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#### Interpretation – A restriction limits allowable action

Oxford Advanced Learner’s Dictionary – 2013, <http://oald8.oxfordlearnersdictionaries.com/dictionary/restriction>

restriction NOUN

1 [countable]

a rule or law that limits what you can do or what can happen

import/speed/travel, etc. restrictions

restriction on something to impose/place a restriction on something

The government has agreed to lift restrictions on press freedom.

There are no restrictions on the amount of money you can withdraw.

2 [uncountable]

the act of limiting or controlling somebody/something

sports clothes that prevent any restriction of movement

A diet to lose weight relies on calorie restriction in order to obtain results.

3 [countable]

a thing that limits the amount of freedom you have

the restrictions of a prison

#### War power is the power to conduct war successfully

HIRABAYASHI v. UNITED STATES - SUPREME COURT - June 21, 1943, Decided, 320 U.S. 81; 63 S. Ct. 1375; 87 L. Ed. 1774; 1943 U.S. LEXIS 1109

The war power of the national government is "the power to wage war successfully." See Charles Evans Hughes, War Powers Under the Constitution, 42 A. B. A. Rep. 232, 238.It extends to every matter and activity so related to war as substantially to affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase of the national defense, including the protection of war materials and the members of the armed forces from injury and from the dangers which attend the rise, prosecution and progress of war. Prize Cases, supra; Miller v. United States, 11 Wall. 268, 303-14; Stewart v. Kahn, 11 Wall. 493, 506-07; Selective Draft Law Cases, 245 U.S. 366; McKinley v. United States, 249 U.S. 397; United States v. Macintosh, 283 U.S. 605, 622-23. HN4Go to this Headnote in the case.Since the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it. Ex parte Quirin, supra, 28-29; cf. Prize Cases, supra, 670; Martin v. Mott, 12 Wheat. 19, 29. Where, as they did here, the conditions call for the exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs.

#### Authority is the power to act

COURT OF APPEALS OF TENNESSEE, EASTERN SECTION - October 31, 1925, Decided, RACY CREAM COMPANY v. MARY BELLE WALDEN., 1 Tenn. App. 653; 1925 Tenn. App. LEXIS 85

While the circumstances in and of themselves do not necessarily show that the driver was the agent, employee or servant of the owner at the time of the accident, and if so that he was engaged in the master's business when the injury was effected, yet good reasons are shown justifying the purposes of the Legislature, if such justification was necessary, as to why these two essential facts should be presumed. The driver fled immediately after the accident, so that his name or identity was not known, and the difficulty of proving the same is therefore manifest, together with the necessity of indulging some such presumption, or else justice will be defeated in an ever increasing number of similar incidents. On the other hand, if in any case the presumption should be ill founded, it would be an easy matter to furnish facts to controvert [\*\*33] it, which are, or would be, more easily within the knowledge of the defendants, or at least much less difficult for them to establish, and thus the ends of justice be subserved. Besides, as it appears from the facts of this case, the proposition has attractions of original merit. When evidence has been furnished as to the negligent injury by one driving the defendants' truck, presumably from the name Racy Cream Company on the truck, engaged in the sale, distribution or transportation of cream or its products, and at a time of day, nine o'clock in the forenoon, in a city where such business might reasonably be pursued, and where just such an outfit so manned might reasonably have been employed, with a woman almost dead in the street from having been wantonly mowed down by its rapid and illegal operation, it furnishes a combination of facts and circumstances from which, it could be more reasonably inferred that the driver was the owner's servant rather than a thief, and that he was engaged in the owners business rather than his own, or that of someone else in which the truck was borrowed or hired. At least these first conceptions are less involved and more direct than the latter, and [\*\*34] are the most natural and legitimate to which the mind first gravitates, and why not indulge them? These first-hand legitimate inferences call for explanation rather than to be combatted by other circumstances neither ordinary nor proximate. It is not a case of draft without reason, but a case of the accusing finger pointing naturally sought to a conclusion which the Legislature in the act just mentioned sought to mature as a prima-facie case. Has the body of the act in the use of the terms employed sufficiently effectuated the purposes expressed in the title? Considered without reference to the amendment, we think it has. It is conceded that while under our constitution [\*669] the body of an act cannot be broader than the restrictions of the title, it may be less pretentious, and thus fall short of the purpose expressed; and in this case authority for the prima-facie case claimed to justify any personal judgment against the defendants must be found in the use of the word "authority," as the other words ("knowledge and consent") used express nothing more than the permissive authority necessary to effect a lien against the machine, if the negligence consists in willful violation [\*\*35] of the statute. It is true that in a certain sense the word "authority" has a meaning synonimous with the other terms, "knowledge and consent," but used as it is in the act, and in connection with the other terms mentioned, it may have another meaning implying direction or supervision, signifying control of subordinate agency. As expressed in 6th. Volume of C. J., page 864, with reference to the term "authority," in defining same it is said: "In another sense power delegated by a principal to his agent or attorney. . . . Power to act, whether originally or delegated. Control over. Jurisdiction. The word is generally used to express a derivative power."

#### Violation – the notification of the aff does not limit the President’s ability to successfully conduct the progress of war operations – it only adds a procedural step – that’s a regulation, not a restriction

Schackleford, justice – Supreme Court of Florida, 3/12/1917

(J., “ATLANTIC COAST LINE RAILROAD COMPANY, A CORPORATION, *et al., Plaintiff in Error,* v. THE STATE OF FLORIDA, *Defendant in Error,”* 73 Fla. 609; 74 So. 595; 1917 Fla. LEXIS 487)

There would seem to be no occasion to discuss whether or not the Railroad Commissioners had the power and authority to make the order, requiring the three specified railroads running into the City of Tampa to erect a union passenger station in such city, which is set out in the declaration in the instant case and which we have copied above. [\*\*\*29] It is sufficient to say that under the reasoning and the authorities cited in State v. Atlantic Coast Line R. Co., 67 Fla. 441, 458, 63 South. Rep. 729, 65 South. Rep. 654, and State v. Jacksonville Terminal [\*631] Co., supra, it would seem that HN14the Commissioners had power and authority. The point which we are required to determine is whether or not the Commissioners were given the authority to impose the fine or penalty upon the three railroads for the recovery of which this action is brought. In order to decide this question we must examine Section 2908 of the General Statutes of 1906, which we have copied above, in the light of the authorities which we have cited and from some of which we have quoted. It will be observed that the declaration alleges that the penalty imposed upon the three railroads was for the violation of what is designated as "Order No. 282," which is set out and which required such railroads to erect and complete a union depot at Tampa within a certain specified time. If the Commissioners had the authority to make such order, it necessarily follows that they could enforce a compliance with the same by appropriate proceedings in the courts, but [\*\*\*30] it does not necessarily follow that they had the power and authority to penalize the roads for a failure to comply therewith. That is a different matter. HN15Section 2908 of the General Statutes of 1906, which originally formed Section 12 of Chapter 4700 of the Laws of Florida, (Acts of 1899, p. 86), expressly authorizes the imposition of a penalty by the Commissioners upon "any railroad, railroad company or other common carrier doing business in this State," for "a violation or disregard of any rate, schedule, rule or regulation, provided or prescribed by said commission," or for failure "to make any report required to be made under the provisions of this Chapter," or for the violation of "any provision of this Chapter." It will be observed that the word "Order" is not mentioned in such section. Are the other words used therein sufficiently comprehensive to embrace an order made by the Commissioners, such as the one now under consideration? [\*632] It could not successfully be contended, nor is such contention attempted, that this order is covered by or embraced within the words "rate," "schedule" or "any report,' therefore we may dismiss these terms from our consideration and [\*\*\*31] direct our attention to the words "rule or regulation." As is frankly stated in the brief filed by the defendant in error: "It is admitted that an order for the erection of a depot is not a 'rate' or 'schedule' and if it is not a 'rule' or 'regulation' then there is no power in the Commissioners to enforce it by the imposition of a penalty." It is earnestly insisted that the words "rule or regulation" are sufficiently comprehensive to embrace such an order and to authorize the penalty imposed, and in support of this contention the following authorities are cited: Black's Law Dictionary, defining regulation and order; Rapalje & Lawrence's Law Dictionary, defining rule; Abbott's Law Dictionary, defining rule; Bouvier's Law Dictionary, defining order and rule [\*\*602] of court; Webster's New International Dictionary, defining regulation; Curry v. Marvin, 2 Fla. 411, text 515; In re Leasing of State Lands, 18 Colo. 359, 32 Pac. Rep. 986; Betts v. Commissioners of the Land Office, 27 Okl. 64, 110 Pac. Rep. 766; Carter V. Louisiana Purchase Exposition Co., 124 Mo. App. 530, 102 S.W. Rep. 6, text 9; 34 Cyc. 1031. We have examined all of these authorities, as well as those cited by the [\*\*\*32] plaintiffs in error and a number of others, but shall not undertake an analysis and discussion of all of them. While it is undoubtedly true that the words, rule, regulation and order are frequently used as synonyms, as the dictionaries, both English and law, and the dictionaries of synonyms, such as Soule's show, it does not follow that these words always mean the same thing or are interchangeable at will. It is well known that the same word used in different contexts may mean a different thing by virtue of the coloring which the word [\*633] takes on both from what precedes it in the context and what follows after. Thus in discussing the proper constructions to be placed upon the words "restrictions and regulations" as used in the Constitution of this State, then in force, Chap. 4, Sec. 2, No. 1, of Thompson's Digest, page 50, this court in Curry v. Marvin, 2 Fla. 411, text 415, which case is cited to us and relied upon by both the parties litigant, makes the following statement: "The word restriction is defined by the best lexicographers to mean limitation, confinement within bounds, and would seem, as used in the constitution, to apply to the amount and to the time [\*\*\*33] within which an appeal might to be taken, or a writ of error sued out. The word regulation has a different signification -- it means method, and is defined by Webster in his Dictionary, folio 31, page 929, to be 'a rule or order prescribed by a superior for the management of some business, or for the government of a company or society.' This more properly perhaps applies to the mode and form of proceeding in taking and prosecuting appeals and writs of error. By the use of both of those terms, we think that something more was intended than merely regulating the mode and form of proceedings in such cases." Thus, in Carter v. Louisiana Purchase Exposition Co., 124 Mo. App. 530, text 538, 102 S.W. Rep. 6, text 9, it is said, "The definition of a rule or order, which are synonymous terms, include commands to lower courts or court officials to do ministerial acts." In support of this proposition is cited 24 Amer. & Eng. Ency. of Law 1016, which is evidently an erroneous citation, whether the first or second edition is meant. See the definition of regulate and rule, 24 amer. & Eng. Ency. of Law (2nd Ed.) pages 243 to 246 and 1010, and it will be seen that the two words are not always [\*\*\*34] synonymous, much necessarily depending upon the context and the sense in which the words are used. Also see the discussion [\*634] of the word regulation in 34 Cyc. 1031. We would call especial attention to Morris v. Board of Pilot Commissioners, 7 Del. chan. 136, 30 Atl. Rep. 667, text 669, wherein the following statement is made by the court: "These words 'rule' and the 'order,' when used in a statute, have a definite signification. They are different in their nature and extent. A rule, to be valid, must be general in its scope, and undiscriminating in its application; an order is specific and not limited in its application. The function of an order relates more particularly to the execution or enforcement of a rule previously made." Also see 7 Words & Phrases 6271 and 6272, and 4 Words & Phrases (2nd Ser.) 419, 420. As we held in City of Los Angeles v. Gager, 10 Cal. App. 378, 102 Pac. Rep. 17, "The meaning of the word 'rules' is of wide and varied significance, depending upon the context; in a legal sense it is synonymous with 'laws.'" If Section 2908 had contained the word order, or had authorized the Commissioners to impose a penalty for the violation of any order [\*\*\*35] made by them, there would be no room for construction. The Georgia statute, Acts of 1905, p. 120, generally known as the "Steed Bill," entitled "An act to further extend the powers of the Railroad Commission of this State, and to confer upon the commission the power to regulate the time and manner within which the several railroads in this State shall receive, receipt for, forward and deliver to its destination all freight of every character, which may be tendered or received by them for transportation; to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said commission in the execution of these powers, and for other purposes," expressly authorized the Railroad Commissioners "to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said Commision." [\*635] See Pennington v. Douglas, A. & G. Ry. Co., 3 Ga. App. 665, 60 S.E. Rep. 485, which we cited with approval in State v. Atlantic Coast Line R. Co., 56 fla. 617, text 651, 47 South. Rep. 969, 32 L.R.A. (N.S.) 639. Under the reasoning in the cited authorities, especially State v. Atlantic Coast Line R. Co., [\*\*\*36] supra, and Morris v. Board of Pilot Commissioners, we are constrained to hold that the fourth and eighth grounds of the demurrer are well founded and that HN16the Railroad Commissioners were not empowered or authorized to impose a penalty upon the three railroads for failure to comply with the order for the erection of a union depot.

#### Specific to war powers – consulting requirements in the WPR don’t “restrict”

PATRICK D. ROBBINS - FALL, 1988, American University, Washington College of Law JD candidate, COMMENT: THE WAR POWERS RESOLUTION AFTER FIFTEEN YEARS: A REASSESSMENT., The American University, 38 Am. U.L. Rev. 141,

The War Powers Resolution states that its purpose is to fulfill the congressional conception of the Framers' intent, n85 and to ensure that Congress plays a substantive role in the use of United States armed forces abroad. n86 The statute requires that the President consult with Congress "in every possible instance," before placing troops into hostile or potentially hostile situations, and at regular [\*156] intervals thereafter. n87 It prescribes the circumstances under which the President must submit a detailed n88 report describing the situation. n89 The Resolution provides that where the President introduces armed forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances," n90 section 5(b) of the Resolution activates a sixty-day clock, at the end of which the President must withdraw the troops. n91 The Resolution further states that the armed forces may remain deployed pursuant only to a declaration of war, or legislation specifically authorizing their use, or when an attack upon the United States prevents Congress from meeting. n92 To avoid a presidential veto of congressional decisions to force a withdrawal prior to the end of sixty days, section 5(c) provides that a concurrent resolution n93 by both Houses of Congress may mandate a withdrawal at any time. n94 Sections 6 and 7 of the Resolution set out certain procedures whereby the House and Senate can consider, on an accelerated basis, legislation authorizing continued military action. n95 Section 8 estalishes [\*157] the construction, intent and effect Congress intended for the Resolution's provisions. n96 Most notably, in section 8 the Resolution claims to have left the constitutional balance of power and the war powers untouched, neither augmenting nor diminishing the President's authority. n97

FOOTNOTE 97: n97. See id. § 1547(d). Section 8(d) states:

Nothing in this joint resolution --

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

Id.

Despite this provision, some members of Congress viewed the War Powers Resolution as an expansion of presidential power. Indeed, the statute places no restriction whatsoever on the President's use of force for sixty days. One Representative argued that the Resolution "does not prevent the commencement of an illegal war, but allows one to continue for from 60 to 90 days." 119 CONG. REC. 33872 (1973) (statement of Rep. Holtzman); see id. at 33556 (statement of Sen. Eagleton) (arguing that sixty day provision gave President "blank check" to wage brief wars).

### 2

#### The United States federal judiciary should order the release of individuals in military detention who have won their habeas corpus hearing.’

#### Solves a comparatively stronger internal link to legitimacy

Sidhu 11

[2011, Dawinder S. Sidhu, J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania, Judicial Review as Soft Power: How the Courts Can Help Us Win the Post-9/11 Conflict”, NATIONAL SECURITY LAW BRIEF, Vol. 1, Issue 1 http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb]

The “Great Wall” The writ of habeas corpus enables an individual to challenge the factual basis and legality of his detention,91 activating the judiciary’s review function in the separation of powers scheme.92 Because the writ acts to secure individual liberty by way of the judicial checking of unlawful executive detentions, the writ has been regarded as a bulwark of liberty. The Supreme Court has observed, for example, that “There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus . . . .”93 The writ is seen as a vital aspect of American jurisprudence, and an essential element of the law since the time of the Framers.94 The United States is a conspicuous actor in the world theater, subject to the interests and inclinations of other players, and possessing a similar, natural desire to shape the global community in a manner most favorable to its own objects. The tendency to attempt to inﬂuence others is an inevitable symptom of international heterogeneity and, at present, the United States is mired in an epic battle with fundamentalists bent on using terrorism as a means to repel,95 if not destroy, America.96 American success in foreign policy depends on the internal assets available to and usable by the United States, including its soft power. The law in America is an aspect of its national soft power. In particular, the moderates in the Muslim world—the intended audience of America’s soft power— may ﬁnd attractive the American constitutional system of governance in which 1) the people are the sovereign and the government consists of merely temporary and recallable agents of the people, 2) federal power is diffused so as to diminish the possibility that any branch of the government, or any of them acting in tandem, can infringe upon the liberty of the people, 3) structural protections notwithstanding, the people are entitled to certain substantive rights including the right to be free of governmental interference with respect to religious exercise, 4) the diversity of interests inherent in its populace is considered a critical safeguard against the ability of a majority group to oppress the minority constituents, 5) the courts are to ensure that the people’s rights to life, liberty, and property are not abridged, according to law, by the government or others, and 6) individuals deprived of liberty have available to them the writ of habeas corpus to invoke the judiciary’s checking function as to executive detention decisions. The Constitution, in the eyes of Judge Learned Hand, is “the best political document ever made.”97 If the aforementioned constitutional principles are part of the closest approximation to a just and reasoned society produced by man, surely they may have some persuasive appeal to the rest of the world, including moderate Muslims who generally live in areas less respectful of minority rights and religious pluralism. Such reverence is to be expected and warranted only if the United States has remained true to these constitutional principles in practice, and in particular, in its behavior in the aftermath of the 9/11 attacks, when national stress is heightened and the option of deviating from such values in favor of an expedient “law of necessity” similarly tempting.98 The extent to which the United States has remained true to itself as a nation of laws—and thus may credibly claim such legal soft power—is the subject of the next section. II. THE COURTS AND SOFT POWER The Judiciary In Wartime The United States has been charged with being unfaithful to its own laws and values in its prosecution of the post-9/11 campaign against transnational terrorism. With respect to its conduct outside of the United States, following 9/11, America has been alleged to have tortured captured individuals in violation of its domestic and international legal obligations,99 and detained individuals indeﬁ nitely without basic legal protections.100 Closer to home, the United States is thought to have proﬁ led Muslims, Arabs, and South Asians in airports and other settings,101 conducted immigration sweeps targeting Muslims,102 and engaged in mass preventative detention of Muslims in the United States,103 among other things. These are serious claims. The mere perception that they bear any resemblance to the truth undoubtedly impairs the way in which the United States is viewed by Muslims around the world, including Muslim-Americans, and thus diminishes the United States’ soft power resources.104 The degree to which they are valid degrades the ability of the United States to argue persuasively that it not only touts the rule of law, but exhibits actual ﬁ delity to the law in times of crisis. These claims relate to conduct of the executive and/or the legislature in the aftermath of the 9/11 attacks. This Article is concerned, however, with the judiciary, that is whether the courts have upheld the rule of law in the post-9/11 context—and thus whether the courts may be a source of soft power today (even if the other branches have engaged, or are alleged to have engaged, in conduct that is illegal or unwise). As to the courts, it is my contention that the judiciary has been faithful to the rule of law after 9/11 and as such should be considered a positive instrument of American soft power. Prior to discussing post-9/11 cases supporting this contention, it is important to provide a historical backdrop to relationship between the courts and wartime situations because judicial decision-making in cases implicating the wars in Afghanistan and Iraq does not take occur on a blank slate, despite the unique and modern circumstances of the post-9/11 conﬂ ict.

### 3

#### Restricting drone use causes a shift to ground operations which increases civilian casualties

Bowden, 13 --- national correspondent for The Atlantic (8/14/2013, Mark, “The Killing Machines; How to think about drones,” <http://www.theatlantic.com/magazine/archive/2013/09/the-killing-machines-how-to-think-about-drones/309434/?single_page=true>)

No civilian death is acceptable, of course. Each one is tragic. But any assessment of civilian deaths from drone strikes needs to be compared with the potential damage from alternative tactics. Unless we are to forgo the pursuit of al-Qaeda terrorists entirely, U.S. forces must confront them either from the air or on the ground, in some of the remotest places on Earth. As aerial attacks go, drones are far more precise than manned bombers or missiles. That narrows the choice to drone strikes or ground assaults. Sometimes ground assaults go smoothly. Take the one that killed Osama bin Laden. It was executed by the best-trained, most-experienced soldiers in the world. Killed were bin Laden; his adult son Khalid; his primary protectors, the brothers Abu Ahmed al-Kuwaiti and Abrar al-Kuwaiti; and Abrar’s wife Bushra. Assuming Bushra qualifies as a civilian, even though she was helping to shelter the world’s most notorious terrorist, civilian deaths in the raid amounted to 20 percent of the casualties. In other words, even a near-perfect special-ops raid produced only a slight improvement over the worst estimates of those counting drone casualties. Many assaults are not that clean. In fact, ground combat almost always kills more civilians than drone strikes do. Avery Plaw, a political scientist at the University of Massachusetts, estimates that in Pakistani ground offensives against extremists in that country’s tribal areas, 46 percent of those killed are civilians. Plaw says that ratios of civilian deaths from conventional military conflicts over the past 20 years range from 33 percent to more than 80 percent. “A fair-minded evaluation of the best data we have available suggests that the drone program compares favorably with similar operations and contemporary armed conflict more generally,” he told The New York Times. When you consider the alternatives—even, and perhaps especially, if you are deeply concerned with sparing civilians—you are led, as Obama was, to the logic of the drone.

#### Shift to ground assaults causes net more civilian casualties, collapses the Pakistani government and increases support for the Taliban

Weitz, 11 --- Senior Fellow and Director of the Center for Political-Military Analysis at the Hudson Institute (1/2/2011, Dr. Richard, “Why UAVs Have Become the Anti-Terror Weapon of Choice in the Afghan-Pak Border,” <http://www.sldinfo.com/why-uavs-have-become-the-anti-terror-weapon-of-choice-in-the-afghan-pak-border/>)

In recent years, the main form of U.S. military operation in Pakistan, Yemen, and other terrorist havens has been the missiles launched from Unmanned Aerial Vehicles (UAVs). These remotely piloted armed drones are widely known to be operated by the Central Intelligence Agency (CIA) and the U.S. Department of Defense (DoD). They launch rapid missile attacks on high-value terrorist targets, selecting their targets on the basis of human and signal intelligence. Although the UAVs often operate with the consent of the host government, who seek to direct the attacks against their violent domestic opponents and prefer the drone strikes to a major foreign military presence or other foreign footprints, they rarely enjoy the popular backing of the people of the bombarded nation. The Predator UAV was first equipped with a Hellfire missile in 2001. It then used this weapon to kill terrorist Qaid Salim Sinan al-Harithi in Yemen on November 3, 2002. Since then, the most widely publicized attacks have been in Pakistan. Like Yemen, Pakistan is another country where a major American military ground presence would be controversial. According to various media and think tank reports, CIA and DoD drones such as the Predator and Reaper UAVs armed with Hellfire missiles have killed hundreds of people in northwest Pakistan in recent years. These numbers have reportedly surged in 2010 as the Obama administration has been seeking to complement the increase in U.S. combat troops inside Afghanistan with intensified operations in the Taliban sanctuary in neighboring Pakistan. This trend will likely continue as the Administration strives to meet its metrics for success by the time its major review of the Afghan War is complete at the end of this year. The discovery that Faisal Shahzad, the failed May 1 Times Square bomber, had received terrorist training in Pakistan, has exacerbated concerns that Pakistan has replaced Afghanistan as the main state sanctuary of international terrorism. The options and dynamics of using drones are also discussed in an accompanying piece by Robbin Laird. The drone attacks are controversial but are still considered the best of a bad set of options by both U.S. and Pakistani officials. On the negative side of the ledger, human rights groups criticize them as extrajudicial killings since the suspected terrorist is killed outright rather than given a trial. Since U.S. officials decline to comment on the UAV operations in Pakistan, the Taliban and others are free to exaggerate to the media the number of innocent victims they cause. Polls show that the UAV attacks are not popular with the Pakistani people, though the inhabitants of the tribal areas who are oppressed by the foreign Islamist radicals are not really free to express their opinion for fear of retaliation. Experts believe that the number of civilian casualties has declined in recent years due to improved intelligence, stricter rules of engagement, and the use of less powerful missile warheads.Still, the UAVs cannot capture terrorist suspects for further interrogation and cannot acquire other sources of intelligence that might reside at the sites they attack, such as revealing documents and computer files. Confirming deaths is difficult due to the absence of credible witnesses or physical evidence at the site. Several prominent targets have been proclaimed dead only to turn up alive later. Members of the Tanzeem-e-Islami, a Pakistani religious group often described as the core of the Pakistani Taliban, also cite the continuing UAV strikes to justify their terrorist campaign against the Pakistanis living outside the tribal zone. They describe their bombings, which have killed thousands of civilians as well as Pakistani security forces, as retaliation for the Pakistani government’s allowing the UAVs to operate. Although most Pakistanis have little sympathy for the militants, polls indicate that they blame the Americans and their own government for antagonizing the Islamists, whose operations had originally been focused on the Afghan-Pakistan border region. The drone strikes have also led the jihadists to kill many other tribal inhabitants whom they suspect of providing targeting data to the Americans or their Pakistani partners. A more recent development has been that the Pakistani Taliban has cited the U.S. drone attacks as the reason why they have started to conduct terrorist bombings against European and American targets, including the successful attack on a CIA operations center in Khost province in late 2009 and the failed Times Square bombing attempt on May 1, 2010. A Tahreek-e-Taliban spokesman also said that the recent torching of the trucks delivering fuel through Pakistan to the NATO forces in Afghanistan would increase for every drone attack on their members. In terms of their advantages, the UAVs are very useful for striking terrorist targets in remote locations, especially those that lack air defenses and must rely on concealment and other passive defenses. Modern drones can remain airborne for more than 24 hours, giving them the opportunity to strike even fleeting targets more rapidly than it would take a manned warplane to reach the target. UAVs cost substantially less to acquire and operate than manned warplanes and helicopters, but these lower acquisition costs must be weighed against the greater losses typically experienced by these aircraft, and the higher cost of most strike versus reconnaissance drones. The larger Reaper drones are much more expensive than simpler ISR drones, so cost advantages over manned systems are much reduced. Indeed, as Robbin Laird will argue, there are manned options which might be considerable cheaper to operate than drones, when the human support components supporting the drones are taken into account. But there are other advantages of a remotely piloted aircraft. For example, pilots and crew are not lost when a UAV crashes or is shot down. Yet, a UAV equipped with Hellfire ground-attack missiles gives an unmanned drone a strike capability comparable to that of an Apache helicopter gunship. The larger MQ-9 Reaper drones can carry as many as 16 Hellfire missiles, two GBU-12 Paveway II laser-guided bombs, or the 500 pound variant of the GBU-38 500 Joint Direct Attack Munition. In addition, the drones have the benefit of stirring up suspicions and tensions in their target areas since the terrorists suspect the local inhabitants as well as rival terrorists of providing information on which targets to attack. The terrorists then get into fights with the locals and one another, which can further tempt the residents and the terrorists to inform on them so that the drones might take out their opponents. Another advantage of the U.S. drone strikes is that the “receiving” governments often come to support them more since their range of targets has been extended from al-Qaeda and other international terrorists to local militants fighting the host government.In Pakistan, the drones have killed Pakistani Taliban leaders who have been waging a campaign of terrorism against the Pakistani government and committing mass atrocities against Pakistani civilians. UAV-launched missiles have reportedly killed several anti-Islamabad guerrilla leaders.In fact, media reports say that the drones are launched from bases inside Pakistan and used against certain targets identified by Pakistani intelligence. Although the Pakistani Taliban cite the drone strikes as the reason for their attacks on the Pakistani government, Pakistani civilians, and now civilians in NATO cities, it is unlikely that an end to the UAV strikes would lead the terrorists to curtail their operations.Perhaps the most important argument in favor of using UAV strikes in northwest Pakistan and other terrorist havens is that alternative options are typically worse. The Pakistani military has made clear that it is neither willing nor capable of repressing the terrorists in the tribal regions. Although the controversial ceasefire accords Islamabad earlier negotiated with tribal leaders have formally collapsed, the Pakistani Army has repeatedly postponed announced plans to occupy North Waziristan, which is where the Afghan insurgents and the foreign fighters supporting them and al-Qaeda are concentrated. Such a move that would meet fierce resistance from the region’s population, which has traditionally enjoyed extensive autonomy. The recent massive floods have also forced the military to divert its assets to humanitarian purposes, especially helping the more than ten million displaced people driven from their homes. But the main reason for their not attacking the Afghan Taliban or its foreign allies based in Pakistan’s tribal areas is that doing so would result in their joining the Pakistani Taliban in its vicious fight with the Islamabad government. Yet, sending in U.S. combat troops on recurring raids or a protracted occupation of Pakistani territory would provoke widespread outrage in Pakistan and perhaps in other countries as well since the UN Security Council mandate for the NATO-led International Security Assistance Force (ISAF) in Afghanistan only authorizes military operations in Pakistan. On the one known occasion when U.S. Special Forces actually conducted a ground assault in the tribal areas in 2008, the Pakistanis reacted furiously. On September 3, 2008, a U.S. Special Forces team attacked a suspected terrorist base in Pakistan’s South Waziristan region, killing over a dozen people. These actions evoked strong Pakistani protests. Army Chief of Staff Gen. Ashfaq Kayani, who before November 2007 had led Pakistan’s Inter-Services Intelligence (ISI), issued a written statement denying that “any agreement or understanding [existed] with the coalition forces” [in Afghanistan] allowing them to strike inside Pakistan.” The general pledged to defend Pakistan’s sovereignty and territorial integrity “at all cost.” Prime Minister Yousaf Raza Gilani and President Asif Ali Zardari also criticized the U.S. ground operation on Pakistani territory. On September 16, 2008, the Pakistani army announced it would shoot any U.S. forces attempting to cross the Afghan-Pakistan border. On several occasions since then, Pakistani troops and militia have fired at what they believed to be American helicopters flying from Afghanistan to deploy Special Forces on their territory, though there is no conclusive evidence that the U.S. military has ever attempted another large-scale commando raid in Pakistan after the September 2008 incident. Further large-scale U.S. military operations into Pakistan could easily rally popular support behind the Taliban and al-Qaeda. It might even precipitate the collapse of the Islambad government and its replacement by a regime in nuclear-armed Pakistan that is less friendly to Washington.Given these alternatives, continuing the drone strikes appears to be the best of the limited options available to deal with a core problem, giving sanctuary to terrorists striking US and coalition forces in Afghanistan and beyond.

## 4

#### Obama has sufficient momentum now to pass immigration reform --- it is the top priority

Taylor, 1/5 (David, 1/5/2014, thetimes.co.uk, “Fun in sun over as Obama gets serious about second term,” Factiva))

President Obama returns to work today bidding to defy White House history with a reforming second term that would save him from three years of lame duck status.

With Mr Obama’s personal approval ratings at their lowest point following the accident-prone launch of his healthcare reforms, his Administration nontheless enters 2014 marked by cautious optimism.

The President’s inner circle is buoyed by the end-of-year budget deal struck with senior Republicans, believing that it may herald sufficient cross-party momentum to push through comprehensive immigration reform, the top priority of hissecond term.

And the arrival of Bill Clinton’s former chief of staff, John Podesta, as a senior counsellor is intended to give some impetus to his agenda on tackling climate change. Mr Podesta, a veteran of dealing with a hostile Congress, will also be part of a new team working with lawmakers on Capitol Hill.

Jay Carney, White House spokesman, said yesterday: “We have some modest momentum after the budget deal. We come into 2014 with some optimism — guarded, cautious, but hopeful that we can make further progress and looking to see if we can work together in the interests of the American people."

The White House has indicated that plans to increase the minimum wage would be a central theme of the President’s State of the Union address later this month, where the focus will be on help for hard-working Americans to get the economy moving.

The President landed with his daughters in the Marine One helicopter yesterday morning on the south lawn of the White House, after a family break in Hawaii which, unlike recent years, was not cut short by terror plots or financial crises. He managed nine games of golf in 15 days, snorkelled in Hanauma Bay, and repeat visits to Morimoto Waikiki, the Hawaiian restaurant of television’s Iron Chef star Masaharu Morimoto.

Michelle Obama stayed behind in Hawaii with girlfriends for a few extra days — a gift from her husband as part of her 50th birthday celebrations later this month.

As well as planning for the State of the Union, Mr Obama will this month make a major speech in response to the wave of revelations about America’s online surveillance machinery.

Speaker Boehner is emerging as an unlikely ally on immigration reform. The Republican leader of the House is now in open warfare with the Tea Party after blaming the conservative Right for dragging the party into a damaging government shutdown in their failed strategy to defund Obamacare.

He has appointed Senator John McCain’s former chief of staff, Rebecca Tallent,as an adviser on the issue. She helped draw up amnesty bills for illegal immigrants in the mid-2000s and published a landmark report ten weeks ago showing how, over 20 years, immigration reform would help the US economy grow by 4.8 per cent, boost housing construction by $68 billion, and cut the US deficit by $1.2 trillion, while off-setting the cost of an ageing population.

Big business wants modern immigration laws to help them attract talent and the Senate has already passed a comprehensive immigration bill with Republican and Democrat support which would also introduce the toughest border controls in history, while giving 11 million undocumented immigrants a path to become US citizens.

**( ) Obama’s capital key to ensuring passage**

**Orlando Sentinel, 11/1** (11/1/2013, “What we think: It'll take both parties to clear immigration logjam,” <http://articles.orlandosentinel.com/2013-11-01/news/os-ed-immigration-reform-congress-20131031_1_immigration-reform-comprehensive-reform-house-republicans>, JMP)

For those who thought the end of the government shutdown would provide a break from the partisan bickering in Washington, think again. **The battle over comprehensive immigration reform could be every bit as contentious.** Polls show the **popular momentum is there for comprehensive reform**, which would include a path to citizenship for many of the nation's 11 million undocumented immigrants. **But it'll take plenty of political capital from** President **Obama and leaders in both parties on Capitol Hill to make it happen**. Immigration-reform activists, who have been pushing for reform for years, are understandably impatient. This week police arrested 15 who blocked traffic at a demonstration in Orlando. There are plenty of selling points for comprehensive immigration reform. An opportunity for millions of immigrants to get on the right side of the law. Stronger border security. The chance for law enforcement to focus limited resources on real threats to public safety, instead of nannies and fruit pickers. A more reliable work force to meet the needs of key industries. Reforms to let top talent from around the world stay here after studying in U.S. universities. The Senate passed its version of comprehensive immigration in June. It includes all of the benefits above. Its path to citizenship requires undocumented immigrants to pay fines, learn English, pass a criminal background check and wait more than a decade. So far, House Republicans have balked, taking a piecemeal rather than comprehensive approach. Many members fear being challenged from the right for supporting "amnesty." Yet polls show the public supports comprehensive reform. In June, a Gallup poll found 87 percent of Americans — including 86 percent of Republicans — support a pathway to citizenship like the one outlined in the Senate bill. Florida Republican Sen. Marco Rubio took flak from tea-party supporters for spearheading the comprehensive bill. Now, apparently aiming to mend fences, he says immigration should be handled piecemeal. He's politically savvy enough to know that's a dead end. But **comprehensive reform won't have a chance without** President **Obama making full use of his bully pulpit to promote it**, emphasizing in particular all that undocumented immigrants would need to do to earn citizenship. **House Democratic leaders will have to underscore the president's message.**

#### **Changes in drone policy cause fights between Congress and the White House.**

Plain Dealer 13

(The Plain Dealer staff and wire reports, “Battle brewing over Obama administration's use of deadly drones”, 2/6/13, http://www.cleveland.com/nation/index.ssf/2013/02/battle\_brewing\_over\_obama\_admi.html)

As some in Congress are looking to limit America's authority to kill suspected terrorists, the White House and Justice Department on Tuesday adamantly defended the administration's authority to use unmanned drones following the release of a controversial memo on the program.¶ Fox News reports that President Obama's advisers are also trying to tamp down concerns about the targeted killings ahead of the confirmation hearing Thursday for CIA director nominee John Brennan -- the counterterrorism adviser and drone-program supporter who has come under criticism from Democrats.¶ The furor is heating up after a white paper, leaked on Monday night and dating from 2011, justifies the killing of United States citizens who hold senior positions in al-Qaida and pose an "imminent threat of violent attack" against America. ¶ The white paper provides some detail of the legal framework under United States and international law for the drones policy, including that the United States is at war with al-Qaida. But it has come under criticism from human rights groups for making too broad a case for killing, rather than capturing, suspected American and foreign terrorists. ¶ The report was shown to senators several weeks ago, but failed to allay their concerns. It was made public by NBC News.¶ Pressed repeatedly about the complicated constitutional and legal questions raised by the targeted killing of Americans, White House Press Secretary Jay Carney said Tuesday that the president takes those issues "very seriously."¶ Senators angered by the lack of transparency over the legal basis for targeting Americans are planning to demand more details from Brennan, currently the White House counter-terrorism chief and a key architect of Obama's drones policy, the Guardian said.¶ The administration's refusal to provide details about one of the most controversial aspects of its drone campaign -- strikes on U.S. citizens abroad -- has emerged as a potential source of opposition to Brennan, the Washington Post reports.¶ The central aspect of the memo that critics find troubling is its vagueness, according to the Christian Science Monitor. The document outlines loose definitions of which citizens qualify as top terrorists, the circumstances under which they pose an "imminent" threat to the US, and when it's not feasible to simply capture them.¶ "The takeaway is that the Obama administration took a process that is supposed to constrain the president within the law's confines ... and then qualified those constraints so drastically that it would be more honest to acknowledge that neither imminence nor infeasible capture are really required," writes Conor Friedersdorf of the Atlantic, a longtime opponent of the secret drone program.¶ Legal experts expressed grave reservations about the memo concluding that the United States can order the killing of American citizens believed to be affiliated with al-Qaida -- with one saying the White House was acting as "judge, jury and executioner."¶ The experts said that the memo threatened constitutional rights and dangerously expanded the definition of national self-defense and of what constitutes an imminent attack.¶ "Anyone should be concerned when the president and his lawyers make up their own interpretation of the law or their own rules," said Mary Ellen O'Connell, a law professor at the University of Notre Dame and an authority on international law and the use of force.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.¶ "It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons, Democrat of Delaware., said in a recent interview.¶ Rep. Steny Hoyer of Maryland, the No. 2 Democrat in the House, said that "it deserves a serious look at how we make the decisions in government to take out, kill, eliminate, whatever word you want to use, not just American citizens but other citizens as well."¶ Hoyer added: "We ought to carefully review our policies as a country."¶ The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said, and Chairman Robert Menendez, Demcrat of New Jersey, and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations.

**( ) New era of cooperation will lead to deals on immigration --- controversial issues will spoil the détente**

**WSJ, 12/30** (“Obama Seeks Way to Right His Ship; Exiting 2013 in His Weakest Political Position, the President Faces a Basic Strategic Choice,” 12/30/2013, <http://online.wsj.com/news/articles/SB10001424052702304361604579290264084633016>))

By almost any measure, 2013 was, as Democratic pollster Peter Hart put it, "a terribly ragged year" for the president, who saw his approval ratings plunge and his agenda stall. **One glimmer of light emerged at year's end, when the two parties agreed on a deal to settle long-festering budget disputes through the new year.** That now leaves it unclear whether Washington is entering a new phase in which the president seeks more compromises with Republicans to move at least part of his agenda through Congress, or whether he instead strikes out on his own by using executive action as a way to advance his program while underscoring his philosophical differences with the GOP on issues such as a higher minimum wage and extended unemployment benefits. For most of 2013, Mr. Obama has been unable to move key proposals such as new controls on gun sales. Meantime, his indecision on whether to actively engage in Syria's civil war has hurt his image as a leader as that conflict festers and Syrian President Bashar al-Assad remains in power. Worst of all for the White House, of course, was the disastrous rollout of the Affordable Care Act, and the deep blow to the president's personal credibility from the public's realization that his declaration that Americans could keep their health-insurance plans when the new law kicks in wasn't turning out to be entirely true. Now, "the Affordable Care Act hovers over everything," says Mike McCurry, former White House press secretary under Bill Clinton. The toll can be seen in the arc of public opinion in Wall Street Journal/NBC news polling through 2013. Mr. Obama's job approval has fallen to 43% from 52% at the start of the year. The percentage of those polled who give him good marks for being honest and straightforward has dropped 10 points to 37%. Mr. Obama's main consolation is that Republicans continue to fare even worse in public estimation. Indeed, his political high point in 2013 came when congressional Republicans shot themselves in the foot by allowing the government to shut down in October in a dispute over funding the president's health law. **Republican leaders** were so singed by the experience that they **moved swiftly this month to strike the compromise budget plan** that will keep the government funded through next year. Then, House Speaker John Boehner (R., Ohio) forcefully quashed complaints by the party's tea-party wing that the new deal didn't cut spending sufficiently **The emergence of a large bloc of House Republicans who voted in favor of that compromise has created the possibility that** Mr. **Obama may be able to work out at least a few deals on other issues**. "The jury's still out on whether or not the budget agreement was a one-off or a sign of things to come," says Rep. Chris Van Hollen of Maryland, the top Democrat on the House Budget Committee. Mr. Van Hollen says an early test will come when the parties try to reach an understanding to raise the debt ceiling, due to be hit around the beginning of March. **If there is a new phase of cooperation**, he says, **that might open the door to deals on** more infrastructure spending, corporate tax reform and, crucially, an overhaul of **immigration** laws. Rep. Kevin **McCarthy, the third-ranking Republican in the House, says the budget deal "does allow us to get more done," but adds that compromises are more likely between House and Senate leaders than with the White House**. He predicts much of Mr. Obama's effort in the new year will be on keeping Democratic supporters from abandoning him as he tries to get his new health program working better. That brings Mr. Obama to his key strategic choice: Does he focus on trying to craft compromises with Republicans to show skeptical voters he is making Washington work? Or does he work around Congress, striking out on his own with executive actions, while attacking the GOP for failing to cooperate? The question of whether more deals with congressional Republicans are possible is "perhaps the question when it comes to predicting how 2014 will play out," says a senior White House official. **"Our approach will be to test as much as possible for principled compromise where Republicans are willing**, but also to push ahead with nonlegislative solutions where Congress stonewalls."

#### Reform key to the economy – immigrants are key to several critical sectors

West, ‘09 – Director of Governance Studies at the Brookings Institution (7/22/09, Darrell M., “The Path to a New Immigration Reform,” http://www.brookings.edu/opinions/2009/0721\_immigration\_reform\_west.aspx)

Skeptics need to understand how important a new immigration policy is to American competitiveness and long-term economic development. High-skill businesses require a sufficient number of scientists and engineers. Many industries such as construction, landscaping, health care and hospitality services are reliant on immigrant labor. Farmers need seasonal workers for agricultural productivity. Critics who worry about resource drains must understand that immigrants spend money on goods and services, pay taxes and perform jobs and start businesses vital to our economy. Beyond the economy, immigration reform prospects improve considerably across a fresh political landscape that features a popular Democratic president armed with substantial Democratic majorities in the House and Senate, many who appear receptive to comprehensive reform. Obama has called repeatedly for big ideas and bold policy actions. The country needs new policies that emphasize the importance of immigrant workers \_ across the skills spectrum \_ to our country's long-term financial future. Our universities invest millions in training foreign students but then send them home without any U.S. job opportunities that would take advantage of their new skills. And investing in the children of middle- and lower-skilled immigrants is wise as we recognize their majority role in our workforce as the next generation rises.

#### Extinction

Harris and Burrows, ‘09 [Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>]

Increased Potential for Global Conflict Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an unintended escalation and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to escalating crises. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

## Case

### Solvency

#### Drone courts fail – no expertise and won’t satisfy concerns about transparency

Groves 2013 – fellow at Heritage Foundation (April 10, Steven, “Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad” <http://www.heritage.org/research/reports/2013/04/drone-strikes-the-legality-of-us-targeting-terrorists-abroad>)

The proponents of a drone court apparently do not appreciate the potential unintended consequences of establishing such an authority. The idea is wrongheaded and raises more questions than it answers. For instance, could the drone court decide as a matter of law that a targeted strike is not justified because the United States is not engaged in an armed conflict with al-Qaeda? Could the drone court rule that members of a force associated with al-Qaeda (e.g., AQAP) may not be targeted because AQAP was not directly involved in the September 11 attacks and therefore the strike is not authorized under the AUMF? The proposed drone court cannot avoid these fundamental questions since the justification for the targeted strikes is dependent on the answers to these questions. Even if the proposed drone court attempts to eschew intervention into foundational questions such as the existence of an armed conflict, it still would not be in a position to rule on the “easy” questions involved in each and every drone strike. Does the target constitute an “imminent threat” to the United States? When civilian casualties may occur as a result of the strike, does the drone court have the authority to overrule the targeting decision as a violation of the principle of proportionality? Is the target an innocent civilian or a civilian “directly participating in hostilities”? Should U.S. forces attempt to capture the target before resorting to a drone strike? Is capture feasible? Any drone court, even if constituted with former military and intelligence officials, is ill suited to weigh all of the competing factors that go into a decision to target an al-Qaeda operative and make a timely decision, particularly when there is often only a short window of time to order a strike. Regardless, creating a judicial or quasi-judicial review process will not ameliorate, much less resolve, objections to U.S. targeted killing practices. Critics will continue to demand more judicial process, including appeals from the proposed drone court, and additional transparency no matter what kind of forum is established to oversee targeting decisions.

#### **Federal courts fail – no jurisdiction, kills SOP, and no due process.**

Robertson 13, ex-judge for District Court of D.C.

(James Robertson, “Judges shouldn’t decide about drone strikes”, Washington Post, 2/15/13, http://articles.washingtonpost.com/2013-02-15/opinions/37117878\_1\_drone-strikes-justice-department-white-paper-federal-courts)

In the wake of the recent confirmation hearing on John Brennan’s nomination as CIA director, and the probably related “leak” of a Justice Department white paper on targeted killings, some politicians, pundits and professors have suggested that “kill lists,” drone strikes and targeting protocols be submitted for “independent judicial review” — essentially, that federal judges ought to be assigned the task of monitoring, mediating and approving the killer instincts of our government. This is a very bad idea.¶ U.S. judges have been hard-wired against rendering “advisory opinions” since 1793, when the first chief justice, John Jay, declined to answer George Washington’s legal questions about the status of a British ship that had been captured by the French and brought to an American port. To answer the president’s questions, Jay wrote, would violate “the lines of separation drawn by the Constitution between the three departments of the government.” Jay’s letter referred to Article II, Section 2 of the Constitution, which provides that the president “may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices” — a provision, Jay wrote, that “seems to have been purposely as well as expressly united to the executive departments.”¶ From that letter — itself an advisory opinion — has grown a complex but well-established and understood set of constraints on the federal courts: They are to decide only “cases” or “controversies” that are “justiciable” and “ripe” for decision. Federal courts rule on specific disputes between adversary parties. They do not make or approve policy; that job is reserved to Congress and the executive.¶ Nor do federal courts act ex parte — hearing one side only — or sit in a Star Chamber, like the co-opted judges of 16th-century England. The targets of a drone strike make no appearance before a judge; they have no notice of the charges against them; no lawyer; no chance to call witnesses or confront the evidence against them; no due process rights. Their case is necessarily considered in absentia and in secret. An American judge cannot do American justice in such a case. If he did, his independence would be severely compromised.¶ But — say the politicians, pundits and professors — courts routinely rule on government requests for search warrants and, in the national security context, on requests for foreign intelligence surveillance. Why not requests for drone strikes? The answer is simple: A search warrant is not a death warrant.

#### **Courts fail – can’t micromanage tactical decisions.**

Rittgers 10, Legal Policy Analyst @ CATO

(David Rittgers, reserve judge advocate, served in Afghanistan as a special forces officer, Cato Institute, “Both Left and Right Are Wrong about Drones”, 2/25/10, http://www.cato.org/publications/commentary/both-left-right-are-wrong-about-drones)

Liberal critics should refrain from erroneously labeling drone strikes as "nonjudicial killings." Even the most controversial drone strikes—those that kill American citizens who have joined al Qaeda affiliates overseas—are permissible under the laws of war. Neither Congress nor the courts should micromanage tactical decisions such as whether the president can order soldiers to seize a particular hill or employ a certain weapon. Referring to drone strikes as "nonjudicial" implies that the courts should be given the ability to rule out specific drone attacks. Vetting these targets for accuracy of intelligence and minimization of collateral damage is essential, and the record continues to improve on that front.

### Adv 1

#### US norms mean nothing

**Anderson 11** [Kenneth, 10/9/2011, “What Kind of Drones Arms Race Is Coming?” http://opiniojuris.org/2011/10/09/what-kind-of-drones-arms-race-is-coming/]

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it — and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be. Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project), will eventually have an important place in ordinary ground transport. UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable — and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this — the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so. But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it. Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do — but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

#### The link and impact can’t both be true – if China and Russia model the US they will use drones in an extremely limited fashion

Anderson 2013 - senior fellow in Governance Studies at Brookings and a professor of law at American University (May 24, Kenneth, “The Case for Drones” <http://www.realclearpolitics.com/articles/2013/05/24/the_case_for_drones_118548.html>)

This critique often leads, however, to the further objection that the American use of drones is essentially laying the groundwork for others to do the same. Steve Coll wrote in the New Yorker: “America’s drone campaign is also creating an ominous global precedent. Ten years or less from now, China will likely be able to field armed drones. How might its Politburo apply Obama’s doctrines to Tibetan activists holding meetings in Nepal?” The United States, it is claimed, is arrogantly exerting its momentary technological advantage to do what it likes. It will be sorry when other states follow suit. But the United States does not use drones in this fashion and has claimed no special status for drones. The U.S. government uses drone warfare in a far more limited way, legally and morally, and entirely within the bounds of international law. The problem with China (or Russia) using drones is that they might not use them in the same way as the United States. The drone itself is a tool. How it is used and against whom—these are moral questions. If China behaves malignantly, drones will not be responsible. Its leaders will be.

#### Global drone norms are impossible

McGinnis, senior professor – Northwestern Law, ‘10

(John O. 104 Nw. U. L. Rev. Colloquy 366)

It is hard to overstate the extent to which advances in robotics, which are driven by AI, are transforming the United States military. During the Afghanistan and Iraq wars, more and more Unmanned Aerial Vehicles (UAVs) of different kinds were used. For example, in 2001, there were ten unmanned "Predators" in use, and at the end of 2007, there were 180. n42 Unmanned aircraft, which depend on substantial computational capacity, are an increasingly important part of our military and may prove to be the [\*374] majority of aircraft by 2020. n43 Even below the skies, robots perform im-portant tasks such as mine removal. n44 Already in development are robots that would wield lasers as a kind of special infantryman focused on killing snipers. n45 Others will act as paramedics. n46 It is not an exaggeration to predict that war twenty or twenty-five years from now may be fought predominantly by robots. The AI-driven battlefield gives rise to a different set of fears than those raised by the potential autonomy of AI. Here, the concern is that human malevolence will lead to these ever more capable machines wreaking ever more havoc and destruction. III. THE FUTILITY OF THE RELINQUISHMENT OF AI AND THE PROHIBITION OF BATTLEFIELD RO-BOTS Joy argues for "relinquishment"--i.e., the abandonment of technologies that can lead to strong AI. Those who are concerned about the use of AI technology on the battlefield would focus more specifically on weapons powered by AI. But whether the objective is relinquishment or the constraint of new weaponry, any such program must be translated into a specific set of legal prohibitions. These prohibitions, at least under current technology and current geopolitics, are certain to be ineffective. Thus, nations are unlikely to unilaterally relinquish the technology behind accelerating compu-tational power or the research to further accelerate that technology. Indeed, were the United States to relinquish such technology, the whole world would be the loser. The United States is both a flourishing commercial republic that benefits from global peace and prosperity, and the world's hegemon, capable of supplying the public goods of global peace and security. Because it gains a greater share of the prosperity that is afforded by peace than do other nations, it has incentives to shoulder the burdens to maintain a global peace that benefits not only the United States but the rest of the world. n47 By relinquishing the power of AI, the United States would in fact be giving greater incentives to rogue nations to develop it. Thus, the only realistic alternative to unilateral relinquishment would be a global agreement for relinquishment or regulation of AI-driven weaponry. But such an agreement would face the same insuperable obstacles nuclear disarma-ment has faced. As recent events with Iran and North Korea demonstrate, n48 it seems difficult if not impossible to per-suade rogue nations [\*375] to relinquish nuclear arms. Not only are these weapons a source of geopolitical strength and prestige for such nations, but verifying any prohibition on the preparation and production of these weapons is a task beyond the capability of international institutions. The verification problems are far greater with respect to the technologies relating to artificial intelligence. Relative-ly few technologies are involved in building a nuclear bomb, but arriving at strong artificial intelligence has many routes and still more that are likely to be discovered. Moreover, building a nuclear bomb requires substantial infrastruc-ture. n49 Artificial intelligence research can be done in a garage. Constructing a nuclear bomb requires very substantial resources beyond that of most groups other than nation-states. n50 Researching artificial intelligence is done by institu-tions no richer than colleges and perhaps would require even less substantial resources.

#### China won’t use drones to resolve territorial disputes – fears backlash and creating a precedent

**Erickson and Strange 13** [Andrew Erickson, associate professor at the Naval War College and Associate in Research at Harvard University's Fairbank Centre, and Austin Strange, researcher at the Naval War College's China Maritime Studies Institute and graduate student at Zhejiang University, 5-29-13 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]

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.

#### Wont go nuclear

**Moore 6** (Scott; Research Assistant – East Asia Nonproliferation Program – James Martin Center for Nonproliferation Studies – Monterey Institute of International Studies, “Nuclear Conflict in the 21st Century: Reviewing the Chinese Nuclear Threat,” 10/18, http://www.nti.org/e\_research/e3\_80.html)

Despite the tumult, there is broad consensus among experts that the concerns generated in this discussion are exaggerated. The size of the Chinese nuclear arsenal is small, estimated at around 200 warheads;[3] Jeffrey Lewis, a prominent arms control expert, claims that 80 is a realistic number of deployed warheads.[4] In contrast, the United States has upwards of 10,000 warheads, some 5,700 of which are operationally deployed.[5]

Even with projected improvements and the introduction of a new long-range Intercontinental Ballistic Missile, the DF-31A China's nuclear posture is likely to remain one of "minimum deterrence."[6] Similarly, despite concern to the contrary, there is every indication that China is extremely unlikely to abandon its No First Use (NFU) pledge.[7] The Chinese government has continued to deny any change to the NFU policy, a claim substantiated by many Chinese academic observers.[8] In sum, then, fears over China's current nuclear posture seem somewhat exaggerated.

This document, therefore, does not attempt to discuss whether China's nuclear posture poses a probable, general threat to the United States; most signs indicate that even in the longer term, it does not. Rather, it seeks to analyze the most likely scenarios for nuclear conflict. Two such possible scenarios are identified in particular: a declaration of independence by Taiwan that is supported by the United States, and the acquisition by Japan of a nuclear weapons capability.

Use of nuclear weapons by China would require a dramatic policy reversal within the policymaking apparatus, and it is with an analysis of this potential that this brief begins. Such a reversal would also likely require crises as catalysts, and it is to such scenarios, involving Taiwan and Japan, that this brief progresses. It closes with a

discussion of the future of Sino-American nuclear relations.

#### **China’s rise will be peaceful --- integration makes hegemonic competition impossible --- Chinese policymakers don’t support expansion**

**Wanandi 4/1, Vice Chairman of Trustees at CSIS**, Insight: China’s peaceful rise, community of nations: Zheng Bijan’s strategy, <http://www.thejakartapost.com/news/2013/04/01/insight-china-s-peaceful-rise-community-nations-zheng-bijian-s-strategy.html>

The peaceful rise of a China based on shared interests with other powers, big and small, was an idea proposed by Zheng Bijian some years ago that has been adopted as strategy by the Chinese leadership in preparing future policies. Zheng, one of China’s great strategists, understood that China could not follow the trajectory that Western countries had followed in the last century. He said that what China had to avoid was embarking on an old strategy that was no longer valid for the future, such as happened in Europe at the end of the 19th century, which resulted in the outbreak of World War I. China had to remain free of power politics, the Cold War and hegemonic competition. As we are experiencing today, elements of competition exist, but so do elements of cooperation and coordination in big-power relations, making the idea of hegemonic competition almost impossible. Economic interdependence and, to a certain extent, global and regional integration have prevented that from happening. In addition, developing nations have developed and modernized, becoming an important part of the world and making hegemonic economic dominance impossible for the last half decade. For China, which might become the world’s biggest economy by GDP in the next 10 years or so, its biggest challenges will be how to behave and how its role should be formulated as a big economic power. In this effort, China must also take huge domestic problems into consideration, as well as its dependence on natural resources, energy and advanced technology. China has no ambitions to become a global superpower, because it recognizes its limitations and willingness to run other parts of the world. This has never been an ambition of China throughout history. China has always been big. Its ambition is mainly to be recognized by others, and not to run over or to subdue others. Admittedly, Southeast Asia or ASEAN’s member nations have their differences in their respective policies toward China. However, in general, the region accepts that China is an important and strategic partner and that economically China is and will become more important. Historically, China has always been accepted and recognized as an important country in the region, and the region has to pay attention to the nation. If hegemony is almost impossible, then China’s peaceful rise has to be taken as the best strategy for China and for the region. A peaceful rise in connection with regional institutions might be just the right strategy for China and the East Asian region, because they share common interests, although strengthening bilateral relations is also of paramount importance.

#### Hostile states won’t follow norms and there’s no enforcement mechanism – they just constrain US flexibility

Lerner 2013 - Vice President for Government Relations at the Center for Security Policy (March 25, Ben, “Judging ‘Drones’ From Afar” <http://spectator.org/archives/2013/03/25/judging-drones-from-afar/1>)

Whatever the potential motivations for trying to codify international rules for using UAVs, such a move would be ill advised. While in theory, every nation that signs onto a treaty governing UAVs will be bound by its requirements, it is unlikely to play out this way in practice. It strains credulity to assume that China, Russia, Iran, and other non-democratic actors will not selectively apply (at best) such rules to themselves while using them as a cudgel with which to bash their rivals and score political points. The United States and its democratic allies, meanwhile, are more likely to adhere to the commitments for which they signed up. The net result: we are boxed in as far as our own self-defense, while other nations with less regard for the rule of law go use their UAVs to take out whomever, whenever, contorting said “rules” as they see fit. One need only look at China’s manipulation of the Law of the Sea Treaty to justify its vast territorial claims at the expense of its neighbors to see how this often plays out. And who would enforce the treaty’s rules — a third party tribunal? Would it be an apparatus of the United Nations, the same U.N. that assures us that it is not coming after the United States or its allies specifically, even as its investigation takes on as its “immediate focus” UAV operations recently conducted by those countries? The United States already conducts warfare under the norms of centuries of practice of customary international law in areas such as military necessity and proportionality, as well as the norms to which we committed ourselves when we became party to the 1949 Geneva Conventions and the United Nations Charter. These same rules can adequately cover the use of UAVs in the international context. But if the United States were to create or agree to a separate international regime for UAVs, we would subject ourselves to new, politicized “rules” that would needlessly hold back countries that already use UAVs responsibly, while empowering those that do not. America is in the midst of an important conversation about UAVs. President Obama should state unambiguously that we will not invite others to dictate its outcome.

### Adv 2

#### Snowden thumps legitimacy

John Parisella, former Quebec delegate general in New York and Professor at the University of Montreal’s International Relations Center, 6-27-2013, “The Effect of Edward Snowden – A Canadian Perspective” http://www.americasquarterly.org/content/effect-edward-snowden-canadian-perspective

To some, former CIA and National Security Administration (NSA) employee Edward Snowden is seen as a classic whistleblower, who divulged government secrets that contradict the U.S. Constitution and its 4th amendment. Many who espouse his view—on both the left and right—have applauded his courage and regard him as a hero. To others—especially within the U.S. political class—he is now considered a charged felon, who has willingly pursued a plan to embarrass his government, and in so doing, has breached matters of national security and made the United States less safe. His weekend flight from Hong Kong to Russia may lead some to go as far as to label him a “traitor”. Which is it—hero, felon or traitor? It is too early to answer this. But the longer the situation drags on, the more damage it will inflict on the reputation of the United States on the world stage. The 4th amendment of the U.S. Constitution sets guidelines to protect individual privacy. Even in matters of national security, we are told that due process must be followed. NSA programs, including the ones covering telephone records as well as internet activity that Snowden denounced, must be subjected to safeguards that protect the right to privacy. President Barack Obama has since justified these NSA programs as the necessary balance between privacy and security in this post-9-11 world. While his administration has been careful in its choice of vocabulary, it has decided to charge Snowden with contravening the Espionage Act. The spectacle of the strongest power on earth chasing Snowden around the globe is not reassuring to those who believe in the value of U.S. diplomacy, U.S. intelligence capacity or U.S. military might. The ease with which Snowden accessed sensitive material and subjected his government to this embarrassing game of “cat and mouse” is also not comforting to those who count on U.S. intelligence forces to keep them safe. Clearly, at the outset, the initial effect of Snowden’s action was to spark a legitimate debate about privacy, security and the importance of the 4th amendment. Libertarian politicians like Rand Paul did not condemn Snowden outright. Snowden also has significant support in progressive circles. Others, like influential Democratic Senator Diane Feinstein and Republican Congressman Mike Rogers—normally on opposite sides, argued that maintaining national security and keeping America safe requires measures that could affect some privacy issues. Together, however, they have vehemently condemned Snowden’s actions .The flight to Russia may have deviated what was becoming a necessary debate in a democracy from matters of substance to theatrics. Snowden detractors refer to another famous whistleblower incident: that of Daniel Ellsberg and the release of the Pentagon papers, which gradually led to the questioning of the Vietnam War. Unlike Snowden, they argue, Ellsberg stayed in the U.S. and faced the justice system. In contrast, Snowden’s behavior, which has been backed by some advocacy journalists such as Glen Greenwald of The Guardian and Wikileaks, seems set on evading the U.S. justice system. The polemics around Snowden’s whereabouts seem to confuse the nature of the conversation America should be having at this time in its history. In the meantime, The United States’ image is not improving around the world. Its government seems hesitant and vulnerable. The ‘soft power’ strengths of the U.S. are being questioned. Countries such as China and Russia, with poor human rights records, are openly defying the wishes of the world’s oldest and strongest democracy, and its rule of law. At the end of the day, the privacy versus security debate is rapidly becoming a secondary issue, and this entire episode is turning into a zero-sum game for the United States where no individual or principle wins the day. And this may well be the unintended consequence of Edward Snowden’s actions.

#### No impact to heg

Christopher J. Fettweis, Department of Political Science, Tulane University, 9-26-2011, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

#### No spillover to legitimacy – compartmentalized – best social science

Stephen Brooks and William Wohlforth 8, profs of IR @ Dartmouth (World Out of Balance, p. 158-170)

According to the logic of institutionalist theory, the United States thus now faces very significant constraints on its security policy due to the institutional order: the United States must be strongly cooperative across the board to maintain cooperation in those aspects of the order that it favors. As it turns out, the institutionalist argument for why the United States needs to pursue a highly cooperative approach regarding all parts of the institutional order is premised on a particular view of how reputations work. Institutionalist theory rests on the notion that "states carry a general reputation for cooperativeness that determines their attractiveness as a treaty partner both now and in the future. A defection in connection with any agreement will impose reputation costs that affect all current and future agreements."36 Despite the fact that this conception of a general reputation does a huge amount of work within institutionalist theory, the theory's proponents have so far not provided a theoretical justification for this perspective .17 Rather, they have simply assumed this is how reputation works. In the most detailed theoretical analysis of the role that reputation plays within international institutions to date, Downs and Jones argue that there is no theoretical basis for viewing states as having a "a single reputation for cooperation that characterizes its expected reliability in connection with every agreement to which it is a party."" Downs and Jones maintain that it is more compelling to view states as having multiple, or segmented, reputations: "states develop a number of reputations, often quite different, in connection with different regimes and even with different treaties within the same regime."" In other words, there is reason to think that a state's reputation within the security realm cannot be different from the reputation that it has within the economic realm, or, indeed, that a state cannot have varying reputations within different parts of the security realm. As an illustrative example, Downs and Jones note: The United States has one simple reputation for making good on its financial commitments with workers in the UN Office of the Secretary General and another quite different simple reputation with officials of European states in connection with its financial commitments to NATO. Neither group is much concerned with characterizing the reliability of the United Stales in meeting its financial commitments in general. Those inside the Office of the Secretary General are aware of the fact that the United States has paid its NATO bills, and NATO workers know that the United States is behind on its UN dues. However, they design their policies in response to the behavior of the United States in the subset of contexts that is relevant to them.43

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[Winter, 2012, Jennifer L. Milko, “Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173]

In light of the compelling arguments on both sides, several important issues have ambiguous answer, and the Supreme Court has, thus far, not chosen to shine light on the situation. Following the 2010 October Term and the Supreme Court's denial of all Guantanamo detainee petitions, the High Court has sent a message that it does not want to review the D.C. Circuit's interpretation of the procedural and substantive issues which that Circuit has implemented. The Supreme Court has not ruled on any cases relating to Guantanamo detainees since its 2008 decision in Boumediene v. Bush. While the Court settled the issue of whether detainees had the privilege of habeas corpus in that case, the Court left the intricacies of the writ and its scope for the lower courts to define. Though leaving this authority in the hands of the lower courts may have been a been appropriate at the time Boumediene was decided, the number of habeas petitions and the subsequent petitions for certiorari to the Supreme Court indicate that there are important issues that must be clarified, and the Supreme Court [\*194] should grant certiorari to be the final voice on these issues for several reasons. First, the stakes in these habeas petitions are high. The detainees at Guantanamo have already been assured the right to petition the courts for habeas corpus to challenge their detention as unlawful. The scope of the courts' authority to provide a remedy is a critical for those individuals on a personal level as well as for the nation as whole. This country was created with a tripartite system and checks and balances for a reason: the Founding Fathers implemented a governmental structure that would serve to limit the three individual branches in order to protect individual liberty. n142 The writ of habeas corpus has an extensive history and is considered to play an integral role in the protection of individual liberty. n143 Habeas corpus is the Judiciary's tool to check the power of the Executive, and has traditionally allowed courts to provide a remedy to reign in the unbridled power of the Executive. The Court in Boumediene asserted that habeas gave the prisoner a meaningful opportunity to challenge his confinement as unlawful, and "the habeas court must have the power to order conditional release of an individual unlawfully detained - though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." n144 While the importance of the writ for the preservation of the individual liberty and as a check on Executive power is one aspect of the tripartite system, the Executive's interest in maintaining a unified voice in the realm of foreign policy is another key concern. By allowing the courts to order release of a detainee or to order advance notice of transfer so that the petitioner may present evidence that he would be harmed in a recipient country, the Judiciary would be forced to make determinations about foreign affairs that its judges may not be competent to make. In a time of chaos and intricate foreign relations, the sensitivity and difficulty of forging meaningful diplomatic relations with other nations at this time in history is a key concern of the Executive, and properly within that Branch's authority under the Constitution. Permitting the Judiciary to make determinations from the bench about the appropriateness of human rights or other similar determinations in a judicial proceeding could very well damage the diplo [\*195] matic relations that the Executive is attempting to form with recipient nations. This separation of powers dilemma facing the High Court has no easy solution, but the critical role that the proper allocation of authority plays in the separation of powers system and the lack of substantive guidance on Guantanamo issues since Boumediene in 2008 demands attention from the Supreme Court. Additionally, because the Guantanamo cases have been litigated in the D.C. Circuit, no other appellate courts have had the opportunity to review these issues. n145 Without the opportunity for an opposing view in another judicial circuit and with no final determination by the Supreme Court, the D.C. Circuit Court of Appeals has been free to shape the law of Guantanamo habeas cases as it wishes. Adding to the concern of the lack of a "check" on the D.C. Circuit Court of Appeals is the fact that the trend within the Circuit itself has been inconsistent as the district courts have assumed a greater role for the judiciary, only to be chastised on appeal for failure to defer to the political branches in these cases. With the D.C. Circuit serving as the sole authority on the scope of the courts' habeas power in Guantanamo cases, petitioners' claims that this court has been improperly applying Supreme Court precedent is another concern that the High Court should address. In both release and transfer cases, the petitioners have argued that while Boumediene assures the privilege of habeas corpus, the Kiyemba cases have foreclosed the courts from fashioning a remedy in contradiction to Boumediene. n146 Instead, the D. C. Circuit Court of Appeals has refused to interfere, based on the Munaf proposition that the determinations of the Executive should not be second-guessed, and has accepted the assurances of the Executive Branch that they are working secure release or that they will not send detainees to countries where it is more likely than not that they will face torture. Raising suspicions that the use of Munaf in the Guantanamo habeas cases was perhaps improper, three Supreme Court Justices questioned the role of that decision and the questions it raised. Petitioners have alleged that the circumstances of that case are markedly different than the facts in the Guantanamo cases, and that Munaf should not be read to bar detainees in habeas petitions [\*196] the opportunity to challenge their transfer or the court to enjoin such a transfer. The nature of these Guantanamo issues presents a complex situation that makes the separation of powers issue more difficult. If the courts do traditionally have the power to require notice or order release under its habeas authority, the manner in which that remedy would require inquiry into the Executive Branch's policy decisions may cross the line into a political question. Because of the nature of diplomacy and foreign affairs in contemporary society, the thought may be that it is easier to reduce the rights of the individual in order to provide for the national security of the country as a whole. IV. Conclusion There are valid arguments on both sides in this issue and the nature of the cases and the times in which we live complicate the situation. The Supreme Court is in a difficult situation-if the Court grants certiorari to review the D.C. Circuit Court of Appeals' jurisprudence of the Guantanamo cases, it must settle an issue of vast importance. Separation of powers and the roles of the Executive and Judiciary in the context of Guantanamo litigation impact the individual liberty of the petitioners and the sensitive nature of foreign affairs and the war on terrorism. Because of significance of these issues, the D.C. Circuit should not be the sole voice addressing them. It should be the responsibility of the nation's Highest Court to settle the debate and determine the appropriate balance of power. Without this supreme guidance, the petitioners will continue to present the same issues and questions to the courts, and these cases will continue to be litigated according to the trend that has dominated the D.C. Circuit over the past several years. With a new Supreme Court Term beginning and new Guantanamo cases bearing old issues appearing before the Court again, the Supreme Court should grant certiorari to review the delicate balance between the power of the courts and the authority of the political branches. The Court left the scope of habeas power undefined after Boumediene and has refused to substantively address the issues created in its aftermath. Since that decision, the D.C. Circuit has given great deference to the Executive Branch. Without any supreme guidance, the D.C. Circuit has been free to fashion the law as it sees fit with no further checks and balances on that interpretation as this Circuit is the sole decision-maker re [\*197] garding these habeas petitions. If the current system stays in place, appeals and petitions regarding the same issues for Guantanamo detainees will continue to cycle through the D.C. Circuit. With so many petitions to the High Court on the same subject, it seems only logical that the Supreme Court should finish what it started nearly six years ago and decide whether the courts have a role to play in the release and transfer of detainees. More Guantanamo petitions for certiorari have been filed in the 2011 Term, and one has raised a familiar issue yet again: whether the Guantanamo detainees have the right to challenge transfer to a recipient nation on fear of torture. n147 The Founding Fathers envisioned a system of checks and balances in order to protect the People from oppression and to prevent any one person or entity from hoarding too much power. The struggle for power between the branches of our government is something that will never fade away entirely, and there are times when it is proper for one branch to defer to the judgment of another, but when an issue arises that has raised so many questions and has been the foundation for numerous appeals and petitions to the Supreme Court for clarification, the People deserve at least some guidance on such an unsettled area of the law. As of now, the D.C. Circuit has been trustworthy of the Executive Branch, and, while in the end, such deference in this area may be appropriate, the very nature of habeas corpus is a strong tool in the hands of the judiciary which should be considered by the Supreme Court. The Court should analyze whether allowing deference strips the Judiciary of the important check of habeas corpus because granting the right of habeas corpus to prisoners without giving the courts the subsequent power to remedy the problem has the potential of making this important right just a phrase with no underlying force.

CP solves and is a prerequisite

Metcalf 09, Director of Arthur Liman Public Interest Program and Law Professor

[December 2009, Hope Metcalf is Director of the Arthur Liman Public Interest Program and teaches a clinic on prisoners’ rights in the United States. She formerly directed the National Litigation Project of the Allard K. Lowenstein International Human Rights Clinic, which was founded in 2002 to respond to infringements on civil liberties and human rights arising out of U.S. counterterrorism policy, “BRIEF OF INTERNATIONAL LAW EXPERTS AS AMICI CURIAE IN SUPPORT OF PETITIONERS”, http://www.law.yale.edu/documents/pdf/cglc/Kiyamba\_v\_Obama\_brief.pdf]

http://www.law.yale.edu/documents/pdf/cglc/Kiyamba\_v\_Obama\_brief.pdf]

Since the mid-1970s, the United States has compiled annual reports on the human rights practices of other countries. By law, the reports reflect the Secretary of State’s assessment of the “status of internationally recognized human rights” in the states under review.23 These reports have consistently criticized foreign countries for failing to provide effective judicial review of detention. They have further made clear that the United States considers courts’ capacity to order release essential to effective judicial review. They therefore provide powerful evidence of the importance of the shared international norm requiring release upon a finding that a detention is unlawful. If the United States now fails to live up to this shared norm, it will not only breed resentment but will also undermine its ability to encourage other countries to follow basic principles of international law in the future. In evaluating other countries’ human rights practices, the United States has considered whether habeas corpus review is not simply available but is effective. The United States has criticized the Philippines for providing formal habeas corpus review but not making that process “effectively available to persons detained by the regime. . . .” See 1 Dep’t of State, Country Reports on Human Rights Practices 261 (1978). It has similarly criticized Cuba for “theoretically provid[ing] a safeguard against unlawful detention” but failing to provide any effective remedy. See 13 Dep’t of State, Country Reports on Human Rights Practices for 1988, at 520 (1989). The United States has criticized many other countries for providing ineffective habeas review, including Paraguay, 9 Dep’t of State, Country Reports on Human Rights Practices for 1984, at 637 (1985) (“the right of habeas corpus . . . can be ignored by government officials.”), Ethiopia, id. at 110 (“A writ of habeas corpus on [Ethiopia]’s statutes has not been successfully invoked in any known case.”), Ghana 8 Dep’t of State, Country Reports on Human Rights Practices for 1984, at 150 (1984) (“There has been no instance of the successful exercise of the right of habeas corpus.”), Afghanistan, 10 Dep’t of State, Country Report on Human Rights Practices for 1985, at 1166 (1986) (“nor is the right of habeas corpus respected”), and Bolivia, 4 Dep’t of State, Country Reports on Human Rights Practices for 1980, at 351 (1981) (“The Garcia Meza regime routinely violates constitutional provisions for habeas corpus.”). And the United States regularly criticizes countries for failing to provide effective judicial review for all detainees. See, e.g., 27 Dep’t of State, Country Reports on Human Rights Practices for 2002, at 345-46 (2003) (noting Liberia had incarcerated “an unknown number of persons . . . during [a] state of emergency as ‘illegal combatants,’ . . . and denied habeas corpus”); 13-A Dep’t of State, Country Reports on Human Rights Practices for 1988, at 844 (1989) (“[H]abeas corpus . . . does not apply to those [in South Korea] charged with violating the National Security Law.”). The United States’ criticisms of other countries further makes clear that it regards the power of the courts to order release as essential to effective judicial review. The United States criticized Ghana for responding to writs of habeas corpus by imposing “ex post facto preventive custody orders barring their release.” 10 Dep’t of State, supra, at 129. The United States similarly criticized Nepal for failing to release a prisoner after the Supreme Court issued a writ of habeas corpus. 27-B Dep’t of State, Country Reports on Human Rights Practices for 2002, at 2284 (2003). In discussing Zambia’s detention policies, the United States noted that “[h]abeas corpus is, in principle, available to persons detained under presidential order, but the Government is not obliged to accept the recommendation of the review tribunal.” 10 Dep’t of State, supra, at 383 (1986). The United States criticized Gambia when its “[p]olice ignored a December 31 court-ordered writ of habeas corpus to release [Gambian National Assembly Majority Leader Baba] Jobe and his co-detainees.” 28 Dep’t of State, Country Reports on Human Rights Practices for 2003, at 241 (2004). The United States has held other countries to account for their failure to live up to “internationally recognized human rights” including effective judicial review of detention. In reviewing the practices of other states, the United States has not regarded as sufficient a formal process allowing detainees to challenge their detention in court. The courts reviewing detention must also have the capacity to order release. The United States should now live up to its own high standards – standards it successfully fought to codify in international law and that it has long sought to encourage the rest of the world to follow.

## DA

#### Replacing drones with ground presence causes troop casualties and public backlash

Weidmann, 13 --- Analyst with a MSc in American Politics (6/6/2013, Maria, “US Drone Strikes: Drones vs Boots on the Ground,” <http://transatlantic-mariaweidmann.blogspot.com/2013/06/us-drone-strikes-drones-vs-boots-on.html)>)

Assumed drones will be replaced by troops instructed to carry out the same objective –capture or terminate the targeted individual – will this be better for the people living in the area and for American troops? The situation so far: No boots on the ground. No American soldiers killed in action in foreign lands. For Americans, this sounds very acceptable. Polls point at this, too. According to a Monitor/TIPP poll, conducted May 28-31, 57 % of Americans approve of the current amount of drone strikes. Now imagine – the targeted area, probably villages complete with families, farmland and livestock. Troops on the ground, zeroing in on the targeted individual. And only he will be killed? Dream on. Military action, despite all the coverage about ‘surgical strikes’, was and is messy. This is one of the ideas behind warfare – if it is messy enough, the enemy, rendered helpless and hopeless, will eventually give up and no future enemy will have the guts to emerge any time soon. In all likelihood, replacing drones with troops would result in American casualties triggered by increasing violence between US troops and terrorist suspects with civilians caught up in the middle.From this perspective, drones are the better solution compared to troops on the ground, for both people in the targeted areas and US troops. What remains problematic is if the targeted individual is an “imminent danger to the American people”. We don’t know. It’s classified.

#### More troop casualties and getting sucked into Pakistan conflict will collapse public support for U.S. foreign policy

Stokes, 9 --- international economics columnist for the National Journal (12/10/2009, Bruce, “US Opinion Turns Against the Globalism of its President; Obama must convince Americans of the importance of engagement with an interconnected world,” <http://yaleglobal.yale.edu/content/us-opinion-turns-against-globalism-their-president)>)

This dissonance between American attitudes and US government policy raises questions about the sustainability of the Obama administration’s international initiatives and threatens to undermine the reservoir of good will for the United States that was generated by Obama’s election just one year ago. Candidate Obama rejected Bush era unilateralism and promised a new American engagement with the world. As president, he reached out to the Europeans, seeking to work with them on Afghanistan and Iran. He chose a non-confrontational approach with China, North Korea and Russia. He pleased Southeast Asian nations by changing course on Burma, long shunned by Washington. And he embraced the creation of the G22 as the new global economic steering committee, replacing the G8 that long only represented only the interests of the world’s richest nations. But opinion polls show the American people are moving in another direction. Reeling from the worst economic downturn since the Great Depression and convinced that the world is an increasingly dangerous place, Americans despair about their country’s future leadership role in the world. They have turned inward and once again become defiantly self-assertive. Americans are now more isolationist and more unilateralist than at any time in recent history. For the first time in more than four decades of polling, a plurality of Americans now says that the US should “mind its own business internationally” and let other countries get along the best they can on their own, according to the recent America’s Place in the World survey conducted by the Pew Research Center for the People & the Press. This isolationist sentiment surpasses that at the end of the Vietnam War. Complicating matters further for a Democratic administration, a majority of the president’s own party now holds isolationist attitudes. In addition, more than four-in-five of those surveyed think the US should go its own way on the international stage, not worrying too much about whether other countries agree or not. That is by far the greatest degree of unilateralist sentiment since the question was first asked in 1964. This unprecedented isolationism and support for unilateralism runs at cross purposes to Obama’s avowed goal of international engagement. The president talks the talk of internationalism, but he has yet to convince the American public to walk that walk. In fact, some would argue that he sought to please the labor unions by imposing tariffs on some Chinese imports while pledging to uphold free trade. Nowhere is this friction between US foreign policy objectives and American attitudes more evident than with regard to Afghanistan. Only one-in-three Americans backed president Obama’s troop surge, before his announcement, including just one-in-five Democrats. If American casualties mount in the months ahead, as they undoubtedly will, if there is new evidence of the Afghan government’s corruption or ineffectiveness and if the US is drawn even deeper into Pakistan to fight the Taliban, the Obama administration has no reservoir of public good will to draw upon to ride out the storms that are bound to rise. Maintaining the military initiative could then prove difficult, especially as public dissatisfaction makes Congress restive in the run up to the 2010 election.

#### Troop death causes military collapse and Taiwan war

Eichenberg 5 Richard C, Associate Professor in the Department of Political Science at Tufts University, International Security, Victory has Many Friends: U.S. Public Opinion and the Use of Military Force, 1981-2005, Project Muse

The second reason to reevaluate the sensitivity of the public to casualties is that decisionmakers in other countries have apparently come to believe that the American public will not tolerate the loss of life in foreign military interventions, a fact that obviously affects their calculations of U.S. credibility. Three studies of the failure (or potential failure) of deterrence or coercive diplomacy are strikingly similar on this point. Janet Gross Stein argues that the inability to deter Saddam Hussein from invading Kuwait in 1990 can be traced in part to Hussein’s “estimate that the United States, given its aversion to high numbers of casualties, might not retaliate for the invasion of Kuwait with large-scale military force.”30 Barry Posen notes that in the Kosovo war, the Serbian strategy of threatening to inflict pain on more powerful adversaries in fact worked: the United States and NATO essentially declared that they would not accept the costs of a ground attack, and in the event they could not coerce Serbia into signing the Rambouillet agreement with the threat of air strikes alone.31 The result was a near disaster. Finally, Thomas Christensen argues that one important factor that may impel the People’s Republic of China to challenge U.S. power in the Far East (perhaps over Taiwan) is the belief among the Chinese elite that the United States would not accept the casualties that might occur in such a conºict. Christensen reached this conclusion based on interviews conducted before the terrorist attacks against the United States on September 11, 2001; but given the erosion of public support as casualties have mounted in Iraq, one wonders if views in Beijing have changed.32

#### Collapses U.S. deterrence credibility

Gerson, 9 --- Research Analyst Center for Naval Analyses

(Autumn 2009, Michael S., Parameters, “Conventional Deterrence in the Second Nuclear Age”, www.carlisle.army. mil/USAWC/Parameters/09autumn/gerson.pdf))

In the conventional setting, it has been advocated that the situation is essentially reversed. Given the comparatively limited power of conventional weapons, an adversary may doubt whether conventional forces are capable of denying a rapid victory or inflicting the associated costs that outweigh the benefits of aggression. As Richard Harknett explains: The nature of conventional forces invites skepticism at a level that few deterrence theorists have emphasized—that of capability. Due to the contestable nature of conventional forces, it is a state’s capability to inflict costs that is most likely to be questioned by a challenger. In a conventional environment, the issue of credibility is dominated by suspicions about the capability to inflict costs rather than on the decision to inflict costs . . . . In the end, a state evaluating a conventional deterrent can assume that the deterrer will retaliate. The pertinent question is how costly that response will be.47 The importance of the credibility of US conventional capabilities remains relevant. Future adversaries may discount conventional threats in the mistaken belief that they could circumvent US forces via a fait accompli strategy or otherwise withstand, overcome, or outmaneuver the United States on the conventional battlefield. But a singular focus on the capabilities part of the credibility equation misses the critical importance of an adversary’s judgment of US political resolve. In future conventional deterrence challenges, perceptions of US political willpower are likely to be as important for deterrence credibility as military capabilities. One of the key challenges facing the United States in future conventional deterrence contingencies is the perception that American public and political leaders are highly sensitive to US combat casualties and civilian collateral damage.48 Regardless of the actual validity of this belief—and there is some evidence suggesting that the US public is willing to tolerate casualties if the conflict is viewed as legitimate or the public believes the United States has a reasonable chance of prevailing—this view appears to be relatively widespread.50 If conventional deterrence is largely based on the threat to rapidly engage the opponent’s forces in combat, then the credibility of this threat depends on an opponent’s belief that the United States is willing to accept the human and fiscal costs of conventional conflict. Consequently, perceptions of casualty sensitivity can undermine the credibility and potential success of conventional deterrence. A nation might be more inclined to attempt regional aggression if it believes that a sufficient US military response would be hindered or prevented by the political pressures associated with America’s alleged aversion to casualties. A potential aggressor likely will try to exploit this perceived aversion to casualties in its deterrence and warfighting strategies. For example, in future conventional contingencies an opponent may attempt to deter US intervention by threatening to execute a protracted war of attrition, thereby inflicting heavy casualties on US forces. In this scenario, the adversary is essentially turning the hallmark of conventional deterrence, the ability to execute a rapid and inexpensive victory, against the United States. Saddam Hussein tried this strategy in the run-up to the first Gulf War by threatening to create “rivers of blood” if US forces intervened. Saddam reportedly told US Ambassador to Iraq April Glaspie, “Yours is a society which cannot accept 10,000 dead in one battle.”51 In fact, perceptions of casualty aversion might actually encourage future adversaries to adopt protracted strategies in an effort to prevent US intervention. These strategies are based on the belief that such aggressors can accomplish their objectives by wearing down America’s political will through a long and bloody war of attrition.

#### ( ) The plan restricts drone use outside Afghanistan by reigning in expansive administration interpretations of combat zones --- if not it proves that circumvention guts solvency

O’Connell, 12 --- prof at Notre Dame and a specialist on the international law of armed conflict (8/16/2012, Mary Ellen, “When are drone killings illegal?” <http://www.cnn.com/2012/08/15/opinion/oconnell-targeted-killing/>))

(CNN) -- The Bush and Obama administrations' extraordinary program of targeted killing has resulted in the deaths of as many as 4,400 people to date. Books such as Daniel Klaidman's "Kill or Capture" and David E. Sanger's "Confront and Conceal" are appearing thick and fast, focusing on the program and particularly on the use of drones to carry it out.

The belated scrutiny is welcome. Yet it still fails to critically assess the essential question: Is this killing occurring in war? Both Presidents Bush and Obama have attempted to justify thousands of drone attacks as part of a "war" or "armed conflict." But is that correct? The question must be answered in terms of international law. When the United States kills people in foreign, sovereign states, the world looks to international law for the standard of justification. In war, enemy fighters may be killed under a standard of reasonable necessity; outside war, authorities are far more restricted in their right to resort to lethal force. Independent scholars confirm that many drone attacks are occurring outside war zones. These experts know the legal definition of war, and they understand why it is important to know it: Above all, protecting human rights is different in war than from protecting them in peace. News: Pakistan spy agency chief to tell CIA: End drone strikes; ID targets for us to attack Admittedly, this dual standard for justifiable killing makes the law protecting the right to life more complicated than the law protecting other fundamental rights. Torture, for example, is absolutely prohibited in international law at all times, in war and peace. The law on killing is different. The human right to life codified in the International Covenant on Civil and Political Rights, to which the United States is a party, prohibits the "arbitrary" deprivation of life. It does not prohibit absolutely all taking of life. The military may use lethal force against enemy fighters during an armed conflict if the use of force meets the requirements of military necessity, and if it will not have a disproportionate impact on civilian lives and property. Countries may lawfully initiate armed conflict in self-defense if the state is the victim of a significant armed attack, as long as the self-defense is carried out against the state responsible for the armed attack. President Bush declared a "global war on terror" after 9/11 to, presumably, gain the advantage of more relaxed rules on killing and detention. Some of the same lawyers who tried to develop legal cover for the use of torture produced an even flimsier analysis of why the entire world was a war zone, so that the president could authorize killing and detention of individuals worldwide. Lawyers in both the Bush and Obama administrations have reportedly prepared memos that according to the media assert the CIA may lawfully conduct so-called "targeted killings" of the "war on terror" without violating President Reagan's ban on assassination. Legality seems to turn in this analysis on the president personally approving a "kill list." In November 2002, the first killings occurred under this "global war" assertion. Six people, including a 23-year-old American, were killed by Hellfire missiles in Yemen fired from CIA-operated drones based in Djibouti. The UN special rapporteur for extra-judicial killing condemned the attack as an arbitrary deprivation of the right to life, but it would take over six years and a change of party in the White House before human rights advocates, international law scholars, moral philosophers, theologians, and others would begin to focus on targeted killing as they had focused on the use of torture. Why has it taken so long to focus on so many questionable deaths? As already indicated, the law is more complicated on killing than on torture. To make the legal argument against targeted killing requires sophisticated knowledge of a broader range of international law than is involved in defending a human right such as the right to be free from torture. Also, the Bush administration carried out fewer targeted killings: Of the 336 attacks as of July 2012 in Pakistan, 284 have occurred under Obama. Bush officials were better able, therefore, to suppress discussion. Also, human rights advocates had their hands full with the more visible problems of the Bush era: torture, Guantanamo Bay and military commissions. A number of them then joined the Obama administration; rather than condemn targeted killing as the violation of international law that it is, some former critics are defending it, presumably as part of their job. Opinion: Civilian casualties plummet in drone strikes The job of the International Law Association is to report on international law in a scholarly and objective fashion. The ILA has had a Committee on the Use of Force for decades. From 2005 to 2010, when I was its chair, the 18-member committee, including members from five continents, undertook to produce a report on how "war" is legally defined. That report assesses hundreds of violent incidents over a period of 65 years. It concludes that under international law, war or armed conflict exists only when there is intense inter-group fighting by organized armed groups.These are objectively verifiable criteria that cannot be fabricated by politicians. The International Committee of the Red Cross recently invoked them with respect to the violence in Syria. The situation in Syria became a civil "war" when organized armed groups were fighting with intensity of some duration. Targeted killing with drones in Yemen, Somalia, and Pakistan have generally violated the right to life because the United States is rarely part of any armed conflict in those places. The human right to life that applies is the right that applies in peace. Complete coverage of drones on CNN's Security Clearance blog Today, the United States is engaged in armed conflict only in Afghanistan. To lawfully resort to military force elsewhere requires that the country where the United States is attacking has first attacked the United States (such as Afghanistan in 2001), the U.N. Security Council has authorized the resort to force (Libya in 2011) or a government in effective control credibly requests assistance in a civil war (Afghanistan since 2002). If the president has been advised otherwise with regard to his "kill list," he should read "What Is War?"

#### ( ) And, legal restriction on drones forces shift to troop intervention

Coughlin, 13 (2/7/2013, Con, “Drones are gruesome, but would we prefer boots on the ground? The human rights lobby wants to limit the use of drones, but they are effective and preferable to sending our troops to fight,” <http://www.telegraph.co.uk/news/uknews/defence/9855577/Drones-are-gruesome-but-would-we-prefer-boots-on-the-ground.html>))

While the majority of drone patrols are reconnaissance missions, drones are also used to strike terrorist targets, with varying success. The Washington-based New America Foundation estimates that around 80 per cent of those killed by US drone strikes in the tribal areas of Pakistan are militants, although human rights groups claim the percentage of civilian casualties is far higher. But at a time when Western governments are increasingly reluctant to commit combat troops, we are becoming ever more reliant on aerial robots to do the job for us. Rather than sending our young men and women to risk being killed or maimed by roadside bombs, it is easier to vaporise the enemy with a well-directed Hellfire missile. The drones’ effectiveness could be severely limited if the human rights lobby achieves its goal of imposing so many legal restrictions on their use as to limit their ability to track and destroy a determined and resourceful enemy such as al-Qaeda.For this reason I believe the Obama administration is right to fall back on the arguments advanced by the Blair government to justify the invasion of Iraq, namely that a country’s right to defend itself should include the ability to take pre-emptive military action. Al-Qaeda and its allies are waging a war against the West which knows no boundaries. If politicians on both sides of the Atlantic do not wish to send their soldiers to fight, then they should ensure the drones can do the job for them.

#### [Another version of this is in 2nc Turns the Case block]

#### ( ) Prioritizing law enforcement is another link --- forces ground assaults that draw U.S. into wars. Turns the case by spurring more instability and civilian casualties.

Bowden, 13 --- national correspondent for The Atlantic (8/14/2013, Mark, “The Killing Machines; How to think about drones,” <http://www.theatlantic.com/magazine/archive/2013/09/the-killing-machines-how-to-think-about-drones/309434/?single_page=true>))

V. Come Out With Your Hands Up!

Once the pursuit of al-Qaeda is defined as “law enforcement,” ground assaults may be the only acceptable tactic under international law. A criminal must be given the opportunity to surrender, and if he refuses, efforts must be made to arrest him. Mary Ellen O’Connell believes the Abbottabad raid was an example of how things should work. “It came as close to what we are permitted to do under international law as you can get,” she said. “John Brennan came out right after the killing and said the seals were under orders to attempt to capture bin Laden, and if he resisted or if their own lives were endangered, then they could use the force that was necessary. They did not use a drone. They did not drop a bomb. They did not fire a missile.” Force in such operations is justified only if the suspect resists arrest—and even then, his escape is preferable to harming innocent bystanders. These are the rules that govern police, as opposed to warriors. Yet the enemies we face will not change if the war on terror ends. The worst of them—the ones we most need to stop—are determined suicidal killers and hardened fighters. Since there is no such thing as global police, any force employed would likely still come from, in most cases, American special-ops units. They are very good at what they do—but under law-enforcement rules, a lot more people, both soldiers and civilians, are likely to be killed. It would be wise to consider how bloody such operations can be. When Obama chose the riskiest available option for getting bin Laden in Abbottabad—a special-ops raid—he did so not out of a desire to conform to international law but because that option allowed the possibility of taking bin Laden alive and, probably more important, because if bin Laden was killed in a ground assault, his death could be proved. The raid went well. But what if the seal raiding party had tripped Pakistan’s air defenses, or if it had been confronted by police or army units on the ground? American troops and planes stood ready in Afghanistan to respond if that happened. Such a clash would likely have killed many Pakistanis and Americans, and left the countries at loggerheads, if not literally at war. There’s another example of a law-enforcement-style raid that conforms to the model that O’Connell and other drone critics prefer: the October 1993 Delta Force raid in Mogadishu, which I wrote about in the book Black Hawk Down. The objective, which was achieved, was to swoop in and arrest Omar Salad and Mohamed Hassan Awale, two top lieutenants of the outlaw clan leader Mohammed Farrah Aidid. As the arrests were being made, the raiding party of Delta Force operators and U.S. Army rangers came under heavy fire from local supporters of the clan leader. Two Black Hawk helicopters were shot down and crashed into the city. We were not officially at war with Somalia, but the ensuing firefight left 18 Americans dead and killed an estimated 500 to 1,000 Somalis—a number comparable to the total civilian deaths from all drone strikes in Pakistan from 2004 through the first half of 2013, according to the Bureau of Investigative Journalists’ estimates. The Somalia example is an extreme one. But the battle that erupted in Mogadishu strikes me as a fair reminder of what can happen to even a very skillful raiding party. Few of the terrorists we target will go quietly. Knowing they are targets, they will surely seek out terrain hostile to an American or UN force. Choosing police action over drone strikes may feel like taking the moral high ground. But if a raid is likely to provoke a firefight, then choosing a drone shot not only might pass legal muster (UN rules allow lethal force “when strictly unavoidable in order to protect life”) but also might be the more moral choice.

### At zero sum

#### Restricting drones forces reliance on conventional troops --- causes more casualties and increases foreign resentment

Etzioni, 13 --- professor of International Affairs at George Washington (4/30/2013, Amitai, “Drones: Say it with figures,” <http://www.upi.com/Top_News/Analysis/Outside-View/2013/04/30/Outside-View-Drones-Say-it-with-figures/UPI-25571367294880)>

It is also worth noting that these critics attribute resentment to drones rather than military strikes. Do they really think that resentment would be lower if the United States were using cruise missiles? Or bombers? Or Special Forces? If they mean that we should grant these suspected terrorists a free pass if they cannot be brought to a court in New York City to be tried, they should say so. Another frequent claim of drone opponents is that the use of drones greatly lowers the costs of war (at least for the United States) and, thus, promotes military adventurism. For example, Mazzetti (as quoted by Bergen) claims that the use of drones has "lowered the bar for waging war, and it is now easier for the United States to carry out killing operations at the ends of the earth than at any other time in its history." However, there is no evidence that the introduction of drones (and before that, high-level bombing and cruise missiles that were criticized on the same grounds) made going to war more likely or its extension more acceptable. On the contrary, anybody who followed the American disengagement in Vietnam after the introduction of high-level bombing (which was subject to criticism similar to that of drones) or the U.S. withdrawal from Afghanistan -- despite the considerable increase in the use of drone strikes elsewhere -- knows better. In effect, the opposite argument may well hold: If the United States couldn't draw on drones in Yemen and the other new theaters of the counterterrorism campaign, the nation might well have been forced to rely more on conventional troops, a choice that would greatly increase our casualties as well as the resentment by the locals, who particularly object to the presence of foreign troops.

#### Restricting drones increases reliance on conventional forces --- increases civilian and military deaths

Etzioni, 13 --- professor of IR at George Washington (March/April 2013, Amitai, Military Review, “The Great Drone Debate,” <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>))

Industrial Warfare?

Mary Dudziak of the University of Southern California’s Gould School of Law opines that “[d]rones are a technological step that further isolates the American people from military action, undermining political checks on . . . endless war.” Similarly, Noel Sharkey, in The Guardian, worries that drones represent “the final step in the industrial revolution of war—a clean factory of slaughter with no physical blood on our hands and none of our own side killed.” This kind of cocktail-party sociology does not stand up to even the most minimal critical examination. Would the people of the United States, Afghanistan, and Pakistan be better off if terrorists were killed in “hot” blood—say, knifed by Special Forces, blood and brain matter splashing in their faces? Would they be better off if our troops, in order to reach the terrorists, had to go through improvised explosive devices blowing up their legs and arms and gauntlets of machinegun fire and rocket-propelled grenades—traumatic experiences that turn some of them into psychopath-like killers? Perhaps if all or most fighting were done in a cold-blooded, push-button way, it might well have the effects suggested above. However, as long as what we are talking about are a few hundred drone drivers, what they do or do not feel has no discernible effects on the nation or the leaders who declare war. Indeed, there is no evidence that the introduction of drones (and before that, high-level bombing and cruise missiles that were criticized on the same grounds) made going to war more likely or its extension more acceptable. Anybody who followed the American disengagement in Vietnam after the introduction of high-level bombing, or the U.S. withdrawal from Afghanistan (and Iraq)—despite the considerable increases in drone strikes—knows better. In effect, the opposite argument may well hold: if the United States could not draw on drones in Yemen and the other new theaters of the counterterrorism campaign, the nation might well have been forced to rely more on conventional troops and prolong our involvement in those areas, a choice which would greatly increase our casualties and zones of warfare.

#### The status quo is achieving a perfect equilibrium --- there is a transition toward more capture missions while maintaining selective drone use --- forcing sole reliance on ground operations will trigger a major international crisis

Taylor & Wong, 13 (10/9/2013, Guy and Kristina, “Drone strikes plummet as U.S. seeks more human intelligence; Terrorist captures can lead to high-value targets,” <http://www.washingtontimes.com/news/2013/oct/9/drone-strikes-drop-as-us-craves-more-human-intelli/?page=all)>

The number of drone strikes approved by the Obama administration on suspected terrorists has fallen dramatically this year, as the war with al Qaeda increasingly shifts to Africa and U.S. intelligence craves more captures and interrogations of high-value targets. U.S. officials told The Washington Times on Wednesday that the reasons for a shift in tactics are many — including that al Qaeda’s senior ranks were thinned out so much in 2011 and 2012 by an intense flurry of drone strikes, and that the terrorist network has adapted to try to evade some of Washington’s use of the strikes or to make them less politically palatable. But the sources acknowledged that a growing desire to close a recent gap in actionable human intelligence on al Qaeda’s evolving operations also has renewed the administration’s interest in more clandestine commando raids like the one that netted a high-value terrorist suspect in Libya last weekend. Capturing and interrogating suspects can provide valuable intelligence about a terrorist network that has been morphing from its roots with a central command in Pakistan and Afghanistan (known as intelligence circles as the FATA) to more diverse affiliates spread most notably across North Africa, officials and analysts said. “Al Qaeda’s senior leadership in Pakistan has been steadily degraded. What remains of the group’s core is still dangerous but spends much of its time thinking about personal security,” one senior counterterrorism official told The Times, speaking on the condition of anonymity because of the secret nature of the drone program. “As the nature of the threat emanating from the FATA changes, it follows that the U.S. government’s counterterrorism approach is going to shift accordingly.”The decreased reliance on drones was in full view last weekend when one team of commandos from the Army's Delta Force captured long-sought al Qaeda operative Abu Anas al-Libi in Tripoli and a Navy SEAL team failed to take down an al Qaeda affiliate leader in Somalia. The U.S. has carried out nearly 400 drone strikes over the past decade in Pakistan, Yemen and Somalia, a tactic that killed numerous senior operatives. But al Qaeda leaders have been increasing their own counterintelligence activities and moving to more populated areas in order to increase the risks of civilian casualties, two developments that have made the strikes less politically palatable and effective, analysts and intelligence sources say. As a result, the number of drone strikes carried out against al Qaeda suspects in the Middle East and South Asia has dropped by half over the past year. There were 22 drone strikes on targets in Pakistan during the first 10 months of this year, compared with 47 carried out during 2012 and 74 in 2011, according to data compiled by the London-based Bureau of Investigative Journalism, the leading independent body examining the U.S. government’s secretive drone program. But intelligence officials and some national security analysts cautioned against reading too deeply into such data, saying the U.S. remains committed to using drones when it makes sense. “Given the clandestine nature of the program, it’s impossible to assess the reasons why the number of strikes has decreased over time,” said Seth Jones, a political scientist who specializes in counterterrorism studies at the Rand Corp., a research institution with headquarters in California. “We just don’t have access to the information,” he said. Thirst for new intelligence With U.S. counterterrorism officials eager to pin down fresh and actionable intelligence on what several sources described as a gradually metastasizing and complex network of al Qaeda affiliate groups concentrated in North Africa, most analysts say it would make sense for the Obama administration to begin favoring capture-and-interrogate missions. “Raids allow you to both potentially capture a high-value target and exploit his knowledge through interrogations,” said Daniel R. Green, an al Qaeda and Yemen analyst at the Washington Institute for Near East Policy. When U.S. soldiers are on the ground for a raid, Mr. Green said, it means they can “collect additional materials of intelligence value from the dwelling, further assisting in the planning of follow-on operations.” Others said heavy reliance on drones has only added to America’s potentially dangerous deficit of human intelligence on al Qaeda. “If you’re not capturing guys to get that intel, then, yeah, you’re going to be missing a part of the picture — if not a large part of the picture,” said Thomas Joscelyn, a senior fellow focusing on al Qaeda and North Africa at the Foundation for Defense of Democracies. “You can rely extensively on electronic intelligence, but you still need that [human intelligence]to put the full picture together,” said Mr. Joscelyn, who added that recent years have fostered a “fetish within some parts of the intelligence community for drone attacks because they’ve succeeded in taking out some very high-level targets. “There are other parts of the American military and intelligence community that understand that drones are not going to win this war,” he said. “Drones are a necessary tactic, but they are not a strategy.” Last weekend’s raids in Libya and Somalia are “evidence that there’s more emphasis now on capture than on kill,” said Linda Robinson a senior international policy analyst at the Rand Corp. “It is an indication of the shift that was alluded to by the president in May,” said Mrs. Robinson, referring to a speech President Obama gave at the National Defense University in which he stressed that “as a matter of policy, the preference of the United States is to capture terrorist suspects.” Mrs. Robinson said there is “recognition that, frankly, you get something from raids, which you don’t get from drones.” Raids allow for capturing a suspect and can lead to an “incredible intelligence dump” from that individual, she said. Drones still on the tableDuring the May speech on terrorism, Mr. Obama acknowledged the use of drones as a central tactic within his administration’s war strategy and suggested it will continue. At the time, Mr. Obama said it “not possible for America to simply deploy a team of Special Forces to capture every terrorist.” Citing instances in which doing so “would pose profound risks to our troops and local civilians” and where “putting U.S. boots on the ground may trigger a major international crisis,” Mr. Obama said the secret May 2011 Navy SEAL operation that resulted in the killing of al Qaeda leader Osama bin Laden “cannot be the norm.” In the shadow of such remarks from the president, some analysts say, such raids likely would pose challenges in Yemen, where the Obama administration has relied heavily on the use of drones. A raid such as the one that netted al-Libi in Tripoli would be “much more difficult” in Yemen “in part because potential targets are far more inland, thus complicating an attack from the sea,” said Mr. Green, at the Washington Institute for Near East Policy. “Also, the Yemeni government is much more capable and would likely detect such a raid, as compared to Libya’s anarchic conditions, and al Qaeda is a much more developed force in Yemen, which will have already adapted to this new tactic by U.S. forces,” he said. Mrs. Robinson said that “with a raid, of course, you incur more risk for those U.S. forces usually, special operations forces that you’re putting on the ground.” “I don’t think there’s a big appetite to go around launching raids unless there is a clear U.S. national security interest to do so,” she said. “The political and diplomatic and atmospheric risks or counterproductive effects have to be very much weighed in the equation.”

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#### Interdependence prevents conflict in south Caucasus – no escalation

Paley Assoc. Rand ‘3

(Tanya Charlick- Paley-, with Phil Williams and Olga Oliker, “Faultlines of Conflict in Central Asia and the South Caucasus Implications for the U.S. Army”, [http://www.rand.org/pubs/ monograph\_reports/2005/RAND\_MR1598.pdf](http://www.rand.org/pubs/%20monograph_reports/2005/RAND_MR1598.pdf))

PROXIMATE CAUSES OF CONFLICT IN CENTRAL ASIA AND SOUTH CAUCASUS

As the previous analysis has demonstrated, CASC states remain institutionally weak. This increases not only the risk of civil strife, the mechanisms for which were discussed above, but also the danger of interstate conflict. States that see themselves as weakening may seek to wage pre-emptive war, hoping to fight while they retain sufficient strength to win—and thus perhaps retain control of assets and power. Increasing domestic political disorder and chaos within a state may bring its leaders to wage war as a means of overcoming internal strife and dissent by building popular unity against a common enemy.58 And even if the weak or declining state is not itself interested in war, its weakness may invite attack from those who see in it a window of opportunity to increase their own power through victory and/or conquest.59 Geoffrey Blainey points out that states fight wars in large part because they believe they can win them. Another state’s weakness can lead to such a belief on the part of others, while the weak state itself, particularly if it is in transition, may not realize the extent of its weakness, and therefore join in battle rather than surrender.60 Moreover, many processes of internal transition, such as revolution, make a state appear weak and vulnerable to outsiders. 61 As we have discussed, the factors of state weakness in the CASC region are far from ambiguous.

In addition to the potential for weak adversaries, the pretexts for internal and interstate war in the region are plentiful. Concentrated resources such as soil, water, and agriculture, competing historical claims to large swaths of land, and national borders disconnected from ethnic and cultural borders,63 all provide potential proximate causes for war and reasons to believe that it might be profitable. Moreover, the lack of cooperation between regional elites means that—to paraphrase from U.S. history—they are increasingly prone to hanging separately, having failed to hang together. Finally, insofar as Islamic revolution can be thought to be on the rise as a mobilizing revolutionary ideology throughout much of the region, particularly in Central Asia, the likelihood that conflict spurred by its adherents could remain confined within one state’s borders appears slim.

All that said, there are other factors that make interstate war somewhat less likely. The economic incentives, particularly for the development of Caspian energy resources, appear to balance out the possible spoils that war might bring. While cooperation among regional leaders remains limited, there is a growing recognition that it is necessary, and it is possible that increased foreign involvement may spur more cooperation.64 Moreover, the presence of regional, Russian, and now Western security forces in the region has played a stabilizing role in the past, particularly in Tajikistan, and may do so again in the future.

#### Contextual evidence proves – war power is the conduct of war and Congress restricts presidential war power by limiting the nature of the military orders he can give

Elsea, Garcia, and Nicola - Legislative Attorneys @ CRS – 2/19/13, Congressional Authority to Limit

Military Operations, Jennifer K. Elsea, Michael John Garcia, Thomas J. Nicola<http://fpc.state.gov/documents/organization/206121.pdf>

At least two arguments support the constitutionality of Congress’s authority to limit the President’s ability to continue military operations. First, Congress’s constitutional power over the nation’s Armed Forces arguably provides ample authority to legislate with respect to how they may be employed. Under Article I, Section 8, Congress has the power “To lay and collect Taxes ... to ... pay the Debts and provide for the common Defence,” “To raise and support Armies,” “To provide and maintain a Navy,” “To make Rules for the Government and Regulation of the land and naval Forces,” and “To declare War, grant letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water,” as well as “To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions” and “To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States.” Further, Congress is empowered “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers ...” as well as “all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” Secondly, Congress has virtually plenary constitutional power over appropriations, one that is not qualified with reference to its powers in Section 8. Article I, Section 9 provides that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” It is well established, as a consequence of these provisions, that “no money can be paid out of the Treasury unless it has been appropriated by an act of Congress”4 and that Congress can specify the terms and conditions under which an appropriation may be used,5 so long as the restrictions do not impair power inherent solely in other branches or otherwise run afoul of constitutional restrictions on congressional prerogatives.6 On the executive side, the Constitution vests the President with the “executive Power,” Article II, Section 1, clause 1, and appoints him “Commander in Chief of the Army and Navy of the United States,” id., §2, clause 1. The President is empowered, “by and with the Advice and Consent of the Senate, to make Treaties,” authorized “from time to time [to] give to the Congress Information on the State of the Union, and [to] recommend to their Consideration such Measures as he shall judge necessary and expedient,” and bound to “take Care that the Laws be faithfully executed.” Id., §3. He is bound by oath to “faithfully execute the Office of President of the United States,” and, to the best of his “Ability, preserve, protect and defend the Constitution of the United States.” Id., §1, clause 8. It is clear that the Constitution allocates powers necessary to conduct war between the President and Congress. While the ratification record of the Constitution reveals little about the meaning of the specific war powers clauses, the importance of preventing all of those powers from accumulating in one branch appears to have been well understood,7 and vesting the powers of the sword and the purse in separate hands appears to have been part of a careful design.8 It is generally agreed that some aspects of the exercise of those powers are reserved to the Commander in Chief, and that Congress could conceivably legislate beyond its authority in such a way as to intrude impermissibly into presidential power. The precise boundaries separating legislative from executive functions, however, remain elusive.9 There can be little doubt that Congress would exceed its bounds if it were to confer exclusive power to direct military operations on an officer not subordinate to the President,10 or to purport to issue military orders directly to subordinate officers.11 At the same time, Congress’s power to make rules for the government and regulation of the Armed Forces provides it wide latitude for restricting the nature of orders the President may give**.** Congress’s power of appropriations gives it ample power to supply or withhold resources, even if the President deems them necessary to carry out planned military operations.12

#### Consultation/notification gives Congress zero influence over the successful conduct of war

Matthew Fleischman – 2010, J.D. Candidate, 2010, New York University School of Law; B.A., 2007, Washington University in St. Louis, NEW YORK UNIVERSITY JOURNAL OF LEGISLATION AND PUBLIC POLICY, 13 N.Y.U. J. Legis. & Pub. Pol'y 137

The War Powers Resolution of 1973 was passed in response to the Vietnam War over a Presidential veto. n156 Congress believed that "it had been dodging its constitutional duty to make the decision whether to commit American troops to combat" n157 and the WPR was supposed to prevent this pattern from continuing. Section 2(c) states that the President may only exercise his commander-in-chief powers pursuant to a declaration of war, specific statutory authorizations, or a national emergency. n158 Section 3 requires that the President consult with Congress before engaging troops whenever possible. n159 Section 4(a) requires the Executive to submit a report to Congress no more than forty-eight hours after introducing United States forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." n160 Subsequently, according to section 5(b), within sixty days of filing a report (or sixty days from when the report must be filed), the President shall terminate any use of United States Armed Forces ... unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. n161 However, section 5(c) allows for Congress to compel the removal of troops by concurrent resolution. n162 There have been numerous arguments against the framework of interactions between the branches of government delineated in the WPR. There is some debate whether or not Section 2(c) "too narrowly defines the President's war powers." n163 Presidents have sent troops into conflict without any of the section 2(c) preconditions. n164 The WPR also fails to detail which members of Congress should be consulted. A study by the Congressional Research Service concluded, [\*163] "there has been very little consultation with Congress under the Resolution when consultation is defined to mean seeking advice prior to a decision to introduce troops." n165 One of the most consistent complaints has been that "no President has ever filed a report 'pursuant to' Section 4(a)(1)." n166 Indeed, the sixty-day window has never been triggered. Furthermore, even if a section 4(a)(1) report was filed, many argue that section 5(c) is an unconstitutional legislative veto in light of the Supreme Court's ruling on this type of congressional action in Chadha. n167 This would mean Congress would have no mechanism of ending a conflict during the sixty-day window. The WPR fails to address the concerns discussed in the previous section, as it has not given Congress a voice in the decision to go to war. Instead, it forces Congress to take a stand after the fact, within sixty days of the commencement of hostilities. Some have said that the true problem is not in the framework itself but that "the President has refused to obey the law." n168 This interpretation is flawed, in that it ignores the fact that the policy options are more limited once troops have been deployed n169 and public pressure is greater. Therefore, it does not matter whether section 5(c) is unconstitutional, as political [\*164] theory suggests n170 that Congress will deem it too politically risky to avail itself of the powers the statute gives it, and end a war in such a way.

#### Congress has two choices: define conditions for the conduct of war OR enact procedural safeguards like consultation – Congress uses the consultation option to avoid restrictions on executive authority

Louis Fisher – 1995, *Presidential War Power*, p. 128-129, Scholar in Residence at the Constitution Project / fmr. Senior Specialist in Separation of Powers @ CRS, PhD in political science at the New School for Social Research

Action by the House of Representatives in 1970 on the War Powers Resolution conceded a measure of war power to the President. Passed by a vote of 289 to 39, the resolution recognized that the President “in certain extraordinary and emergency circumstances has the authority to defend the United States and its citizens without specific prior authorization by the Congress.” Instead of trying to define the precise conditions under which Presidents may act, the House opted for procedural safeguards. The President would be required, “whenever feasible,” to consult with Congress before sending American forces into armed conflict. He was also to report the circumstances necessitating the action; the constitutional, legislative, and treaty provisions authorizing the action, together with his reasons for not seeking specific prior congressional authorization; and the estimated scope of activities.72 The House passed the same resolution a year later,73 but the Senate did not act on either measure. Both Houses later passed the War Powers Resolution that went beyond mere reporting requirements. The House of Representatives, adhering to its earlier practices, did not try to define or codify presidential war powers. It directed the President “in every possible instance,” to consult with Congress before sending forces into hostilities or situations in which hostilities might be imminent. If unable to do so, he was to report to Congress within seventy-two hours, setting forth the circumstances and details of his action. Unless Congress declared war within 120 days or specifically authorized the use of force, the President had to terminate the commitment and remove the troops. Congress could also direct disengagement at any time during the 120-day period by passing a concurrent resolution.74 The Senate thought it could identify the precise conditions under which Presidents could act unilaterally. Armed force could be used in three situations: (1) to repel an armed attack upon the United States, its territories and possessions, retaliate in the event of such an attack, and forestall the direct and imminent threat of such an attack; (2) to repel an armed attack against U.S. armed forces located outside the United States, its territories and possessions, and forestall the direct and imminent threat of such an attack; and (3) to rescue endangered American citizens and nationals in foreign countries or at sea. The first situation (except for the final clause) agrees with the understanding reached at the Philadelphia convention. The other situations reflect the changes in presidential power that developed later, including the broad concept of defensive war and actions taken to protect American lives and property.

#### There are 100s of consultation affs alone – when to consult, how to consult, who to consult

Richard F. Grimmett – Specialist in International Security @ CRS – September 25, 2012, War Powers Resolution: Presidential Compliance, http://www.fas.org/sgp/crs/natsec/RL33532.pdf

Section 3 of the War Powers Resolution requires the President “in every possible instance” to consult with Congress before introducing U.S. Armed Forces into situations of hostilities and imminent hostilities, and to continue consultations as long as the Armed Forces remain. A review of instances involving the use of Armed Forces since passage of the Resolution, noted in this report, indicates there has been very little consultation with Congress under the Resolution when consultation is defined to mean seeking advice prior to a decision to introduce troops. Presidents have met with congressional leaders after the decision to deploy was made but before commencement of operations. One problem is the interpretation of when consultation is required. The War Powers Resolution established different criteria for consultation than for reporting. Consultation is required only before introducing Armed Forces into “hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances,” the circumstances triggering the time limit. A second problem is the meaning of the term consultation. The executive branch has often taken the view that the consultation requirement has been fulfilled when from the viewpoint of some Members of Congress it has not. The House report on the War Powers Resolution said, “consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated.” A third problem is who represents Congress for consultation purposes. The House version specifically called for consultation between the President and the leadership and appropriate committees. This was changed to less specific wording in final House-Senate conference committee version, to provide some flexibility. Some critics of the existing statute have introduced proposals to specify a consultation group. But Congress has yet to act on such a proposal.

#### Notification produces no functional restriction

Philip Alston - John Norton Pomeroy Professor of Law, New York University School of Law – 2011, Harvard National Security Journal, ARTICLE: The CIA and Targeted Killings Beyond Borders, 2 Harv. Nat'l Sec. J. 283

The Gang of Eight procedure has been strongly criticized for being overused, providing too little information, generating no significant records, providing members with no real opportunity for input, and amounting to a formality. A member of the House Committee complained that such notifications are not conducive to effective oversight because members [\*389] "cannot take notes, seek the advice of their counsel, or even discuss the issues raised with their committee colleagues." n376 Indeed, the most extraordinary fact about the congressional notification procedures is how little is known, even by those very close to, but not actually engaged in the process. Thus in a 2011 report, the Congressional Research Service highlighted just how little is known about the extent to which the executive has complied with the relevant legal provisions. The questions they identified and to which they claim no answers are known include the criteria actually applied by the executive in determining whether and how to notify Congress, whether explanations have been furnished, as required by law, to congressional leaders in cases where a restrictive (Gang of Eight) notification approach has been adopted, whether the executive has ever briefed the intelligence committees after the event in relation to actions that were not notified to the Gang of Eight, whether the latter has ever determined that it should alert the intelligence committees to a matter of which it has been informed by the executive, and whether the committees have ever sought to develop procedures for dealing with the many issues that arise in this grey zone. n377

#### Notification allows the President to war powers single-handedly

Louis Fisher – 1995, *Presidential War Power*, p. 185, Scholar in Residence at the Constitution Project / fmr. Senior Specialist in Separation of Powers @ CRS, PhD in political science at the New School for Social Research

The drift of the war power from Congress to the President after World War II is unmistakable. The framers’ design, deliberately placing in Congress the decision to expend the nation’s blood and treasure, has been radically transformed. Presidents now regularly claim that the commander-in-chief clause empowers them to send American troops anywhere in the world, including into hostilities, without first seeking legislative approval. Congress has made repeated efforts since the 1970s to restore legislative prerogatives, with only moderate success. Presidents continue to wield military power single-handedly, agreeing only to consult with legislators and notify them of completed actions. That is not the framers’ model.

#### Consultation leaves the president exclusive control over war powers

Louis Fisher – 1995, *Presidential War Power*, p. xi, Scholar in Residence at the Constitution Project / fmr. Senior Specialist in Separation of Powers @ CRS, PhD in political science at the New School for Social Research

During October 1993, when Congress was considering restrictions on the President’s use of American forces in Somalia and Haiti, President Bill Clinton vigorously objected to any congressional interference: “I would strenuously oppose such attempts to encroach on the President’s foreign policy powers.”1 While promising to *consult* with members of Congress, he claimed that “the Constitution leaves the President, for good and sufficient reasons, the ultimate decisionmaking authority.”2 Acknowledging that the President has an obligation to define and justify the use of U.S. force, Clinton said that “the President must make the ultimate decision.”3 In February 1994, while contemplating air strikes in Bosnia, he looked for authority not to Congress but to the UN Security Council and to NATO.4 At a press conference on August 3, 1994, Clinton said he was not “constitutionally mandated” to receive approval from Congress before invading Haiti.5 This definition of executive power—to send troops anywhere in the world whenever the President likes—would have astonished the framers of the Constitution. Their structure of government very deliberately rejected the British models that gave the executive exclusive control over foreign affairs and the war power. Instead, the framers vested in Congress explicit control over the initiation and authorization of war, power over foreign commerce, approval of treaties, confirmation of ambassadors, power of the purse, and other authorities over external affairs. The trend of presidential war power since World War II—the last congressionally declared war—collides with the constitutional framework adopted by the founding fathers. The period after 1945 created a climate in which Presidents have regularly breached constitutional principles and democratic values. Under these pressures (and invitations), Presidents have routinely exercised war powers with little or no involvement by Congress.