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use. ¶ Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best. ¶ Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations. ¶ Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

### 1NC China No Use Drones

#### China won’t use drones to resolve territorial disputes – fears international backlash and creating a precedent for U.S. strikes in the area

Erickson and Strange 5-29

Erickson, associate professor at the Naval War College and Associate in Research at Harvard University's Fairbank Centre, and Strange, researcher at the Naval War College's China Maritime Studies Institute and graduate student at Zhejiang University, 5-29-13 (Andrew and Austin, China has drones. Now how will it use them? Foreign Affairs, McClatchy-Tribune, 29 May 2013, http://www.nationmultimedia.com/opinion/China-has-drones-Now-how-will-it-use-them-30207095.html, da 8-3-13) PC

Drones, able to dispatch death remotely, without human eyes on their targets or a pilot's life at stake, make people uncomfortable - even when they belong to democratic governments that presumably have some limits on using them for ill. (On May 23, in a major speech, US President Barack Obama laid out what some of those limits are.) An even more alarming prospect is that unmanned aircraft will be acquired and deployed by authoritarian regimes, with fewer checks on their use of lethal force.¶ Those worried about exactly that tend to point their fingers at China. In March, after details emerged that China had considered taking out a drug trafficker in Myanmar with a drone strike, a CNN blog post warned, "Today, it's Myanmar. Tomorrow, it could very well be some other place in Asia or beyond." Around the same time, a National Journal article entitled "When the Whole World Has Drones" teased out some of the consequences of Beijing's drone programme, asking, "What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea?"¶ Indeed, the time to fret about when China and other authoritarian countries will acquire drones is over: they have them. The question now is when and how they will use them. But as with its other, less exotic military capabilities, Beijing has cleared only a technological hurdle - and its behaviour will continue to be constrained by politics.¶ China has been developing a drone capacity for over half a century, starting with its reverse engineering of Soviet Lavochkin La-17C target drones that it had received from Moscow in the late 1950s. Today, Beijing's opacity makes it difficult to gauge the exact scale of the programme, but according to Ian Easton, an analyst at the Project 2049 Institute, an American think-tank devoted to Asia-Pacific security matters, by 2011 China's air force alone had over 280 combat drones. In other words, its fleet of unmanned aerial vehicles is already bigger and more sophisticated than all but the United States'; in this relatively new field Beijing is less of a newcomer and more of a fast follower. And the force will only become more effective: the Lijian ("sharp sword" in Chinese), a combat drone in the final stages of development, will make China one of the very few states that have or are building a stealth drone capacity.¶ This impressive arsenal may tempt China to pull the trigger. The fact that a Chinese official acknowledged that Beijing had considered using drones to eliminate the Myanmar drug trafficker, Naw Kham, makes clear that it would not be out of the question for China to launch a drone strike in a security operation against a non-state actor. Meanwhile, as China's territorial disputes with its neighbours have escalated, there is a chance that Beijing would introduce unmanned aircraft, especially since India, the Philippines and Vietnam distantly trail China in drone funding and capacity, and would find it difficult to compete. Beijing is already using drones to photograph the Senkaku/Diaoyu islands it disputes with Japan, as the retired Chinese major-general Peng Guangqian revealed earlier this year, and to keep an eye on movements near the North Korean border.¶ Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry.

### 1NC No Senkaku Impact

#### No Senkaku or Asian conflict- empirically denied, economic interdependence checks, and China avoids nationalism.

Carlson ’13

(Allen Carlson is an Associate Professor in Cornell University’s Government Department. He was granted his PhD from Yale University’s Political Science Department. His undergraduate degree is from Colby College. In 2005 his Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era was published by Stanford University Press. He has also written articles that appeared in the Journal of Contemporary China, Pacific Affairs, Asia Policy, and Nations and Nationalism. In addition, he has published monographs for the National Committee on U.S.-China Relations and the East-West Center Washington. Carlson was a Fulbright-Hays scholar at Peking University during the 2004-2005 academic year. In 2005 he was chosen to participate in the National Committee’s Public Intellectuals Program, and he currently serves as an adviser to Cornell’s China Asia Pacific Studies program and its East Asia Program. Carlson is currently working on a project exploring the issue of nontraditional security in China’s emerging relationship with the rest of the international system. His most recent publications are the co-edited Contemporary Chinese Politics: New Sources, Methods and Field Strategies (Cambridge University Press, 2010) and New Frontiers in China’s Foreign Relations (Lexington, 2011). China Keeps the Peace at Sea China Keeps the Peace at Sea Why the Dragon Doesn't Want War Allen Carlson February 21, 2013

At times in the past few months, China and Japan have appeared almost ready to do battle over the **Senkaku** (Diaoyu) Islands --which are administered by Tokyo but claimed by both countries -- and to ignite a war that could be bigger than any since World War II. Although Tokyo and Beijing have been shadowboxing over the territory for years, the standoff reached a new low in the fall, when the Japanese government nationalized some of the islands by purchasing them from a private owner. The decision set off a wave of violent anti-Japanese demonstrations across China. In the wake of these events, the conflict quickly reached what political scientists call a state of equivalent retaliation -- a situation in which both countries believe that it is imperative to respond in kind to any and all perceived slights. As a result, it may have seemed that armed engagement was imminent. **Yet,** months later,nothing has happened. And **despite** their **aggressive posturing** in the disputed territory, **both** sides **now show** glimmers of willingness to dial down hostilities and to reestablish stability**.** Some analysts have cited North Korea's recent nuclear test as a factor in the countries' reluctance to engage in military conflict. They argue that the detonation, and Kim Jong Un's belligerence, brought China and Japan together, unsettling them and placing their differences in a scarier context. Rory Medcalf, a senior fellow at the Brookings Institution, explained that "the nuclear test gives the leadership in both Beijing and Tokyo a chance to focus on a foreign and security policy challenge where their interests are not diametrically at odds." The nuclear test, though, is a red herring in terms of the conflict over the disputed islands. In truth, the roots of the conflict -- and the reasons it has not yet exploded -- are much deeper. Put simply, **China** cannot afford military conflict **with** any of its **Asian neighbors.** It is not that China believes it would lose such a spat; the country increasingly enjoys strategic superiority over the entire region, and it is difficult to imagine that its forces would be beaten in a direct engagement over the islands, in the South China Sea or in the disputed regions along the Sino-Indian border. However**, Chinese officials see** thateven the most pronounced victory would be outweighed by the collateral damagethat such a use of force would cause **to Beijing's** two most fundamental national interests **--** economic **growth and preventing the escalation of** radical **nationalist sentiment at home.** These constraints, rather than any external deterrent**, will keep** Xi Jinping, **China's new leader, from** authorizing the use of deadly **force** in the Diaoyu Islands theater. For over three decades, **Beijing has promoted** peace and stability **in Asia** to facilitate conditions amenable to **China's** **economic** **development**. The origins of the policy can be traced back to the late 1970s, when Deng Xiaoping repeatedly contended that to move beyond the economically debilitating Maoist period, China would have to seek a common ground with its neighbors. Promoting cooperation in the region would allow China to spend less on military preparedness, focus on making the country a more welcoming destination for foreign investment, and foster better trade relations. All of this would strengthen the Chinese economy. Deng was right. Today, China's economy is second only to that of the United States. The fundamentals of Deng's grand economic strategy are still revered in Beijing. But any war in the region would erode the hard-won, and precariously held, political capital that China has gained in the last several decades. It would also disrupt trade relations, complicate efforts to promote the yuan as an international currency, and send shock waves through the country's economic system at a time when it can ill afford them. There is thus little reason to think that China is readying for war with Japan. At the same time, the specter of rising Chinese nationalism, **although** often seen as **a promoter of conflict**, further limits the prospects for armed engagement. This is because Beijing will try to discourage nationalism if it fears it may lose control or be forced by popular sentiment to take an action it deems unwise. **Ever since** the **Tiananmen Square** massacre put questions about the Chinese Communist Party's right to govern before the population, **successive generations of Chinese leaders have carefully negotiated a balance** between promoting nationalist sentiment and preventing it from boiling over. In the process, they cemented the legitimacy of their rule. A war with Japan could easily upset that balance by inflaming nationalism that could blow back against China's leaders. Consider a hypothetical scenario in which a uniformed Chinese military member is killed during a firefight with Japanese soldiers. Regardless of the specific circumstances, the casualty would create a new martyr in China and, almost as quickly, catalyze popular protests against Japan. Demonstrators would call for blood, and if the government (fearing economic instability) did not extract enough, citizens would agitate against Beijing itself. Those in Zhongnanhai, the Chinese leadership compound in Beijing, would find themselves between a rock and a hard place. It is possible that Xi lost track of these basic facts during the fanfare of his rise to power and in the face of renewed Japanese assertiveness. It is also possible that the Chinese state is more rotten at the core than is understood. That is, party elites believe that a diversionary war is the only way to hold on to power -- damn the economic and social consequences. But Xi does not seem blind to the principles that have served Beijing so well over the last few decades. Indeed, although he recently warned unnamed others about infringing upon China's "national core interests" during a foreign policy speech to members of the Politburo, he also underscored China's commitment to "never pursue development at the cost of sacrificing other country's interests" and to never "benefit ourselves at others' expense or do harm to any neighbor." Of course, wars do happen -- and still could in the East China Sea. Should either side draw first blood through accident or an unexpected move, Sino-Japanese relations would be pushed into terrain that has not been charted since the middle of the last century. However, understanding that war would be a no-win situation, China has avoided rushing over the brink. This relative restraint seems to have surprised everyone. But it shouldn't. Beijing will continue to disagree with Tokyo over the sovereign status of the islands, and will not budge in its negotiating position over disputed territory. However, it cannot take the risk of going to war over a few rocks in the sea. On the contrary, in the **coming months it will quietly** seek a way to **shelve the dispute in return for** securing **regional stability**, facilitating economic development, and keeping a lid on the Pandora's box of rising nationalist sentiment. The ensuing peace, while unlikely to be deep, or especially conducive to improving Sino-Japanese relations, will be enduring.

### 1NC No SCS

#### China is de-escalating South China Sea tensions – promoting peaceful negotiations now

Ponnudurai 9-26

Parameswaran Ponnudurai, September 26th, 2012, "China Seeks To Mend Fences In Sea Dispute – Analysis" [www.eurasiareview.com/26092012-china-seeks-to-mend-fences-in-sea-dispute-analysis/](http://www.eurasiareview.com/26092012-china-seeks-to-mend-fences-in-sea-dispute-analysis/)

As Beijing flexes its muscles over its territorial dispute with Japan in the East China Sea, it is mending fences with Southeast Asian nations after a spate of tensions in the contested South China Sea.¶ Following much prodding and diplomacy, **China appears to be showing some flexibility in its approach towards drawing up a code of conduct with the Southeast Asian nations** aimed at avoiding clashes over competing territorial claims in the vast sea, diplomats in the region told RFA.¶ Although they are skeptical of any early breakthrough for a legally binding document between China and the Association of Southeast Asian Nations (ASEAN) to guide behavior in the sea, there is optimism that negotiations will occur on a sustained basis.¶ “We see some flexibility to discuss the COC with ASEAN,” one Southeast Asian diplomat said, referring to the elusive Code of Conduct or COC which ASEAN—comprising Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam—has been striving to devise with Beijing for a decade.¶ **In an initial display of seriousness that it is prepared to come to the table,** China sent its senior officials to Cambodia last week to informally discuss with their counterparts from ASEAN the prospects for drawing up a code, officials said.¶ This is the first meeting between the two sides specifically on the maritime dispute since ASEAN plunged into a crisis two months ago when foreign ministers of the 10-member bloc failed to issue their customary joint statement at the conclusion of their annual meeting hosted by Cambodia, China’s top ally in Southeast Asia.¶ Some ASEAN diplomats had charged that Cambodia had been influenced by China not to incorporate in the statement the views of ASEAN member states the Philippines and Vietnam, which had tiffs earlier this year with Beijing over islands and reefs in the South China Sea, causing an impasse at the meeting.¶ China claims to South China Sea¶ China claims to South China Sea¶ The ASEAN-China Senior Officials’ Informal Consultations on the Code of Conduct (COC) in the South China Sea, as last week’s meeting in Phnom Penh was officially called, was among a series of discussions in preparation for the ASEAN summit and the East Asia Summit in November.¶ “**Compared to two months ago, when there was complete reluctance to come to the table, China appears willing to sit down and talk,” said one Southeast Asian official, who was briefed on the talks but spoke on condition of anonymity**.¶ “Indirectly, they may be feeling the heat from the mounting criticism over what happened at the meeting in July which was a big blow to ASEAN,” the official said.¶ “But China has also asked the ASEAN states to do their part by reducing tensions and not conducting border incursions and creating a conducive environment for any future talks. **They don’t want us to bring in third parties [the United States] over the conflict and want us to stick to the 2002 declaration**,” the diplomat said.¶ Under a 2002 agreement for managing their overlapping territorial claims, ASEAN and China adopted a Declaration on the Conduct of Parties in the South China Sea, called DOC as a first step towards a binding code of conduct.¶ But in a reflection of the sensitivity over the issue, it was only last year—after 10 years—that they agreed on a set of guidelines to implement the declaration that was aimed at laying the groundwork for discussions on the regional code of conduct.¶ Ray of hope¶ The new ray of hope for achieving a COC comes after extensive diplomacy, including U.S. Secretary of State Hillary Clinton’s trip to Southeast Asia and China, with a meeting with Chinese President Hu Jintao.¶ Chinese leaders told Clinton—who has often emphasized that freedom of navigation in the South China Sea is a U.S. “national interest”—that they want to pursue the COC, U.S. Ambassador to China Gary Locke told a forum in Washington last week, saying the talks between the two sides were “very good.”¶ “I’ve also heard from many prominent Chinese academics that China would like somehow to return to the status quo, that they would like to lower the temperature,” Locke said.¶ Chinese Foreign Minister Yang Yechi had also visited Indonesia as well as Malaysia and Brunei, giving reassurances that diplomacy was still on track.¶ Cambodian Prime Minister Hun Sen, embarrassed by the failure by his country as 2012 ASEAN chairman to forge an agreement on the foreign ministers’ joint statement, also made a trip to China this month, meeting Prime Minister Wen Jiabao.¶ Hun Sen won assurances from Wen that Beijing will “closely work” to make the upcoming East Asia Summit which Cambodia will host a success,” Chinese media reported.¶ Southeast Asian diplomats said a key objective is to get an initial ASEAN-China accord on the COC before the November East Asia Summit, to be attended by leaders of ASEAN as well as China, Japan, South Korea, India, Australia, New Zealand, Russia and the United States.¶ **Key elements of the COC have been agreed upon by ASEAN member states whose foreign ministers will meet to consider a full draft document on the sidelines of the U.N. General Assembly in New York this coming week**, the diplomats said.¶ “We are now in the process of spelling out the draft [of the code] and we hope to be able to share it with my ASEAN foreign minister colleagues when I meet them in New York,” Indonesian Foreign Minister Marty Natalegawa said, according to the Jakarta Globe newspaper.¶ “The development of the South China Sea [issues] reminds us how we desperately need the code of conduct, [so] I’m trying to use the momentum,” Marty said, as Indonesia asserts a leadership role in ASEAN to deal with the South China Sea issue, Asia’s biggest potential military flashpoint.¶ Cambodia or Thailand, which is the ASEAN coordinator for China issues, could host another round of informal talks between senior officials from ASEAN and China on the COC before the East Asia Summit.¶ “Both sides might also issue a joint statement to commemorate the 10th anniversary of the DOC at Summit,” an official involved in the planning of the summit told RFA, referring to the declaration adopted in 2002 in Cambodia to set the stage for the regional code of conduct.¶ **Beijing has maintained all this while that it wants to resolve the South China Sea territorial conflicts on a bilateral basis with ASEAN members Brunei, Malaysia, the Philippines and Vietnam, which have competing claims with China**.

### No Solve

#### Drone courts doesn’t solve norms

Vladeck 2013

(Steve Vladeck, professor of law and the associate dean for scholarship at American University Washington College of Law, February 10, 2013, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…,” Lawfare Blog, http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/)

That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts.¶As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans.¶In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante revew in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea.

## Solvency

### 1NC Rubber Stamp

#### Drone court doesn’t appropriately promote effective control over drones

Roth 2013

(Kenneth Roth, Executive Director of Human Rights Watch, April 4, 2013, “What Rules Should Govern US Drone Attacks?,” New York Review of Books, http://www.nybooks.com/articles/archives/2013/apr/04/what-rules-should-govern-us-drone-attacks/?pagination=false)

Whatever the rules governing drone attacks, many object to the covert, unilateral way the administration decides who should be killed. In the heat of battle, that is a necessity. But drone targets are typically selected over lengthy periods, with more than enough time for independent scrutiny. Under US law, the executive branch cannot even secure a wiretap without court oversight, so why should it be allowed to select drone targets unilaterally? Senator Dianne Feinstein has thus put forward the idea of a drone court similar to the courts that review wiretap applications under the Foreign Intelligence Surveillance Act (FISA).¶But replicating the FISA courts would provide little by way of effective control because, by their nature, they must be kept secret from the target, so they provide no opportunity for an independent attorney to challenge the government’s claims. At least for wiretaps the law is reasonably settled. But the administration, as we have seen, seems to accept in only vague terms the law governing drone attacks. In the absence of an adversarial process, a judge cannot be counted on to challenge the administration’s permissive interpretation of the law.¶Moreover, a drone court could at most approve placing someone on a kill list, not whether the circumstances of a prospective attack, including the risk to civilians in a changing situation, would be lawful. That would require a determination of the sort that a court can’t possibly undertake in advance. In any event, most proposals for drone courts envision them being used only for targeted US citizens—not much help to the great majority of targets from other nationalities. Though of no help to those killed, permitting after-the-fact lawsuits against the government would be a better way to allow the courts to define the limits of the law. But the administration has blocked such suits through various claims of secrecy.

### 1NC Political Will

#### No political will to implement the plan

Druck 12

Druck, JD – Cornell Law, ‘12¶ (Judah, 98 Cornell L. Rev. 209)

There are obvious similarities between the causes and effects of the public scrutiny associated with the larger wars discussed above. In each situation, the United States was faced with some, or even all, of the traditional costs associated with war: a draft, an increasingly large military industry, logistical sacrifices (such as rationing and other noncombat expenses), and significant military casualties. n114 Americans looking to keep the United States out of foreign affairs ob-viously had a great deal on the line, which provided sufficient incentive to scrutinize military policy. In the face of these potentially colossal harms, the public was willing to assert a significant voice, which in turn increased the willingness of politicians to challenge and subsequently shift presidential policy. As a result, public scrutiny and activism placed a President under constant scrutiny in one war, delayed U.S. intervention in another, and even helped end two wars entire-ly. Thus, we may extract a general principle from these events: when faced with the prospect of a war requiring heavy domestic sacrifices, and absent an incredibly compelling reason to engage in such a war (as seen in World War II, for example), n115 the public is properly incentivized to emerge and exert social (and, consequently, political) pressure in order to engage and shift foreign policy. However, as we will see, the converse is true as well. B. The Introduction of Technology-Driven Warfare and Shifting Wartime Doctrines The recent actions in Libya illustrate the culmination of a shift toward a new era of warfare, one that upsets the system of social and political checks on presidential military action. Contrary to the series of larger conflicts fought in the twen-tieth century, this new era has ushered in a system of war devoid of some of the fundamental aspects of war, including the traditional costs discussed above. Specifically, through the advent of military technology, especially in the area of robotics, modern-day hostilities no longer require domestic sacrifices, thereby concealing the burden of war from main-stream consciousness. n116 By using fewer troops and introducing drones and other [\*228] forms of mechanized warfare into hostile areas more frequently, n117 an increased number of recent conflicts have managed to avoid many domestic casualties, economic damages, and drafts. n118 In a way, less is on the line when drones, rather than people, take fire from enemy combatants, and this reality displaces many hindrances and considerations when deciding whether to use drones in the first place. n119 This move toward a limited form of warfare has been termed the "Obama Doctrine," which "emphasizes air power and surgical strikes, rather than boots on the ground." n120 Under this military framework, as indicated by the recent use of drones in the Middle East, the traditional harms associated with war might become increasingly obsolete as technolo-gy replaces the need for soldiers. Indeed, given the increased level of firepower attached to drones, we can imagine a situation where large-scale military engagements are fought without any American soldiers being put in harm's way, without Americans having to ration their food purchases, and without teenagers worrying about being drafted. n121 For example, "with no oxygen-and sleep-needing human on board, Predators and other [unmanned aerial vehicles] can watch over a potential target for 24 hours or more - then attack when opportunity knocks." n122 Thus, if the recent actions in Libya are any indication of what the future will look like, we can predict a major shift in the way the United States carries out wars . n123 [\*229] C. The Effects of Technology-Driven Warfare on Politics and Social Movements The practical effects of this move toward a technology-driven, and therefore limited, proxy style of warfare are mixed. On the one hand, the removal of American soldiers from harm's way is a clear benefit, n124 as is the reduced harm to the American public in general. For that, we should be thankful. But there is another effect that is less easy to identify: pub-lic apathy. By increasing the use of robotics and decreasing the probability of harm to American soldiers, modern war-fare has "affected the way the public views and perceives war" by turning it into "the equivalent of sports fans watching war, rather than citizens sharing in its importance." n125 As a result, the American public has slowly fallen victim to the numbing effect of technology-driven warfare; when the risks of harm to American soldiers abroad and civilians at home are diminished, so too is the public's level of interest in foreign military policy. n126 In the political sphere, this effect snowballs into both an uncaring public not able (or willing) to effectively mobi-lize in order to challenge presidential action and enforce the WPR, and a Congress whose own willingness to check presidential military action is heavily tied to public opinion. n127 Recall, for example, the case of the Mayaguez, where potentially unconstitutional action went unchecked because the mission was perceived to be a success. n128 Yet we can imagine that most missions involving drone strikes will be "successful" in the eyes of [\*230] the public: even if a strike misses a target, the only "loss" one needs to worry about is the cost of a wasted missile, and the ease of deploying another drone would likely provide a quick remedy. Given the political risks associated with making critical statements about military action, especially if that action results in success, n129 we can expect even less congressional WPR en-forcement as more military engagements are supported (or, at the very least, ignored) by the public. In this respect, the political reaction to the Mayaguez seems to provide an example of the rule, rather than the exception, in gauging politi-cal reactions within a technology-driven warfare regime. Thus, when the public becomes more apathetic about foreign affairs as a result of the limited harms associated with technology-driven warfare, and Congress's incentive to act consequently diminishes, the President is freed from any possible WPR constraints we might expect him to face, regardless of any potential legal issues. n130 Perhaps unsurpris-ingly, nearly all of the constitutionally problematic conflicts carried out by presidents involved smaller-scale military actions, rarely totaling more than a few thousand troops in direct contact with hostile forces. n131 Conversely, conflicts that have included larger forces, which likely provided sufficient incentive for public scrutiny, have generally complied with domestic law. n132 The result is that as wars become more limited, n133 unilateral presidential action will likely become even more un-checked as the triggers for WPR enforcement fade away. In contrast with the social and political backlash witnessed during the Civil War, World War I, the Vietnam War, and the Iraq War, contemporary military actions provide insuffi-cient incentive to prevent something as innocuous and limited as a drone strike. Simply put, technology-driven warfare is not conducive to the formation of a substantial check on presidential action. n134

### 1NC Obama Circumvents

#### Obama will circumvent

Michaels 13

(Martin Michaels, Mint Press staff writer, “The Human Side Of Drones: Congress Fails In Oversight” May 13, 2013, <http://www.mintpressnews.com/the-human-side-of-drones-congress-fails-in-oversight/158722/>, KB)

“The Obama administration justifies its use of armed drones with reference to the Authorization for the Use of Military Force that Congress passed just days after the Sept. 11 attacks. In the AUMF, Congress authorized force against groups and countries that had supported the terrorist strikes. But Congress rejected the Bush administration’s request for open-ended military authority ‘to deter and preempt any future acts of terrorism or aggression against the United States,’” said Cohn, former president of the National Lawyers Guild.¶ Congress has placed limitations upon the Bush administration’s use of force and similarly restricted Obama with the passage of the 2012 National Defense Authorization Act (NDAA), denying the president authority to expand the war on terror, including through drone strikes.¶ “Deterrence and preemption are exactly what Obama is trying to accomplish by sending robots to kill ‘suspected militants’ or those who happen to be present in an area where suspicious activity has taken place. Moreover, in the National Defense Authorization Act of 2012, Congress specifically declared, ‘Nothing in this section is intended to … expand the authority of the President or the scope of the Authorization for the Use of Military Force [of September 2001],” Cohn adds.¶ It hasn’t slowed down the president, who has authorized dozens of strikes in Southeast Asia and the Middle East over the course of his two terms in office.

# 2NC

## K

### Impact

#### The K qualitatively outweighs – we control the biggest internal link to macro-level violence - only our evidence is comparative about the scope and quality of violence in what our authors describe as “war”.

Prozorov 2K6

[Sergei, collegium fellow at the Helsinki Collegium for Advanced Studies, University of Helsinki, Professor of International Relations in the Department of International Relations, Faculty of Politics and Social Sciences, Petrozavodsk State University, Russia, 2006, “Liberal Enmity: The Figure of the Foe in the Political Ontology of Liberalism,” Millennium: Journal of International Studies, Vol. 35, No. 1, p. 75-99]

Schmitt makes a distinction between hostis and inimicus to stress the specificity of the relationship of a properly political enmity. The concept of inimicus belongs to the realm of the private and concerns various forms of moral, aesthetic or economic resentment, revulsion or hate that are connoted by the archaic English word ‘foe’, whose return into everyday circulation was taken by Schmitt as an example of the collapse of the political into the moral.31 In contrast, the concept of hostis is limited to the public realm and concerns the existential threat posed to the form of life of the community either from the inside or from the outside. In simple terms, the enemy (hostis) is what we confront, fight and seek to defeat in the public realm, to which it also belongs, while the foe (inimicus) is what we despise and seek either to transform into a more acceptable life-form or to annihilate. Contrary to Zizek’s attribution of the ‘ultra-politics of the foe’ to Schmitt, he persistently emphasised that the enemy conceptually need not and normatively should not be reduced to the foe: ‘The enemy in the political sense need not be hated personally.’32 In Schmitt’s argument, during the twentieth century such a reduction entailed the destruction of the symbolic framework of managing enmity on the basis of equality and the consequent absolutisation of enmity, i.e. the actualisation of the ‘most extreme possibility’: [Presently] the war is considered to constitute the absolute last war of humanity. Such a war is necessarily unusually intense and inhuman because, by transcending the limits of the political framework, it simultaneously degrades the enemy into moral and other categories and is forced to make of him a monster that must not only be defeated but also utterly destroyed. In other words, he is an enemy who no longer must be compelled to retreat into his borders only.33 Thus, it appears impossible to equate Schmitt’s notion of enmity with the friend–foe politics that was the object of his criticism. The very anti- essentialism, which Zizek’s reading recovers in Schmitt, brings into play a plurality of possible modalities of enmity. To argue, as Schmitt certainly does, that enmity is an ontological presupposition of any meaningful political relation, is certainly not to valorise any specific construction of the friend–enemy distinction. What is at stake is the need to distinguish clearly between what we have termed the transcendental function of the friend–enemy distinction (and in this aspect, Zizek’s own work on politics, particularly his recent ‘Leninist’ turn,34 remains resolutely Schmittian) and the empirical plurality of historical modalities of enmity. Schmitt’s philosophical achievement arguably consists in his affirmation of the irreducibility of the former function and the perils of its disavowal, an achievement that is not tarnished by a plausible criticism of his historical excursus on the Jus Publicum Europaeum as marked by a conservative nostalgia for a system that, after all, combined the sovereign equality of European powers with the manifestly asymmetric structure of colonial domination. At the same time, the objective of this article is not merely to correct manifold misreadings in the exegesis of a ‘properly Schmittian’ conception of enmity. Instead, we shall rely on Schmitt’s political realism and more contemporary philosophical orientations in deconstructing the present, actually existing ultra-politics of the foe, which has acquired a particular urgency in the current ascendancy of American neoconservative exceptionalism but is by no means reducible to it. Against the facile assumption of the unbridgeable gulf between the politics of the Bush administration and the remainder of the transatlantic community, we shall rather posit the ‘ultra-politics of the foe’ as the definitive feature of the transformation of the relation of enmity in Western politics in the twentieth century. Moreover, as our analysis below will demonstrate, the emergence of this ultra-politics is a direct effect of the universalisation of the liberal disposition rather than a resurgence of an ‘archaic’ form of political realism. What we observe presently is not a temporary ‘barbarian’ deviation from the progressive teleology of liberalism, but the fulfilment of Schmitt’s prophecy that liberalism produces its own form of barbarism.

#### The 1AC’s denial of enmity results in extinction

Schmitt ’63

(Carl. The Theory of the Partisan: A Commentary/Remark on the Theory of the Political. Trans. A. C. Goodson. East Lansing, MI: Michigan State University Press, 2004. 67.)

This means concretely that the supra-conventional weapon supposes¶ the supra-conventional man. It presupposes him not merely as a postulate¶ of some remote future; it intimates his existence as an already existent reality. The ultimate danger lies then not so much in the living presence of the¶ means of destruction and a premeditated meanness in man. It consists in¶ the inevitability of a moral compulsion. Men who turn these means against¶ others see themselves obliged/forced to annihilate their victims and¶ objects, even morally. They have to consider the other side as entirely criminal and inhuman, as totally worthless. Otherwise they are themselves¶ criminal and inhuman. The logic of value and its obverse, worthlessness,¶ unfolds its annihilating consequence, compelling ever new, ever deeper discriminations, criminalizations, and devaluations to the point of annihilating all of unworthy life [lebensunwerten Lebens]. In a world in which the partners push each other in this way into the¶ abyss of total devaluation before they annihilate one another physically,¶ new kinds of absolute enmity must come into being. Enmity will be so terrifying that one perhaps mustn’t even speak any longer of the enemy or of¶ enmity, and both words will have to be outlawed and damned fully before¶ the work of annihilation can begin. Annihilation thus becomes entirely¶ abstract and entirely absolute. It is no longer directed [96] against an¶ enemy, but serves only another, ostensibly objective attainment of highest¶ values, for which no price is too high to pay. It is the renunciation of real¶ enmity that opens the door for the work of annihilation of an absolute¶ enmity.

### AT Perm - Do Both

#### PERM IMPOSSIBLE - we must choose between universalization of values or recognition of enmity

Moreiras 04

[Director of European Studies at Duke, Alberto, “A God without Sovereignty. Political Jouissance. The Passive Decision”, CR: The New Centennial Review 4.3, p. 79-80, Project MUSE]

The friend/enemy division is peculiar at the highest level, at the level of the order of the political. This peculiarity ultimately destroys the under- standing of the political as based on and circumscribed by the friend/enemy division. The idea of **an order of the political presupposes that the enemies of the order as such**—that is, the enemy configuration that can overthrow a given order, or even the very idea of an order of the political—**are generated from the inside**: enemies of the order are not properly external enemies. This is so **because the order of the political**, as a principle of division, as division itself, **always already** regulates, and thus **subsumes, its** externality: **externality is produced by the order** as such, and it is a function of the order. Or rather: a principle of division can have no externality. Beyond the order, there can be enemies, if attacked, but they are not necessarily enemies of the order: they are simply ignorant of it. At the highest level of the political, at the highest level of the friend/ enemy division, there where the very existence of a given order of the political is at stake, the order itself secretes its own enmity. Enmity does not precede the order: it is in every case produced by the order. **The friend/enemy division is** therefore a division that is **subordinate to the primary ordering division**, produced from itself. The friend/enemy division is therefore not supreme: **a nomic antithesis generates it**, **and** thus **stands above** it. The order of the political rules over politics. The political ontology implied inthe notion ofan order of the political deconstructs the **political** ontology ciphered in the friend/enemy division, and vice versa. They are mutually incompatible**. Either the friend/enemy division is supreme**, for a determination of the political, **or the order of the political is** supreme**. Both** of them **cannot simultaneously be supreme. The gap between them is** strictly **untheorizable.** If the friend/enemy division obtains independently of all the other antitheses as politically primary, then there is no order of the political. If there is an order of the political, the order produces its own political divisions.

### AT Owen 2

#### Owen concludes ontological interrogations come before the politics of the aff

Owen 2

David, Reader in Political Theory at the University of Southampton “Reorienting International Relations: On Pragmatism, Pluralism and Practical Reasoning”, Millennium: Journal of International Studies, Vol. 31, No. 3

The first dimension concerns the relationship between positivist IR theory and postmodernist IR ‘theory’ (and the examples illustrate the claims concerning pluralism and factionalism made in the introduction to this section). It is exhibited when we read Walt warning of the danger of postmodernism as a kind of theoretical decadence since ‘issues of peace and war are too important for the field [of IR] to be diverted into a prolix and self-indulgent discourse that is divorced from the real world’,12 or find Keohane asserting sniffily that Neither neorealist nor neoliberal institutionalists are content with interpreting texts: both sets of theorists believe that there is an international political reality that can be partly understood, even if it will always remain to some extent veiled.13 We should be wary of such denunciations precisely because the issue at stake for the practitioners of this ‘prolix and self-indulgent discourse’ is the picturing of international politics and the implications of this picturing for the epistemic and ethical framing of the discipline, namely, the constitution of what phenomena are appropriate objects of theoretical or other forms of enquiry. The kind of accounts provided by practitioners of this type are not competing theories (hence Keohane’s complaint) but conceptual reproblematisations of the background that informs theory construction, namely, the distinctions, concepts, assumptions, inferences and assertability warrants that are taken for granted in the course of the debate between, for example, neorealists and neoliberal institutionalists (hence the point-missing character of Keohane’s complaint). Thus, for example, Michael Shapiro writes: The global system of sovereign states has been familiar both structurally and symbolically in the daily acts of imagination through which space and human identity are construed. The persistence of this international imaginary has helped to support the political privilege of sovereignty affiliations and territorialities. In recent years, however, a variety of disciplines have offered conceptualizations that challenge the familiar, bordered world of the discourse of international relations.14 The point of these remarks is to call critically into question the background picture (or, to use another term of art, the horizon) against which the disciplinary discourse and practices of IR are conducted in order to make this background itself an object of reflection and evaluation. In a similar vein, Rob Walker argues: Under the present circumstances the question ‘What is to be done?’ invites a degree of arrogance that is all too visible in the behaviour of the dominant political forces of our time. . . . The most pressing questions of the age call not only for concrete policy options to be offered to existing elites and institutions, but also, and more crucially, for a serious rethinking of the ways in which it is possible for human beings to live together.15 The aim of these comments is to draw to our attention the easily forgotten fact that our existing ways of picturing international politics emerge from, and in relation to, the very practices of international politics with which they are engaged and it is entirely plausible (on standard Humean grounds) that, under changing conditions of political activity, these ways of guiding reflection and action may lose their epistemic and/or ethical value such that a deeper interrogation of the terms of international politics is required. Whether or not one agrees with Walker that this is currently required, it is a perfectly reasonable issue to raise. After all, as Quentin Skinner has recently reminded us, it is remarkably difficult to avoid falling under the spell of our own intellectual heritage. . . . As we analyse and reflect on our normative concepts, it is easy to become bewitched into believing that the ways of thinking about them bequeathed to us by the mainstream of our intellectual traditions must be the ways of thinking about them.16 In this respect, one effect of the kind of challenge posed by postmodernists like Michael Shapiro and Rob Walker is to prevent us from becoming too readily bewitched.

### Alt

#### Only this resolves the violence the affirmative describes

Odysseos ‘07

Louiza Odysseos. “Crossing the Line? Carl Schmitt on the ‘Spaceless Universalism’ of Cosmopolitanism and the War on Terror.” The international political thought of Karl Schmitt. New York: Routledge, 2007. 136.

The first relationship arises from their joint location in a long line of thought and policy offering both a worldview and a political programme of modernity in which violence and war dissipate, in which war is gradually replaced by rules and principled behavior. One might say, in other words, that both the War on Terror and liberal cosmopolitanism are located within the modernist vision of the end of war. Hans Joas has eloquently called this ‘the dream of a modernity without violence’. That cosmopolitanism seeks ‘perpetual’ peace is often acknowledged through cosmopolitanism’s intellectual debt to Immanuel Kant. That the War on Terror is located in this understanding of modernity is less obvious, perhaps, but becomes increasingly apparent when one examines the rhetorical framing and understanding of the War on Terror as a fight that will not be abandoned until terrorism is rooted out. The terrorist acts of 11 September 2001 in the seat of this dream, the United States of America, were an unforgivable affront to this modernist and liberal cosmopolitan vision of perpetual peace. At the same time, modernity’s dream to end war has repeatedly had the opposite effect, signaling a much neglected paradox, that ‘[a] political project based concretely upon an ideal of “peace” has continually produced its nemesis, war’. It is not only that the search for peace has time and again led to war – it is the very intensification of war within the horizon of liberal modernity that is worth investigating. Schmitt’s own assessment in the *Nomos* of prior liberal attempts to abolish war, such as those undertaken by the League of Nations, suggests that ‘any abolition of war without true bracketing [has historically] resulted only in new, perhaps even worse types of war, such as reversions to civil war and other types of wars of annihilation’. Reid, more recently, echoes this insight: Not only does the recurrence of war throughout modernity serve to underline its paradoxical character. But the very forms of war that recur are of such increasing violence and intensity as to threaten the very sustainability of the project of modernity understood in terms of the pursuit of perpetual peace.

## Solvency

### 2NC Political Will

#### Political partisanship guarantees there’s no enforcement

Cohen ‘12

(Michael A. Cohen is a senior fellow at the American Security Project and is author of "Live From the Campaign Trail: The Greatest Presidential Campaign Speeches of the 20th Century and How They Shaped Modern America" (Walker Books: 2008). Previously, Michael served in the U.S. Department of State as chief speechwriter for U.S. Representative to the United Nations Bill Richardson and Undersecretary of State Stuart Eizenstat. “The Imperial Presidency: Drone Power and Congressional Oversight” 24 Jul 2012 <http://www.worldpoliticsreview.com/articles/12194/the-imperial-presidency-drone-power-and-congressional-oversight>, TSW)

In a sense we are witnessing a perfect storm of executive branch power-grabbing: a broad authorization of military force giving the president wide-ranging discretion to act, combined with a set of tools -- drones, special forces and cyber technology -- that allows him to do so in unprecedented ways. And since few troops are put in harm’s way, there is barely any public scrutiny.¶ ¶ Congress has the ability to stop these excesses. On Libya, it possessed the power to turn off the financial spigot and cut off funding, and indeed, there was a tepid effort in the House of Representatives to do so. On the AUMF, Congress could simply repeal it or more realistically modify it to take into account the new battlefields in the war on terror. Finally, it could conduct greater oversight, in particular public hearings, of how the executive branch is utilizing military force. But not only has Congress not taken these steps, in deliberations over the National Defense Authorization Act earlier this year, it tried to expand the AUMF. On the use of drones and targeted killings, Congress has made little effort to demand greater information from the White House and has not held any public hearings on either of these issues. As Micah Zenko recently noted, claims “that congressional oversight of targeted killings exclusively by the intelligence committees in closed sessions is adequate” are “indefensible.”¶ The reasons for congressional abdication are legion. Partisanship plays an important role. For example, from 2001 to 2006, Republicans largely abstained from overseeing a Republican White House’s wars in Iraq and Afghanistan.¶ Since a Democrat became president, however, congressional oversight and scrutiny of the administration in terms of foreign policy has remained underwhelming, if not nearly as bad. Meanwhile, the White House has treated Congress dismissively and even with contempt. Historically, strong institutional prerogatives have been a check on such parochialism -- think William Fulbright and the Senate Foreign Relations Committee’s apostasy on Vietnam or even the bipartisan Iran-Contra hearings in the 1980s. Today, however, few in Congress have shown much interest in upholding even its most basic foreign policy responsibilities. Quite simply, there are no Frank Churches or even Russ Feingolds in Congress anymore.

#### The drone lobby overwhelms

Michaels 13

(Martin Michaels, Mint Press staff writer, “The Human Side Of Drones: Congress Fails In Oversight” May 13, 2013, <http://www.mintpressnews.com/the-human-side-of-drones-congress-fails-in-oversight/158722/>, KB)

The drone lobby?¶ Standing in the way of proper congressional oversight has been the burgeoning drone lobby, an emerging force contributing to Congressional campaigns.¶ “This is all about money when it comes down to it. The fact that there is an unmanned Aerial Systems Caucus in Congress says it all. It’s shameful when you look at the millions of dollars the industry spends on both lobbying and contributing to Congressional candidates,” Benjamin said¶ “You see the collusion between our elected officials and the drone industry,” Benjamin said.¶ Drones represent big money for manufacturers and local communities promised thousands of manufacturing jobs.¶ A recent study by the Teal Group, an aviation and defense consulting firm, estimated that global spending on unmanned aircraft will almost double over the next decade, from $5.9 billion annually to $11.3 billion. Most of that growth will be in the United States.¶ The same study estimated that the drone industry would create 23,000 new jobs in the U.S. by 2025.¶ Political action committees affiliated with drone manufacturers donated a total of $2.3 million to the nearly 60 members of the bipartisan House Unmanned Systems Caucus, according to First Street Research. Seventy-seven percent of these donations went to Republicans.

#### Their ev doesn’t assume nearing elections

**Farley ‘12**

[Ben. J.D. with honors, Emory University School of Law, 2011. Editor-in-Chief, Emory International Law Review, 2010-2011. M.A., The George Washington University Elliott School of International Affairs, 2007. Drones and Democracy: Missing Out on Accountability? 54 S. Tex. L. Rev. 385 ETB]

Compounding voters’ lack of interest and ability to effectively measure leaders’ actions, the information necessary to evaluate leaders’ actions is often obscure or unattainable.¶ Frequently, the public may not be able to acquire relevant information detailing the work of its¶ leadership or may only be able to do so at a significant cost.66 Legislative policymaking diffuses¶ responsibility and naturally masks information: “[W]hen policy is produced by a legislature, it is¶ difficult to see how one can hold individual members responsible for it unless one has a detailed¶ empirical and theoretical understanding of legislative procedure and politics (which even fulltime¶ students of Congress do not agree on).”67 The President, on the other hand, has the ability to control public access to information through his authority to classify or declassify¶ information.68¶ The periodicity of elections also tempers the efficacy of political accountability.69¶ Elections for federal offices in the United States occur every two, four, or six years depending on¶ the office.70 Although political leaders are highly responsive to the electorate in the period when¶ an election looms—within the so-called “shadow” of an election—their responsiveness wanes in¶ the period between elections.71 This oscillating responsiveness suggests that leaders know—or at¶ least believe—that the electorate is relatively less concerned with their actions when an election¶ is distant. That is, political leaders may enjoy greater freedom of action and less accountability¶ between elections.

### AT Obama Likes the Aff

Rhode ev is about interrogation, not the aff

#### He’s bluffing

Friedersdorf 13

~Conor, staff writer at The Atlantic, focuses on politics and national affairs, "A Skeptical Celebration of President Obama’s Shifty Terrorism Speech", 5/24, <http://www.theatlantic.com/politics/archive/2013/05/a-skeptical-celebration-of-president-obamas-shifty-terrorism-speech/276205/>

There are, alas, huge caveats to consider. Some concessions, like the change in status for Yemeni prisoners cleared for release, appear to be policy changes that Obama will actually implement. But he has a long record of broken promises and misleading rhetoric on civil liberties, and it would be naive to assume that he'll follow through on everything he said on Thursday. The speech was an inescapably political maneuver, intended in part to disarm his critics, following the classic Obama pattern of affirming their strongest insights and critiques, but acting as if, having done so, there's no need to change course in the way those critiques imply. As Benjamin Wittes put it at Lawfare: If there was a unifying theme of President Obama's speech today at the National Defense University, it was an effort to align himself as publicly as possible with the critics of the positions his administration is taking without undermining his administration's operational flexibility in actual fact. To put it crassly, the president sought to rebuke his own administration for taking the positions it has -- but also to make sure that it could continue to do so.

### 1NC Article 2

#### He’ll claim Article II

Currier 13

(Cora, Former editor of the New Yorker, "Drone strikes test legal grounds for ’war on terror’", 2/6/13, http://www.pbs.org/wnet/need-to-know/security/drone-strikes-test-legal-grounds-for-war-on-terror/16252/)

Administration officials say strikes against al-Qaida and associated forces are permitted under international law on the basis of self-defense, in addition to the authority the AUMF provides under domestic law. The U.N. has been investigating targeted killings and civilian casualties from drone strikes. In a case where the 2001 AUMF did not apply, the administration could seek a new authorization from Congress or rely on presidential powers to use force against an imminent threat. Gen. Carter Ham, the head of U.S. Africa Command, said in an interview with The Wall Street Journal in December that an authorization to address new threats in North Africa was a “worthy discussion.” But what form that would take is unclear. The Pentagon and White House did not comment to ProPublica on the possibility of a new AUMF. Presidents have used force without Congressional authorization by invoking presidential powers under Article II of the Constitution. Obama ordered airstrikes over Libya in the spring of 2011 citing international cooperation and “national interest” as justification. (Several lawmakers subsequently sued the administration for bypassing them, but the case was dismissed.) He has also claimed authority to launch pre-emptive cyberattacks, the New York Times reported this weekend. President Bill Clinton cited the nation’s right to self-defense when he bombed Afghanistan and Sudan in 1998 in retaliation for the bombing of U.S. embassies in East Africa. Obama officials regularly cite self-defense alongside the AUMF in justifying targeted killing. White House counterterror adviser John Brennan has said that the U.S. uses “a flexible understanding of 2018imminence’ ” in determining what constitutes a threat. The Justice Department memo on targeting U.S. citizens also references a “broader concept of imminence,” which it holds “does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.”

## Drone Prolif

### 2NC No Drone Wars

#### Air defense takes them out – prevents escalation

Lewis 12

Michael W. Lewis 12, Associate Professor of Law at Ohio Northern University Pettit College of Law, Spring 2012, “ARTICLE: SYMPOSIUM: THE 2009 AIR AND MISSILE WARFARE MANUAL: A CRITICAL ANALYSIS: Drones and the Boundaries of the Battlefield,” Texas International Law Journal, p. lexis

Like any weapons system drones have significant limitations in what they can achieve. Drones are extremely vulnerable to any type of sophisticated air defense system. They are slow. Even the jet-powered Avenger recently purchased by the Air Force only has a top speed of around 460 miles per hour, n20 meaning that it cannot escape from any manned fighter aircraft, not even the outmoded 1970s-era fighters that are still used by a number of nations. n21 Not only are drones unable to escape manned fighter aircraft, they also cannot hope to successfully fight them. Their air-to-air weapons systems are not as sophisticated as those of manned fighter aircraft, n22 and in the dynamic environment of an air-to-air engagement, the drone operator could not hope to match the situational awareness n23 of the pilot of manned fighter aircraft. As a result, the outcome of any air-to-air engagement between drones and manned fighters is a foregone conclusion. Further, drones are not only vulnerable to manned fighter aircraft, they are also vulnerable to jamming. Remotely piloted aircraft are dependent upon a continuous signal from their operators to keep them flying, and this signal is vulnerable to disruption and jamming. n24 If drones were [\*299] perceived to be a serious threat to an advanced military, a serious investment in signal jamming or disruption technology could severely degrade drone operations if it did not defeat them entirely. n25¶ These twin vulnerabilities to manned aircraft and signal disruption could be mitigated with massive expenditures on drone development and signal delivery and encryption technology, n26 but these vulnerabilities could never be completely eliminated. Meanwhile, one of the principal advantages that drones provide - their low cost compared with manned aircraft n27 - would be swallowed up by any attempt to make these aircraft survivable against a sophisticated air defense system. As a result, drones will be limited, for the foreseeable future, n28 to use in "permissive" environments in which air defense systems are primitive n29 or non-existent. While it is possible to find (or create) such a permissive environment in an inter-state conflict, n30 permissive environments that will allow for drone use will most often be found in counterinsurgency or counterterrorism operations.

# 1NR

Sharepoint lost this doc. It was politics.