# 1NC

## 1NC T—Must Prohibit

#### Restrictions on war powers create areas where the President can NOT act

Fisher 12—Louis, Scholar in Residence at The Constitution Project; served for four decades at the Library of Congress, as Senior Specialist, Congressional Research Service [“Basic Principles of the War Power,” 2012, Journal of National Security Law & Policy, 5 J. Nat'l Security L. & Pol'y 319]

Article II designates the President as Commander in Chief, but that title does not carry with it an independent authority to initiate war or act free of legislative control. Article II provides that the President "shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." Congress, not the President, does the calling. Article I grants Congress the power to provide "for calling forth the Militia to execute the laws of the Union, suppress Insurrections, and repel invasions." Presidential use of the militia depends on policy enacted by Congress.

The Commander in Chief Clause is sometimes interpreted as an exclusive, plenary power of the President, free of statutory checks. It is not. Instead, it offers several protections for republican, constitutional government. Importantly, it preserves civilian supremacy over the military. The individual leading the armed forces is an elected civilian, not a general or admiral. Attorney General Edward Bates in 1861 concluded that the President is Commander in Chief not because he is "skilled in the art of war and qualified to marshal a host in the field of battle." He possesses that title for a different reason. Whatever military officer leads U.S. forces against an enemy, "he is subject to the orders of the civil magistrate, and he and his army are always "subordinate to the civil power.'" n23 Congress is an essential part of that civil power.

The Framers understood that the President may "repel sudden attacks," especially when Congress is out of session and unable to assemble quickly, but the power to take defensive actions does not permit the President to initiate wars and exercise the constitutional authority of Congress. President Washington took great care in instructing his military commanders that operations against Indians were to be limited to defensive actions. n24 Any offensive action required congressional authority. He wrote in 1793: "The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure." n25

[\*324] In 1801, President Jefferson directed that a squadron be sent to the Mediterranean to safeguard American interests against the Barbary pirates. On December 8, he informed Congress of his actions, asking lawmakers for further guidance. He said he was "unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense ... ." It was up to Congress to authorize "measures of offense also." n26 In 1805, after conflicts developed between the United States and Spain, Jefferson issued a public statement that articulates fundamental constitutional principles: "Congress alone is constitutionally invested with the power of changing our condition from peace to war." n27 In the Smith case of 1806, a federal circuit court acknowledged that if a foreign nation invades the United States, the President has an obligation to resist with force. But there was a "manifest distinction" between going to war with a nation at peace and responding to an actual invasion: "In the former case, it is the exclusive province of congress to change a state of peace into a state of war." n28

The second value that the Founders embraced in the Commander-in-Chief Clause is accountability. Hamilton in Federalist No. 74 wrote that the direction of war "most peculiarly demands those qualities which distinguish the exercise of power by a single hand." The power of directing war and emphasizing the common strength "forms a usual and essential part in the definition of the executive authority." n29 Presidential leadership is essential but it cannot operate outside legislative control. The President is subject to the rule of law, including statutory and judicial restrictions.

#### Context is Key

Haneman 59—J.A.D. is a justice of the Superior Court of New Jersey, Appellate Division [“Russell S. Bertrand et al. v. Donald T. Jones et al.,” 58 NJ Super. 273; 156 A.2d 161; 1959 N.J. Super, Lexis]

HN4 In ascertaining the meaning of the word "restrictions" as here employed, it must be considered in context with the entire clause in which it appears. It is to be noted that the exception concerns restrictions "which have been complied with." Plainly, this connotes a representation of compliance by the vendor with any restrictions upon the permitted uses of the subject property. The conclusion that "restrictions" refer solely to a limitation of the manner in which the vendor may [\*\*\*14] use his own lands is strengthened by the further provision found in said clause that the conveyance is "subject to the effect, [\*\*167] if any, of municipal zoning laws." Municipal zoning laws affect the use of property. HN5 A familiar maxim to aid in the construction of contracts is noscitur a sociis. Simply stated, this means that a word is known from its associates. Words of general and specific import take color from each other when associated together, and thus the word of general significance is modified by its associates of restricted sense. 3 Corbin on Contracts, § 552, p. 110; cf. Ford Motor Co. v. New Jersey Department of Labor and Industry, 5 N.J. 494 (1950). The [\*284] word "restrictions," therefore, should be construed as being used in the same limited fashion as "zoning."

#### Their supervising terms OR conditions for acting don’t meet.

COURT OF APPEALS 12 [STATE OF WASHINGTON DEPARTMENT OF HEALTH, THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION I, RANDALL KINCHELOE Appellant. vs. Respondent, BRIEF OF APPELLANT, http://www.courts.wa.gov/content/Briefs/a01/686429%20Appellant%20Randall%20Kincheloe's.pdf]

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put.

The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as;

To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

#### Vote Neg—Smaller predictable case list comes for Prohibitions only, and allowing modifications creates a bi-directional topic where they can IMPROVE war-fighting by the president.

## 1NC Politics

**Immigration will pass – ignore random quotes from pissed off tea-partiers**

**BUCKHOUT 10 – 23 – 13 NDN Staff Blogger** [Emma Buckhout, Immigration Reform: Alive, Not Dead, in the House, <http://ndn.org/blog/2013/10/immigration-reform-alive-not-dead-house>]

A surprising number of recent media reports declare once again that immigration reform is dead- **surprising** because **numerous** House Republicans are **signaling the exact opposite**. It is true that responsibility for action lies with the House GOP after the Senate passed its bipartisan comprehensive immigration reform bill in June, House Democrats have introduced both CIR ASAP and H.R. 15 (now with 184 cosponsors), and President Obama has declared immigration reform a legislative priority. However, the House GOP passed five separate bills out of committee, and this week members have affirmed they are still working on more related to legalization of undocumented immigrants. As long as a contingent of the House majority is willing to keep moving on meaningful pieces of legislation, immigration reform is very much alive.

See these articles:

Speaker Hopeful of Immigration Reform This Year, Donna Cassata, Associated Press, October 23, 2013

“Reps. Mike Coffman, R-Colo., and David Valadao, R-Calif., joined immigrants brought illegally to the U.S. as children who want to join the military at a Capitol Hill news conference. Coffman and Valadao have been working with Majority Leader Eric Cantor, R-Va., and Judiciary Committee Chairman Robert Goodlatte, R-Va., on legislation that would offer citizenship to the children.”

Boehner Says He Might Bring Up Immigration Reform This Year, David Lawder and Caren Bohan, Reuters, October 23, 2013

House Speaker Boehner: "I still think that immigration reform is an important subject that needs to be addressed and I am hopeful."

Immigration Reform: Still Not Quite Dead, Greg Sargent, Washington Post, October 22, 2013

Rep. Mario Diaz-Balart (R, Fla.) says he is working with a number of representatives to figure out: “what to do with the millions of undocumented who are here in a way that completely conforms with the rule of law.”

House Republicans Drafting Immigration Measures, Kristina Peterson, Wall Street Journal, October 22, 2013

“Rep. Mario Diaz-Balart (R., Fla.) and a small group of other lawmakers are working on one proposal that includes elements of –but is expected to diverge from– a bipartisan plan Mr. Diaz-Balart had worked on earlier this year.”

“Rep. Darrell Issa (R., Calif.) is also working on a proposal that would offer temporary legal status to qualifying illegal immigrants, his spokesman said Tuesday.”

Is Immigration Really Dead in the House?, Fawn Johnson, National Journal, October 22, 2013

“Powerful House Republicans like Boehner, Majority Leader Eric Cantor, and Budget Committee Chairman Paul Ryan all want to see something happen on immigration.”

An Immigration Challenge for Boehner, William Galston, Wall Street Journal, October 22, 2013

“…a majority of rank-and-file Republicans, backed by evangelical leaders and business, favor immigration reform….”

Did Shutdown “Poison the Well” for Immigration Reform?, Carrie Dann, NBC News, October 20, 2013

"Another proposal being worked on by Majority Leader Eric Cantor, R-Va., and House Judiciary Chairman Bob Goodlatte, R-Va., would allow some children who were brought the United States illegally as children to obtain legal status.”

Written Off for Dead, Immigration Reform Could Still Live On, Byron York, Washington Examiner, October 17, 2013

"’There is still a window,’ says one House GOP aide involved in crafting a reform proposal. ‘The leadership has said keep working on it and see what you can do.’”

Time Running Out for Immigration Reform, Dan Nowicki, Arizona Republic, October 20, 2013

"’We're still committed to moving forward on step-by-step, common-sense reforms,’ Boehner spokesman Michael Steel told The Arizona Republic in an email. ‘The Judiciary Committee has already passed several bills that could see floor action.’"

**Obama’s top priority – his pressure is key**

**STOKOLS 10 – 17 – 13 Fox31 Denver Staff Writer** [Eli Stokols, ANALYSIS: Obama’s quick pivot to immigration reform, <http://kdvr.com/2013/10/17/analysis-obamas-quick-pivot-to-immigration-reform/>]

Just hours after signing the legislation ending the government shutdown and raising the debt ceiling, President Barack Obama told the country that “there are no winners” after the two-week stalemate that cost the country’s economy more than $20 billion.

But, in the political world, there is a clear winner — the president.

Republicans, by following a bone-headed strategy in pursuit of an unattainable goal, have put their own approval ratings in the toilet 13 months before the 2014 midterm election.

Further, they’ve put some wind back in the sails of an administration that had been rudderless and adrift almost from the start of the president’s second term.

On Thursday morning, Obama looked to press his advantage by urging Republicans in Congress to end the political brinksmanship and to start working together with Democrats on budget negotiations, immigration reform and the farm bill that has stalled in the House.

“To all my friends in Congress, understand that how business is done in this town has to change,” Obama said, implicitly chiding the Republicans who seemingly oppose his administration at every turn.

“You don’t like a particular policy, or a particular president, then argue for your position,” Mr. Obama said in the 15-minute statement. “Go out there and win an election. Push to change it. But don’t break it.”

While another stern lecture from the president isn’t likely to improve relations between the White House and Capitol Hill, **Obama does have a stronger hand** in the upcoming political fights; and **by pivoting quickly to immigration** reform, he’s taking advantage of a sudden window of opportunity.

During his remarks Thursday, Obama re-framed the debate over comprehensive immigration reform, reminding the country of the Senate proposal, passed with broad bipartisan support earlier this year, that’s lingering in the House.

“There’s already a broad coalition across America that’s behind this effort of comprehensive immigration reform — from business leaders to faith leaders to law enforcement,” the president said.

“In fact, the Senate has already passed a bill with strong bipartisan support that would make the biggest commitment to border security in our history; would modernize our legal immigration system; make sure everyone plays by the same rules, makes sure that folks who came here illegally have to pay a fine, pay back taxes, meet their responsibilities.”

The legislation, crafted by a bipartisan group of eight senators including Colorado Sen. Michael Bennet, a Democrat, would spend $46 billion to enhance security on the U.S. Mexico border and create a 13-year path to citizenship for undocumented immigrants.

“It will establish a sensible and rational system for the future flow of immigrants to this country, put in place a process to reunite families and provide a path to citizenship for millions of people who came to this country for a better but are living in the shadows of our society,” Bennet said. “I suggest the House take a hard look at the Senate bill. **There is no reason we can’t work out a final bill to pass into law in the coming months**.”

Obama noted that the legislation is likely to grow the nation’s economy over the next several decades.

“Our economy would be 5 percent larger two decades from now,” the president said. “That’s $1.4 trillion in new economic growth.

“The majority of Americans think this is the right thing to do. And it’s sitting there waiting for the House to pass it. Now, if the House has ideas on how to improve the Senate bill, let’s hear them. Let’s start the negotiations. But let’s not leave this problem to keep festering for another year, or two years, or three years. This can and should get done by the end of this year.”

The president is speaking to a House GOP caucus that is fractured into factions, the body’s growing dysfunction writ large by the debacle of the last two weeks.

While many of the conservative hard-liners who aimed to dismantle Obamacare by shutting down the government **will never support** comprehensive immigration reform, more moderate Republicans — those concerned with the GOP’s ability to win national elections, not just their own grip on their safe, gerrymandered, primary-ripe seats — have likely been chastened by recent polls showing their approval ratings in the 20s.

**Plan kills Obama’s agenda**

**KRINER 10 Assistant professor of political science at Boston University** [Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, page 276-77]

One of the mechanisms by which congressional opposition influences presidential cost-benefit calculations is by sending signals of American disunity to the target state. Measuring the effects of such congressional signals on the calculations of the target state is always difficult. In the case of Iraq it is exceedingly so, given the lack of data on the non-state insurgent actors who were the true “target” of the American occupation after the fall of the Hussein regime. Similarly, in the absence of archival documents, such as those from the Reagan Presidential Library presented in chapter 5, it is all but impossible to measure the effects of congressional signals on the administration’s perceptions of the military costs it would have to pay to achieve its objectives militarily.

By contrast. measuring the domestic political costs of congressional opposition, while still difficult, is at least a tractable endeavor. Chapter 2 posited two primary pathways through which congressional opposition could raise the political costs of staying the course militarily for the president. **First. high-profile congressional challenges** to a use of force can affect real or anticipated public opinion and bring popular pressures to bear on the president to change course. Second, congressional opposition to the president’s conduct of military affairs **can compel him to spend considerable political capital in the military arena to the detriment of other major items on his programmatic agenda**. On both of these dimensions, congressional opposition to the war in Iraq appears to have had the predicted effect.

**Immigration reform expands skilled labor --- spurs relations and economic growth in China and India.**

**Los Angeles Times, 11/9/2012** (Other countries eagerly await U.S. immigration reform, p. <http://latimesblogs.latimes.com/world_now/2012/11/us-immigration-reform-eagerly-awaited-by-source-countries.html>)

"Comprehensive immigration reform will see **expansion of skilled labor visas**," predicted B. Lindsay Lowell, director of policy studies for the Institute for the Study of International Migration at Georgetown University. A former research chief for the congressionally appointed Commission on Immigration Reform, Lowell said he expects to see at least a **fivefold increase** in the number of highly skilled labor visas that would provide "a **significant shot in the arm for India and China**." There is **widespread consensus among economists and academics** that skilled migration **fosters new trade and business relationships** between countries and **enhances links to the global economy**, Lowell said. "Countries like India and China weigh the opportunities of business abroad from their expats with the possibility of brain drain, and I think they still see the immigration opportunity as a bigger plus than not," he said.

**US/India relations averts South Asian nuclear war.**

**Schaffer**, Spring **2002** (Teresita – Director of the South Asia Program at the Center for Strategic and International Security, Washington Quarterly, p. Lexis)

Washington's increased interest in India since the late 1990s reflects India's economic expansion and position as Asia's newest rising power. New Delhi, for its part, is adjusting to the end of the Cold War. As a result, both giant democracies see that they can **benefit by closer cooperation**. For Washington, the advantages include a wider network of friends in Asia at a time when the region is changing rapidly, as well as a **stronger position** from which to help **calm possible future nuclear tensions in the region**. Enhanced trade and investment benefit both countries and are a **prerequisite for improved U.S. relations with India**. For India, the country's ambition to assume a stronger leadership role in the world and to maintain an economy that lifts its people out of poverty depends critically on good relations with the United States.

**China collapse causes nuclear war**

**Kaminski 7** (Antoni Z., Professor – Institute of Political Studies, “World Order: The Mechanics of Threats (Central European Perspective)”, Polish Quarterly of International Affairs, 1, p. 58)

As already argued, the economic advance of China has taken place with relatively few corresponding changes in the political system, although the operation of political and economic institutions has seen some major changes. Still, tools are missing that would allow the establishment of political and legal foundations for the modem economy, or they are too weak. The tools are efficient public administration, the rule of law, clearly defined ownership rights, efficient banking system, etc. For these reasons, many experts fear an economic crisis in China. Considering the importance of the state for the development of the global economy, the crisis would have serious global repercussions. Its political ramifications could be no less dramatic owing to the special position the military occupies in the Chinese political system, and the existence of many potential vexed issues in East Asia (disputes over islands in the China Sea and the Pacific). A potential hotbed of conflict is also Taiwan's status. Economic recession and the related destabilization of internal policies could lead to a political, or even military crisis. The likelihood of the **global escalation** of the conflict is high, as the interests of Russia, China, Japan, Australia and, first and foremost, the US clash in the region.

## 1NC CP

**Text: The Office of Legal Counsel should determine that the Executive Branch lacks the legal authority for UAV targeted killing as a first resort outside zones of active hostilities.**

**The President should require the Office of Legal Counsel to publish any legal opinions regarding policies adopted by the Executive Branch. The President should comply with the Office of Legal Counsel determination.**

**The United States executive should convene and sign onto an international convention on the regulation of the sale and military use of drones modeled off of the Convention on Certain Conventional Weapons including a provision that has a United Nations investigatory body investigate and monitor states for enforcement.**

**The CP is competitive and solves the case—OLC rulings do not actually remove authority but nevertheless hold binding precedential value on the executive.**

Trevor W. Morrison, October 2010. Professor of Law, Columbia Law School. “STARE DECISIS IN THE OFFICE OF LEGAL COUNSEL,” Columbia Law Review, 110 Colum. L. Rev. 1448, Lexis.

On the other hand, an OLC that says "yes" too often is not in the client's long-run interest. n49 Virtually all of OLC's clients have their own legal staffs, including the White House Counsel's Office in the White House and the general counsel's offices in other departments and agencies. Those offices are capable of answering many of the day-to-day issues that arise in those components. They typically turn to OLC when the issue is sufficiently controversial or complex (especially on constitutional questions) that some external validation holds special value. n50 For example, when a department confronts a difficult or delicate constitutional question in the course of preparing to embark upon a new program or course of action that raises difficult or politically sensitive legal questions, it has an interest in being able to point to a credible source affirming the  [\*1462]  legality of its actions. n51 The in-house legal advice of the agency's general counsel is unlikely to carry the same weight. n52 Thus, even though those offices might possess the expertise necessary to answer at least many of the questions they currently send to OLC, in some contexts they will not take that course because a "yes" from the in-house legal staff is not as valuable as a "yes" from OLC. But that value depends on OLC maintaining its reputation for serious, evenhanded analysis, not mere advocacy. n53

The risk, however, is that OLC's clients will not internalize the long-run costs of taxing OLC's integrity. This is in part because the full measure of those costs will be spread across all of OLC's clients, not just the client agency now before it. The program whose legality the client wants OLC to review, in contrast, is likely to be something in which the client has an immediate and palpable stake. Moreover, the very fact that the agency has come to OLC for legal advice will often mean it thinks there is  [\*1463]  at least a plausible argument that the program is lawful. In that circumstance, the agency is unlikely to see any problem in a "yes" from OLC.

Still, it would be an overstatement to say that OLC risks losing its client base every time it contemplates saying "no." One reason is custom. In some areas, there is a longstanding tradition - rising to the level of an expectation - that certain executive actions or decisions will not be taken without seeking OLC's advice. One example is OLC's bill comment practice, in which it reviews legislation pending in Congress for potential constitutional concerns. If it finds any serious problems, it writes them up and forwards them to the Office of Management and Budget, which combines OLC's comments with other offices' policy reactions to the legislation and generates a coordinated administration position on the legislation. n54 That position is then typically communicated to Congress, either formally or informally. While no statute or regulation mandates OLC's part in this process, it is a deeply entrenched, broadly accepted practice. Thus, although some within the Executive Branch might find it frustrating when OLC raises constitutional concerns in bills the administration wants to support as a policy matter, and although the precise terms in which OLC's constitutional concerns are passed along to Congress are not entirely in OLC's control, there is no realistic prospect that OLC would ever be cut out of the bill comment process entirely. Entrenched practice, then, provides OLC with some measure of protection from the pressure to please its clients.

But there are limits to that protection. Most formal OLC opinions do not arise out of its bill comment practice, which means most are the product of a more truly voluntary choice by the client to seek OLC's advice. And as suggested above, although the Executive Branch at large has an interest in OLC's credibility and integrity, the preservation of those virtues generally falls to OLC itself. OLC's nonlitigating function makes this all the more true. Whereas, for example, the Solicitor General's aim of prevailing before the Supreme Court limits the extent to which she can profitably pursue an extreme agenda inconsistent with current doctrine, OLC faces no such immediate constraint. Whether OLC honors its oft-asserted commitment to legal advice based on its best view of the law depends largely on its own self-restraint.

2. Formal Requests, Binding Answers, and Lawful Alternatives. - Over time, OLC has developed practices and policies that help maintain its independence and credibility. First, before it provides a written opinion, n55 OLC typically requires that the request be in writing from the head or general counsel of the requesting agency, that the request be as specific and concrete as possible, and that the agency provide its own written  [\*1464]  views on the issue as part of its request. n56 These requirements help constrain the requesting agency. Asking a high-ranking member of the agency to commit the agency's views to writing, and to present legal arguments in favor of those views, makes it more difficult for the agency to press extreme positions.

Second, as noted in the Introduction, n57 OLC's legal advice is treated as binding within the Executive Branch until withdrawn or overruled. n58 As a formal matter, the bindingness of the Attorney General's (or, in the modern era, OLC's) legal advice has long been uncertain. n59 The issue has never required formal resolution, however, because by longstanding tradition the advice is treated as binding. n60 OLC protects that tradition today by generally refusing to provide advice if there is any doubt about whether the requesting entity will follow it. n61 This guards against "advice-shopping by entities willing to abide only by advice they like." n62 More broadly, it helps ensure that OLC's answers matter. An agency displeased with OLC's advice cannot simply ignore the advice. The agency might  [\*1465]  construe any ambiguity in OLC's advice to its liking, and in some cases might even ask OLC to reconsider its advice. n63 But the settled practice of treating OLC's advice as binding ensures it is not simply ignored.

In theory, the very bindingness of OLC's opinions creates a risk that agencies will avoid going to OLC in the first place, relying either on their general counsels or even other executive branch offices to the extent they are perceived as more likely to provide welcome answers. This is only a modest risk in practice, however. As noted above, legal advice obtained from an office other than OLC - especially an agency's own general counsel - is unlikely to command the same respect as OLC advice. n64 Indeed, because OLC is widely viewed as "the executive branch's chief legal advisor," n65 an agency's decision not to seek OLC's advice is likely to be viewed by outside observers with skepticism, especially if the in-house advice approves a program or initiative of doubtful legality.

OLC has also developed certain practices to soften the blow of legal advice not to a client's liking. Most significantly, after concluding that a client's proposed course of action is unlawful, OLC frequently works with the client to find a lawful way to pursue its desired ends. n66 As the OLC Guidelines put it, "when OLC concludes that an administration proposal is impermissible, it is appropriate for OLC to go on to suggest modifications that would cure the defect, and OLC should stand ready to work with the administration to craft lawful alternatives." n67 This is a critical component of OLC's work, and distinguishes it sharply from the courts. In addition to "providing a means by which the executive branch lawyer can contribute to the ability of the popularly-elected President and his administration to achieve important policy goals," n68 in more instrumental terms the practice can also reduce the risk of gaming by OLC's clients. And that, in turn, helps preserve the bindingness of OLC's opinions. n69

 [\*1466]  To be sure, OLC's opinions are treated as binding only to the extent they are not displaced by a higher authority. A subsequent judicial decision directly on point will generally be taken to supersede OLC's work, and always if it is from the Supreme Court. OLC's opinions are also subject to "reversal" by the President or the Attorney General. n70 Such reversals are rare, however. As a formal matter, Dawn Johnsen has argued that "the President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds." n71 Solely is a key word here, especially for the President. Although his oath of office obliges him to uphold the Constitution, n72 it is not obvious he would violate that oath by pursuing policies that he thinks are plausibly constitutional even if he has not concluded they fit his best view of the law. It is not clear, in other words, that the President's oath commits him to seeking and adhering to a single best view of the law, as opposed to any reasonable or plausible view held in good faith. Yet even assuming the President has some space here, it is hard to see how his oath permits him to reject OLC's advice solely on policy grounds if he concludes that doing so is indefensible as a legal matter. n73 So the President needs at least a plausible legal basis for  [\*1467]  disagreeing with OLC's advice, which itself would likely require some other source of legal advice for him to rely upon.

The White House Counsel's Office might seem like an obvious candidate. But despite recent speculation that the size of that office during the Obama Administration might reflect an intention to use it in this fashion, n74 it continues to be virtually unheard of for the White House to reverse OLC's legal analysis. For one thing, even a deeply staffed White House Counsel's Office typically does not have the time to perform the kind of research and analysis necessary to produce a credible basis for reversing an OLC opinion. n75 For another, as with attempts to rely in the first place on in-house advice in lieu of OLC, any reversal of OLC by the White House Counsel is likely to be viewed with great skepticism by outside observers. If, for example, a congressional committee demands to know why the Executive Branch thinks a particular program is lawful, a response that relies on the conclusions of the White House Counsel is unlikely to suffice if the committee knows that OLC had earlier concluded otherwise. Rightly or wrongly, the White House Counsel's analysis is likely to be treated as an exercise of political will, not dispassionate legal analysis. Put another way, the same reasons that lead the White House to seek OLC's legal advice in the first place - its reputation for  [\*1468]  providing candid, independent legal advice based on its best view of the law - make an outright reversal highly unlikely. n76

Of course, the White House Counsel's Office may well be in frequent contact with OLC on an issue OLC has been asked to analyze, and in many cases is likely to make it abundantly clear what outcome the White House prefers. n77 But that is a matter of presenting arguments to OLC in support of a particular position, not discarding OLC's conclusion when it comes out the other way. n78The White House is not just any other client, and so the nature of - and risks posed by - communications between it and OLC on issues OLC is analyzing deserve special attention. I take that up in Part III. n79 My point at this stage is simply that the prospect of literal reversal by the White House is remote and does not meaningfully threaten the effective bindingness of OLC's decisions.

**The CP is the only way to internationalize the legal norms of drone regulation**

**Boyle 13** – Professor of Political Science @ La Salle University [Michael J. Boyle (Former Lecturer in International Relations and Research Fellow in the Centre for the Study of Terrorism and Political Violence @ University of St. Andrews), “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) pg. 1–29

The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.

## \*\*\*Case

## Norms

**No reverse casual modeling internal link --- we can’t reverse the precedent that has already been set**

**Boot 11** (Max Boot, Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations in New York, leading military historian and foreign-policy analyst, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, October 9, 2011, http://www.commentarymagazine.com/2011/10/09/drone-arms-race/)

The New York Times engages in some scare-mongering today about a drone arms race. Scott Shane notes correctly other nations such as China are building their own drones and in the future U.S. forces could be attacked by them–our forces will not have a monopoly on their use forever. Fair enough, but he goes further, suggesting our current use of drones to target terrorists will backfire:

If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them.

“The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the University of Pittsburgh and author of Missile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.”

This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.

**The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example.** In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.

Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected assassination of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone?

While a decision on our part to stop drone strikes would be unlikely to alter Russian or Chinese thinking, it would have one immediate consequence: al-Qaeda would be strengthened and could regenerate the ability to attack our homeland. Drone strikes are the only effective weapon we have to combat terrorist groups in places like Pakistan or Yemen where we don’t have a lot of boots on the ground or a lot of cooperation from local authorities. We cannot afford to give them up in the vain hope it will encourage disarmament on the part of dictatorial states.

**No impact --- drones are ineffective and there’s no incentive for them be used on a wide-scale --- they’ll be easily countered even if they are with limited escalation**

**Lewis 11** (Michael W. Lewis, professor of international law and the law of war at Ohio Northern University School of Law, former Navy fighter pilot, and coauthor of ‘The War on Terror and the Laws of War: A Military Perspective,’ “Unfounded Drone Fears,” Los Angeles Times, October 17, 2011, http://articles.latimes.com/2011/oct/17/opinion/la-oe--lewis-drones-20111017)

Almost since the United States began using the unmanned aerial vehicles known as drones, their use has drawn criticism. The latest criticism, which has received considerable attention in the wake of the drone strike on Anwar Awlaki, is that America's use of drones has sparked a new international arms race.

While it is true that some other nations have begun developing their own unmanned aerial vehicles, the extent of the alarm is unjustified. Much of it rests on myths that are easily dispelled.

Myth 1: Drones will be a threat to the United States in the hands of other nations. Drones are surveillance and counter-terrorism tools; they are **not effective weapons** of conventional warfare. The unmanned aerial vehicles are slow and **extremely vulnerable** to even basic air defense systems, illustrated by the fact that a U.S. surveillance drone was shot down by a 1970s-era MIG-25 Soviet fighter over Iraq in 2002. Moreover, drones are dependent on constant telemetry signals from their ground controllers to remain in flight. Such signals can be easily jammed or disrupted, causing the drone to fall from the sky. It's even possible that a party sending stronger signals could take control of the drone. The drones, therefore, have limited usefulness. And certainly any drone flying over the U.S. while being controlled by a foreign nation could be easily detected and either destroyed or captured.

Myth 2: Terrorists could effectively use drones to strike targets that are otherwise safe. Though it would be preferable if terrorist groups did not acquire drones, the technology required to support them is not particularly advanced. If organizations such as Al Qaeda were intent on acquiring the technology, they probably could. One of the reasons Al Qaeda may not have spent the time and resources necessary to do so is that drones would be of limited value. In addition to being very vulnerable to even basic air defense systems, drones require a great deal of logistical support. They have to be launched, recovered and controlled from a reasonably large and secure permanent facility. Wherever Al Qaeda's drones landed would immediately become a target.

It is true that a small, hand-launched drone capable of delivering a small warhead over a reasonably short distance could be, like radio-controlled model airplanes, launched in a public park or other open area and flown to a target several miles away. However, the amount of explosives that such a drone can carry is very limited (at most a few pounds) and pales in comparison to the amount of explosives that can be delivered by a vehicle or even a suicide bomber. It seems likely that terrorist groups will continue to deliver their explosives by vehicle or suicide bomber.

Myth 3: The U.S. use of drones in cases such as the Awlaki killing in Yemen serves to legitimize their use by China or Russia. International law places the same restrictions on the use of drones that it places on any other use of military force. The U.S. used a drone on Yemeni territory to kill Awlaki because it was given permission to do so by the Yemeni government, and because Awlaki was an active member of an Al Qaeda affiliate who had repeatedly been involved in operations designed to kill Americans at home and abroad. With such permission, the U.S. could instead have employed special forces or a conventional airstrike.

Numerous commentators have suggested that U.S. drone use legitimizes Russian drone use in Chechnya or Chinese drone use against the Uighurs. If China or Russia were facing genuine threats from Chechen or Uighur separatists, they might be allowed under international law to use drones in neighboring states if those states gave them permission to do so. However, given the fact that Chechen separatists declared an end to armed resistance in 2009, and that the greatest concern Russians currently have with Chechnya is with the lavish subsidies that Russia is currently providing it, the likelihood of armed Russian drones over Chechnya seems **remote at best.**

Likewise, there is no Uighur separatist organization that even remotely resembles Al Qaeda. Uighur unrest has taken the form of uprisings in Urumqi and other areas, similar to the Tibetan unrest of a few years ago. The Chinese eliminated such unrest with widespread arrests and disappearances, which raised serious human rights concerns. But there has been no time in which Uighur opposition has met the threshold established by international law that would allow for the use of armed drones in response to Uighur actions.

It is important to recognize drones for what they are: slow, relatively low-tech anti-terrorism tools that would be of limited use on most modern battlefields and are particularly unsuited to use by terrorist organizations.

### 1NC LOAC DA

#### The plan hinders the development of the Law of Armed Conflict

**Blank, 13 –** professor of law at Emory (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE” <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>)

B. Consequences for the Continued Development of LOAC

Uncertainty about the geographic scope of armed conflict leads to a variety of analytical and implementation challenges with regard to LOAC, human rights law, jus ad bellum, and other relevant legal regimes. The simple fact that within an armed conflict, a party to the conflict can use lethal force as a first resort, while outside an armed conflict, such deadly force may only be used as a last resort, is the starkest reminder of why such extensive attention has been focused on this question over the past few years. For the purpose of achieving LOAC’s central goal of “alleviating, as much as possible the calamities of war,”32 greater clarity regarding where an armed conflict is taking place and to where the concomitant authorities and obligations extend certainly would be a significant contribution. The international community—military lawyers, policymakers, international law scholars— should therefore address these issues head-on in a continuing effort to better understand how to apply the law most effectively and efficiently.33 Daskal’s proposal for a rules-driven new law of war framework is therefore a welcome and important contribution to the discussion and debate. At the same time, however, these efforts must stay true to the needs and goals of LOAC as a pragmatic, operationally focused body of law that is, above all, designed to work in the inherent chaos and uncertainty of armed conflict. As I have argued elsewhere, there are significant risks for the future implementation and development of LOAC as a result of conflating norms from LOAC with norms from human rights law, or of borrowing one from the other without careful delineation, including, in particular, the rules regarding surrender and capture and the different applications and purposes of proportionality in each legal regime.34 No place is this risk more profound than in relation to the legal authority to employ force against an enemy belligerent.

In the context of a specific legal framework for one particular type of conflict, the same concerns about blurring the lines between legal regimes remain. LOAC does not require an individualized threat assessment in the targeting of combatants, who are presumed hostile by dint of their status. Over time, however, the requirement for an individualized threat assessment in certain geographical zones in a new law of war framework for conflicts with transnational terrorist groups may well begin to bleed into the application of LOAC in more traditional conflicts. In essence, therefore, a carefully designed paradigm for one complex and difficult conflict scenario ultimately impacts LOAC writ large, even absent any perceived need or direct motivation for such change. Interpreting LOAC to require an individualized threat assessment for all targeting decisions—even those against the regular armed forces of the enemy state in an international armed conflict—introduces significant tactical and operational risk for soldiers not mandated or envisioned by the law.35 The same conflation problem holds true for other non-LOAC obligations that might be imported into LOAC depending on the analysis of where and how a new law of war framework were to apply. It is important to recognize, notwithstanding the focus on the operational effectiveness of LOAC in this Response, that conflation and “borrowing” offer the same challenges for the implementation of human rights law, to the extent that norms from LOAC begin to bleed into the application of human rights norms. Lastly, superimposing an artificially created framework detracts attention from—or even papers over—current challenges within LOAC, such as the identification of enemy operatives, the nature and amount of proof required for determinations of reasonableness or unreasonableness in targeting decisions, and other perennially tricky issues.

CONCLUSION

The procedural and legal protections proposed in the sort of rules-based, geographically differentiated law of war framework that Daskal proposes could certainly maximize protections for certain groups of people in certain areas during certain specific conflicts. To that end, such enhanced protections would indeed be an important contribution. However, the operational imperatives of conflict—all conflicts, not only the complex current conflict with al Qaeda and associated terrorist groups—suggest that such a framework would likely have more significant detrimental consequences through diminished clarity and predictability in the application of LOAC at all stages and unfortunate modifications in the future development of LOAC. Learning to accept some uncertainty in assessing the geography of conflict therefore helps to protect equally important LOAC goals and may well be a better option than it appears at first blush.

#### Uniquely turns the case

Corn, ’13 [Geoffrey Corn, South Texas College of Law, Professor of Law and Presidential Research Professor, J.D., 2013, Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2179720]

Seeking to identify some legally mandated geographic boundary for armed conflict of any type is, thus, a genuine Red Herring.23 Armed conflict is a threat driven concept, arising when the threat necessitates resort to combat power, and extending to wherever the operational and tactical opportunity to produce a militarily valuable effect on the enemy arises. There are examples of States choosing not to expand the scope of conflicts simply because such an opportunity arose. However, other factors impact such decisions, and it would be an error to equate decisions to refrain from exercising authority with an inherent legal prohibition against such exercise.

The scope of TAC—like that of any armed conflict—must be threat driven for a reason. Admittedly, there exists a perceived and actual risk of an overzealous and overbroad assertion of LOAC–based authority to attack and disable threat operatives inherent in the combined effect of TAC as a theory of armed conflict typology and a threat–driven scope interpretation. Nonetheless, States must avoid attempts to identify or impose some per se geographic limitations on this type of armed conflict. Any authority overreach (invoking the power to incapacitate through an application of LOAC principles), triggered by extending the concept of armed conflict to transnational non-State threats, will be more effectively mitigated by focusing on the traditional dynamics of lawful wartime action and tailoring or adjusting traditional sources of LOAC authority to meet the unique challenges of this type of armed conflict. Chief among these particular challenges are, one, ensuring that the targeting process adequately accounts for the complexity of threat identification in this inherently unconventional environment; and two, ensuring that preventive detention processes sufficiently address the unique scope and nature of this type of armed conflict. Focusing on these two practical challenges will produce a better balance between national security realities and the individual interests of potential objects of State action than would be achieved by attempting to confine that action to an arbitrary “hot zone.”

#### Loac key to regulate new military technology

Stewart, ‘11 [Darren M Stewart, Colonel, British Army; Director, Military Department, International Institute of Humanitarian Law (IIHL), “New Technology and the Law of Armed Conflict”, International Law Studies, Volume 87]

Over the centuries LOAC, in its various guises, has always had as its focus the regulation of armed conflict so as to protect the victims of war.2 During the nineteenth century, in response to both the development of military technology and the prevailing social mores of the time, LOAC rules started to become formalized and began to reflect the format that we are familiar with today.

One of the notable features of LOAC has been its evolutionary flexibility. This flexibility has allowed LOAC to evolve in a manner that adapts to the developments in both technological capabilities (means) and tactics (methods) employed in armed conflict. This has included specific measures to ban weapons3 and tactics4 when seen as appropriate. More important, LOAC has demonstrated its flexibility through the defining principles underpinning its operation. These principles— military necessity, humanity, distinction and proportionality—are of an enduring quality and provide a benchmark against which developments in technology and tactics can be assessed as to their lawfulness. When applied in the context of prevailing international mores, LOAC proves itself both flexible and responsive to changes in the armed conflict paradigm.

The changing character of weapons systems and their impact on the law is neither one-dimensional nor negative. In fact, technological advances in weaponry frequently work to enhance application of LOAC, particularly in the areas of distinction and proportionality. Challenges usually arise when such developments raise wider questions as to what are the acceptable ethical limits in the application of technology to military purposes. In this context LOAC, operating as a system regulating what is inherently a human activity within a prevailing set of international mores, becomes an important consideration.

#### Extinction

Masciulli 11—Professor of Political Science @ St Thomas University [Joseph Masciulli, “The Governance Challenge for Global Political and Technoscientific Leaders in an Era of Globalization and Globalizing Technologies,” Bulletin of Science, Technology & Society February 2011 vol. 31 no. 1 pg. 3-5]

What is most to be feared is enhanced global disorder resulting from the combination of weak global regulations; the unforeseen destructive consequences of converging technologies and economic globalization; military competition among the great powers; and the prevalent biases of short-term thinking held by most leaders and elites. But no practical person would wish that such a disorder scenario come true, given all the weapons of mass destruction (WMDs) available now or which will surely become available in the foreseeable future. As converging technologies united by IT, cognitive science, nanotechnology, and robotics advance synergistically in monitored and unmonitored laboratories, we may be blindsided by these future developments brought about by technoscientists with a variety of good or destructive or mercenary motives. The current laudable but problematic openness about publishing scientific results on the Internet would contribute greatly to such negative outcomes.

To be sure, if the global disorder-emergency scenario occurred because of postmodern terrorism or rogue states using biological, chemical, or nuclear WMDs, or a regional war with nuclear weapons in the Middle East or South Asia, there might well be a positive result for global governance. Such a global emergency might unite the global great and major powers in the conviction that a global concert was necessary for their survival and planetary survival as well. In such a global great power concert, basic rules of economic, security, and legal order would be uncompromisingly enforced both globally and in the particular regions where they held hegemonic status. That concert scenario, however, is flawed by the limited legitimacy of its structure based on the members having the greatest hard and soft power on planet Earth.

At the base of our concerns, I would argue, are human proclivities for narrow, short-term thinking tied to individual self-interest or corporate and national interests in decision making. For globalization, though propelled by technologies of various kinds, “remains an essentially human phenomenon . . . and the main drivers for the establishment and uses of disseminative systems are hardy perennials: profit, convenience, greed, relative advantage, curiosity, demonstrations of prowess, ideological fervor, malign destructiveness.” These human drives and capacities will not disappear. Their “manifestations now extend considerably beyond more familiarly empowered governmental, technoscientific and corporate actors to include even individuals: terrorists, computer hackers and rogue market traders” (Whitman, 2005, p. 104).

In this dangerous world, if people are to have their human dignity recognized and enjoy their human rights, above all, to life, security, a healthy environment, and freedom, we need new forms of comprehensive global regulation and control. Such **effective global leadership** **and governance** with robust enforcement powers **alone can adequately respond to destructive current global problems, and prevent new ones**. However, successful human adaptation and innovation to our current complex environment through the social construction of effective global governance will be a daunting collective task for global political and technoscientific leaders and citizens. For our global society is caught in “the whirlpool of an accelerating process of modernization” that has for the most part “been left to its own devices” (Habermas, 2001, p. 112). We need to progress in human adaptation to and innovation for our complex and problematical global social and natural planetary environments through global governance. I suggest we need to begin by ending the prevalent biases of short-termism in thinking and acting and the false values attached to the narrow self-interest of individuals, corporations, and states.

### Heg

No intenral link – says countries will challenge not collapse of us unipolarity

#### The only comprehensive study proves no transition impact.

MacDonald & Parent 11—Professor of Political Science at Williams College & Professor of Political Science at University of Miami [Paul K. MacDonald & Joseph M. Parent, “Graceful Decline? The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4 (Spring 2011), pp. 7–44]

In this article, we question the logic and evidence of the retrenchment pessimists. To date there has been neither a comprehensive study of great power retrenchment nor a study that lays out the case for retrenchment as a practical or probable policy. This article fills these gaps by systematically examining the relationship between acute relative decline and the responses of great powers. We examine eighteen cases of acute relative decline since 1870 and advance three main arguments.

First, we challenge the retrenchment pessimists’ claim that domestic or international constraints inhibit the ability of declining great powers to retrench. In fact, when states fall in the hierarchy of great powers, peaceful retrenchment is the most common response, even over short time spans. Based on the empirical record, we find that great powers retrenched in no less than eleven and no more than fifteen of the eighteen cases, a range of 61–83 percent. When international conditions demand it, states renounce risky ties, increase reliance on allies or adversaries, draw down their military obligations, and impose adjustments on domestic populations.

Second, we find that the magnitude of relative decline helps explain the extent of great power retrenchment. Following the dictates of neorealist theory, great powers retrench for the same reason they expand: the rigors of great power politics compel them to do so.12 Retrenchment is by no means easy, but necessity is the mother of invention, and declining great powers face powerful incentives to contract their interests in a prompt and proportionate manner. Knowing only a state’s rate of relative economic decline explains its corresponding degree of retrenchment in as much as 61 percent of the cases we examined.

Third, we argue that the rate of decline helps explain what forms great power retrenchment will take. How fast great powers fall contributes to whether these retrenching states will internally reform, seek new allies or rely more heavily on old ones, and make diplomatic overtures to enemies. Further, our analysis suggests that great powers facing acute decline are less likely to initiate or escalate militarized interstate disputes. Faced with diminishing resources, great powers moderate their foreign policy ambitions and offer concessions in areas of lesser strategic value. Contrary to the pessimistic conclusions of critics, retrenchment neither requires aggression nor invites predation. Great powers are able to rebalance their commitments through compromise, rather than conflict. In these ways, states respond to penury the same way they do to plenty: they seek to adopt policies that maximize security given available means. Far from being a hazardous policy, retrenchment can be successful. States that retrench often regain their position in the hierarchy of great powers. Of the fifteen great powers that adopted retrenchment in response to acute relative decline, 40 percent managed to recover their ordinal rank. In contrast, none of the declining powers that failed to retrench recovered their relative position. Pg. 9-10

#### Latent power sustains hegemony

Wohlforth 7— Olin Fellow in International Security Studies at Yale University [William, “Unipolar Stability: The Rules of Power Analysis, [A Tilted Balance](http://www.harvardir.org/symposia/72/),” Vol. 29 (1), Spring]

US military forces are stretched thin, its budget and trade deficits are high, and the country continues to finance its profligate ways by borrowing from abroad—notably from the Chinese government. These developments have prompted many analysts to warn that the United States suffers from “imperial overstretch.” And if US power is overstretched now, the argument goes, unipolarity can hardly be sustainable for long. The problem with this argument is that it fails to distinguish between actual and latent power. One must be careful to take into account both the level of resources that can be mobilized and the degree to which a government actually tries to mobilize them. And how much a government asks of its public is partly a function of the severity of the challenges that it faces. Indeed, one can never know for sure what a state is capable of until it has been seriously challenged. Yale historian Paul Kennedy coined the term “imperial overstretch” to describe the situation in which a state’s actual and latent capabilities cannot possibly match its foreign policy commitments. This situation should be contrasted with what might be termed “self-inflicted overstretch”—a situation in which a state lacks the sufficient resources to meet its current foreign policy commitments in the short term, but has untapped latent power and readily available policy choices that it can use to draw on this power. This is arguably the situation that the United States is in today. But the US government has not attempted to extract more resources from its population to meet its foreign policy commitments. Instead, it has moved strongly in the opposite direction by slashing personal and corporate tax rates. Although it is fighting wars in Afghanistan and Iraq and claims to be fighting a global “war” on terrorism, the United States is not acting like a country under intense international pressure. Aside from the volunteer servicemen and women and their families, US citizens have not been asked to make sacrifices for the sake of national prosperity and security. The country could clearly devote a greater proportion of its economy to military spending: today it spends only about 4 percent of its GDP on the military, as compared to 7 to 14 percent during the peak years of the Cold War. It could also spend its military budget more efficiently, shifting resources from expensive weapons systems to boots on the ground. Even more radically, it could reinstitute military conscription, shifting resources from pay and benefits to training and equipping more soldiers. On the economic front, it could raise taxes in a number of ways, notably on fossil fuels, to put its fiscal house back in order. No one knows for sure what would happen if a US president undertook such drastic measures, but there is nothing in economics, political science, or history to suggest that such policies would be any less likely to succeed than China is to continue to grow rapidly for decades. Most of those who study US politics would argue that the likelihood and potential success of such power-generating policies depends on public support, which is a function of the public’s perception of a threat. And as unnerving as terrorism is, there is nothing like the threat of another hostile power rising up in opposition to the United States for mobilizing public support. With latent power in the picture, it becomes clear that unipolarity might have more built-in self-reinforcing mechanisms than many analysts realize. It is often noted that the rise of a peer competitor to the United States might be thwarted by the counterbalancing actions of neighboring powers. For example, China’s rise might push India and Japan closer to the United States—indeed, this has already happened to some extent. There is also the strong possibility that a peer rival that comes to be seen as a threat would create strong incentives for the United States to end its self-inflicted overstretch and tap potentially large wellsprings of latent power.

### 1NC soft power bad

#### US leadership will be used to counterbalance China. That undermines regional cooperation over the South China Seas and risks US-China Cold War.

**Steinbock 13** - Senior ASLA-Fulbright Scholar @ New York University [Dr. Dan Steinbock (Expert on the economic, political and strategic aspects of the nascent multipolar world), “Two Visions: U.S. and Chinese Rebalancing in Asia,” EconoMonitor, October 14th, 2013, pg. http://www.economonitor.com/blog/2013/10/two-visions-u-s-and-chinese-rebalancing-in-asia/#sthash.m4yEgivO.dpuf

Today, the United States is no longer the dominant economic contributor in the region. Nonetheless, Washington hopes to restore its primacy in Asia to counterbalance China’s role.

In turn, from China’s standpoint, U.S. rebalancing translates to de facto containment policies vis-à-vis America’s old allies (Japan, Australia), new partners (India) and new military partnerships with emerging ASEAN nations (e.g., the Manila Declaration, cooperation with Vietnam).

Indeed, the two pivots toward Asia have a very different approach to regional cooperation and the South China Seas disputes.

U.S. rebalancing in Asia

Indeed, the buildup of U.S. forces in Asia has intensified since 2011. In June 2012, at Shangri-La Dialogue in Singapore, an annual meeting of regional defense ministers and security experts, U.S. Defense Secretary Leon Panetta said that America’s combat ships in Asia would be doubled to 60 percent by 2020. Further, some military scenarios (e.g., the so-called AirSea Battle plan) have identified China as a kind of a hostile hegemon in the region – in a way that has divided even Pentagon’s leadership.

The most recent strategic moves toward U.S. rebalancing in the region include the new U.S.-Japanese agreement to broaden the bilateral military alliance. It was signed only a few days ago during a joint visit by Secretary of State John Kerry and Defense Secretary Chuck Hagel in a meeting with their Japanese counterparts. It reflects the US’ increased military, economic and diplomatic focus on Asia.

Most importantly, the deal comes at a time when the Japanese government is seeking to greatly enhance its own military capabilities and to revise its pacifist Constitution, drafted after World War II. Prime Minister Shinzo Abe plans to increase Tokyo’s military budget by 3 percent this year. As a result, Japan’s this year’s defense budget will be highest since the end of the Cold War, despite Japan’s huge and soaring debt burden.

Since Prime Minister Shinzo Abe was elected at the end of last year, he has revived Japan’s efforts to enhance its military capabilities. Under its Constitution, Japan has been constrained since World War II from using military force for purposes beyond basic self-defense, which Abe hopes to change. These efforts have become complicated by Japan’s increasingly tense relations with nearby South Korea and China.

A year ago, Tokyo also decided to “nationalize” a group of disputed, uninhabited islands in the East China Sea. Meanwhile, China is Japan’s number one trading partner by a large margin, whereas Japan is China’s second-largest source of foreign trade, after the U.S.

In brief, while the U.S. rebalancing in Asia is motivated by efforts to accelerate trade and investment, its primary focus, at least currently, is military.

China’s rebalancing in Asia

China, too, is rebalancing its foreign policy in the region. But its approach is different.

In the past, Chinese foreign ministers have been U.S. or Russia experts. Now, the emphasis is no shifting (back) to Asia and Asia-Pacific. New foreign policy is reflected by a slate of new appointments, including those of senior diplomats Yang Jiechi, Wang Yi, and Cui Tiankai.

In the past, Washington and Brussels have sought to nurture relations with Asia vis-à-vis special relations with the ASEAN’s more advanced but small members, such as Singapore. In contrast, President Xi made his opening in Indonesia whose huge population accounts for 40 percent of the ASEAN total. While the West prefers advanced-economy partners to focus on trade and defense, Chinese approach favors emerging-economy cooperation stressing trade with economic development.

During his maiden Southeast Asian visit, President Xi Jinping addressed the Indonesian parliament proposing joint efforts with countries in the region to develop a new ”maritime silk road.” What the speech underscored were the economic opportunities for cooperation between China and the 10 member nations of the ASEAN. This initiative holds potential for great opportunities for regional development. In particular, setting up an Asian investment bank to support regional connectivity construction is vital to Indonesia, which has drawn up a $400 billion plan for its domestic infrastructure development.

Further, President Xi told the Indonesian lawmakers China would strive to ensure the trade volume with ASEAN countries reaches US$1 trillion by 2020. He also restated the proposal to establish a regional infrastructure investment bank, an initiative he raised during a visit to the region in March.

Following President Xi’s opening, Premier Li Keqiang outlined the blueprint for a “diamond decade” of relations between China and ASEAN, at the China-ASEAN leaders meeting in Brunei, Premier Li proposed a treaty on good-neighborliness, friendship and cooperation between China and the ASEAN.

In addition to a treaty on good-neighborliness, friendship and cooperation, Premier Li advocated the need to boost security exchanges and cooperation, speaking for bilateral trade to 1 trillion U.S. dollars by 2020, an Asian infrastructure investment bank as a platform for financing intra-ASEAN and regional inter-connectivity projects, cooperation to enhance regional financial cooperation and immunity to risks, promotion of maritime cooperation, and exchanges in culture, technology, environmental protection.

The strategic partnership between China and ASEAN was initiated a decade ago. However, the proposals by President Xi and Premier Li could broaden and deepen the relationship by a magnitude – in order to support, secure and boost regional cooperation between China and the ASEAN.

Cooperation versus rearmament

A week ago, President Barack Obama canceled his appearance at the Asia-Pacific Economic Cooperation [APEC] conference in Bali and long-planned visits to Malaysia and the Philippines, because of the fiscal standoff in Washington. That, in turn, raised questions about the White House’s stated goal of pivoting its foreign policy toward Asia. Replacing President Obama at the APEC, Secretary of State John Kerry assured his Asian audience that the U.S. fiscal standoff was actually “an example of the robustness of our democracy.”

Clearly, President Obama had no other option but to focus on the domestic priorities. But America’s pivot toward Asia is not just about the presence or absence of the U.S. president in certain vital summits in Asia. What’s far more important is the way the U.S. and China are pivoting to Asia is very different.

What emerging Asia needs is broader and deeper economic cooperation through security, trade and investment, and shared prosperity. What Asia does not need is a 21st century Cold War.

#### It goes nuclear. Their takeouts do not assume the Air-Sea Battle strategy

**Etzioni 13** – professor of international relations @ The George Washington University [Amitai Etzioni, “[Air-Sea Battle: A Dangerous Way to Deal with China](http://thediplomat.com/2013/09/03/air-sea-battle-a-dangerous-way-to-deal-with-china/),” The Diplomat, September 03, 2013, pg. http://thediplomat.com/2013/09/03/air-sea-battle-a-dangerous-way-to-deal-with-china/

On the face of it, the Pentagon’s Air-Sea Battle plan makes eminently good sense; it is a clear response to a clear challenge. China has been developing a whole slew of weapons (especially anti-ship missiles) over the past two decades that are of great concern to the U.S. military. These weapons, known in Pentagon-speak as anti-access/area-denial (A2/AD) capabilities, could undermine the international right to free passage in China’s surrounding waters or, in the case of a conflict over Taiwan or contested islands in the South and East China Seas, prevent the U.S. from making good on defense commitments to its friends in the region.

In response, the Pentagon developed Air-Sea Battle (ASB), the employment of which entails, according to position papers developed to promote it, a blistering assault on China’s mainland. A report by the Center for Strategic and Budgetary Assessments (CSBA) gives a detailed account of how an ASB-style war with China would unfold. In the opening “blinding campaign,” the U.S. attacks China’s reconnaissance and command-and-control networks to degrade the PLA’s ability to target U.S. and allied forces. Next, the military takes the fight to the Chinese mainland, striking long-range anti-ship missile launchers. Given that this is where the anti-ship missiles are located, it is only logical that the U.S. would target land- based platforms. And to go after them, one of course needs to take out China's air defense systems, command control centers, and other anti-access weapons. In short, ASB requires a total war with China.

As word of this plan spread, it generated a great deal of buzz in defense circles—and considerable push back. Some in the Army saw ASB as an attempt by the Air Force and Navy to grab future missions and a larger share of a shrinking defense budget. They were somewhat mollified when planners later carved out more room in the plan for land forces. Others fear that it would lead to an arms race between the U.S. and China just when both powers must focus on nation building at home. Still others claim that the same goal could be achieved by a much less aggressive strategy, such as imposing a blockade on China. Above all, critics hold that ASB is highly escalatory and may lead to nuclear war. Defense analyst Raoul Heinrichs warns that the deep mainland strikes “could easily be misconstrued in Beijing as an attempt at preemptively destroying China’s retaliatory nuclear options. Under intense pressure, it would be hard to limit a dramatic escalation of such a conflict, including, in the worst case, up to and beyond the nuclear threshold.”

### Asia

No Asian war

**Sari 12** [Angguntari, reporter for the Jakarta Post, "Three possible scenarios in South China Sea," 12-31, http://www2.thejakartapost.com/news/2012/12/31/three-possible-scenarios-south-china-sea.html]

In the status-quo scenario, which is the most likely scenario for the next 10 years, the claimants adopt half-hearted attitudes to resolving the territorial claims and maintaining stability. The current information suggests that a major conflict will not take place. Military analysts at IHS Jane’s say that Southeast Asian countries, including the claimants, together increased defense spending by 13.5 percent last year, to US$24.5 billion. The figure is projected to rise to $40 billion by 2016. This will prevent China from forcefully pressuring other claimants or occupying the territory that it claims. The other stabilizing factor is the US. The US pivot to Asia Pacific since 2009 includes the commitment to keep all claimants in check since this area has a high strategic and economic value. Nearly a third of the world’s maritime shipping traverse this area. An encouraging sign has come from China’s next leader Xi Jinping. In his address to the annual meeting with ASEAN members, held in the southern Chinese city of Nanning recently, Xi said China was committed to “common development and a peaceful regional solution to the dispute”.

#### No Asian drone wars

**Zhou 12** (Dillon Zhou, graduate of the International Relations Program at the University of Massachusetts Boston, “China Drones Prompts Fears of a Drone Race With the US,” Policymic, December 2012, http://www.policymic.com/articles/19753/china-drones-prompt-fears-of-a-drone-race-with-the-us)

There are several facts that provide some solace to the U.S. as China's drones are far from being a real challenge to the American drone program.

First, the Chinese drones are nowhere as sophisticated as U.S. drones in their range and proper hardware for optic systems and motors to power the "dragons." The DSB report notes that the U.S. technical systems are almost unrivaled at present.

Second, China lacks the manpower to properly support their new fleet of drones. Whereas the U.S. has been training and honing a large force of UAV pilots, technicians and operation managers for 15 years.

Finally, the U.S. drone program is about 20 years ahead of the Chinese program. The current models on show are considered to be prototypes and not finished products. The Chinese also have not had a chance to gain real experience with their drones during real operation.

## Terrorism

#### restricting targeted killing as a first resort outside active hostilities collapses counter-terrorism by signaling availability of safe havens – executive self-restraint solves the aff

Geoffrey Corn 13, Professor of Law and Presidential Research Professor, South Texas College of Law, 5/16/13, Statement before the Senate Armed Services Committee, CQ Congressional Testimony, lexis

3. What is the geographic scope of the AUMF and under what circumstances may the United States attack belligerent targets in the territory of another country?

In my opinion, there is no need to amend the AUMF to define the geographic scope of military operations it authorizes. On the contrary, I believe doing so would fundamentally undermine the efficacy of U.S. counter-terror military operations by overtly signaling to the enemy exactly where to pursue safe-haven and de facto immunity from the reach of U.S. power. This concern is similar to that associated with explicitly defining co- belligerents subject to the AUMF, although I believe it is substantially more significant. It is an operational and tactical axiom that insurgent and non-state threats rarely seek the proverbial "toe to toe" confrontation with clearly superior military forces. Al Qaeda is no different. Indeed, their attempts to engage in such tactics in the initial phases of Operation Enduring Freedom proved disastrous, and ostensibly caused the dispersion of operational capabilities that then necessitated the co-belligerent assessment. Imposing an arbitrary geographic limitation of the scope of military operations against this threat would therefore be inconsistent with the strategic objective of preventing future terrorist attacks against the United States.

I believe much of the momentum for asserting some arbitrary geographic limitation on the scope of operations conducted to disrupt or disable al Qaeda belligerent capabilities is the result of the commonly used term "hot battlefield." This notion of a "hot" battlefield is, in my opinion, an operational and legal fiction. Nothing in the law of armed conflict or military doctrine defines the meaning of "battlefield." Contrary to the erroneous assertions that the use of combat power is restricted to defined geographic locations such as Afghanistan (and previously Iraq), the geographic scope of armed conflict must be dictated by a totality assessment of a variety of factors, ultimately driven by the strategic end state the nation seeks to achieve. The nature and dynamics of the threat -including key vulnerabilities - is a vital factor in this analysis. These threat dynamics properly influence the assessment of enemy capabilities and vulnerabilities, which in turn drive the formulation of national strategy, which includes determining when, where, and how to leverage national power (including military power) to achieve desired operational effects. Thus, threat dynamics, and not some geographic "box", have historically driven and must continue to drive the scope of armed hostilities. The logic of this premise is validated by (in my opinion) the inability to identify an armed conflict in modern history where the scope of operations was legally restricted by a conception of a "hot" battlefield. Instead, threat dynamics coupled with policy, diplomatic considerations and, in certain armed conflicts the international law of neutrality, dictate such scope. Ultimately, battlefields become "hot" when persons, places, or things assessed as lawful military objectives pursuant to the law of armed conflict are subjected to attack.

I do not, however, intend to suggest that it is proper to view the entire globe as a battlefield in the military component of our struggle against al Qaeda, or that threat dynamics are the only considerations in assessing the scope of military operations. Instead, complex considerations of policy and diplomacy have and must continue to influence this assessment. However, suggesting that the proper scope of combat operations is dictated by a legal conception of "hot" battlefield is operationally irrational and legally unsound. Accordingly, placing policy limits on the scope of combat operations conducted pursuant to the legal authority provided by the AUMF is both logical and appropriate, and in my view has been a cornerstone of U.S. use of force policy since the enactment of the AUMF. In contrast, interpreting the law of armed conflict to place legal limits on the scope of such operations to "hot" battlefields, or imposing such a legal limitation in the terms of the AUMF, creates a perverse incentive for the belligerent enemy by allowing him to dictate when and where he will be subject to lawful attack.

I believe this balance between legal authority and policy and diplomatic considerations is reflected in what is commonly termed the "unable or unwilling" test for assessing when attacking an enemy belligerent capability in the territory of another country is permissible. First, it should be noted that the legality of an attack against an enemy belligerent is determined exclusively by the law of armed conflict when the country where he is located provides consent for such action (is the target lawful within the meaning of the law and will attack of the target comply with the targeting principles of distinction, proportionality and precautions in the attack). In the unusual circumstance where a lawful object of attack associated with al Qaeda and therefore falling within the scope of the AUMF is identified in the territory of another country not providing consent for U.S. military action, policy and diplomacy play a decisive role in the attack decision-making process. Only when the U.S. concludes that the country is unable or unwilling to address the threat will attack be authorized, which presupposes that the nature of the target is determined to be sufficiently significant to warrant a non-consensual military action in that territory. I believe the Executive is best positioned to make these judgments, and that to date they have been made judiciously. I also believe that imposing a statutory scope limitation would vest terrorist belligerent operatives with the benefits of the sovereignty of the state they exploit for sanctuary. It strikes me as far more logical to continue to allow the President to address these sovereignty concerns through diplomacy, focused on the strategic interests of the nation.

### 1NC domestic

#### Zero impact to backlash

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

This is the crux of the problem. We stand at the beginning of the Drone Age and the genie is not going to climb back into the bottle. The chances that this way of war will, over time, reduce the amount of random violence in the world are essentially nil. Obama’s drone policy has set an ominous precedent, and not only for future residents of the White House. It promises, over the long term, to engender more violence than it prevents because it excites no public backlash. That, for the permanent national security apparatus that has deftly moulded the worldview of a novice president, is its irresistible allure. It doesn’t provoke significant protest even on the part of people who condemn hit-jobs done with sticky bombs, radioactive isotopes or a bullet between the eyes – in the style of Mossad or Putin’s FSB. That America appears to be laidback about drones has made it possible for the CIA to resume the assassination programme it was compelled to shut down in the 1970s without, this time, awakening any politically significant outrage. It has also allowed the Pentagon to wage a war against which antiwar forces are apparently unable to rally even modest public support.

### 1NC allied coop

#### Allied terror coop is high now, despite frictions

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

#### PRISM and detention are massive alt-causes

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

Although the United States and the EU both recognize the importance of sharing information in an effort to track and disrupt terrorist activity, data privacy has been and continues to be a key U.S.-EU sticking point. As noted previously, the EU considers the privacy of personal data a basic right; EU data privacy regulations set out common rules for public and private entities in the EU that hold or transmit personal data, and prohibit the transfer of such data to countries where legal protections are not deemed “adequate.” In the negotiation of several U.S.-EU informationsharing agreements, from those related to Europol to SWIFT to airline passenger data, some EU officials have been concerned about whether the United States could guarantee a sufficient level of protection for European citizens’ personal data. In particular, some Members of the European Parliament (MEPs) and many European civil liberty groups have long argued that elements of U.S.-EU information-sharing agreements violate the privacy rights of EU citizens. In light of the public revelations in June 2013 of U.S. National Security Agency (NSA) surveillance programs and news reports alleging that U.S. intelligence agencies have monitored EU diplomatic offices and computer networks, many analysts are worried about the future of U.S.-EU information-sharing arrangements. As discussed in this section, many of these U.S.-EU information-sharing agreements require the approval of the European Parliament, and many MEPs (as well as many officials from the European Commission and the national governments) have been deeply dismayed by the NSA programs and other spying allegations. In response, the Parliament passed a resolution expressing serious concerns about the U.S. surveillance operations and established a special working group to conduct an in-depth investigation into the reported programs.17 In addition, led by the European Commission and the U.S. Department of Justice, the United States and the EU have convened a joint expert group on the NSA’s surveillance operations, particularly the so-called PRISM program (in which the NSA reportedly collected data from leading U.S. Internet companies), to assess the “proportionality” of such programs and their implications for the privacy rights of EU citizens.18 U.S. officials have sought to reassure their EU counterparts that the PRISM program and other U.S. surveillance activities operate within U.S. law and are subject to oversight by all three branches of the U.S. government. Some observers note that the United States has been striving to demonstrate that it takes EU concerns seriously and is open to improving transparency, in part to maintain European support for existing information-sharing accords, such as SWIFT (which will be up for renewal in 2015), and the U.S.-EU Passenger Name Record agreement (up for renewal in 2019). Nevertheless, many experts predict that the revelations of programs such as PRISM will make the negotiation of future U.S.-EU information-sharing arrangements more difficult, and may make the European Parliament even more cautious and skeptical about granting its approval.

#### US anti-terror intel is fine on its own – outstrips everybody else

Barton Gellman and Greg Miller, 8-29-2013, “Top secret ‘black budget’ reveals US spy agencies’ spending,” LA Daily News, http://www.dailynews.com/government-and-politics/20130829/top-secret-black-budget-reveals-us-spy-agencies-spending

“The United States has made a considerable investment in the Intelligence Community since the terror attacks of 9/11, a time which includes wars in Iraq and Afghanistan, the Arab Spring, the proliferation of weapons of mass destruction technology, and asymmetric threats in such areas as cyber-warfare,” Director of National Intelligence James Clapper said in response to inquiries from The Post. “Our budgets are classified as they could provide insight for foreign intelligence services to discern our top national priorities, capabilities and sources and methods that allow us to obtain information to counter threats,” he said. Among the notable revelations in the budget summary: Spending by the CIA has surged past that of every other spy agency, with $14.7 billion in requested funding for 2013. The figure vastly exceeds outside estimates and is nearly 50 percent above that of the National Security Agency, which conducts eavesdropping operations and has long been considered the behemoth of the community. The CIA and NSA have launched aggressive new efforts to hack into foreign computer networks to steal information or sabotage enemy systems, embracing what the budget refers to as “offensive cyber operations.” The NSA planned to investigate at least 4,000 possible insider threats in 2013, cases in which the agency suspected sensitive information may have been compromised by one of its own. The budget documents show that the U.S. intelligence community has sought to strengthen its ability to detect what it calls “anomalous behavior” by personnel with access to highly classified material. U.S. intelligence officials take an active interest in foes as well as friends. Pakistan is described in detail as an “intractable target,” and counterintelligence operations “are strategically focused against [the] priority targets of China, Russia, Iran, Cuba and Israel.” In words, deeds and dollars, intelligence agencies remain fixed on terrorism as the gravest threat to national security, which is listed first among five “mission objectives.” Counterterrorism programs employ one in four members of the intelligence workforce and account for one-third of all spending. The governments of Iran, China and Russia are difficult to penetrate, but North Korea’s may be the most opaque. There are five “critical” gaps in U.S. intelligence about Pyongyang’s nuclear and missile programs, and analysts know virtually nothing about the intentions of North Korean leader Kim Jong Un. Formally known as the Congressional Budget Justification for the National Intelligence Program, the “Top Secret” blueprint represents spending levels proposed to the House and Senate intelligence committees in February 2012. Congress may have made changes before the fiscal year began on Oct 1. Clapper is expected to release the actual total spending figure after the fiscal year ends on Sept. 30. The document describes a constellation of spy agencies that track millions of individual surveillance targets and carry out operations that include hundreds of lethal strikes. They are organized around five priorities: combating terrorism, stopping the spread of nuclear and other unconventional weapons, warning U.S. leaders about critical events overseas, defending against foreign espionage and conducting cyber operations. In an introduction to the summary, Clapper said the threats now facing the United States “virtually defy rank-ordering.” He warned of “hard choices” as the intelligence community — sometimes referred to as the “IC” — seeks to rein in spending after a decade of often double-digit budget increases. This year’s budget proposal envisions that spending will remain roughly level through 2017 and amounts to a case against substantial cuts. “Never before has the IC been called upon to master such complexity and so many issues in such a resource-constrained environment,” Clapper wrote. The summary provides a detailed look at how the U.S. intelligence community has been reconfigured by the massive infusion of resources that followed the Sept. 11 attacks. The United States has spent more than $500 billion on intelligence during that period, an outlay that U.S. officials say has succeeded in its main objective: preventing another catastrophic terrorist attack in the United States. The result is an espionage empire with resources and reach beyond those of any adversary, sustained even now by spending that rivals or exceeds the levels reached at the height of the Cold War.

### Impact

#### Nuclear use is just a theoretical possibility --- terrorists are not interested.

Mueller ‘10 (John, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies and a Professor of Political Science at The Ohio State University, A.B. from the University of Chicago, M.A. and Ph.D. @ UCLA, *Atomic Obsession – Nuclear Alarmism from Hiroshima to Al-Qaeda*, Oxford University Press, Accessed @ Emory)

In this spirit, alarm about the possibility that small groups could fabricate and then set off nuclear weapons have been repeatedly raised at least since 1946, when, as noted in chapter 2, atomic bomb maker J. Robert Oppenheimer contended that if three or four men could smuggle in units for an atomic bomb, they could "destroy New York." Assertions like that proliferated after the 1950s, when the "suitcase bomb" appeared to become a something of a practical possibility. And it has now been well over three decades since a prominent terrorism specialist, Brian Jenkins, published his (not unreasonable) warnings about how "the world's increasing dependence on nuclear power may provide terrorists with weapons of mass destruction " and since a group empowered by the Atomic Energy Commission darkly noted that "terrorist groups have increased their professional skills, intelligence networks, finances, and levels of armaments throughout the world." And because of "the widespread dissemination of instructions for processing special nuclear materials and for making simple nuclear weapons," the group warned, "acquisition of special nuclear material remains the only substantial problem facing groups which desire to have such weapons."2 At around the same time, journalist John McPhee decided that, although only a small proportion of nuclear professionals expressed a "sense of urgency" about the issue, he would devote an entire book to a physicist he was able to find who did (nothing, of course, is as boring as a book about how urgent something isn't). That was Theodore Taylor, who proclaimed the problem to be "immediate" and who explained to McPhee at length "how comparatively easy it would be to steal nuclear material and step by step make it into a bomb." To fabricate a crude atomic bomb, Taylor patiently, if urgently, pointed out, was "simple": all one needed was some plutonium oxide powder, some high explosives, and "a few things that anyone could buy in a hardware store." "Everything is a matter of probabilities," Taylor assured his rapt auditor, and at the time he thought either that it was already too late to "prevent the making of a few bombs, here and there, now and then," or that "in another ten or fifteen years, it will be too late."3 Thirty-five years later, we continue to wait for terrorists to carry out their "simple" task. In the wake of 9/11, concerns about the atomic terrorist surged, even though the terrorist attacks of that day used no special weapons. "Nothing is really new about these perils” notes the New York Times' Bill Keller, but 9/11 turned "a theoretical possibility into a felt danger," giving "our nightmares legs." Jenkins has run an Internet search to discover how often variants of the term al-Qaeda appeared within ten words of nuclear. There were only seven hits in 1999 and eleven in 2000, but this soared to 1,742 in 2001 and to 2,931 in 2002.4 In this spirit, Keller relays the response of then Secretary of Homeland Security Tom Ridge when asked what he worried about most: Ridge "cupped his hands prayerfully and pressed his fingertips to his lips. 'Nuclear/ he said simply." On cue, when the presidential candidates were specifically asked by Jim Lehrer in their first debate in September 2004 to designate the "single most serious threat to the national security of the United States," the candidates had no difficulty agreeing on one. It was, in George W. Bush's words, a nuclear weapon "in the hands of a terrorist enemy." Concluded Lehrer, "So it's correct to say the single most serious threat you believe, both of you believe, is nuclear proliferation?" George W. Bush: "In the hands of a terrorist enemy." John Kerry: "Weapons of mass destruction, nuclear proliferation....There's some 600-plus tons of unsecured material still in the former Soviet Union and Russia.... there are terrorists trying to get their hands on that stuff today." And Defense Secretary Robert Gates contends that every senior leader in the government is kept awake at night by "the thought of a terrorist ending up with a weapon of mass destruction, espe-cially nuclear"5 If there has been a "failure of imagination" over all these decades, however, perhaps it has been in the inability or unwillingness to consider the difficulties confronting the atomic terrorist. Thus far, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. This may be because, after brief exploration of the possible routes to go atomic, they, unlike generations of alarmed pundits, have discovered that the tremendous effort required is scarcely likely to be successful.

### More a2 allies

#### US anti-terror intel is fine on its own – outstrips everybody else

Barton Gellman and Greg Miller, 8-29-2013, “Top secret ‘black budget’ reveals US spy agencies’ spending,” LA Daily News, http://www.dailynews.com/government-and-politics/20130829/top-secret-black-budget-reveals-us-spy-agencies-spending

“The United States has made a considerable investment in the Intelligence Community since the terror attacks of 9/11, a time which includes wars in Iraq and Afghanistan, the Arab Spring, the proliferation of weapons of mass destruction technology, and asymmetric threats in such areas as cyber-warfare,” Director of National Intelligence James Clapper said in response to inquiries from The Post. “Our budgets are classified as they could provide insight for foreign intelligence services to discern our top national priorities, capabilities and sources and methods that allow us to obtain information to counter threats,” he said. Among the notable revelations in the budget summary: Spending by the CIA has surged past that of every other spy agency, with $14.7 billion in requested funding for 2013. The figure vastly exceeds outside estimates and is nearly 50 percent above that of the National Security Agency, which conducts eavesdropping operations and has long been considered the behemoth of the community. The CIA and NSA have launched aggressive new efforts to hack into foreign computer networks to steal information or sabotage enemy systems, embracing what the budget refers to as “offensive cyber operations.” The NSA planned to investigate at least 4,000 possible insider threats in 2013, cases in which the agency suspected sensitive information may have been compromised by one of its own. The budget documents show that the U.S. intelligence community has sought to strengthen its ability to detect what it calls “anomalous behavior” by personnel with access to highly classified material. U.S. intelligence officials take an active interest in foes as well as friends. Pakistan is described in detail as an “intractable target,” and counterintelligence operations “are strategically focused against [the] priority targets of China, Russia, Iran, Cuba and Israel.” In words, deeds and dollars, intelligence agencies remain fixed on terrorism as the gravest threat to national security, which is listed first among five “mission objectives.” Counterterrorism programs employ one in four members of the intelligence workforce and account for one-third of all spending. The governments of Iran, China and Russia are difficult to penetrate, but North Korea’s may be the most opaque. There are five “critical” gaps in U.S. intelligence about Pyongyang’s nuclear and missile programs, and analysts know virtually nothing about the intentions of North Korean leader Kim Jong Un. Formally known as the Congressional Budget Justification for the National Intelligence Program, the “Top Secret” blueprint represents spending levels proposed to the House and Senate intelligence committees in February 2012. Congress may have made changes before the fiscal year began on Oct 1. Clapper is expected to release the actual total spending figure after the fiscal year ends on Sept. 30. The document describes a constellation of spy agencies that track millions of individual surveillance targets and carry out operations that include hundreds of lethal strikes. They are organized around five priorities: combating terrorism, stopping the spread of nuclear and other unconventional weapons, warning U.S. leaders about critical events overseas, defending against foreign espionage and conducting cyber operations. In an introduction to the summary, Clapper said the threats now facing the United States “virtually defy rank-ordering.” He warned of “hard choices” as the intelligence community — sometimes referred to as the “IC” — seeks to rein in spending after a decade of often double-digit budget increases. This year’s budget proposal envisions that spending will remain roughly level through 2017 and amounts to a case against substantial cuts. “Never before has the IC been called upon to master such complexity and so many issues in such a resource-constrained environment,” Clapper wrote. The summary provides a detailed look at how the U.S. intelligence community has been reconfigured by the massive infusion of resources that followed the Sept. 11 attacks. The United States has spent more than $500 billion on intelligence during that period, an outlay that U.S. officials say has succeeded in its main objective: preventing another catastrophic terrorist attack in the United States. The result is an espionage empire with resources and reach beyond those of any adversary, sustained even now by spending that rivals or exceeds the levels reached at the height of the Cold War.

## Solvency

#### Broad definitions of imminent threat and zone of hostilities takes out solvency

Dworkin, ’13 [Anthony, Anthony Dworkin is a Senior Policy Fellow at the European Council on Foreign Relations (ECFR). European Council on Foreign Relations. “DRONES AND TARGETED KILLING: DEFINING A EUROPEAN POSITION”. http://ecfr.eu/page/-/ECFR84\_DRONES\_BRIEF.pdf]

In some respects, these standards remain unclear: the president did not specify how quickly they would be implemented, or how “areas of active hostilities” should be understood. Nevertheless, taken at face value, they seem to represent a meaningful change, at least on a conceptual level. Effectively, they bring the criteria for all targeted strikes into line with the standards that the administration had previously determined to apply to US citizens. Where the administration had previously said on occasions that it focused in practice on those people who pose the greatest threat, this is now formalised as official policy. In this way, the standards are significantly more restrictive than the limits that the laws of armed conflict set for killing in wartime, and represent a shift towards a threat-based rather than status-based approach.

In effect, the new policy endorses a self-defence standard as the de facto basis for US drone strikes, even if the continuing level of attacks would strike most Europeans as far above what a genuine self-defence analysis would permit.32 The new standards would seem to prohibit signature strikes in countries such as Yemen and Somalia and confine them to Pakistan, where militant activity could be seen as posing a cross-border threat to US troops in Afghanistan. According to news reports, signature strikes will continue in the Pakistani tribal areas for the time being.33

However, the impact of the new policy will depend very much on how the concept of a continuing, imminent threat is interpreted. The administration has not given any definition of this phrase, and the leaked Department of Justice white paper contained a strikingly broad interpretation of imminence; among other points, the white paper said that it “does not require the United States to have clear evidence that a specific attack on US persons or interests will take place in the immediate future” and that it “must incorporate considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”.34 The presidential policy guidance captures the apparent concerns behind the administration’s policy more honestly by including the criterion of continuing threat, but this begs the question of how the notions of a “continuing” and “imminent” threat relate to each other. Even since Obama’s speech, the US is reported to have carried out four drone strikes (two in Pakistan and two in Yemen) killing between 18 and 21 people – suggesting that the level of attacks is hardly diminishing under the new guidelines.35

#### Plan will be circumvented on the operational level – accountability is impossible

**Blank, 13 –** professor of law at Emory (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE” <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>)

Third, the enforcement and accountability stage of conflict introduces similar challenges as a result of the interaction of a new law of war framework with operational needs during conflict. Accountability for legal violations during armed conflict is an essential component of ensuring LOAC compliance, thus maximizing the law’s ability to protect civilians and others hors de combat and to ensure humane treatment, among other goals. Over the past few decades, the remarkable development of an international criminal jurisprudence—through the work of ad hoc tribunals, hybrid tribunals, and the International Criminal Court, among other mechanisms—has demonstrated the vital role that accountability plays in enforcing the law, in bringing justice to the victims, and, in some cases, in helping to promote reconciliation. The application of the law in the courtroom, however, must be operationally relevant in order to serve as a useful guide for commanders in future military operations. If it is not, the likelihood that the law will be seen as irrelevant or too hard to follow is unfortunately far too great and is a serious concern.30

In the specific context of a law of war framework designed to incorporate additional procedural guarantees and legal regimes in addressing targeting and detention issues across a range of geographic spaces in a transnational conflict, these accountability challenges will loom even larger. First, the relevant legal obligations will be based not only on LOAC but on additional legal regimes as well, such as human rights law or domestic constitutional law, for example. Second, the nature of those obligations and the way in which the various legal regimes relate to each other within this new law of war paradigm will change depending on where, geographically, the relevant conduct takes place. And, as noted above, , the lines between geographic areas that drive different legal obligations are not fixed during a conflict with a transnational actor but rather will shift in accordance with the nature of the threat, the state’s response, and other factors. Current cases before the military commissions in the United States already demonstrate the jurisdictional hurdles posed by a conflict whose geographic and temporal parameters are difficult to identify; 31 these challenges will be magnified exponentially if different components of the same conflict trigger different legal obligations as a result of a new framework based on a sliding scale of procedural obligations relative to geographical location and other factors. Furthermore, enforcement of LOAC always helps to guide future decisionmaking by commanders, judge advocates, and others, but the nature of an accountability process in this new law of war framework will unfortunately not foster greater clarity and predictability. Which precedents would apply in which areas, and for how long? Military commanders and other decisionmakers would be left with the unenviable task of sorting through the uncertainty of the legal precedents and judgments or might simply disregard these precedents as not applicable, an equally problematic outcome. As a result, even when a new framework offers the apparent potential for greater procedural protections or other metrics of effectiveness, if it divorces the decisionmaking and, later, the enforcement process from the operational realities of military operations, it is likely to be viewed as irrelevant or, still worse, as doing more harm than good.

#### Daskal says lots of other things are necessary to solve

Daskal, ’13 [Jennifer C. Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center. THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE “HOT” CONFLICT ZONE. University of Pennsylvania Law Review, Vol. 161, No. 5. April 2013. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2049532>]

B. Setting the Standards

Law-of-war detention and lethal targeting outside a zone of active hostilities should be limited, not categorically prohibited. It should be focused on those threats that are clearly tied to the zone of active hostilities and other significant and ongoing threats that cannot be adequately addressed through other means. Moreover, a heightened quantum of information and other procedural requirements should apply, given the possibility and current practice of ex ante deliberation and review. Pursuant to these guiding principles, this Section proposes the adoption of an individualized threat requirement, a least-harmful-means test, and meaningful procedural safeguards for lethal targeting and law-of-war detention that take place outside zones of active hostilities.

### 1NC circumvention DA (congress)

#### Wartime will force Obama to resist. The intractable battle creates a national diversion and impairs military wartime decisions

Lobel 8—Professor of Law @ University of Pittsburgh [Jules Lobel, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, Vol. 69, 2008, pg. 391]

The critical difficulty with a contextual approach is its inherent ambiguity and lack of clarity, which tends to sharply shift the balance of power in favor of a strong President acting in disregard of congressional will. For example, the application of the Feldman and Issacharoff test asking whether the congressional restriction makes realistic sense in the modern world would yield no coherent separation of powers answer if applied to the current Administration’s confrontation with Congress. It would undoubtedly embolden the President to ignore Congress’s strictures. The President’s advisors would argue that the McCain Amendment’s ban on cruel and inhumane treatment, or FISA’s requirement of a warrant, does not make realistic sense in the context of the contemporary realities of the war on terror in which we face a shadowy, ruthless nonstate enemy that has no respect for laws or civilized conduct, a conclusion hotly disputed by those opposed to the President’s policies. Focusing the debate over whether Congress has the power to control the treatment of detainees on the President’s claim that the modern realities of warfare require a particular approach will merge the separation of powers inquiry of who has the power with the political determination of what the policy ought to be. Such an approach is likely to encourage the President to ignore and violate legislative wartime enactments whenever he or she believes that a statute does not make realistic sense—that is, when it conflicts with a policy the President embraces. 53

The contextual approach has a “zone of twilight” quality that Justice Jackson suggested in Youngstown. 54 Often constitutional norms matter less than political realities—wartime reality often favors a strong President who will overwhelm both Congress and the courts. While it is certainly correct— as Jackson noted—that neither the Court nor the Constitution will preserve separation of powers where Congress is too politically weak to assert its authority, a fluid contextual approach is an invitation to Presidents to push beyond the constitutional boundaries of their powers and ignore legislative enactments that seek to restrict their wartime authority.

Moreover, another substantial problem with a contextual approach in the war powers context is that the judiciary is unlikely to resolve the dispute. 55 The persistent refusal of the judiciary to adjudicate the constitutionality of the War Powers Resolution strongly suggests that courts will often refuse to intervene to resolve disputes between the President and Congress over the constitutionality of a statute that a President claims impermissibly interferes with her conduct of an ongoing war. 56 This result leaves the political branches to engage in an intractable dispute over the statute’s constitutionality that saps the nation’s energy, diverts focus from the political issues in dispute, and endangers the rule of law.

Additionally, in wartime it is often important for issues relating to the exercise of war powers to be resolved quickly. Prompt action is not usually the forte of the judiciary.

If, however, a constitutional consensus exists or could be consolidated that Congress has the authority to check the President’s conduct of warfare, that consensus might help embolden future Congresses to assert their power. Such a consensus might also help prevent the crisis, chaos, and stalemate that may result when the two branches assert competing constitutional positions and, as a practical matter, judicial review is unavailable to resolve the dispute.

Moreover, the adoption of a contextual, realist approach will undermine rather than aid the cooperation and compromise between the political branches that is so essential to success in wartime. In theory, an unclear, ambiguous division of power between the branches that leaves each branch uncertain of its legal authority could further compromise and cooperation. However, modern social science research suggests that the opposite occurs. 57 Each side in the dispute is likely to grasp onto aspects or factors within the ambiguous or complex reality to support its own self-serving position. This self-serving bias hardens each side’s position and allows the dispute to drag on, as has happened with the ongoing, unresolved dispute over the constitutionality of the War Powers Resolution. Pg. 407-409

#### Stalemate creates an antiwar congressional coalition that guts our commitment to Afghanistan

Lieberman 10—Independent Democratic senator from Connecticut [Joseph I. Leiberman, “Back to a Bipartisan Foreign Policy,” Wall Street Journal, November 16, 2010, pg. http://tinyurl.com/m5z623w]

This year's midterm elections marked the first time since 9/11 that national security was not a major consideration for American voters. But it is precisely in the realm of foreign policy and national security that we may have the greatest opportunities for bipartisan cooperation between President Obama and resurgent Republicans in Congress.

Seizing these opportunities will require both parties to break out of a destructive cycle that has entrapped them since the end of the Cold War and caused them to depart from the principled internationalist tradition that linked Democratic presidents like Truman and Kennedy with Republican presidents like Nixon and Reagan.

During the 1990s, too many Republicans in Congress reflexively opposed President Clinton's policies in the Balkans and elsewhere. Likewise, during the first decade of the 21st century, too many Democrats came to view the post-9/11 exercise of American power under President Bush as a more pressing danger than the genuine enemies we faced in the world.

The larger truth was that the foreign policy practices and ideals of both President Clinton and Bush were within the mainstream of American history and values. And if one can see through the fog of partisanship that has continued to choke Washington since President Obama was elected in 2008, the same is true of the new administration as well.

President Obama has moved to the internationalist center on several key issues of national security. Although both parties are hesitant to acknowledge it, the story of the Obama administration's foreign policy is as much continuity as change from the second term of the Bush administration—from the surge in Afghanistan to the reauthorization of the Patriot Act, and from drone strikes against al Qaeda to a long-term commitment to Iraq.

Republicans have also stayed loyal to the internationalist policies they supported under President Bush. When they have criticized the Obama administration, it has reflected this worldview—arguing that the White House has not been committed enough in its prosecution of the war in Afghanistan or done enough to defend human rights and democracy in places like Iran and China.

The critical question now, as we look forward to the next two years, is whether this convergence of the two parties towards the internationalist center can be sustained and strengthened. There are three national security priorities where such a consensus is urgently needed.

The first is the war in Afghanistan. To his credit, President Obama last December committed more than 30,000 additional troops to Afghanistan as part of a comprehensive counterinsurgency campaign, despite opposition within the Democratic Party.

Having just returned from Afghanistan, I am increasingly confident that the tide there is turning in our favor, with growing signs of military progress. But as Gen. David Petraeus, the top U.S. commander in Afghanistan, has warned, success will come neither quickly nor easily, and there is still much tough fighting ahead. It is all but certain that no more than a small number of U.S. forces will be able to withdraw responsibly in July 2011, and that success in Afghanistan is going to require a long-term commitment by the U.S. beyond this date.

Sustaining political support for the war in Afghanistan therefore will increasingly require President Obama and Republicans in Congress to stand together. Failure to sustain this bipartisan alliance runs the risk that an alternative coalition will form in Congress, between antiwar Democrats and isolationist Republicans. That would be the single greatest political threat to the success of the war effort in Afghanistan, which remains critical to our security at home.

#### Nuclear instability and great power adventurism

Miller 12—Professor of International Security Affairs & Director for the Afghanistan-Pakistan program @ National Defense University [Paul D. Miller (Former Director for Afghanistan on the National Security Council staff under Presidents Bush and Obama), “It’s Not Just Al-Qaeda: Stability in the Most Dangerous Region,” World Affairs Journal, March-April 2012, pg. http://tinyurl.com/lnplsb7]

In fact, the war is only now entering its culminating phase, indicated by the willingness of both US and Taliban officials to talk openly about negotiations, something parties to a conflict do only when they see more benefit to stopping a war than continuing it. That means the war’s ultimate outcome is likely to be decided by the decisions, battles, and bargaining of the next year or so. And its outcome will have huge implications for the future of US national security. In turn, that means the collective decision to ignore the war and its consequences is foolish at best, dangerous at worst. While Americans have lost interest in the war, the war may still have an interest in America. Now is the time, more than ten years into the effort, to remind ourselves what is at stake in Afghanistan and why the United States must secure lasting stability in South Asia.

It was, of course, al-Qaeda’s attack on the US homeland that triggered the intervention in Afghanistan, but wars, once started, always involve broader considerations than those present at the firing of the first shot. The war in Afghanistan now affects all of America’s interests across South Asia: Pakistan’s stability and the security of its nuclear weapons, NATO’s credibility, relations with Iran and Russia, transnational drug-trafficking networks, and more. America leaves the job in Afghanistan unfinished at its peril.

The chorus of voices in the Washington policy establishment calling for withdrawal is growing louder. In response to this pressure, President Obama has pledged to withdraw the surge of thirty thousand US troops by September 2012—faster than US military commanders have recommended—and fully transition leadership for the country’s security to the Afghans in 2013. These decisions mirror the anxieties of the electorate: fifty-six percent of Americans surveyed recently by the Pew Research Center said that the US should remove its troops as soon as possible.

But it is not too late for Obama (who, after all, campaigned in 2008 on the importance of Afghanistan, portraying it as “the good war” in comparison to Iraq) to reformulate US strategy and goals in South Asia and explain to the American people and the world why an ongoing commitment to stabilizing Afghanistan and the region, however unpopular, is nonetheless necessary.

The Afghanistan Study Group, a collection of scholars and former policymakers critical of the current intervention, argued in 2010 that al-Qaeda is no longer in Afghanistan and is unlikely to return, even if Afghanistan reverts to chaos or Taliban rule. It argued that three things would have to happen for al-Qaeda to reestablish a safe haven and threaten the United States: “1) the Taliban must seize control of a substantial portion of the country, 2) Al Qaeda must relocate there in strength, and 3) it must build facilities in this new ‘safe haven’ that will allow it to plan and train more effectively than it can today.” Because all three are unlikely to happen, the Study Group argued, al-Qaeda almost certainly will not reestablish a presence in Afghanistan in a way that threatens US security.

In fact, none of those three steps are necessary for al-Qaeda to regain its safe haven and threaten America. The group could return to Afghanistan even if the Taliban do not take back control of the country. It could—and probably would—find safe haven there if Afghanistan relapsed into chaos or civil war. Militant groups, including al-Qaeda offshoots, have gravitated toward other failed states, like Somalia and Yemen, but Afghanistan remains especially tempting, given the network’s familiarity with the terrain and local connections. Nor does al-Qaeda, which was never numerically overwhelming, need to return to Afghanistan “in strength” to be a threat. Terrorist operations, including the attacks of 2001, are typically planned and carried out by very few people. Al-Qaeda’s resilience, therefore, means that stabilizing Afghanistan is, in fact, necessary even for the most basic US war aims. The international community should not withdraw until there is an Afghan government and Afghan security forces with the will and capacity to deny safe haven without international help.

Setting aside the possibility of al-Qaeda’s reemergence, the United States has other important interests in the region as well—notably preventing the Taliban from gaining enough power to destabilize neighboring Pakistan, which, for all its recent defiance, is officially a longstanding American ally. (It signed two mutual defense treaties with the United States in the 1950s, and President Bush designated it a major non-NATO ally in 2004.) State failure in Pakistan brokered by the Taliban could mean regional chaos and a possible loss of control of its nuclear weapons. Preventing such a catastrophe is clearly a vital national interest of the United States and cannot be accomplished with a few drones.

Alarmingly, Pakistan is edging toward civil war. A collection of militant Islamist groups, including al-Qaeda, Tehrik-e Taliban Pakistan (TTP), and Tehrik-e Nafaz-e Shariat-e Mohammadi (TNSM), among others, are fighting an insurgency that has escalated dramatically since 2007 across Khyber Pakhtunkhwa, the Federally Administered Tribal Areas, and Baluchistan. According to the Brookings Institution’s Pakistan Index, insurgents, militants, and terrorists now regularly launch more than one hundred and fifty attacks per month on Pakistani government, military, and infrastructure targets. In a so far feckless and ineffectual response, Pakistan has deployed nearly one hundred thousand regular army soldiers to its western provinces. At least three thousand soldiers have been killed in combat since 2007, as militants have been able to seize control of whole towns and districts. Tens of thousands of Pakistani civilians and militants—the distinction between them in these areas is not always clear—have been killed in daily terror and counterterror operations.

The two insurgencies in Afghanistan and Pakistan are linked. Defeating the Afghan Taliban would give the United States and Pakistan momentum in the fight against the Pakistani Taliban. A Taliban takeover in Afghanistan, on the other hand, will give new strength to the Pakistani insurgency, which would gain an ally in Kabul, safe haven to train and arm and from which to launch attacks into Pakistan, and a huge morale boost in seeing their compatriots win power in a neighboring country. Pakistan’s collapse or fall to the Taliban is (at present) unlikely, but the implications of that scenario are so dire that they cannot be ignored. Even short of a collapse, increasing chaos and instability in Pakistan could give cover for terrorists to increase the intensity and scope of their operations, perhaps even to achieve the cherished goal of stealing a nuclear weapon.

Although our war there has at times seemed remote, Afghanistan itself occupies crucial geography. Situated between Iran and Pakistan, bordering China, and within reach of Russia and India, it sits on a crossroads of Asia’s great powers. This is why it has, since the nineteenth century, been home to the so-called Great Game—in which the US should continue to be a player.

Two other players, Russia and Iran, are aggressive powers seeking to establish hegemony over their neighbors. Iran is seeking to build nuclear weapons, has an elite military organization (the Quds Force) seeking to export its Islamic Revolution, and uses the terror group Hezbollah as a proxy to bully neighboring countries and threaten Israel. Russia under Vladimir Putin is seeking to reestablish its sphere of influence over its near abroad, in pursuit of which it (probably) cyber-attacked Estonia in 2007, invaded Georgia in 2008, and has continued efforts to subvert Ukraine.

Iran owned much of Afghan territory centuries ago, and continues to share a similar language, culture, and religion with much of the country. It maintains extensive ties with the Taliban, Afghan warlords, and opposition politicians who might replace the corrupt but Western-oriented Karzai government. Building a stable government in Kabul will be a small step in the larger campaign to limit Tehran’s influence.

Russia remains heavily involved in the Central Asian republics. It has worked to oust the United States from the air base at Manas, Kyrgyzstan. It remains interested in the huge energy reserves in Kazakhstan and Turkmenistan. Russia may be wary of significant involvement in Afghanistan proper, unwilling to repeat the Soviet Union’s epic blunder there. But a US withdrawal from Afghanistan followed by Kabul’s collapse would likely embolden Russia to assert its influence more aggressively elsewhere in Central Asia or Eastern Europe, especially in the Ukraine.

A US departure from Afghanistan will also continue to resonate for years to come in the strength and purpose of NATO. Every American president since Harry Truman has affirmed the centrality of the Atlantic Alliance to US national security. The war in Afghanistan under the NATO-led International Security Assistance Force (ISAF), the Alliance’s first out-of-area operation in its sixty-year history, was going poorly until the US troop surge. Even with the limited success that followed, allies have complained that the burden in Afghanistan has been distributed unevenly. Some, like the British, Canadians, and Poles, are fighting a shooting war in Kandahar and Helmand, while others, like the Lithuanians and Germans, are doing peacekeeping in Ghor and Kunduz. The poor command and control—split between four regional centers—left decisionmaking slow and poorly coordinated for much of the war. ISAF’s strategy was only clarified in 2008 and 2009, when Generals David McKiernan and Stanley McChrystal finally developed a more coherent campaign plan with counterinsurgency-appropriate rules of engagement.

A bad end in Afghanistan could have dire consequences for the Atlantic Alliance, leaving the organization’s future, and especially its credibility as a deterrent to Russia, in question. It would not be irrational for a Russian observer of the war in Afghanistan to conclude that if NATO cannot make tough decisions, field effective fighting forces, or distribute burdens evenly, it cannot defend Europe. The United States and Europe must prevent that outcome by salvaging a credible result to its operations in Afghanistan—one that both persuades Russia that NATO is still a fighting alliance and preserves the organization as a pillar of US national security.

# 2NC

### 2NC domestic backlash

#### The government won’t take up that backlash

Benjamin Wittes, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and a member of the Hoover Institution's Task Force on National Security and Law, 2/27/13, In Defense of the Administration on Targeted Killing of Americans, www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/

This view has currency among European allies, among advocacy groups, and in the legal academy. Unfortunately for its proponents, it has no currency among the three branches of government of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation. There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

#### Empirics are overwhelming

Chesney ’12

(Robert Chesney, professor at the University of Texas School of Law, nonresident senior fellow of the Brookings Institution, distinguished scholar at the Robert S. Strauss Center for International Security and Law, and Cofounder of the Lawfare Blog, “Beyond the Battlefield, Beyond Al Qaeda: The Destabilizing Legal Architecture of Counterterrorism,” August 29, 2012, U Texas School of Law, Public Law and Legal Theory Research Paper No. 227)

This multi-year pattern of cross-branch and cross-party consensus gives the impression that the legal architecture of detention has stabilized at last. But the settlement phenomenon is not limited to detention policy. The same thing has happened, albeit to a lesser extent, in other areas. The military commission prosecution system provides a good example. When the Obama administration came into office, it seemed quite possible, indeed likely, that it would shut down the commissions system. Indeed, the new president promptly ordered all commission proceedings suspended pending a policy review.48 In the end, however, the administration worked with the then Democratic-controlled Congress to pursue a **mend-it-don’t-end-it approach** culminating in passage of the Military Commissions Act of 2009, **which addressed a number of key objections** to the statutory framework Congress and the Bush administration had crafted in 2006. In his National Archives address in spring 2009, moreover, President Obama also made clear that he would make use of this system in appropriate cases.49 He has duly done so, notwithstanding his administration’s doomed attempt to prosecute the so-called “9/11 defendants” (especially Khalid Sheikh Mohamed) in civilian courts. Difficult questions continue to surround the commissions system as to particular issues—such as the propriety of charging “material support” offenses for pre-2006 conduct50—but the system as a whole is **far more stable today** than at any point in the past decade.51 There have been strong elements of cross-party continuity between the Bush and Obama administration on an array of other counterterrorism policy questions, including the propriety of using rendition in at least some circumstances and, perhaps most notably, the legality of **using lethal force** not just in contexts of overt combat deployments but also in **areas physically remote from the “hot battlefield.**” Indeed, the Obama administration **quickly outstripped the Bush administration in terms of the quantity and location** of its airstrikes outside of Afghanistan,52 and it also greatly surpassed the Bush administration in its efforts to marshal public defenses of the legality of these actions.53 What’s more, the Obama administration also **succeeded in fending off a lawsuit challenging the legality of the drone strike program** (in the specific context of Anwar al-Awlaki, an American citizen and member of AQAP known to be on a list of approved targets for the use of deadly force i

n Yemen who was in fact killed in a drone strike some months later).54 The point of all this is not to claim that legal disputes surrounding these counterterrorism policies have effectively ended. Far from it; a steady drumbeat of criticism persists, especially in relation to the use of lethal force via drones. But by the end of the first post-9/11 decade, this criticism no longer seemed likely to spill over **in the form of disruptive judicial rulings, newly restrictive legislation,** or significant spikes in diplomatic or domestic political pressure, as had repeatedly occurred in earlier years. Years of law-conscious policy refinement—and quite possibly some degree of public fatigue or inurement when it comes to legal criticisms—had made possible an extended period of **cross-branch and cross-party consensus**, and this in turn left the impression that the underlying legal architecture had reached a stage of stability that was good enough for the time being.

### 2NC A2 EU coop

#### EU cooperation on terrorism intel high and inevitable – in their self interest

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of its drive to bolster its counterterrorism capabilities, the EU has also made promoting law enforcement and intelligence cooperation with the United States a top priority. Washington has largely welcomed these efforts, recognizing that they may help root out terrorist cells both in Europe and elsewhere, and prevent future attacks against the United States or its interests abroad. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Contacts between U.S. and EU officials on police, judicial, and border control policy matters have increased substantially since 2001. A number of new U.S.-EU agreements have also been reached; these include information-sharing arrangements between the United States and EU police and judicial bodies, two new U.S.-EU treaties on extradition and mutual legal assistance, and accords on container security and airline passenger data. In addition, the United States and the EU have been working together to curb terrorist financing and to strengthen transport security.

#### SQ solves US-EU dialogue and Europe is too interdependent to dump us over drone policy

Anthony Dworkin 7-3-2013; Senior Policy Fellow working on human rights, international justice and international humanitarian law at the European Council on foreign relations “Drones and targeted killing: defining a European position” http://ecfr.eu/publications/summary/drones\_and\_targeted\_killing\_defining\_a\_european\_position211

Torn between an evident reluctance to accuse Obama of breaking international law and an unwillingness to endorse his policies, divided in part among themselves and in some cases bound by close intelligence relationships to the US, European countries have remained essentially disengaged as the era of drone warfare has dawned. Yet, as drones proliferate, such a stance seems increasingly untenable. Moreover, where in the past the difference between US and European conceptions of the fight against al-Qaeda seemed like an insurmountable obstacle to agreement on a common framework on the use of lethal force, the evolution of US policy means that there may now be a greater scope for a productive dialogue with the Obama administration on drones.

## Terrorism

#### Prefer Mueller - he is a voice of reason in response to Allison’s terror threat industry

Ikenberry 2007, G. John Ikenberry, PHD, January/February 2007, “Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats, and Why We Believe Them”, http://www.foreignaffairs.com/articles/62117/g-john-ikenberry/overblown-how-politicians-and-the-terrorism-industry-inflate-nat, KENTUCKY

In this provocative book, the noted political scientist Mueller argues that reactions to terrorism are a greater threat than terrorism itself. The scope and destructiveness of international terrorism, he contends, are limited; it is the inflation of this threat and the policy overreactions to it that impose severe costs on society. Mueller is correct to note that very few people have died in terrorist attacks, especially compared with other causes of death, such as car accidents, but the real fear of terrorism is prospective: it is focused on the possibility that an extremist network will detonate a nuclear device in a major city. Mueller acknowledges such a possibility but, taking issue with Harvard's Graham Allison and other experts, finds the obstacles to such a terrorist act formidable. In surveying encounters with past foreign threats (Pearl Harbor, Soviet communism), he sees a pattern of exaggeration, posturing, and -- after 9/11 -- a "terrorism industry" that has a vested interest in alarmism. This book will provoke a lively debate -- and to the extent it encourages an honest discussion of risk, this is to be welcomed. Moreover, Mueller's recommendations are ultimately quite sensible: since overreacting to groups such as al Qaeda plays into their hands, a long-term response to terrorism should entail patient and methodical intelligence, law enforcement, and homeland security.

## Overview

#### AND, Botched withdrawal shatters NATO’s credibility and encourages Russian aggression. NASA computer models and climatologist conclude that will cause extinction

Starr 10—Director of Clinical Laboratory Science Program @ University of Missouri [Steven Starr (Senior scientist @ Physicians for Social Responsibility.), “The climatic consequences of nuclear war” | Bulletin of the Atomic Scientists, 12 March 2010, Pg. http://www.thebulletin.org/web-edition/op-eds/the-climatic-consequences-of-nuclear-war]

This isn't a question to be avoided. Recent scientific studies have found that a war fought with the deployed U.S. and Russian nuclear arsenals would leave Earth virtually uninhabitable. In fact, NASA computer models have shown that even a "successful" first strike by Washington or Moscow would inflict catastrophic environmental damage that would make agriculture impossible and cause mass starvation. Similarly, in the January Scientific American, Alan Robock and Brian Toon, the foremost experts on the climatic impact of nuclear war, warn that the environmental consequences of a "regional" nuclear war would cause a global famine that could kill one billion people.

#### Botched withdrawal destabilizes the North Caucasus

Menon 12—Professor of International Relations @ Lehigh University [Dr. Rajan Menon, When America Leaves: Asia after the Afghan War,” The American Interest, May-June 2012, pg. http://tinyurl.com/lrbbst9

India and Pakistan will not be the lone contenders in post-American Afghanistan. Neighboring Uzbekistan and Tajikistan may be pulled in if rump armies based on Afghanistan’s Tajiks and Uzbeks emerge (as happened between 1992 and 2001, with the Uzbek forces led by Abdul Rashid Dostum and Tajiks led by Ahmed Shah Masoud). Such armies are likely to form to secure their homelands in the north and northeast of Afghanistan if the security situation deteriorates because of Taliban successes. Unlike Kazakhstan, Kyrgyzstan and Turkmenistan, which are societies with a nomadic past where Islam sunk shallower roots, Uzbekistan and Tajikistan emerged from sedentary communities with larger urban populations where Islam therefore has a stronger social foundation. While this in itself says nothing about what role Islam will play in their politics and what forms of Islam will prove strongest, the post-Soviet history of Tajikistan and Uzbekistan shows that they cannot escape the reverberations of Afghanistan’s religious extremism and violence. They could easily become entangled in post-American Afghanistan’s conflicts deliberately—as in the 1990s—by supporting their Afghan co-ethnics against the Taliban in cooperation with India, Russia, Turkey and Iran. Or they could be sucked in unwillingly by violence and refugee flows created by upheaval in Afghanistan. Either way, geography and ethnicity put Tajikistan and Uzbekistan on the front lines, and both states already have major problems and limited means.

For its part, Russia is determined to keep militant Islamic movements out of Central Asia. The Czarist and Soviet empires ruled th

e region for 150 years, and Moscow still has substantial economic and strategic interests there that will be jeopardized if violent, chiliastic Islamic movements in Afghanistan (to whose influence the Soviet invasion contributed mightily) become powerful enough to reach into the “Stans”, directly or indirectly.

Despite being far removed from Afghanistan, Russia’s North Caucasus region is also susceptible to ramped-up religious radicalism there. What began in Chechnya in the twilight of the Soviet Union as a largely nationalist movement for autonomy and then independence has metamorphosed and metastasized across the North Caucasus. Radical Islamist groups have displaced nationalists and have formed “jamaats” whose “emirs” vow to establish a sharia-based state throughout the region. Russia’s relative success in Chechnya (where state-sponsored Islam nevertheless thrives) has been offset by the mounting mayhem in the other North Caucasus republics, particularly Dagestan. Insurgent attacks, kidnappings, bombings and assassinations are routine. In combination with entrenched local problems—above all staggering unemployment, corruption, criminality and feuds among ethnic groups that were shoehorned into various “republics” during the Stalinist era—the bloodletting has created what former Russian President Dmitry Medvedev called Russia’s primary internal security problem.

Historical trends do not favor Russia in its turbulent southern periphery. Except for the 19th-century Czarist conquests, and Soviet rule thereafter, the North Caucasus, like Central Asia, would have gravitated toward the larger Islamic world—to the south and southwest, instead of to the north. That process has resumed since 1991 and is reshaping identities and introducing new modes of thought and social protest. Ruling elites with roots in the Soviet era are now rapidly passing from the scene. A post-Soviet generation is emerging into an environment in which corruption, repression and poverty provide ample tinder, and the Russian state is relatively weak in its periphery. This makes Afghanistan’s future more important for Russia than ever.

#### War powers stalemate signals a lack of commitment and emboldens our adversaries

Kahn 2k—Professor of Law and Humanities @ Yale Law School [Paul W. Kahn, “"War Powers and the Millennium" Faculty Scholarship Series, Paper 328, 2000, http://digitalcommons.law.yale.edu/fss\_papers/328]

With respect to foreign affairs, however, these techniques of congressional decision-making work poorly. The differentiation that marks the parties as distinct and separate, and is domestically an initial step toward compromise, serves the same differentiating function in foreign policy, but there it tends to freeze party positions. Treaties come before the Senate too late in the process for compromise to be an option, particularly when they are multiparty covenants.62 Moreover, compromises can look like concessions of U.S. interests to foreign states, rather than a distribution among competing elements of the polity. Nor is there a great deal of pressure to compromise. Rejecting foreign policy initiatives is a way of preserving the status quo, and preserving the international status quo is rarely a policy for which one is held politically accountable. It is hard to make an issue out of a failure to change the conditions that prevail internationally, when the country is enjoying power, prestige, and wealth. Unable to compromise, the Senate can end up doing nothing, and then treaty ratification fails. Difference leads to stalemate, rather than to negotiation. The problem is greatly exacerbated by the two-thirds requirement for ratification.63 This structural bias toward inaction accounts in part for the use of executive agreements in place of treaties.64 These agreements make use of some of the tactical advantages of presidential initiative. Many of the structural problems remain, however, when executive agreements require subsequent congressional approval.

If the issue involves the use of force, compromise is particularly difficult. A compromise that produces a less substantial response to a foreign policy crisis can look like a lack of commitment. Disagreement now threatens to appear to offer an “exploitable weakness” to adversaries. Congress cannot simply give the president less of what he wants, when what he wants is a military deployment. There cannot easily be compromises on a range of unrelated issues in order to achieve support for a military deployment. While that may happen, it has the look of disregard for the national interests and of putting politics ahead of the public interest. Nor can Congress easily adopt the technique of the expert commission.65 The timeframe of a crisis usually will not allow it. More importantly, the military— particularly in the form of the Joint Chiefs of Staff—has already preempted the claim of expertise, as well as the claim to be “apolitical.” Finally, there is little room for the private lobbyist with respect to these decisions.

Congress, in short, is not capable of acting because it only knows how to reach compromise across dissensus. When disagreement looks unpatriotic, and compromise appears dangerous, Congress is structurally disabled. This produces the double consequence for American foreign policy of a reluctance to participate in much of the global development of international law—outside of those trade and finance arrangements that are in our immediate self-interest— and a congressional abdication of use of force decisions to the president.The same structural incapacities are behind these seemingly contradictory results. Pg. 27-30

#### “Say Yes” is no better. It triggers US isolationism

Kahn 2k—Professor of Law and Humanities @ Yale Law School [Paul W. Kahn, “"War Powers and the Millennium" Faculty Scholarship Series, Paper 328, 2000, http://digitalcommons.law.yale.edu/fss\_papers/328]

If the president is publicly accountable, then it is not necessarily the case that Congress’s failure has produced a sort of democracy deficit. Indeed, our most compelling problem today is not democratic accountability for the use of force, but Congress’s structural weakness in assessing American participation in an emerging global order. To insist that the constitutional text requires congressional approval of any commitment of American military forces that places them at risk would put the war-declaring function in the same position as the treaty-making function. The consequence would be an effective withdrawal of American forces from an active international role.

One unfortunate consequence of our domestic, ideological wars of the ’60s and the ’70s, and particularly of our experience over Vietnam, is an academic tendency to argue for the further democratization of use of force decisions. This is the lens through which the war-declaring power of Congress is viewed. For the reasons sketched above, however, the political and institutional underpinnings for such a view are unrealistic. More importantly, we are already at a point at which there is too much “public accountability,” given the ends for which force is deployed today. The democratization of the war powers is a Cold War agenda that no longer makes sense in a post-Cold War era. To understand this we have to investigate the changing character of the international legal order. Pg. 32

## 2NC Link

legally codifying geographic limits causes the U.S. to circumvent the ban by relying on even worse legal justifications---that’s clearly net worse for both norms and allied perception

Geoffrey **Corn 13**, Professor of Law and Presidential Research Professor, South Texas College of Law, 2013, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring,” International Legal Studies, 89 INT’L L. STUD. 77 (2013)

**\*\*NOTE**: “Sub rosa” denotes secrecy or confidentiality – Wikipedia

The law of conflict regulation is arguably **at a critical crossroads**. If **threat drives strategy**, and strategy drives the existence of armed conflict, the concept of TAC seems an unavoidable reality in the modern strategic environment. Opponents of TAC will continue to **argue for limiting armed conflict to the well–accepted** inter–State or intra–State **hostilities frame-works**, but this would only drive States to adopt sub rosa uses of the same type of power under the guise of legal fictions. Concepts such as self–defense targeting, or internationalized law enforcement, might avoid the armed conflict characterization, but they would do little to resolve the un-derlying uncertainties associated with TAC. Even worse, they would inject **regulatory uncertainty** into the planning and execution of military counter-terror operations, and expose those called upon to put themselves in harm’s way to protect the State **to legal liabilities based on inapposite legal norms**.

#### President will not abide. Congress will inevitably fall in line

Bell 4—Professor of Political Science @ Randolph-Macon College [Lauren Cohen Bell, “Following the Leaders or Leading the Followers? The US President's Relations with Congress,” Journal of Legislative Studies, Summer/Autumn, 2004, Vol. 10 Issue 2/3, pg. 193-205]

As noted ahove. Article I of the Constitution grants to the Congress the sole authority to make declarations of war. However, the president has the power to command US military personnel based on the provisions of Article II. Over the course of US history, the commander-in-chief power has been interpreted to permit presidents to commit troops to areas of conflict even in the absence of a formal declaration of war. Today, formal declarations of war are the exception rather than the rule; separation of powers expert Louis Fisher notes that through 1991 only five wars had ever been declared and that "in only one (the War of 1812) did members of Congress actually debate the merits of entering into hostilities'.'^ As Samuel Kemell and Gary Jacohson note: "[SJince 1989 U.S. armed forces have been almost continuously engaged somewhere in the world.''^

This was not always the case. Fisher points out that there is evidence of presidential restraint with regard to war-making by relating the story of President Grover Cleveland (1885-89; 1893-97), who refused to mobilise troops for a conflict with Cuba despite Congress' intention to declare war. In Fisher's account, Cleveland told the Congress: 'I will not mobilize the army ... I happen to know that we can buy the island of Cuba from Spain for $100,000,000, and a war will cost vastly more than that and will entail another long list of pensioners. It would be an outrage to declare war.''^ Yet, in the modem history of presidential-congressional relations, it is much more frequently the president who has mobilised American troops without consultation with the Congress and in the absence of a formal declaration of war. And it is clear that even when we consider Cleveland's actions, the president has been far more important to the conduct of American foreign policy than the Congress.

This circumstance led, in the aftermath of the war in Vietnam, to congressional passage of the War Powers Resolution in 1973. The War Powers Resolution (WPR) was an attempt to constrain presidential discretion with regard to committing troops oversees. Section 3 of the WPR requires that 'The president in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances".' Section 4 of the WPR gives the president 48 hours to provide a report to both Chambers of the Congress detailing the reason for committing troops, the authority under which he committed them and his prediction conceming the duration of the troops' engagement abroad.'^ Once the president has informed the Congress of the commitment of troops, and in the event that the Congress does not declare war, the WPR requires the president to end the engagement within 60 days, with the possibility of an additional 30 days' commitment in the event that the president certifies to the Congress that the additional time is necessary.^\*\* According to the Congressional Research Service (CRS), the research branch of the Library of Congress, since the War Powers Resolution was enacted over President Richard M. Nixon's 1973 veto, it has been invoked on 107 occasions (to 23 July 2003).^' Figure 2 illustrates both the absolute number of times as well as the rate of each president's exercise of war powers. As Figure 2 demonstrates, the rate of War Powers Resolution uses has continually increased since it took effect in 1974.

A reading of the WPR would seem to clarify the relationship between Congress and the president with regard to the exercise of national war powers. A close reading would also suggest that the president and Congress share war-making power. Yet no president has ever recognised the WPR as a constraint on his ability to move American armed forces around the globe or keep them in place as long as necessary. Moreover, presidents rarely abide by the provisions of the Resolution that require their consultation with the Congress. As CRS researcher Richard F. Grimmett notes, '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'.^" And while the Congress has, from time to time, expressed its sense that troops should be withdrawn from conflicts or engagements abroad, in truth the Congress has relatively few options for dealing with a president that violates the WPR. Indeed, as the late presidency scholar Aaron Wildavsky notes, the Congress is much less likely to challenge presidents" foreign policy actions than it is willing to challenge presidents" domestic policy actions.'^'^ This is because presidents oversee an enormous national security apparatus and because the constituents represented by members of Congress rarely hold strong opinions on matters of foreign policy. As a result, congressional challenges to violations of the WPR consist mostly of holding oversight hearings and passing symbolic resolutions.''\* Moreover, once troops are committed abroad. Congress almost always falls in line with the president’s vision of the scope of the conflict and the need for a military presence. The members of Congress become reluctant to challenge a president who has troops on the ground and typically acquiesce to the president’s wishes when it comes to provisions for support. In this way, the president is able to exercise some leadership over the Congress, whose members generally find it politically expedient to follow the president on matters pertaining to the military or the conduct of America's relations with other countries. Pg. 200-202

#### Obama refuses to seek Congressional approval for drone use

Alston 11—Professor of Law @ New York University [Philip Alston (UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010) “The CIA and Targeted Killings Beyond Borders,” Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283, 2011]

And fourth, the Obama administration has signaled that it does not regard the deployment of drones to a foreign country for the purposes of killing to require congressional approval unless the strikes reached an unspecified but clearly high threshold such as if "we were carpet-bombing a country using Predators." n136 Drones thus become an especially attractive  [\*328]  way for a President to undertake lethal operations in various countries without seeking the sort of authorization that might provoke a sustained and structured public debate.

## 2NC Uniqueness

#### US is positioned well t meet it core objectives is Afghanistan. Their ev is media speculation by people who are not on the ground

Allen et al.13—Former Commander of the NATO International Security Assistance Force and U.S. Forces-Afghanistan (2011-2013) [General John R. Allen, USMC (Ret.); Michèle Flournoy (Co-Chair of the Board of Directors of the Center for a New American Security. Former Under Secretary of Defense for Policy from (2009-2012) & Michael O’Hanlon (Senior fellow in Foreign Policy Studies @ Brookings Institution), “Toward a Successful Outcome in Afghanistan,” Center for a New American Security, May 2013

Although media coverage of the war has led many Americans to believe that Afghanistan is a lost cause, this is not the case. It is true that the war has been a long, hard slog, by far the longest in U.S. history (and three times as long for Afghans as for Americans, since today’s fight logically connects back to the Soviet invasion in 1979). It is also true that the U.S./NATO-led mission has achieved only partial results, when measured against the initial goals of President George W. Bush during his stewardship of the war effort or the goals of President Barack Obama early in his time in office. Leaving aside former Secretary of Defense Robert Gates’ apt warning that the United States would not achieve “Valhalla” in the Hindu Kush, there have been far more fundamental problems. In particular, corruption in Kabul has remained very serious, Pakistan’s cooperation with the war effort has been fickle and the enemy has proved quite resilient.

However, the United States has wound up with a reasonable “Plan B” for achieving its core objective of preventing Afghanistan from once again becoming a safe haven for al Qaeda and its affiliates. This plan is not guaranteed to work, of course, and whatever its short-term gains, it cannot hold up over time unless there is at least some further progress on the broader political and strategic challenges mentioned above. But in fact, the development of the Afghan security forces, combined with the gradual emergence of a new generation of remarkable Afghan reformers working across many sectors of society, hold out great hope for this troubled land.

While the surge has not achieved everything originally envisioned, the United States can still likely meet its fundamental objectives by continuing to work with partners to degrade the Taliban-led insurgency and create a strong enough Afghan state to hold the country intact. President Obama has been careful to articulate a cl

ear and limited set of objectives for Afghanistan, and these are still largely within reach—even if at greater cost and with somewhat more fragility than initially hoped. Future American policy should therefore be motivated not by a desire to cut losses but with a determination to loc in hard-fought gains.

The Security Situation

Although the Taliban insurgency remains resilient, particularly in the east and south, and though it retains its sanctuary in Pakistan, its momentum on the ground in Afghanistan has stalled. The insurgency is still capable of high-profile suicide bombings, small-scale attacks and intimidation tactics at the local level, but it has not succeeded in winning over Afghan hearts and minds or expanding control and influence over the country’s major populated areas.

Moreover, the Taliban’s shift to more brutal tactics, such as assassinations of Afghan officials and perceived government or foreign collaborators, is having a polarizing impact. Specifically, it is engendering harsh retaliation measures by some Afghan power brokers and creating the conditions for anti- Taliban uprisings. These include local movements in places such as Zhary and Panjwa’i, in western Kandahar province, and Andar, in Ghazni province between Kabul and Kandahar.

At this stage of the war, the central security question is: Have the United States and its partners degraded the Taliban enough and built the Afghan National Security Forces (ANSF) to be strong enough so the insurgency no longer poses a threat of overrunning the central government? The short answer is: yes, for the most part, though there is still a ways to go. Some 80 percent of the population is now largely protected from Taliban violence, which is increasingly limited to the country’s more remote regions.

Nearly half of the country’s violence is concentrated in just 17 of the country’s 400 or so districts. In addition, almost all of the country’s major cities are now secured by the Afghan security forces rather than foreign troops—and the biggest cities have all seen substantial further improvements in security in the last year. Life is generally buzzing in these places; the war is a concern, but not the predominant reality in people’s daily lives. Pg. 5-6

# 1NR

## Politics

Kick – no u for nay of the impacts, don’t allow new crossapplications of intrinsicness

### A2 caucasus

### A2 caucasus addon

#### Modelling doesn’t solve. Their evidence says US norms are failing.

Clayton 12 (Nick Clayton, Worked in several publications, including the Washington Times the Asia Times and Washington Diplomat. He is currently the senior editor of Kanal PIK TV's English Service (a Russian-language channel), lived in the Caucuses for several years,10/23/2012, "Drone violence along Armenian-Azerbaijani border could lead to war", www.globalpost.com/dispatch/news/regions/europe/121022/drone-violence-along-armenian-azerbaijani-border-could-lead-war)

With this in mind, the UN and the Organization for Security and Co-operation in Europe (OSCE) have long imposed a non-binding arms embargo on both countries, and both are under a de facto arms ban from the United States. But, according to the Stockholm International Peace Research Institute (SIPRI), this has not stopped Israel and Russia from selling to them.

#### No escalation—great powers don’t want it

**Kucera 10**—regular contributor to U.S. News and World Report, Slate and EurasiaNet (Joshua, Central Asia Security Vacuum, 16 June 2010, http://the-diplomat.com/2010/06/16/central-asia%E2%80%99s-security-vacuum/)

Note – CSTO = Collective Security Treaty Organization

Yet when brutal violence broke out in one of the CSTO member countries, Kyrgyzstan, just days later, the group didn’t respond rapidly at all. Kyrgyzstan’s interim president, Roza Otunbayeva, even asked Russia to intervene, but Russian President Dmitry Medvedev responded that Russians would only do so under the auspices of the CSTO. And nearly a week after the start of the violence—which some estimate has killed more than 1000 people and threatens to tear the country apart—the CSTO has still not gotten involved, but says it is ‘considering’ intervening. ‘We did not rule out the use of any means which are in the CSTO’s potential, and the use of which is possible regardless of the development of the situation in Kyrgyzstan,’ Russian National Security Chief Nikolai Patrushev said Monday. On June 10-11, another regional security group, the Shanghai Cooperation Organisation, held its annual summit in Tashkent, Uzbekistan. The SCO has similar collective security aims as the CSTO, and includes Russia, China and most of the Central Asian republics, including Kyrgyzstan. But despite the violence that was going on even as the SCO countries’ presidents met in Uzbekistan, that group also didn’t involve itself in the conflict, and made only a tepid statement calling for calm. Civil society groups in Kyrgyzstan and Uzbekistan (much of the violence is directed toward ethnic Uzbeks in Kyrgyzstan, and the centre of the violence, the city of Osh, is right on the border of Uzbekistan) called on the United Nations to intervene. And Otunbayeva said she didn’t ask the US for help. Even Uzbekistan, which many in Kyrgyzstan and elsewhere feared might try to intervene on behalf of ethnic Uzbeks, has instead opted to stay out of the fray, and issued a statement blaming outsiders for ‘provoking’ the brutal violence. The violence has exposed a security vacuum in Central Asia that no one appears interested in filling. In spite of all of the armchair geopoliticians who have declared that a ‘new Great Game’ is on in Central Asia, the major powers seem distinctly reluctant to expand their spheres of influence there. Why? It’s possible that, amid a tentative US-Russia rapprochement and an apparent pro-Western turn in Russian foreign policy, neither side wants to antagonize the other. The United States, obviously, also is overextended in Iraq and Afghanistan and has little interest in getting in the middle of an ethnic conflict in Kyrgyzstan. It’s possible that the CSTO Rapid Reaction Force isn’t ready for a serious intervention as would be required in Kyrgyzstan. (It’s also possible that Russia’s reluctance is merely a demure gesture to ensure that they don’t seem too eager to get involved; only time will tell.)

#### No war—lesson learning and tension management

Irina **Zviagel'skaia**, leading research fellow at the Institute of Oriental Studies, the Russian Academy of Sciences, Moscow, June **2005**. “Russia and Central Asia: Problems of Security,” Central Asia at the End of the Transition, ed. Boris Rumer, <http://books.google.com/books?id=cnXVyW1QIIYC&pg=PA86&lpg=PA86&dq=%22central+asia%22+numerous+challenges+stability&source=web&ots=-3Uve6KFdU&sig=62TKLdSLAgBp6rszCPvbUBtjjVY&hl=en#PPR5,M1>.

Notwithstanding these numerous challenges, in general the countries of Central Asia have demonstrated stability in the course of their existence as independent states. This region, in contrast to the Caucasus, has not witnessed armed conflicts between states, or wars driven by separatist or irredentist movements. To be sure, such movements do in fact exist, and interethnic tensions are constantly felt. The exception, as already noted, is Tajikistan, where a civil war unfolded in the early 1990s. However, it was precisely the **lessons** of Tajikistan that **have been learned** by the regimes in other states. Nowhere else has a single leader permitted the creation of organized opposition. Although differing in the degree of harshness used to repress political opponents, these former leaders of the Communist Party of the Soviet Union are well versed in political-bureaucratic games and have demonstrated a high level of survivability.

#### Alt causes prove disprove escalation and/or solvency

**Stratfor, 12** [“Annual Forecast 2012”, global intelligence company, http://www.stratfor.com/forecast/annual-forecast-2012]

Numerous factors will undermine Central Asia's stability in 2012, but they **will not lead to a major breaking point** in the region this year. Protests over deteriorating economic conditions will occur throughout the region, particularly in Kazakhstan, though these will be contained to the region and will not result in overly disruptive violence. Serious issues in Kazakhstan's banking sector could lead to a financial crisis, though the government will be able to manage the difficulties and contain it during 2012 by using the oil revenues it has saved up.

## Disad

### overview

#### Weak global regulations risk the accidental release and weaponization of convergence technologies like nanotech, AI, robotics, and biotechnology. We must shift our decision calculus away from short-term thinking to guarantee planetary survival. That’s Masciulli.

#### AND, our impact is 100 million times greater than nuclear war

Ćirković 8—Professor of Physics @ University of Novi Sad in Serbia and Senior Research Associate at the Astronomical Observatory of Belgrade [Milan M. Ćirković Ph.D. (Fellow of the Institute for Ethics and Emerging Technologies), “How can we reduce the risk of human extinction?,” Institute for Ethics and Emerging Technologies, September 17, 2008, pg. http://ieet.org/index.php/IEET/print/2606]

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face evengreater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics “fade out” by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore’s Law.

Farther out in time are technologies that remain theoretical but might be developed this century. Molecular nanotechnology could allow the creation of self-replicating machines capable of destroying the ecosystem. And advances in neuroscience and computation might enable improvements in cognition that accelerate the invention of new weapons. A survey at the Oxford conference found that concerns about human extinction were dominated by fears that new technologies would be misused. These emerging threats are especially challenging as they could become dangerous more quickly than past technologies, outpacing society’s ability to control them. As H.G. Wells noted, “Human history becomes more and more a race between education and catastrophe.”

Such remote risks may seem academic in a world plagued by immediate problems, such as global poverty, HIV, and climate change. But as intimidating as these problems are, they do not threaten human existence. In discussing the risk of nuclear winter, Carl Sagan emphasized the astronomical toll of human extinction:

A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, **the stakes are** one million times greater **for extinction than for** the more modest **nuclear wars that kill “only” hundreds of millions** of people. There are many other possible measures of the potential loss—including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise.

There is a discontinuity between risks that threaten 10 percent or even 99 percent of humanity and those that threaten 100 percent. For disasters killing less than all humanity, there is a good chance that the species could recover. If we value future human generations, then reducing extinction risks should dominate our considerations. Fortunately, most measures to reduce these risks also improve global security against a range of lesser catastrophes, and thus deserve support regardless of how much one worries about extinction.

#### Terminal uniqueness – it will collapse unipolarity

McGaughran 10—Honors in Environmental Studies @ University of Colorado - Boulder [Jamie L. McGaughran, “FUTURE WAR WILL LIKELY BE UNSUSTAINABLE FOR THE SURVIVAL AND CONTINUATION OF HUMANITY AND THE EARTH‘S BIOSPHERE,” A thesis submitted to the University of Colorado at Boulder in partial fulfillment of the requirements to receive Honors designation in Environmental Studies, May 2010, pg. <http://citizenpresident.com/uploads/Whole_Thesis_Future_War_UnSstnble.pdf>]

More than just human civilization is threatened with extinction from weaponized nanotechnology. The entire planet could be devastated and our biosphere could be irreversibly damaged. Nanoweapons can generate myriad forms of weaponry. They can be eco-friendly in one attack and eco-devastating in another. According to Admiral David E. Jeremiah, ViceChairman (ret.), U.S. Joint Chiefs of Staff, in an address at the 1995 Foresight Conference on Molecular Nanotechnology, "Military applications of molecular manufacturing have even greater potential than nuclear weapons to radically change the balance of power." He describes nanotechnology‘s potential to destabilize international relations.

Molecular manufacturing may reduce economic influence and interdependence, encourage targeting of people as opposed to factories and weapons, and reduce the ability of a nation to monitor its potential enemies. It may also, by enabling many nations to be globally destructive, eliminate the ability of powerful nations to "police" the international arena. By making small groups self-sufficient, it can encourage the breakup of existing nations (Nanotechnology: Dangers of Molecular Manufacturing, 2010). The Center for Nanotechnology illustrates a comparative analysis of nanotech weaponry vs. nuclear weaponry and their site contains insightful and thought provoking information regarding the future of nanotechnologies. One question addressed by the CNR is the effect of nanotechnology on the global community. They explore whether nanotech weaponry would either stabilize or destabilize the world. A factor that may have prevented a large scale nuclear war post WWII, and during the Cold War between the U.S. and U.S.S.R., appeared to be the global consequences of utilizing nuclear weapons. The devastation and long lasting effects of radiation have been well documented and disseminated to the public. An example of these consequences occurred in Japan in 1945 with the atomic bombing of Hiroshima and Nagasaki. The consequences of nuclear war include the death of innocent people along with devastating radioactive effects that could linger for long periods of time. It is no longer just a military conflict. Civilians will be killed along with the destruction of valuable resources and military targets. Thus, up to the present time, nuclear weapons controlled by rational acting States have been successful at preventing nuclear war . ―Nuclear weapons perhaps can be credited with preventing major wars since their invention‖ (Nanotechnology: Dangers of Molecular Manufacturing, 2010). But this is only the case because they have thus far been kept out of the hands of irrational actors.

#### Conceded turns norms – Corn

Prove we solve terminal impact to terror

### U

Yes – we read uniqueness – LOAC currently has the ability to adapt and accommodate to new technology - - tha’ts Stewart

Linear DA

### A2 already institutionalized

Question of future development – LOAC protections have not yet been institutionalized for new technology – it’s a question of peresrving it’s adaptability

Blank

Stewart

### Link

Plan crushes development of LOAC:

1. Conflates norms of the law of armed conflict and human rights law. Procedural safeguards are njorms from HIL,

2. Operational unclarity – not necessarily ambiguity of zone but its constantly shifting nature since it’s a function fo numerous factors. Destroys clsarity and predictability in the law, prevengint future development

3. Distraction – the plan’s aritificially created framework detracts from existing challenges – undermines the development of the law

Spills over to future conflicts and eliminates application of LOAC

Blank

#### Plan will be circumvented on the operational level – turns the case and undermines the credibility of LOAC

**Blank, 13 –** professor of law at Emory (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE” <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>)

Third, the enforcement and accountability stage of conflict introduces similar challenges as a result of the interaction of a new law of war framework with operational needs during conflict. Accountability for legal violations during armed conflict is an essential component of ensuring LOAC compliance, thus maximizing the law’s ability to protect civilians and others hors de combat and to ensure humane treatment, among other goals. Over the past few decades, the remarkable development of an international criminal jurisprudence—through the work of ad hoc tribunals, hybrid tribunals, and the International Criminal Court, among other mechanisms—has demonstrated the vital role that accountability plays in enforcing the law, in bringing justice to the victims, and, in some cases, in helping to promote reconciliation. The application of the law in the courtroom, however, must be operationally relevant in order to serve as a useful guide for commanders in future military operations. If it is not, the likelihood that the law will be seen as irrelevant or too hard to follow is unfortunately far too great and is a serious concern.30

In the specific context of a law of war framework designed to incorporate additional procedural guarantees and legal regimes in addressing targeting and detention issues across a range of geographic spaces in a transnational conflict, these accountability challenges will loom even larger. First, the relevant legal obligations will be based not only on LOAC but on additional legal regimes as well, such as human rights law or domestic constitutional law, for example. Second, the nature of those obligations and the way in which the various legal regimes relate to each other within this new law of war paradigm will change depending on where, geographically, the relevant conduct takes place. And, as noted above, , the lines between geographic areas that drive different legal obligations are not fixed during a conflict with a transnational actor but rather will shift in accordance with the nature of the threat, the state’s response, and other factors. Current cases before the military commissions in the United States already demonstrate the jurisdictional hurdles posed by a conflict whose geographic and temporal parameters are difficult to identify; 31 these challenges will be magnified exponentially if different components of the same conflict trigger different legal obligations as a result of a new framework based on a sliding scale of procedural obligations relative to geographical location and other factors. Furthermore, enforcement of LOAC always helps to guide future decisionmaking by commanders, judge advocates, and others, but the nature of an accountability process in this new law of war framework will unfortunately not foster greater clarity and predictability. Which precedents would apply in which areas, and for how long? Military commanders and other decisionmakers would be left with the unenviable task of sorting through the uncertainty of the legal precedents and judgments or might simply disregard these precedents as not applicable, an equally problematic outcome. As a result, even when a new framework offers the apparent potential for greater procedural protections or other metrics of effectiveness, if it divorces the decisionmaking and, later, the enforcement process from the operational realities of military operations, it is likely to be viewed as irrelevant or, still worse, as doing more harm than good.

#### The plan divorces LOAC from operational concerns

**Blank, 13 –** professor of law at Emory (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE” <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>)

Two central concerns, however, arise from the prospective application of Daskal’s suggested legal framework: (­) how the lack of strategic clarity trickles down to affect operational and tactical clarity, and (­) the long-term consequences for the development and implementation of the law of armed conflict (LOAC). This Response highlights these concerns as a counterpoint to the idea of a new set of rules based on shifting geographical combat zones, even in light of the potential procedural benefits such new rules and frameworks might engender. In essence, it is important to recognize that LOAC’s constituents, as it were, include not only the strategic and policylevel decisionmakers and the suspected enemy operatives they seek to combat, but also the individual soldiers tasked with carrying out the mission and, in a broader sense, all those who will implement LOAC in the future or employ its authorities and benefit from its protections. Exploring and accounting for the purposes and functionality of LOAC from all angles is therefore a critical aspect of any discussion of LOAC’s applicability with regard to either geographical application or the formulation of situationdependent rules or parameters. Indeed, the application of LOAC—where and when it applies, and how it applies to different categories of persons and objects—is fundamental not only to the execution of military operations, but also to the planning of and training for operations, and to the enforcement of accountability for violations of the law. Divorcing considerations of LOAC’s geographical reach or its applications in different geographical areas from these three components thus introduces substantial concerns about feasibility, operational effectiveness and predictability, and risks severing the debate from LOAC’s fundamental purposes and objectives. Lost in the current discourse as well is the fact that “armed conflict” is a legal term of art, one introduced to avoid the political manipulations enabled by the earlier use of the word “war,”3 while “battlefield” is an operational euphemism for the place where armed hostilities are taking place and does not even appear as a defined term in military doctrine.4 And yet “armed conflict” and “battlefield” have become linked and have even begun to morph into a legal conception of the “battlefield” that is not based in LOAC, which does not provide specific geographic parameters for armed conflict.

#### Generates legal uncertainty and blurs the lines between distinct legal frameworks

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II. OPERATIONAL CLARITY AND THE DEVELOPMENT OF THE LAW: CASUALTIES OF A HYBRID RULES-BASED FRAMEWORK

As Daskal aptly describes, the primary contours of the debate over the scope of the battlefield are shaped by the territorially prescribed view on one side and the broadly conceived “global battlefield” on the other.17 From a policy standpoint, the latter poses the risk of spiraling violence and a degradation of sovereignty; the former offers terrorists and other armed groups an unnecessary bonus of safe haven simply by crossing an international border. In an earlier piece, I have argued for a middle ground, based on an understanding of the relevant legal parameters that can offer guidance in analyzing the geographic space of conflict.18 In this sense, I firmly agree with the motivation behind Daskal’s effort to transcend the “impasse” seemingly created by a dichotomous, all-or-nothing view of the geography of conflict. However, attempting to navigate these thorny questions through new binding legal frameworks that copy and borrow from two or more distinct legal regimes poses a separate set of concerns, with the risk of more comprehensive long-term consequences.

This Part highlights two of these concerns, specifically within the context of one overarching question: would a new law of war framework apply only to conflicts with terrorist groups or to all LOAC-triggering situations? To the extent that this new framework would become the dominant framework for all conflict situations, the operational and law-development concerns discussed in this Part loom large. However, if the new framework were to apply only in the event of conflicts like that between the U.S. and al Qaeda—a conflict between a state and a transnational terrorist group— two equally significant questions arise. First, how—and by whom—would the determination be made as to whether a particular conflict situation fits within the regular LOAC framework or the new rules-based framework? The risk of additional layers of complexity, legal challenge, and uncertainty as a result of having to make this additional determination first would be great and poses a significant concern. Second, would there thus be two different standards for training and for enforcement, depending on the framework under which a particular unit was operating? Here the consequences for clarity and predictability are quite simply enormous.

A. Operational Clarity and Predictability

A central focus of debate for more than a decade has been how to apply LOAC to conflicts with terrorist groups—from how to define the conflict to how to implement the principle of distinction to the content of law of war detention. The very application of LOAC to military operations against terrorist operatives or groups depends, as the essential preliminary consideration, on the existence of an armed conflict. 19 Notwithstanding the complexities of these determinations in the context of efforts to combat transnational terrorist groups, LOAC continues to rely on clear and objective standards to assess when the law applies. Effective implementation of LOAC depends on the clarity of the legal principles, their application during the heat of battle, and their credible application post hoc in investigations and prosecutions. Moreover, commanders and their troops can best adhere to the law and carry out its central tenets when the law and the obligations it imposes are predictable and operationally logical.

The introduction of a new law of war framework for certain types of conflicts—in which the application of relevant rules depends not on established standards but on a new set of considerations drawn from multiple legal regimes—will affect the application of LOAC at all levels: training, implementation, and enforcement. First, a new framework will have implications for training generally, but the implications go well beyond the need to develop new training methods and modules. Rather, the military will have to explore and assess how to train commanders, lawyers, and troops to comply with a legal framework based on a more complex set of considerations than that established by LOAC, including factors drawn from U.S. constitutional law and other international law regimes. At this stage of training and planning, another challenge will be that of drafting and implementing rules of engagement for operations governed by the legal standards at issue here. Rules of engagement (ROE) distill law, strategy, and policy into tactical instructions for military personnel regarding when and against whom they can use force.20 LOAC forms the outer boundaries of lawfulness for conduct during armed conflict and thus is the outer framework for the rules of engagement; each military operation then has specifically designed rules of engagement to meet the operation’s particular needs. At one level, a new framework based on different legal obligations in different geographical locales does not have significant consequences for the development of ROE because there can be many specific considerations in any conflict situation that drive particularized ROE. Nonetheless, the rapidly changing nature of a conflict with terrorist groups—the nature and geographical location of the threat, and the available responses—will mean that the parameters of this new framework will also be changing—a recipe for extraordinary challenges with regard to developing and training for effective ROE.

Second, implementation in the context of a new law of war framework as proposed, based on distinctions between various zones of security needs and the shifting procedural obligations that result, poses even more significant concerns. Pragmatically, threat and the concomitant need to respond to that threat will always be the primary consideration driving the strategic, operational, and tactical calculus: “Armed conflict is a threat-driven concept, arising when the threat necessitates resort to combat power, and extending to wherever the operational and tactical opportunity to produce a militarily valuable effect on the enemy arises.”21 Divorcing a geographic analysis from this fundamental nature of military operations and decisionmaking can make the law less practical in the immediate sense, and can also, as explained below, hinder the development of the law going forward. During military operations, the law plays an essential protective role not only for those uninvolved in the conflict, but—just as importantly—for those who are fighting.22 Beyond specific provisions that protect soldiers, sailors, airmen, and Marines (such as the obligation to care for the wounded, 23 the prohibition on weapons that cause superfluous injury,24 and the protections provided for prisoners of war25), the law accomplishes this key purpose by striving for clarity and predictability. At the most basic level, soldiers need to know when and against whom they can use force. Uncertainty regarding that most fundamental aspect of wartime conduct places an extraordinary burden on the soldier and places him or her in grave danger beyond that already inherent in the nature of conflict. It may well be possible that a new law of war framework with binding rules that depend on a security calculus drawn from different geographic zones can offer more guidance for a policymaker or other decisionmaker at the highest strategic level. For the men and women directly facing the enemy, however, it muddies the waters by introducing additional considerations to the tactical and operational decisionmaking process, a process that is measured in seconds, if not less.26

More broadly, the balance between military necessity and humanity, highlighted in Part I, is most vital in the direct implementation of LOAC during military operations. Military necessity provides the authority for a party to a conflict to use all force—within the bounds of the law—necessary to achieve the complete submission of the enemy.27 This authority extends beyond the neutralization or elimination of immediate threats to the broader purpose of defeating the enemy as an entity itself, rather than the individuals who comprise the enemy force. For this reason, the law envisions a robust and broad power to attack and disable the enemy based on the presumption that, by nature of being part of the enemy, all members of the enemy force pose a threat.28 ROE then provide parameters for and limits on that power in some situations, depending on the strategic, political, and operational needs of the mission at hand.29 If the law would now be relied upon to provide those parameters—as seems to be the effect of proposed law of war frameworks such as that which Daskal suggests—the law would apply differently in different conflicts and in different geographic areas related to the same conflict. Operationally, this effect has the potential to be a recipe for uncertainty and unpredictability, and divorces legal authority from operational practice and necessity. No less, such a framework raises the question of how the decisions are to be made regarding where different authorities can be used and where different procedural obligations must be fulfilled, all the while recognizing that conflict is a fluid and shifting environment, driven by threat perception, operational needs, the conduct of the enemy, and a range of other factors.

#### The plan mixes armed conflict and human rights frameworks – that causes noncompliance and crushes LOAC legitimacy

Geoffrey Corn 10, Professor of Law and Presidential Research Professor, South Texas College of Law, 2010, “Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conﬂict,” International Humanitarian Legal Studies 1 (2010) 52–94

Perhaps the most critical premise of this article is that failing to recognize the existence of a logical boundary for the complementary application 8 of these two bodies of law leads to a distortion of this historic authority/restraint balance inherent in the LOAC 9 ; a distortion that will almost inevitably be perceived as operationally illogical by armed forces. 10 This, in turn, will produce one of three outcomes. The ﬁrst would be the routine disregard of purported human rights obligations during armed conﬂict. The second would be an absolute resistance to any application of human rights norms in relation to any issues arising during armed conﬂict. The third would be the application of regulatory norms derived from operationally inapposite human rights instruments based on a perceived necessity to comply with human rights during armed conﬂ ict. This third outcome is actually far from hypothetical, but instead is increasingly apparent in the conduct of operations by many NATO member armed forces, and is a trend that seems to be gaining substantial momentum with very little critical analysis of whether it will produce results that are consistent with the very nature of armed conﬂict. 11

Each of these outcomes is problematic. In the ﬁ rst instance, noncompliance inevitably discredits the law; in the second the outright rejection of application of the law disables its eﬀectiveness in situations where its application is logical and pragmatic. 12 Th e third instance might appear to be ideal to many human rights advocates. However, without careful and critical assessment of when and where human rights norms are logically applicable during armed conﬂ ict and where that logic dissipates, the risk of overbroad application creates the potent to disable the eﬃcacy of military operations.

### Daskal

Ev is bad, it’s just about drone norms not LOAC more broadly

#### Uncertainty facilitates effective application of LOAC

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LOAC has multiple purposes that all stem from or contribute to the regulation of the conduct of hostilities and the protection of persons and objects affected by conflict. The most obvious, perhaps, is the humanitarian purpose, the focus on protecting persons who are caught up in the horrors of war. Equally important, however, is the regulation of the means and methods of warfare for the direct purpose of protecting those who are fighting—soldiers and others—from unnecessary suffering during conflict. Finally, it is crucial to recognize that the law of war does not exist to inhibit military operations or prevent war; rather, the goal of this body of law is to enable effective, moral, and lawful military operations within the parameters of the two aforementioned protective purposes.8

The Geneva Conventions, and the laws of war for centuries before that, are based on four key principles: military necessity, humanity, distinction, and proportionality.9 These key principles of LOAC not only provide the foundation for the law, but can also serve as a useful guidepost for exploring difficult challenges and finding solutions that preserve and protect the law’s core values. Military necessity recognizes that the goal of war is the complete submission of the enemy as quickly as possible; it allows any force necessary to achieve that goal as long as not forbidden by the law.10 The principle of humanity aims to minimize suffering in armed conflict; the infliction of suffering not necessary for legitimate military purposes is therefore forbidden.11 The principle of distinction requires all parties in a conflict to distinguish between those who are fighting and those who are not and target only the former when launching attacks.12 Finally, the principle of proportionality seeks to balance military goals with the protection of civilians, prohibiting attacks when the expected civilian casualties will be excessive compared to the anticipated military advantage.13

In the context of the geography of armed conflict, military necessity and humanity might help provide guidance in delineating the scope of the battlefield. Military necessity naturally suggests a broad view of the zone of combat in order to offer the most comprehensive opportunity to defeat the enemy. At first glance, the principle of humanity seems to support a broad view of the geographical scope of armed conflict as well. The Commentary to the Fourth Geneva Convention emphasizes that the drafters sought to ensure the “widest possible field of application” for LOAC’s protective goals.14 In the past, this goal of maximizing protection has been a driving force, facilitating interpretations of complicated questions regarding protected persons or other issues.15 In the context of conflicts with terrorist groups, however, this goal may not operate as effectively. Simply put, taking a broad view of the time and space dimensions in a conflict with terrorist groups could—with little imagination—lead one to conclude that a large portion of the world falls within the zone of combat, by dint of terrorist groups having a presence in many countries and terrorist attacks taking place in many countries. Although this approach would, in theory, mean that large numbers of persons might benefit from the rights and protections of LOAC, it also means that large swaths of the globe would fall within the “use of force as first resort” authority—against positively identified enemy operatives only—that LOAC grants to belligerents.16 Thus, the principle of humanity more rationally supports a narrow view of the geographic scope of conflict in this situation, a view that seeks to protect the most people by keeping conflict, and the battlefield, away from their countries altogether.

This result—a broad view of geographical application based on military necessity and a narrow view based on humanity—mirrors in some ways LOAC’s essential and inherent balancing of military necessity and humanity and ultimately leaves lingering uncertainties about how to frame the geographic scope of the battlefield. And yet, as discussed further in Section II.A, this inherent tension between military necessity and humanity, between authority and obligation, raises important cautions about attempts to delineate the contours of that balance more specifically. That is, our discomfort with a lack of geographical clarity in a conflict between a state and a transnational terrorist group may well be precisely the source of the elasticity needed to enable this balance between military necessity and humanity to be sustained in pursuit of LOAC’s core purposes.

## Drones

### Heg

No i/l – zhang and shi says power position prevents

Mac

#### Decline doesn’t cause war

Fettweis 11—Professor of Poli Sci @ Tulane University [Christopher J. Fettweis, “The Superpower as Superhero: Hubris in U.S. Foreign Policy,” Paper prepared for presentation at the 2011 meeting of the American Political Science Association, September 1-4, Seattle, WA, September 2011, pg. http://ssrn.com/abstract=1902154]

The final and in some ways most important pathological belief generated by hubris places the United States at the center of the current era of relative peace. “All that stands between civility and genocide, order and mayhem,” explain Kaplan and Kristol, “is American power.”68 This belief is a variant of what is known as the “hegemonic stability theory,” which proposes that international peace is only possible when there is one country strong enough to make and enforce a set of rules.69 Although it was first developed to describe economic behavior, the theory has been applied more broadly, to explain the current proliferation of peace. At the height of Pax Romana between roughly 27 BC and 180 AD, for example, Rome was able to bring an unprecedented level of peace and security to the Mediterranean. The Pax Britannica of the nineteenth century brought a level of stability to the high seas. Perhaps the current era is peaceful because the United States has established a de facto Pax Americana in which no power is strong enough to challenge its dominance, and because it has established a set of rules that are generally in the interests of all countries to follow. Without a benevolent hegemon, some strategists fear, instability may break out around the globe.70 Unchecked conflicts could bring humanitarian disaster and, in today’s interconnected world, economic turmoil that could ripple throughout global financial markets. There are good theoretical and empirical reasons, however, to doubt that U.S hegemony is the primary cause of the current stability.¶ First, the hegemonic-stability argument shows the classic symptom of hubris: It overestimates the capability of the United States, in this case to maintain global stability. No state, no matter how strong, can impose peace on determined belligerents. **The U.S. military** may be the most imposing in the history of the world, but it can only police the system if the other members generally cooperate. Self-policing must occur, in other words; if other states had not decided on their own that their interests are best served by peace, then no amount of international constabulary work by the United States could keep them from fighting. The five percent of the world’s population that lives in the United States simply cannot force peace upon an unwilling ninety-five percent. Stability and unipolarity may be simply coincidental.¶ In order for U.S. hegemony to be the explanation for global stability, the rest of the world would have to expect reward for good behavior and fear punishment for bad. Since the end of the Cold War, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. Since most of the world today is free to fight without U.S. involvement, something else must be preventing them from doing so.71 Stability exists in many places where no hegemony is present. Ethiopia and Eritrea are hardly the only states that could go to war without the slightest threat of U.S. intervention, yet few choose to do so.¶ Second, it is worthwhile to repeat one of the most basic observations about misperception in international politics, one that is magnified by hubris: Rarely are our actions as consequential upon their behavior as we believe them to be. The ego-centric bias suggests that while it may be natural for U.S. policymakers to interpret their role as crucial in the maintenance of world peace, they are almost certainly overestimating their own importance. At the very least, the United States is probably not as central to the myriad decisions in foreign capitals that help maintain international stability as it thinks it is.¶ Third, if U.S. security guarantees were the primary cause of the restraint shown by the other great and potentially great powers, then those countries would be demonstrating an amount of **trust** in the intentions, judgment and wisdom of another that would be **without precedent in** international **history**. If the states of Europe and the Pacific Rim detected a good deal of danger in the system, relying entirely on the generosity and sagacity (or, perhaps the naiveté and gullibility) of Washington would be the height of strategic irresponsibility. Indeed it is hard to think of a similar choice: When have any capable members of an alliance virtually disarmed and allowed another member to protect their interests? It seems more logical to suggest that the other members of NATO and Japan just do not share the same perception of threat that the United States does. If there was danger out there, as so many in the U.S. national security community insist, then the grand strategies of the allies would be quite different. Even during the Cold War, U.S. allies were not always convinced that they could rely on U.S. security commitments. Extended deterrence was never entirely comforting; few Europeans could be sure that United States would indeed sacrifice New York for Hamburg. In the absence of the unifying Soviet threat, their trust in U.S. commitments for their defense would presumably be lower—if in fact that commitment was at all necessary outside of the most pessimistic works of fiction.¶ Furthermore, in order for hegemonic stability logic to be an adequate explanation for restrained behavior, allied states must not only be fully convinced of the intentions and capability of the hegemon to protect their interests; they must also trust that the hegemon can interpret those interests correctly and consistently. As discussed above, the allies do not feel that the United States consistently demonstrates the highest level of strategic wisdom. In fact, they often seem to look with confused eyes upon our behavior, and are unable to explain why we so often find it necessary to go abroad in search of monsters to destroy. They will participate at times in our adventures, but minimally and reluctantly.¶ Finally, while believers in hegemonic stability as the primary explanation for the long peace have articulated a logic that some find compelling, they are rarely able to cite much evidence to support their claims. In fact, the limited empirical data we have suggests that there is little connection between the relative level of U.S. activism and international stability. During the 1990s, the United States cut back on defense fairly substantially, spending $100 billion less in real terms in 1998 that it did in 1990, which was a twenty-five percent reduction.72 To defense hawks and other believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace,” argued Kristol and Kagan.”73 If global stability were unrelated to U.S. hegemony, however, one would not have expected an increase in conflict and violence.¶ The verdict from the last two decades is fairly plain: The world grew more peaceful while the United States cut its forces.74 No state believed that its security was endangered by a less-capable U.S. military, or at least none took any action that would suggest such a belief. **No defense establishments were enhanced** to address power vacuums; **no security dilemmas drove insecurity or arms races; no regional balancing occurred** after 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. 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 that spending back up. The two phenomena are unrelated.¶ These figures will not be enough to convince skeptics. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability, and one could also presumably argue that spending is not the only or even the best indication of hegemony, 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 be 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, two points deserve to be made. First, even if it were true that either U.S. commitments or relative spending account for global pacific trends, it would remain the case that stability can be maintained at drastically lower levels. 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 cut back on engagement and spending until that level is determined. 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, as many suspect, this era of global peace proves to be inherently stable because normative evolution is typically unidirectional, then no increase in conflict would ever occur, irrespective of U.S. spending.75 Abandoning the mission to stabilize the world would save untold trillions for an increasingly debt-ridden nation.¶ Second, it is also 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 surely hegemonists would note that their expectations had been justified. If increases in conflict would have been interpreted as evidence for 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 relationship between U.S. power and international stability suggests that the two are unrelated. 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.¶ It requires a good deal of hubris for any actor to consider itself indispensable to world peace. Far from collapsing into a whirlwind of chaos, the chances are high that the world would look much like it does now if the United States were to cease regarding itself as God’s gladiator on earth. The people of the United States would be a lot better off as well.

### Asia

#### economics and diplomacy

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Little noticed, however, has been China's recent adoption of a new -- and much more moderate -- approach. The primary goals of the friendlier policy are to restore China's tarnished image in East Asia and to reduce the rationale for a more active U.S. role there.

Beijing is also unlikely to be more assertive if that sustains Southeast Asian countries' desires to further deepen ties with the United States.

The first sign of China's new approach came last June, when Hanoi dispatched a special envoy to Beijing for talks about the countries' various maritime disputes. The visit paved the way for an agreement in July 2011 between China and the ten members of the Association of Southeast Asian Nations (ASEAN) to finally implement a declaration of a code of conduct they had originally drafted in 2002 after a series of incidents in the South China Sea. In that declaration, they agreed to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes."

Since the summer, senior Chinese officials, especially top political leaders such as President Hu Jintao and Premier Wen Jiabao, have repeatedly reaffirmed the late Deng Xiaoping's guidelines for dealing with China's maritime conflicts to focus on economic cooperation while delaying the final resolution of the underlying claims. In August 2011, for example, Hu echoed Deng's approach by stating that "the countries concerned may put aside the disputes and actively explore forms of common development in the relevant sea areas."

Authoritative Chinese-language media, too, has begun to underscore the importance of cooperation. Since August, the international department of People's Daily (under the pen name Zhong Sheng) has published several columns stressing the need to be less confrontational in the South China Sea. In January 2012, for example, Zhong Sheng discussed the importance of "pragmatic cooperation" to achieve "concrete results." Since the People's Daily is the official paper of the Central Committee of the Chinese Communist Party, such articles should be interpreted as the party's attempts to explain its new policy to domestic readers, especially those working lower down in party and state bureaucracies.

In terms of actually setting aside disputes, China has made progress. In addition to the July consensus with ASEAN, in October China reached an agreement with Vietnam on "basic principles guiding the settlement of maritime issues." The accord stressed following international law, especially the UN Convention on the Law of the Sea. Since then, China and Vietnam have begun to implement the agreement by establishing a working group to demarcate and develop the southern portion of the Gulf of Tonkin near the disputed Paracel Islands.

China has also initiated or participated in several working-level meetings to address regional concerns about Beijing's assertiveness. Just before the East Asian Summit last November, China announced that it would establish a three billion yuan ($476 million) fund for China-ASEAN maritime cooperation on scientific research, environmental protection, freedom of navigation, search and rescue, and combating transnational crimes at sea. The following month, China convened several workshops on oceanography and freedom of navigation in the South China Sea, and in January it hosted a meeting with senior ASEAN officials to discuss implementing the 2002 code of conduct declaration. The breadth of proposed cooperative activities indicates that China's new approach is probably more than just a mere stalling tactic.

Beyond China's new efforts to demonstrate that it is ready to pursue a more cooperative approach, the country has also halted many of the more assertive behaviors that had attracted attention between 2009 and 2011. For example, patrol ships from the Bureau of Fisheries Administration have rarely detained and held any Vietnamese fishermen since 2010. (Between 2005 and 2010, China detained 63 fishing boats and their crews, many of which were not released until a hefty fine was paid.) And Vietnamese and Philippine vessels have been able to conduct hydrocarbon exploration without interference from China. (Just last May, Chinese patrol ships cut the towed sonar cable of a Vietnamese ship to prevent it from completing a seismic survey.) More generally, China has not obstructed any recent exploration-related activities, such as Exxon's drilling in October of an exploratory well in waters claimed by both Vietnam and China. Given that China retains the capability to interfere with such activities, its failure to do so suggests a conscious choice to be a friendlier neighbor.

The question, of course, is why did the Chinese shift to a more moderate approach? More than anything, Beijing has come to realize that its assertiveness was harming its broader foreign policy interests. One principle of China's current grand strategy is to maintain good ties with great powers, its immediate neighbors, and the developing world. Through its actions in the South China Sea, China had undermined this principle and tarnished the cordial image in Southeast Asia that it had worked to cultivate in the preceding decade. It had created a shared interest among countries there in countering China -- and an incentive for them to seek support from Washington. In so doing, China's actions provided a strong rationale for greater U.S. involvement in the region and inserted the South China Sea disputes into the U.S.-Chinese relationship.

By last summer, China had simply recognized that it had overreached. Now, Beijing wants to project a more benign image in the region to prevent the formation of a group of Asian states allied against China, reduce Southeast Asian states' desire to further improve ties with the United States, and weaken the rationale for a greater U.S. role in these disputes and in the region.

So far, Beijing's new approach seems to be working, especially with Vietnam. China and Vietnam have deepened their political relationship through frequent high-level exchanges. Visits by the Vietnamese Communist Party general secretary, Nguyen Phu Trong, to Beijing in October 2011 and by the Chinese heir apparent, Xi Jinping, to Hanoi in December 2011 were designed to soothe spirits and protect the broader bilateral relationship from the unresolved disputes over territory in the South China Sea. In October, the two also agreed to a five-year plan to increase their bilateral trade to $60 billion by 2015. And just last month, foreign ministers from both countries agreed to set up working groups on functional issues such as maritime search and rescue and establish a hotline between the two foreign ministries, in addition to starting talks over the demarcation of the Gulf of Tonkin.

Even if it is smooth sailing now, there could be choppy waters ahead. Months of poor weather have held back fishermen and oil companies throughout the South China Sea. But when fishing and hydrocarbon exploration activities resume in the spring, incidents could increase. In addition, China's new approach has raised expectations that it must now meet -- for example, by negotiating a binding code of conduct to replace the 2002 declaration and continuing to refrain from unilateral actions.

Nevertheless, because the new approach reflects a strategic logic, it might endure, signaling a more significant Chinese foreign policy shift. As the 18th Party Congress draws near, Chinese leaders want a stable external environment, lest an international crisis upset the arrangements for this year's leadership turnover. And even after new party heads are selected, they will likely try to avoid international crises while consolidating their power and focusing on China's domestic challenges.

China's more moderate approach in the South China Sea provides further evidence that China will seek to avoid the type of confrontational policies that it had adopted toward the United States in 2010. When coupled with Xi's visit to Washington last month, it also suggests that the United States need not fear Beijing's reaction to its strategic pivot to Asia, which entails enhancing U.S. security relationships throughout the region. Instead, China is more likely to rely on conventional diplomatic and economic tools of statecraft than attempt a direct military response. Beijing is also unlikely to be more assertive if that sustains Southeast Asian countries' desires to further deepen ties with the United States. Whether the new approach sticks in the long run, it at least demonstrates that China, when it wants to, can recalibrate its foreign policy. That is good news for stability in the region.

#### No military aggression

Goldstein 11—Professor and Director of the China Maritime Studies Institute @ US Naval War College [Dr. Lyle J. Goldstein, “Resetting the US–China Security Relationship,” Survival | vol. 53 no. 2 | April–May 2011 | pp. 89–116]

Weighed in the aggregate, China’s rise remains a peaceful process, and the record to date should engender significant confidence. Beijing has not resorted to a significant use of force against another state in more than three decades. Its deployments of troops as UN peacekeepers to hot spots such as Lebanon and the Democratic Republic of the Congo have played a helpful role, as have the counter-piracy operations of its fleet in the Gulf of Aden. When dealing with weak and occasionally unstable states on its borders, such as Kyrgyzstan or Tajikistan, Beijing has not resorted to military intervention, nor even flexed its military muscles to gain advantage. Chinese maritime claims, whether in the South or the East China seas, are generally being enforced by unarmed patrol cutters, a clear signal that Beijing does not seek escalation to a major crisis on these matters. Contrary to the perception that China’s senior military officers are all irreconcilable hawks, one influential People’s Liberation Army Navy (PLAN) admiral recently said in an interview, with reference to lessons learned from recent border negotiations on China’s periphery: ‘If there are never any concessions or compromises, there is simply no possibility of reaching a breakthrough in border negotiations.’2 pg. 90

#### Institutions check escalation

Ba 11**—**Professor of Political Science and International Relations @ University of Delaware [Dr. Alice D. Ba (PhD in Government and Foreign Affairs from University of Virginia) , “Staking Claims and Making Waves in the South China Sea: How Troubled Are the Waters?,” Contemporary Southeast Asia: A Journal of International and Strategic Affairs, Volume 33, Number 3, December 2011, pp. 269-291]

Thayer’s conclusion also speaks to the fact that China’s relations with Southeast Asia (and also the world in general) are much more extensive compared to, for example, the early-mid 1990s when the South China Sea was last a major issue. Put another way, recent commentary to the contrary, China’s regional engagement cannot be reduced to this one issue, and Chinese diplomacy of the last decade was not all for naught. At minimum, ten years of mutual engagement have put in place a range of mechanisms and interests that serve to buffer and mediate specific tensions, in addition to keeping opportunities on the table. Nevertheless, China’s relations with Southeast Asian states are, as highlighted, challenged by events. The expansiveness of China’s claim, especially with reference to “historic waters” and historic claims, suggest a sense of regional entitlement that sit in tension with the message China has been trying to convey through what has otherwise been China’s successful regional diplomacy. These tensions have to be reconciled and addressed if the South China Sea is not to remain the primary contradiction and “Achilles heel” (to use Kavi Chongkittavorn’s characterization) in China-Southeast Asian relations.37 pg. 279-280

#### No war—not worth it and China won’t be militarily aggressive

Wang 12 [Terry, “Will South China Sea Disputes Lead to War?” 9-4, http://www.voanews.com/content/south-china-sea-war-unlikely/1501780.html]

“A minor military clash in the South China Sea is, rather worryingly, a distinct and growing possibility,” according to Ian Storey from the Institute of Southeast Asian Studies in Singapore. Storey, an expert on Asia Pacific maritime security, goes even further. He envisions the possibility of differences over fishing rights or energy exploration turning into a military clash. “Caused by miscalculation, misperception or miscommunication, it’s just a question of time before one these skirmishes results in loss of life,” Storey said. A South China Sea War is Unlikely But that doesn’t mean a war. Storey said an escalation into full-blown conflict is unlikely. “It is in no country’s interests to spill blood or treasure over this issue – the costs far outweigh the benefits,” Storey said. Other experts agree. James Holmes of the U.S. Naval War College says admires how China has been able to get its way in spreading it claims of sovereignty without becoming a bully. “[China] gradually consolidated the nation's maritime claims while staying well under the threshold for triggering outside -most likely American -intervention,” said Holmes. “Is war about to break out over bare rocks? I don't think so.” writes Robert D. Kaplan, Chief Political Strategist for the geopolitical analysis group Stratfor. Kaplan, however, doesn’t give much hope for negotiations. “The issues involved are too complex, and the power imbalance between China and its individual neighbors is too great,” he said. For that reason, Kaplan says China holds all the cards. Kaplan doesn’t look for Chinese military aggression against other claimants. That, he says, would be counterproductive for its goals in the region. “It would completely undermine its carefully crafted ‘peaceful rise’ thesis and push Southeast Asian countries into closer strategic alignment with the US,” said Kaplan.

#### No escalation—EP-3 and Impeccable proves.

Womack 11**—**Professor of Foreign Affairs @ University of Virginia [Dr. Brantly Womack (PhD in Poli Sci from University of Chicago), “The Spratlys: From Dangerous Ground to Apple of Discord,” Contemporary Southeast Asia: A Journal of International and Strategic Affairs, Volume 33, Number 3, December 2011, pp. 370-387

It is difficult to imagine a Spratly scenario in which a crisis would go beyond a specific incident and threaten the current overall pattern of mixed occupation. Accidents happen, so incidents cannot be ruled out, though the sustained confrontation of two or more militaries are increasingly unlikely. Accidental incidents are likely to lead to a blamestorm, but not to prolonged conflict or to escalation. A premeditated fait accompli against other claimants, as argued earlier, would not accomplish much. The victor (let us assume China) would have alienated the entire region and it would have alarmed the rest of its neighbours and international partners. International cooperation in resource development would be unlikely, and the logistics of transportation, supply and defence would be formidable. If China’s overall foreign policy made a radical change towards aggressive regional hegemony perhaps the Spratlys could become a battleground. But the ramp-up in aggressiveness would take time to develop, Spratly controversies would be derivative rather than the leading element, and there would no longer be a need for a synecdoche of anxiety. The currently foreseeable future is based on a quarter century of broad and peaceful development in which the Spratlys have been a grain of sand.

A militarized incident in the South China Sea between China and the United States is more likely, but it is not likely to originate in the Spratlys nor is it likely to escalate. The direct confrontation has been over the definition of innocent passage in the context of freedom of navigation in EEZs, and an incident in the Spratlys is unlikely to generate a restriction of general freedom of navigation since traffic goes around the islands rather than through them. Incidents such as those involving the EP-3 surveillance aircraft incident of April 2001 or the USNS Impeccable hydrographic ship in March 2009 are possible, but these do not relate specifically to the Spratlys and are only indirectly related to Southeast Asia. It would be surprising if Southeast Asian states would be happy with an American solution that would consider intelligence operations (by China as well as by the United States) legitimate up to a twelve mile limit. The reverberations from such incidents are likely to be restricted to tit-for-tat responses rather than general escalation. The days of the War of Jenkins’s Ear are long past.35 pg. 381-383

**China’s drones have no motor tech, no imagery, and no control --- there’s zero industrial base to produce these regardless of any interest their evidence describes --- China’s best are inelegant prototypes**

**Axe 11** (David Axe, “Where are China’s Killer Drones?” Wired, February 8, 2011, http://www.wired.com/dangerroom/2011/02/where-are-chinas-killer-drones/)

Against this fast-expanding fleet of killer drones, China has just a handful of inelegant UAV prototypes. There were two dozen different aerial bots on display at the Zhuhai Airshow in southern China last year, but almost all of them were small, flimsy models that John Pike, from Globalsecurity.org, called “easy to do.”

China does possess prototypes for at least four medium-size drones similar in dimension to the Predator and Reaper. These include the propeller-driven Yilong and BZK-005 and the jet-poweredTianchi and WJ-600. The BZK-005 is the only one of these four drones to show up in a photo depicting a seemingly operational environment. That photo, seen above, was leaked onto the Internet in October 2009 and showed just two BZK-005s at what appeared to be an active PLAAF airstrip. Otherwise, China’s four medium drones appear to be mere prototypes. And only the WJ-600 is said to be capable of carrying weapons.

What’s holding China back? Engines, for one. Chinese industry has not proved capable of developing reliable military-grade motors. That’s been the biggest thing holding back China’s new fighters and choppers — and now apparently drones, too.

“Another obstacle probably is real-time, on-time delivery of precision photo imagery,” observed Arthur Ding, an analyst based in Taiwan. The Pentagon possesses scores of communications satellites for linking drones, ground troops and imagery analysts; China has just a handful of similar spacecraft. The same communication problem could also inhibit the PLA’s ability to control its UAVs.