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#### Targeted killings are strikes carried about against pre-meditated, individually designated targets—signature strikes are distinction—precision of definition is key to education.

Anderson 11—Kenneth Anderson, Professor of International Law at American University [August 29, 2011, “Distinguishing High Value Targeted Killing and “Signature” Attacks on Taliban Fighters,” http://www.volokh.com/2011/08/29/distinguishing-high-value-targeted-killing-and-signature-attacks-on-taliban-fighters/]

From the US standpoint, it is partly that it does not depend as much as it did on Pakistan’s intelligence. But it is also partly, as a couple of well-publicized incidents a few months ago made clear, that sharing targeting decisions with Pakistan’s military and ISI runs a very considerable possibility of having the targets tipped off (as even The Onion has observed). The article notes in this regard, the U.S. worries that “if they tell the Pakistanis that a drone strike is coming someone within Pakistani intelligence could tip off the intended target.” However, the Journal’s reporting goes from there to emphasize an aspect of targeted killing and drone warfare that is not sufficiently appreciated in public discussions trying to assess such issues as civilian collateral damage, strategic value and uses, and the uses of drones in counterterrorism and counterinsurgency as distinct activities. The article explains:

The CIA carries out two different types of drone strikes in the tribal areas of Pakistan—those against so-called high-value targets, including Mr. Rahman, and “signature” strikes targeting Taliban foot-soldiers who criss-cross the border with Afghanistan to fight U.S. forces there.

High-value targets are added to a classified list that the CIA maintains and updates. The agency often doesn’t know the names of the signature targets, but it tracks their movements and activities for hours or days before striking them, U.S. officials say.

Another way to put this is that, loosely speaking, the high value targets are part of a counterterrorism campaign – a worldwide one, reaching these days to Yemen and other places. It is targeted killing in its strict sense using drones – aimed at a distinct individual who has been identified by intelligence. The “signature” strikes, by contrast, are not strictly speaking “targeted killing,” because they are aimed at larger numbers of fighters who are targeted on the basis of being combatants, but not on the basis of individuated intelligence. They are fighting formations, being targeted on a mass basis as part of the counterinsurgency campaign in Afghanistan, as part of the basic CI doctrine of closing down cross-border safe havens and border interdiction of fighters. Both of these functions can be, and are, carried out by drones – though each strategic function could be carried out by other means, such as SEAL 6 or CIA human teams, in the case of targeted killing, or manned aircraft in the case of attacks on Taliban formations. The fundamental point is that they serve distinct strategic purposes. Targeted killing is not synonymous with drone warfare, just as counterterrorism is analytically distinct from counterinsurgency. (I discuss this in the opening sections of this draft chapter on SSRN.)

This analytic point affects how one sees the levels of drone attacks going up or down over the years. Neither the total numbers of fighters killed nor the total number of drone strikes – going up or down over months – tells the whole story. Total numbers do not distinguish between the high value targets, being targeted as part of the top down dismantling of Al Qaeda as a transnational terrorist organization, on the one hand, and ordinary Taliban being killed in much larger numbers as part of counterinsurgency activities essentially part of the ground war in Afghanistan, on the other. Yet the distinction is crucial insofar as the two activities are, at the level of truly grand strategy, in support of each other – the war in Afghanistan and the global counterterrorism war both in support of the AUMF and US national security broadly – but at the level of ordinary strategic concerns, quite distinct in their requirements and conduct. If targeted killing against AQ leadership goes well in Pakistan, those might diminish at some point in the future; what happens in the war against the Afghan Taliban is distinct and has its own rhythm, and in that effort, drones are simply another form of air weapon, an alternative to manned aircraft in an overt, conventional war. Rising or falling numbers of drone strikes in the aggregate will not tell one very much without knowing what mission is at issue.

#### Vote neg—signature strikes and targeted killings are distinct operations with entirely separate lit bases and advantages—they kill precision and limits

Anderson 11—Kenneth Anderson, Professor of International Law at American University [September 23, 2011, “Efficiency in Bello and ad Bellum: Targeted Killing Through Drone Warfare,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1812124]

Although targeted killing and drone warfare are often closely connected, they are not the same and are not always associated with each other. We need to disaggregate the practices of targeted killing from the technologies of drone warfare.

Targeted killing consists of using deadly force, characterized by the identification of and then strike against an individual marked to be killed. It is distinguished, among other things, by making an individualized determination of a person to be killed, rather than simply identifying, for example, a mass of enemy combatants to attack as a whole. Since it is a practice that involves the determination of an identified person, rather than a mass of armed and obvious combatants, it is a use of force that is by its function integrated with intelligence work, whether the intelligence actors involved are uniformed military or a civilian agency such as the CIA.

Targeted killing might (and does) take place in the course of conventional warfare, through special operations or other mechanisms that narrowly focus operations through intelligence. But it might also take place outside of a conventional conflict, or perhaps far from the conventional battlefields of that conflict, sufficiently so operationally to best be understood as its own operational category of the use of force – “intelligence-driven,” often covert, and sometimes non-military intelligence agency use of force, typically aimed at “high value” targets in global counterterrorism operations. It might be covert or it might not – but it will be driven by intelligence, because of necessity it must identify and justify the choice of target (on operational, because resources are limited; or legal grounds; or, in practice, both).

Targeted killing might use a variety of tactical methods by which to carry out the attack. The method might be by drones firing missiles – the focus of discussion here. But targeted killing – assassination, generically – is a very old method for using force and drones are new. Targeted killing in current military and CIA doctrine might, and often does, take place with covert civilian intelligence agents or military special operations forces – a human team carrying out the attack, rather than a drone aircraft operated from a distance. The Bin Laden raid exemplifies the human team-conducted targeted killing, of course, and in today’s tactical environment, the US often uses combined operations that have available both human teams and drones, to be deployed according to circumstances.

Targeted killing is thus a tactic that might be carried out either by drones or human teams. If there are two ways to do targeted killing, there are also two functions for the use of drones – targeted killing as part of an “intelligence-driven” discrete use of force, on the one hand, and a role (really, roles) in conventional warfare. Drones have a role in an ever-increasing range of military operations that have no connection to “targeted killing.” For many reasons ranging from cost-effectiveness to mission-effectiveness, drones are becoming more ramified in their uses in military operations, and will certainly become more so. This is true starting with their fundamental use in surveillance, but is also true when used as weapons platforms.

From the standpoint of conventional military operations and ordinary battlefields, drones are seen by the military as simply an alternative air weapons platform. One might use an over-the-horizon manned aircraft – or, depending on circumstances, one might instead use a drone as the weapons platform. It might be a missile launched from a drone by an operator, whether sitting in a vehicle near the fighting or farther away; it might be a weapon fired from a helicopter twenty miles away, but invisible to the fighters; it might be a missile fired from a US Navy vessel hundreds of miles away by personnel sitting at a console deep inside the ship. Future air-to-air fighter aircraft systems are very likely to be remotely piloted, in order to take advantage of superior maneuverability and greater stresses endurable without a human pilot. Remotely-piloted aircraft are the future of much military and, for that matter, civil aviation; this is a technological revolution that is taking place for reasons having less to do with military aviation than general changes in aviation technology.

Missiles fired from a remotely-piloted standoff platform present the same legal issues as any other weapons system – the law of war categories of necessity and proportionality in targeting. To military professionals, therefore, the emphasis placed on “remoteness” from violence of drone weapons operators, and presumed psychological differences in operators versus pilots, is misplaced and indeed mystifying. Navy personnel firing missiles from ships are typically just as remote from the fighting, and yet one does not hear complaints about their indifference to violence and their “Playstation,” push-button approach to war. Air Force pilots more often than not fire from remote aircraft; pilots involved in the bombing campaign over Serbia in the Kosovo war sometimes flew in bombers taking off from the United States; bomber crews dropped their loads from high altitudes, guided by computer, with little connection to the “battlefield” and little conception of what they – what their targeting computers - were aiming at. Some of the crews in interviews described spending the flights of many hours at a time, flying from the Midwest and back, as a good chance to study for graduate school classes they were taking – not Playstation, but study hall. In many respects, the development of new sensor technologies make the pilots, targeters, and the now-extensive staff involved in a decision to fire a weapon from a drone far more aware of what is taking place at the target than other forms of remote targeting, from Navy ships or high altitude bombing.

Very few of the actors on a technologically advanced battlefield are personally present in a way that makes the destruction and killing truly personal – and that is part of the point. Fighting up close and personal, on the critics’ psychological theories, seems to mean that it has greater significance to the actors and therefore leads to greater restraint. That is extremely unlikely and contrary to the experience of US warfighters. Lawful kinetic violence is more likely to increase when force protection is an issue, and overuse of force is more likely to increase when forces are under personal pressure and risk. The US military has known since Vietnam at least that increased safety for fighting personnel allows them greater latitude in using force, encourages and permits greater willingness to consider the least damaging alternatives, and that putting violence at a remove reduces the passions and fears of war and allows a coolly professional consideration of what kinds, and how much, violence is required to accomplish a lawful military mission. Remote weapon systems, whether robotic or simply missiles launched from a safe distance, in US doctrine are more than just a means for reducing risk to forces – they are an integral part of the means of allowing more time to consider less-harmful alternatives.

This is an important point, given that drones today are being used for tasks that involve much greater uses of force than individualized targeted killing. Drones are used today, and with increasing frequency, to kill whole masses of enemy columns of Taliban fighters on the Pakistan border – in a way that would otherwise be carried out by manned attack aircraft. This is not targeted killing; this is conventional war operations. It is most easily framed in terms of the abstract strategic division of counterinsurgency from counterterrorism (though in practice the two are not so distinct as all that). In particular, drones are being deployed in the AfPak conflict as a counterinsurgency means of going after Taliban in their safe haven camps on the Pakistan side of the border. A fundamental tenet of counterinsurgency is that the safe havens have to be ended, and this has meant targeting much larger contingents of Taliban fighters than previously understood in the “targeted killing” deployment. This could be – and in some circumstances today is – being done by the military; it is also done by the CIA under orders of the President partly because of purely political concerns; much of it today seems to be a combined operation of military and CIA.

Whoever conducts it and whatever legal issues it might raise, the point is that this activity is fundamentally counterinsurgency. The fighters are targeted in much larger numbers in the camps than would be the case in “targeted killing,” and this is a good instance of how targeted killing and drone warfare need to be differentiated. The targets are not individuated, either in the act of targeting or in the decision of who and where to target: this is simply an alternative air platform for doing what might otherwise be done with helicopters, fixed wing aircraft, or ground attack, in the course of conventional counterinsurgency operations. But it also means that the numbers killed in such operations are much larger, and consist often of ordinary fighters who would otherwise pile into trucks and cross back into Afghanistan, rather than individualized “high value” targets, whether Taliban or Al Qaeda.

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#### Obama holding off new Iranian sanctions now – credibility and pc key. No thumpers

WSJ 12 – 19 – 13 [Obama Issues Rare Veto Threat on Iran Bill; Bipartisan Senate Bill Would Slap Tehran With New Sanctions. Lee, Carol EView Profile. Wall Street Journal (Online) [New York, N.Y] 19 Dec 2013: n/a.]

The White House issued a rare veto threat in response to a bipartisan Senate bill that would slap Iran with new sanctions if it violates an interim deal reached last month to curb its nuclear program.

The threat sets up a standoff in the new year between President Barack Obama and more than two dozen Senate Democrats and Republicans who introduced the legislation on Thursday. The challenge to Mr. Obama is particularly stark because half of the lawmakers sponsoring the new bill are from his own party.

The bill could also imperil Mr. Obama's efforts to reach a diplomatic end to the decadelong standoff over Iran's nuclear program, which administration officials hope will be a signature achievement of his second term.

Iranian officials have repeatedly threatened in recent days to back out of negotiations with the U.S. and other global powers over Tehran's nuclear program if Washington enacts new sanctions.

White House Press Secretary Jay Carney criticized the Senate move, saying such sanctions would undermine Mr. Obama's diplomatic efforts "no matter how they're structured."

"We don't think it will be enacted. We certainly don't think it should be enacted," Mr. Carney said. "If it were to pass, the president would veto it."

Iranian officials didn't comment Thursday on the introduction of the legislation. But in recent days they have described Iranian President Hasan Rouhani as in a power struggle with hard-liners in Iran's military and clergy over the November agreement with the five permanent members of the United Nations Security Council and Germany, a bloc called the P5+1.

Any moves by the U.S. to impose new sanctions on Tehran, said these officials, could weaken Mr. Rouhani's hand.

"Naturally, there is opposition to this agreement, both inside Iran and elsewhere," said Iran's Ambassador to France Ali Ahani, at a conference last weekend. "There are people who say you can't trust the Americans."

In Washington, Mr. Obama has little political capital with a divided Congress that has given him few recent victories. He is already bracing for tough legislative battles next year.

Republicans are weighing a fight over the need to raise the debt limit early next year, and Mr. Obama is set to give a speech in January outlining potentially sweeping changes to the government's contested spying programs. The programs, like Iran diplomacy, have prompted some members of the president's own Democratic Party to criticize his administration.

A presidential veto, while unusual for Mr. Obama--particularly on Democratic-backed legislation--could appease all sides. Mr. Obama may strengthen his hand in negotiations by keeping Congress at bay, while lawmakers who are under pressure over Iran get to vote for additional sanctions.

And a veto threat by Mr. Obama could provide American diplomats with a way to assure Iran that they are earnest about the diplomacy. Iran last week objected to U.S. moves to enforce existing U.S. sanctions against alleged violations by more than a dozen Iranian individuals and businesses.

But the White House also risks seeing Mr. Obama's veto overridden, if Republicans in the Senate remain unified and Democrats continue to feel emboldened to challenge the party line.

Mr. Obama, Secretary of State John Kerry and other top administration officials have worked vigorously to keep Congress from enacting new sanctions against Iran while the U.S. and other world powers negotiate a long-term diplomatic agreement with Tehran to curb its nuclear program. Iran says its program is for peaceful purposes only.

#### The standing of the executive is the crucial internal link – key to hold off hawks in congress. Vital internal to overall US nuclear leadership

LEVERETT 11/7/13—Profs of International Relations – Penn State & American University [Flynt Leverett and Hillary Mann Leverett, America’s Moment of Truth on Iran , http://iranian.com/posts/view/post/23789]

America’s Iran policy is at a crossroads. Washington can abandon its counterproductive insistence on Middle Eastern hegemony, negotiate a nuclear deal grounded in the Nuclear Non-Proliferation Treaty (NPT), and get serious about working with Tehran to broker a settlement to the Syrian conflict. In the process, the United States would greatly improve its ability to shape important outcomes there. Alternatively, America can continue on its present path, leading ultimately to strategic irrelevance in one of the world’s most vital regions—with negative implications for its standing in Asia as well.

U.S. policy is at this juncture because the costs of Washington’s post-Cold War drive to dominate the Middle East have risen perilously high. President Obama’s self-inflicted debacle over his plan to attack Syria after chemical weapons were used there in August showed that America can no longer credibly threaten the effective use of force to impose its preferences in the region. While Obama still insists “all options are on the table” for Iran, the reality is that, if Washington is to deal efficaciously with the nuclear issue, it will be through diplomacy.

In this context, last month’s Geneva meeting between Iran and the P5+1 brought America’s political class to a strategic and political moment of truth. Can American elites turn away from a self-damaging quest for Middle Eastern hegemony by coming to terms with an independent regional power? Or are they so enthralled with an increasingly surreal notion of America as hegemon that, to preserve U.S. “leadership,” they will pursue a course further eviscerating its strategic position?

The proposal for resolving the nuclear issue that Iran’s foreign minister, Javad Zarif, presented in Geneva seeks answers to these questions. It operationalizes the approach advocated by Hassan Rohani and other Iranian leaders for over a decade: greater transparency on Iran’s nuclear activities in return for recognizing its rights as a sovereign NPT signatory—especially to enrich uranium under international safeguards—and removal of sanctions. For years, the Bush and Obama administrations rejected this approach. Now Obama must at least consider it.

The Iranian package provides greater transparency on Tehran’s nuclear activities in two crucial respects. First, it gives greater visibility on the conduct of Iran’s nuclear program. Iran has reportedly offered to comply voluntarily for some months with the Additional Protocol (AP) to the NPT—which it has signed but not yet ratified and which authorizes more proactive and intrusive inspections—to encourage diplomatic progress. Tehran would ratify the AP—thereby committing to its permanent implementation—as part of a final deal.

Second, the package aims to validate Iran’s declarations that its enrichment infrastructure is not meant to produce weapons-grade fissile material. Iran would stop enriching at the near-20 percent level of fissile-isotope purity needed to fuel the Tehran Research Reactor and cap enrichment at levels suitable for fueling power reactors. Similarly, Iran is open to capping the number of centrifuges it would install—at least for some years—at its enrichment sites in Natanz and Fordo.

Based on conversations with Iranian officials and political figures in New York in September (during Rohani and Zarif’s visit to the UN General Assembly) and in Tehran last month, it is also possible to identify items that the Iranian proposal almost certainly does not include. Supreme Leader Ayatollah Seyed Ali Khamenei has reportedly given President Rohani and his diplomats flexibility in negotiating a settlement—but he has also directed that they not compromise Iran’s sovereignty. Thus, the Islamic Republic will not acquiesce to American (and Israeli) demands to suspend enrichment, shut its enrichment site at Fordo, stop a heavy-water reactor under construction at Arak, and ship its current enriched uranium stockpile abroad.

On one level, the Iranian package is crafted to resolve the nuclear issue based on the NPT, within a year. Iran’s nuclear rights would be respected; transparency measures would reduce the proliferation risks of its enrichment activities below what Washington tolerates elsewhere. On another level, though, the package means to test America’s willingness and capability to resolve the issue on this basis. It tests this not just for Tehran’s edification, but also for that of other P5+1 states, especially China and Russia, and of rising powers like India and South Korea.

America can fail the Iranian test in two ways. First, the Obama administration—reflecting America’s political class more broadly—may prove unwilling to acknowledge Iran’s nuclear rights in a straightforward way, insisting on terms for a deal that effectively suborn these rights and violate Iranian sovereignty.

There are powerful constituencies—e.g., the Israel lobby, neoconservative Republicans, their Democratic “fellow travelers,” and U.S.-based Iran “experts”—that oppose any deal recognizing Iran’s nuclear rights. They understand that acknowledging these rights would also mean accepting the Islamic Republic as an enduring entity representing legitimate national interests; to do so, America would have to abandon its post-Cold War pretensions to Middle Eastern hegemony.

Those pretensions have proven dangerously corrosive of America’s ability to accomplish important objectives in the Middle East, and of its global standing. Just witness the profoundly self-damaging consequences of America’s invasion and occupation of Iraq, and how badly the “global war on terror” has eviscerated the perceived legitimacy of American purposes in the Muslim world.

But, as the drama over Obama’s call for military action against Syria indicates, America’s political class remains deeply attached to imperial pretense—even as the American public turns away from it. If Washington could accept the Islamic Republic as a legitimate regional power, it could work with Tehran and others on a political solution to the Syrian conflict. Instead, Washington reiterates hubristic demands that President Bashar al-Assad step down before a political process starts, and relies on a Saudi-funded “Syrian opposition” increasingly dominated by al-Qa’ida-like extremists.

If Obama does not conclude a deal recognizing Iran’s nuclear rights, it will confirm suspicions already held by many Iranian elites—including Ayatollah Khamenei—and in Beijing and Moscow about America’s real agenda vis-à-vis the Islamic Republic. It will become undeniably clear that U.S. opposition to indigenous Iranian enrichment is not motivated by proliferation concerns, but by determination to preserve American hegemony—and Israeli military dominance—in the Middle East. If this is so, why should China, Russia, or rising Asian powers continue trying to help Washington—e.g., by accommodating U.S. demands to limit their own commercial interactions with Iran—obtain an outcome it does not actually want?

America can also fail Iran’s test if it is unable to provide comprehensive sanctions relief as part of a negotiated nuclear settlement. The Obama administration now acknowledges what we have noted for some time—that, beyond transitory executive branch initiatives, lifting or even substantially modifying U.S. sanctions to support diplomatic progress will take congressional action.

During Obama’s presidency, many U.S. sanctions initially imposed by executive order have been written into law. These bills—signed, with little heed to their long-term consequences, by Obama himself—have also greatly expanded U.S. secondary sanctions, which threaten to punish third-country entities not for anything they’ve done in America, but for perfectly lawful business they conduct in or with Iran. The bills contain conditions for removing sanctions stipulating not just the dismantling of Iran’s nuclear infrastructure, but also termination of Tehran’s ties to movements like Hizballah that Washington (foolishly) designates as terrorists and the Islamic Republic’s effective transformation into a secular liberal republic.

The Obama administration may have managed to delay passage of yet another sanctions bill for a few weeks—but Congressional Democrats no less than congressional Republicans have made publicly clear that they will not relax conditions for removing existing sanctions to help Obama conclude and implement a nuclear deal. If their obstinacy holds, why should others respect Washington’s high-handed demands for compliance with its extraterritorial (hence, illegal) sanctions against Iran?

Going into the next round of nuclear talks in Geneva on Thursday, it is unambiguously plain that Obama will have to spend enormous political capital to realign relations with Iran. America’s future standing as a great power depends significantly on his readiness to do so.

#### 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”, pg. 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.

#### US/Iran war & Iranian prolif

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

The administration has also pressured Congress to suspend plans for new sanctions legislation against Iran. The sources said the White House effort has encountered resistance from both Democrats and Republicans, particularly those in the defense and foreign affairs committees.

“I urge the White House and the Senate to learn from the lessons of the past and not offer sanctions relief in return for the false hopes and empty promises of the Iranian regime,” Rep. Ileana Ros-Lehtinen, chairwoman of the House Middle East and North Africa Subcommittee, said. “Instead, new rounds of sanctions must be implemented to gain further leverage because any misstep in calculations at this juncture will have devastating and irreversible consequences that will be difficult to correct retroactively.”

On Nov. 12, the White House warned that additional sanctions on Iran would mean war with the United States. White House press secretary Jay Carney, in remarks meant to intensify pressure on Congress, said sanctions would end the prospect of any diplomatic solution to Iran’s crisis.

“The American people do not want a march to war,” Carney said. “It is important to understand that if pursuing a resolution diplomatically is disallowed or ruled out, what options then do we and our allies have to prevent Iran from acquiring a nuclear weapon?”

Still, the Senate Banking Committee has agreed to delay any vote on sanctions legislation until a briefing by Secretary of State John Kerry on Nov. 13. The sources said Kerry was expected to brief the committee on the P5+1 talks in Geneva that almost led to an agreement with Teheran.

“The secretary will be clear that putting new sanctions in place would be a mistake,” State Department spokeswoman Jen Psaki said on Nov. 12. “We are still determining if there’s a diplomatic path forward. What we are asking for right now is a pause, a temporary pause, in sanctions.”

#### Iran war escalates

White 11—July/August 2011 (Jeffrey—defense fellow at the Washington Institute for Near East Policy, What Would War With Iran Look Like, National Interest, p. http://www.the-american-interest.com/article-bd.cfm?piece=982)

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

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#### Text: The Office of Legal Counsel should determine that the Executive Branch lacks the legal authority to engage in targeted killing operations using remotely piloted vehicles outside declared zones of conflict to individuals identified as leaders of transnational organizations with direct involvement in past or ongoing violent operations against the United States.

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

#### 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.

### 1NC K

#### The affirmative is a form of lawfare which maps out legal zones of violence. Their securitizing language cements an epistemologically suspect juridical warfare which naturalizes preemptive violence

John MORRISSEY, Lecturer in Political and Cultural Geography, National University of Ireland, 11 [“Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” *Geopolitics*, 16:280–305, 2011]

Foucault’s envisioning of a more governmentalised and securitized modernity, framed by a ubiquitous architecture of security, speaks on various levels to the contemporary US military’s efforts in the war on terror, but I want to mention three specifically, which I draw upon through the course of the paper. First, in the long war in the Middle East and Central Asia, the US military actively seeks to legally facilitate both the ‘circulation’ and ‘conduct’ of a target population: its own troops. This may not be commonly recognized in biopolitical critiques of the war on terror but, as will be seen later, the Judge Advocate General Corps has long been proactive in a ‘juridical’ form of warfare, or lawfare, that sees US troops as ‘technical-biopolitical’ objects of management whose ‘operational capabilities’ on the ground must be legally enabled. Second, as I have explored elsewhere, the US military’s ‘grand strategy of security’ in the war on terror – which includes a broad spectrum of tactics and technologies of security, including juridical techniques – has been relentlessly justified by a power/knowledge assemblage in Washington that has successfully scripted a neoliberal political economy argument for its global forward presence.19 Securitizing economic volatility and threat and regulating a neoliberal world order for the good of the global economy are powerful discursive touchstones registered perennially on multiple forums in Washington – from the Pentagon to the war colleges, from IR and Strategic Studies policy institutes to the House and Senate Armed Services Committees – and the endgame is the legitimisation of the military’s geopolitical and biopolitical technologies of power overseas.20 Finally, Foucault’s conceptualisation of a ‘society of security’ is marked by an urge to ‘govern by contingency’, to ‘anticipate the aleatory’, to ‘allow for the evental’.21 It is a ‘security society’ in which the very language of security is promissory, therapeutic and appealing to liberal improvement. The lawfare of the contemporary US military is precisely orientated to plan for the ‘evental’, to anticipate a series of future events in its various ‘security zones’ – what the Pentagon terms ‘Areas of Responsibility’ or ‘AORs’ (see Figure 1).22 These AORs equate, in effect, to what Foucault calls “spaces of security”, comprising “a series of possible events” that must be securitized by inserting both “the temporal” and “the uncertain”.23 And it is through preemptive juridical securitization ‘beyond the battlefield’ that the US military anticipates and enables the necessary biopolitical modalities of power and management on the ground for any future interventionary action.

AORs AND THE ‘MILIEU’ OF SECURITY

For CENTCOM Commander General David Petraeus, and the other five US regional commanders across the globe, the ‘population’ of primary concern in their respective AORs is the US military personnel deployed therein. For Petraeus and his fellow commanders, US ground troops present perhaps less a collection of “juridical-political” subjects and more what Foucault calls “technical-political” objects of “management and government”.25 In effect, they are tasked with governing “spaces of security” in which “a series of uncertain elements” can unfold in what Foucault terms the “milieu”.26 What is at stake in the ‘milieu’ is “the problem of circulation and causality”, which must be anticipated and planned for in terms of “a series of possible events” that need to “be regulated within a multivalent and transformable framework”.27 And the “technical problem” posed by the eighteenth-century town planners Foucault has in mind is precisely the same technical problem of space, population and regulation that US military strategists and Judge Advocate General Corps (JAG) personnel have in the twenty-first century.

For US military JAGs, their endeavours to legally securitize the AORs of their regional commanders are ultimately orientated to “fabricate, organize, and plan a milieu” even before ground troops are deployed (as in the case of the first action in the war on terror, which I return to later: the negotiation by CENTCOM JAGs of a Status of Forces Agreement with Uzbekistan in early October 2001).28 JAGs play a key role in legally conditioning the battlefield, in regulating the circulation of troops, in optimising their operational capacities, and in sanctioning the privilege to kill. The JAG’s milieu is a “field of intervention”, in other words, in which they are seeking to “affect, precisely, a population”.29 To this end, securing the aleatory or the uncertain is key. As Michael Dillon argues, central to the securing of populations are the “sciences of the aleatory or the contingent” in which the “government of population” is achieved by the sciences of “statistics and probability”.30 As he points out elsewhere, you “cannot secure anything unless you know what it is”, and therefore securitization demands that “people, territory, and things are transformed into epistemic objects”.31 And in planning the milieu of US ground forces overseas, JAGs translate regional AORs into legally enabled grids upon which US military operations take place. This is part of the production of what Matt Hannah terms “mappable landscapes of expectation”;32 and to this end, the aleatory is anticipated by planning for the ‘evental’ in the promissory language of securitization.

The ontology of the ‘event’ has recently garnered wide academic engagement. Randy Martin, for example, has underlined the eventual discursive underpinnings of US military strategy in the war on terror; highlighting how the risk of future events results in ‘preemption’ being the tactic of their securitization.33 Naomi Klein has laid bare the powerful event-based logic of ‘disaster capitalism’;34 while others have pointed out how an ascendant ‘logic of premediation’, in which the future is already anticipated and “mediated”, is a marked feature of the “post-9/11 cultural landscape”.35 But it was Foucault who first cited the import of the ‘evental’ in the realm of biopolitics. He points to the “anti-scarcity system” of seventeenth-century Europe as an early exemplar of a new ‘evental’ biopolitics in which “an event that could take place” is prevented before it “becomes a reality”.36 To this end, the figure of ‘population’ becomes both an ‘object’, “on which and towards which mechanisms are directed in order to have a particular effect on it”, but also a ‘subject’, “called upon to conduct itself in such and such a fashion”.37 Echoing Foucault, David Nally usefully argues that the emergence of the “era of bio-power” was facilitated by “the ability of ‘government’ to seize, manage and control individual bodies and whole populations”.38 And this is part of Michael Dillon’s argument about the “very operational heart of the security dispositif of the biopolitics of security”, which seeks to ‘strategize’, ‘secure’, ‘regulate’ and ‘manipulate’ the “circulation of species life”.39 For the US military, it is exactly the circulation and regulation of life that is central to its tactics of lawfare to juridically secure the necessary legal geographies and biopolitics of its overseas ground presence.

#### This biopolitical calculation justifies extinction in the name of saving human life.

Dillon 96—Michael, University of Lancaster [October 4, 1996, “Politics of Security: Towards a Political Philosophy of Continental Thought”]

The way of sharpening and focusing this thought into a precise question is first provided, however, by referring back to Foucault; for whom Heidegger was the philosopher. Of all recent thinkers, Foucault was amongst the most committed to the task of writing the history of the present in the light of the history of philosophy as metaphysics. 4 That is why, when first thinking about the prominence of security in modern politics, I first found Foucault’s mode of questioning so stimulating. There was, it seemed to me, a parallel to be drawn between what he saw the technology of disciplinary power/knowledge doing to the body and what the principle of security does to politics.

What truths about the human condition, he therefore prompted me to ask, are thought to be secreted in security? What work does securing security do for and upon us? What power-effects issue out of the regimes of truth of security? If the truth of security compels us to secure security, why, how and where is that grounding compulsion grounded? How was it that seeking security became such an insistent and relentless (inter)national preoccupation for humankind? What sort of project is the pursuit of security, and how does it relate to other modern human concerns and enterprises, such as seeking freedom and knowledge through representative-calculative thought, technology and subjectification? Above all, how are we to account—amongst all the manifest contradictions of our current (inter)national systems of security: which incarcerate rather than liberate; radically endanger rather than make safe; and engender fear rather than create assurance—for that terminal paradox of our modern (inter)national politics of security which Foucault captured so well in the quotation that heads this chapter. 5 A terminal paradox which not only subverts its own predicate of security, most spectacularly by rendering the future of terrestrial existence conditional on the strategies and calculations of its hybrid regime of sovereignty and governmentality, but which also seems to furnish a new predicate of global life, a new experience in the context of which the political has to be recovered and to which it must then address itself: the globalisation of politics of security in the global extension of nihilism and technology, and the advent of the real prospect of human species extinction.

#### Alternative—Challenge to *conceptual* framework of national security. Only our alternative displaces the source of executive overreach. Legal restraint without conceptual change is futile.

Aziz RANA Law at Cornell 11 [“Who Decides on Security?” Cornell Law Faculty Working Papers, Paper 87, http://scholarship.law.cornell.edu/clsops\_papers/87 p. 45-51]

The prevalence of these continuities between Frankfurter’s vision and contemporary judicial arguments raise serious concerns with today’s conceptual framework. Certainly, Frankfurter’s role during World War II in defending and promoting a number of infamous judicial decisions highlights the potential abuses embedded in a legal discourse premised on the specially-situated knowledge of executive officials and military personnel. As the example of Japanese internment dramatizes, too strong an assumption of expert understanding can easily allow elite prejudices—and with it state violence—to run rampant and unconstrained. For the present, it hints at an obvious question: How skeptical should we be of current assertions of expertise and, indeed, of the dominant security framework itself? One claim, repeated especially in the wake of September 11, has been that regardless of normative legitimacy, the prevailing security concept—with its account of unique knowledge, insulation, and hierarchy—is simply an unavoidable consequence of existing global dangers. Even if Herring and Frankfurter may have been wrong in principle about their answer to the question “who decides in matters of security?” they nevertheless were right to believe that complexity and endemic threat make it impossible to defend the old Lockean sensibility. In the final pages of the article, I explore this basic question of the degree to which objective conditions justify the conceptual shifts and offer some initial reflections on what might be required to limit the government’s expansive security powers. VI. CONCLUSION: THE OPENNESS OF THREATS The ideological transformation in the meaning of security has helped to generate a massive and largely secret infrastructure of overlapping executive agencies, all tasked with gathering information and keeping the country safe from perceived threats. In 2010, The Washington Post produced a series of articles outlining the buildings, personnel, and companies that make up this hidden national security apparatus. According to journalists Dana Priest and William Arkin, there exist “some 1271 government organizations and 1931 private companies” across 10,000 locations in the United States, all working on “counterterrorism, homeland security, and intelligence.”180 This apparatus is especially concentrated in the Washington, D.C. area, which amounts to “the capital of an alternative geography of the United States.”181 Employed by these hidden agencies and bureaucratic entities are some 854,000 people (approximately 1.5 times as many people as live in Washington itself) who hold topsecret clearances.182 As Priest and Arkin make clear, the most elite of those with such clearance are highly trained experts, ranging from scientists and economists to regional specialists. “To do what it does, the NSA relies on the largest number of mathematicians in the world. It needs linguists and technology experts, as well as cryptologists, known as ‘crippies.’”183 These professionals cluster together in neighborhoods that are among the wealthiest in the country—six of the ten richest counties in the United States according to Census Bureau data.184 As the executive of Howard County, Virginia, one such community, declared, “These are some of the most brilliant people in the world. . . . They demand good schools and a high quality of life.”185 School excellence is particularly important, as education holds the key to sustaining elevated professional and financial status across generations. In fact, some schools are even “adopting a curriculum . . . that will teach students as young as 10 what kind of lifestyle it takes to get a security clearance and what kind of behavior would disqualify them.”186 The implicit aim of this curriculum is to ensure that the children of NSA mathematicians and Defense Department linguists can one day succeed their parents on the job. In effect, what Priest and Arkin detail is a striking illustration of how security has transformed from a matter of ordinary judgment into one of elite skill. They also underscore how this transformation is bound to a related set of developments regarding social privilege and status—developments that would have been welcome to Frankfurter but deeply disillusioning to Brownson, Lincoln, and Taney. Such changes highlight how one’s professional standing increasingly drives who has a right to make key institutional choices. Lost in the process, however, is the longstanding belief that issues of war and peace are fundamentally a domain of common care, marked by democratic intelligence and shared responsibility. Despite such democratic concerns, a large part of what makes today’s dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. Thus, the best response is the further entrenchment of Herring’s national security state, with the U.S. permanently mobilized militarily to gather intelligence and to combat enemies wherever they strike—at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs. Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are not objective empirical judgments but rather are socially complex and politically infused interpretations. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves riddled with ideological presuppositions and subjective biases. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that the question of who decides—and with it the issue of how democratic or insular our institutions should be—remains open as well. Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers.189 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view—such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy. In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have—at times unwittingly—reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states. The key point is that regardless of whether one agrees with such an underlying project, the value of this project is ultimately an open political question. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers—which have been consistent in recent years—place the gravity of the threat in perspective. Rather than a condition of endemic danger—requiring everincreasing secrecy and centralization—such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling. It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions—like the centrality of global primacy or the view that instability abroad necessarily implicates security at home—shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge. If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit. If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars—emphasizing new statutory frameworks or greater judicial assertiveness—is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants—danger too complex for the average citizen to comprehend independently—it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

### 1NC Circumvention

#### Zone of active conflict guarantees non-compliance—no universal definition and it’s operationally impossible

Wood 13—David Wood has been a journalist since 1970, a staff correspondent successively for Time Magazine, the Los Angeles Times, Newhouse News Service, The Baltimore Sun and Politics Daily [February 14, 2013, http://www.huffingtonpost.com/2013/02/14/drone-attacks-legal-debate\_n\_2687980.html?utm\_hp\_ref=david-wood]

Yemen was different. The White House was not sending tens of thousands of troops, and there was no solemn Oval Office speech summoning the nation to battle there. However, though few knew it at the time, earlier that year Yemen had been officially designated as a "combat zone" making the killings legal, at least in the eyes of the CIA and the White House of George W. Bush.

But ever since that first "non-battlefield" drone strike, generals and legal scholars, pundits and politicians have argued passionately about what, exactly, constitutes an armed conflict, or a war zone, or a battlefield, and what is outside armed conflict.

The distinction matters. "Inside an armed conflict, you are allowed to kill people without warning. Outside, you are not," says Notre Dame law professor Mary Ellen O'Connell, a specialist in international laws of war and conflict. "That makes it pretty important to know whether you're on a battlefield or not."

And not just if you're standing on a battlefield. As difficult as it is to pin down the law of armed conflict, "it's really important to raise these questions, because we've been lulled since 9/11 into the sense that our government has the ability to decide through its intelligence agencies who is a bad guy and to kill him and the people around him," O'Connell told The Huffington Post. "I don't want to see them drag the law down and lose the world as a place in which the law is held as a high standard."

Difficult questions about international law are boiling up because of the Obama administration's accelerating use of armed drones against what it says are suspected terrorists in Pakistan, Yemen and Somalia, and potentially elsewhere as well.

In his State of the Union address Tuesday, President Obama seemingly acknowledged the growing public unease about the program's troubling secrecy and whether the strikes are justified and legal. He would, he promised, be "even more transparent" about how the strikes comply with the law.

That vague wording promises that the bitter disagreements over what the law says, and how it applies, are only going to get more heated.

"I don't think we are ever going to have a precise answer," says Laurie R. Blank, director of the International Humanitarian Law Center at Emory University School of Law and the author of several books on war and international law. In the long history of warfare, there have been clear-cut cases where existing law applies, mostly when two governments are at war in a geographically defined area.

"But the nature of the world today is that it makes it difficult to put war into neat and tidy packages," Blank says.

War and the law have come a long way from that muddy day in October almost 600 years ago when British infantry and archers memorably clashed with French knights near the Normandy village of Maisoncelles. It was a modest, neatly-defined battle, or armed conflict: the belligerents were drawn up at either end of a small wheat field; the bristling battle lines were barely 1,000 yards apart, and when the carnage was over in a few hours, a pair of professional referees declared British King Henry V the winner and named the battle Agincourt, after a nearby castle.

By contrast, many of today's conflicts range over time and space, and belligerents morph from terrorist to civilian to warrior. Do a few suicide bombings in Islamabad define a war zone? Does the taking of hostages at an Algerian gas plant constitute an international armed conflict? Does a skyjacking plot conceived in Afghanistan and planned in Germany, which kills 3,000 people in New York and Washington, create legal war zones or armed conflicts in all four places? What if one of the plotters is hiding in Cleveland?

How far does the concept of self-defense go? Can someone just declare an area to be a free-fire "battlefield"? If the United States is at war with terrorists, and there are terrorists inside the United States, can they be targeted with armed drones? If a Taliban sneaks across the Afghan border with Iran, can the U.S. target him there? And is Iran then justified under the U.N. rule of self defense to plant a terrorist bomb in Times Square?

Could an al Qaeda terrorist protect himself by becoming an American citizen?

These are among the questions that remain for the Obama White House to clear up. But there are no simple answers.

The administration has argued, for instance, that in some places like Paris, or Cleveland, the police can handle an al Qaeda suspect as a matter of law enforcement. But when a terrorist is operating in a place like Yemen, where the government "is unable or unwilling to suppress the threat," the president has the authority to order a strike, according to the Department of Justice white paper on the legal basis for drone attacks, which surfaced last week.

That explanation -- that killing is okay in a "weak" state -- hardly quieted the debate on Capitol Hill.

If geography doesn't settle the matter of what is an armed conflict, what does? The International Committee of the Red Cross, the independent, neutral organization which oversees the 1949 Geneva Conventions and associated international humanitarian law, recognizes two types of armed conflict: international conflict, between two nations, and "non-international conflict," involving a state and an armed group, or two armed groups -- basically everything else but international conflict.

According to the ICRC, to qualify as a non-international armed conflict, the fighting must be protracted and intense. As it is, for example, in Afghanistan.

Given that the fighting between the United States and anyone in Yemen is neither protracted nor intense -- but rather consists of sporadic drone attacks and other targeted killings -- it would seem that the U.S. drone attacks in Yemen do not qualify and thus are illegal.

That's the argument advanced by O'Connell, and it was noted and abruptly dismissed by the Obama lawyers who wrote the white paper. Their argument was not that the fighting was protracted and intense. They argued that the law doesn't apply.

"There is little judicial or other authoritative precedent that speaks directly to the question of the geographic scope of a non-international armed conflict in which one of the parties is a transnational, non-state actor and where the principal theater of operations is not within the territory of the nation that is a party to the conflict," the anonymous authors of the white paper wrote.

This back-and-forth argument, about whether a conflict can be defined by its battle space or intensity, is irrelevant, says Geoffrey Corn, a career Army officer who served as the senior Army advisor on the law of war. A conflict ought to be defined by the threat, he told The Huffington Post.

"Trying to define the military hot zone is inconsistent with military logic, with the history of warfare and inconsistent with the laws of armed conflict," said Corn, who teaches at South Texas College of Law, in Houston. "Plus, it invests your opponent with the perverse incentive to conduct operations from some place not involved in the struggle, in order to gain immunity." In other words, to skip across the border into sanctuary.

According to Corn, the idea of a geographical battle zone was dismissed in 1982, when the Argentine cruiser Belgrano was sunk by British forces during the Falklands War. While the Argentines claimed the attack was a war crime because the cruiser was not in the Falklands exclusion zone and had in fact turned away from the British fleet, London asserted it was legal because once Britain and Argentina engaged in hostilities, any target was fair game, no matter where.

#### Military history proves geographic limitations don’t work—strategic necessity overwhelms

Corn 13—Geoffrey Corn, South Texas College of Law, Professor of Law and Presidential Research Professor, J.D., [“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]

While the TAC typology seemed to defy accepted international law cat-egorizations of armed conflict, it was never really remarkable. National se-curity strategy is always threat driven: intelligence defines the risk created by various threats; and strategy is developed to prioritize national effort to protect the nation from these threasecurity policy makers determine that military power must be used as one of these tools, this is translated into a military mission. That mission is then refined in the form of military strategy, which seeks to identify threat vul-nerabilities and match combat capabilities to address them.44 Once again, the nature of the threat becomes the dominant driving force in this strate-gic analysis. Thus, when the threat capability and/or vulnerability is identi-fied outside a “hot zone,” it in no way nullifies the imperative of addressing the threat. In short, as others have noted, once the armed conflict door is open, threat-based strategy—focusing military action in response to threat dynamics in order to destroy or disable threat capabilities—is essentially opportunity driven: the conflict follows the belligerent target.45

In conventional inter-State armed conflict, this process is almost axio-matic. One need only consider events such as the sinking of the Bismarck in the South Atlantic during the opening phase of World War II46 or the “small war” in East Africa between Great Britain and Germany during World War I.47 These episodes, like countless others throughout history, indicate that the scope of armed conflict is threat driven. But the more un-conventional the threat becomes, the less comfortable this concept feels. When non-international armed conflicts were almost exclusively internal in nature, this produced very little concern. It is a mistake, however, to as-sume this was the result of some inherent international legal invalidity of extending such conflicts beyond the territory of one State or perhaps the border regions of geographically contiguous States. Instead, like all armed conflicts, it was the combined impact of threat dynamics and diplomatic and policy considerations that drove the natural geographic constraint as-sociated with internal armed conflicts. Indeed, examples of cross-border spillover operations bolster this conclusion. From Vietnam, to Turkey, to South Africa, to Angola, to Rwanda, to Afghanistan, when States perceived the strategic necessity of expanding an internal armed conflict into the ter-ritory of a neighboring State based on the threat dynamics, they have al-ways done so.48

#### Obama will circumvent war restrictions—empirics prove we can always just change definitions

Levine 12—David Levine, Law Clerk; J.D., May 2012, University of Michigan Law School [2013 SURVEY OF BOOKS RELATED TO THE LAW: BOOK NOTICE: A TIME FOR PRESIDENTIAL POWER? WAR TIME AND THE CONSTRAINED EXECUTIVE, 111 Mich. L. Rev. 1195, Lexis]

Both the Declare War Clause n49 and the War Powers Resolution n50 give Congress some control over exactly when "wartime" exists. While the U.S. military was deployed to Libya during the spring and summer of 2011, the Obama Administration advanced the argument that, under the circumstances, it was bound by neither clause. n51 If Dudziak is worried about "war's presence as an ongoing feature of American democracy" (p. 136), Libya is a potent case study with implications for the use of force over the coming decades.

Article I, Section 8 of the U.S. Constitution grants to Congress the power to "declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." n52 Although there is substantial debate on the precise scope of these powers, n53 this clause at least provides some measure of congressional control over significant commitments of U.S. forces to battle. However, it has long been accepted that presidents, acting pursuant to the commander-in-chief power, may "introduce[] armed forces into situations in which they encounter[], or risk[] encountering, hostilities, but which [are] not "wars' in either the common meaning or the [\*1207] constitutional sense." n54 Successive administrations have adopted some variant of that view and have invariably deployed U.S. forces abroad in a limited manner based on this inherent authority. n55

The Obama Administration has adopted this position - that a president has inherent constitutional authority to deploy forces outside of war - and even sought to clarify it. In the Office of Legal Counsel's ("OLC") memo to President Obama on the authority to use military force in Libya, n56 the Administration acknowledged that the Declare War Clause is a "possible constitutionally-based limit on ... presidential authority to employ military force." n57 The memo reasoned that the Constitution speaks only to Congress's ability to shape engagements that are "wars," and that presidents have deployed forces in limited contexts from the earliest days of the Union. n58 Acknowledging those facts, the memo concluded that the constitutional limit on congressional power must be the conceptual line between war and not war. In locating this boundary, the memo looked to the "anticipated nature, scope, and duration" of the conflict to which President Obama was introducing forces. n59 OLC found that the "war" standard "will be satisfied only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period." n60

The Obama Administration's position was not out of sync with previous presidential practice - the Declare War Clause did not require congressional approval prior to executive deployment of troops. In analyzing the "nature, scope, and duration" questions, the memo looked first to the type of missions that U.S. forces would be engaged in. The air missions envisioned for the Libya operation did not pose the threat of withdrawal difficulty or escalation risk that might indicate "a greater need for approval [from Congress] at the outset." n61 The nature of the mission, then, was not similar to full "war." Similarly, the scope of the intended operation was primarily limited, at the time the memo was written, to enforcing a no-fly zone. n62 Consequently, [\*1208] the operation's expected duration was not long. Thus, concluded OLC, "the use of force by the United States in Libya [did not rise] to the level of a "war' in the constitutional sense." n63 While this conclusion may have been uncontroversial, it highlights Dudziak's concerns over the manipulation of the idea of "wartime," concerns that were heightened by the Obama Administration's War Powers Resolution analysis. Congress passed the War Powers Resolution in 1973 in an attempt to rein in executive power in the wake of the Vietnam War. n64 The resolution provides that the president shall "in every possible instance ... 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." n65 Additionally, when the president sends U.S. forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated," the resolution requires him to submit a report to Congress describing the circumstances of the deployment and the expected involvement of U.S. troops in the "hostilities." n66 Within sixty days of receiving that report, Congress must either declare war or in some other way extend the deployment; in the absence of some ratifying action, the resolution requires that the president withdraw U.S. forces. n67 Though eschewing the plainly confrontational route of directly challenging Congress's power under the War Powers Resolution, the Obama Administration implicitly challenged Congress's ability to affect future operations. In declining to withdraw forces, despite Congress's lack of approving legislation, President Obama claimed that the conflict in Libya could not be deemed "hostilities" as that term is used in the resolution. This argument was made both in a letter to Congress during the summer of 2011 n68 and in congressional testimony given by Harold Koh, the State Department Legal Advisor under the Obama Administration. n69 [\*1209] Koh's testimony provides the most complete recitation of the Obama Administration's analysis and focuses on four factors that distinguish the fighting in Libya (or at least the United States' participation) from "hostilities": the scope of the mission, the exposure of U.S. forces, the risk of escalation, and the nature of the tactics to be used. First, "the mission is limited." n70 That is, the objectives of the overall campaign led by the North American Treaty Organization ("NATO") were confined to a "civilian protection operation ... implementing a U.N. Security Council resolution." n71 Second, the "exposure" of the U.S. forces involved was narrow - the conflict did not "involve active exchanges of fire with hostile forces" in ways that would endanger U.S. service members' safety. n72 Third, the fact that the "risk of escalation [was] limited" weighed in favor of not categorizing the conflict as "hostilities." n73 Finally, the "military means" the United States used in Libya were limited in nature. n74 The majority of missions were focused on "providing intelligence capabilities and refueling assets." n75 Those American flights that were air-to-ground missions were a mix of suppression-of-enemy-air-defenses operations to enforce a no-fly zone and strikes by armed Predator drones. n76 As a point of comparison, Koh noted that "the total number of U.S. munitions dropped has been a tiny fraction of the number dropped in Kosovo." n77 With the exception of this final factor, these considerations are quite similar to the factors that define whether a conflict is a "war" for constitutional purposes. n78

The result of this reasoning is a substantially relaxed restraint on presidential authority to use force abroad going forward. As armed drones begin [\*1210] to make up a larger portion of the United States' arsenal, n79 and as other protective technologies, such as standoff munitions n80 and electronic warfare techniques, gain traction, it is far more likely that the "exposure" of U.S. forces will decrease substantially. The force used in Yemen and the Horn of Africa is illustrative of this new paradigm where U.S. service members are not "involved [in] active exchanges of fire with hostile forces," n81 but rather machines use force by acting as human proxies. To the same point, if the "military means" used in Libya are markers of something short of "hostilities," the United States is only likely to see the use of those means increase in the coming decades. Pressing the logic of Koh's testimony, leeway for unilateral executive action will increase as the makeup of our arsenal continues to modernize. n82

Dudziak worries about the invocation of "wartime" as an argument for the perpetual exercise of extraordinary powers. The Libya scenario, of course, is somewhat different - the president has argued that the absence of "war" leaves him a residuum of power such that he may use force abroad without congressional input. The two positions are of a piece, though. Dudziak argues that legacy conceptions of "wartime" and "peacetime" have left us vulnerable to the former's use, in and of itself, as a reason for increased executive power. Such literal thinking - that "war" is something specific or that the word "hostilities" has certain limits - also opens the door to the Obama Administration's defense of its position on Libya. And looking at the substance of that position leaves much to be desired.

Both Koh's testimony and the OLC memo pay lip service to the idea that the policy considerations underlying their position are consistent with the policy considerations of the Framers with respect to the Declare War Clause and Congress with respect to the War Powers Resolution. But the primary, if not the only, consideration mentioned is the loss of U.S. forces. That concern is front and center when analyzing the "exposure" of service [\*1211] members, n83 and it is also on display with respect to discussions about the nature and scope of an operation. n84 This is not the only policy consideration that one might intuit from those two provisions, however. Using lethal force abroad is a very serious matter, and the U.S. polity might rationally want input from the more representative branch in deciding when, where, and how that force is used in its name. In that same vein, permitting one individual to embroil the nation in foreign conflicts - limited or otherwise - without the input of another coequal branch of government is potentially dangerous. n85

As Dudziak's framework highlights the limits of the Obama Administration's argument for expansive power, so does the Administration's novel dissection of "hostilities" illustrate the limits of Dudziak's analysis. Dudziak presents a narrative arc bending toward the expansion of wartime and, as a result, increased presidential power. That is not the case with Libya: the president finds power in "not war" rather than in "wartime." If the American public is guilty, as Dudziak asserts, of using the outmoded and misleadingly concrete terminology of "wartime" to describe an increasingly complex phenomenon, Dudziak herself is guilty of operating within a paradigm where wartime necessarily equals more executive power (than does "not war"), a paradigm that has been supplanted by a more nuanced reality. Although [\*1212] Dudziak identifies the dangers of manipulating the boundaries of wartime, her catalog of manipulations remains incomplete because of the inherent limits of her framework.

This realization does not detract from Dudziak's warnings about the perils of endless wartime, however. Indeed, the powers that President Obama has claimed seem, perhaps, more palatable after a decade in which war has been invoked as an argument for many executive powers that would, in other eras, seem extraordinary. Though he has not explicitly invoked war during the Libya crisis, President Obama has certainly shown a willingness to manipulate its definition in the service of expanded executive power in ways that seem sure to increase "war's presence as an ongoing feature of American democracy" (p. 136).

Conclusion Dudziak presents a compelling argument and supports it well. War Time is potent as a rhetorical device and as a way to frame decisionmaking. This is especially so for the executive branch of the U.S. government, for which wartime has generally meant increased, and ever more expansive, power. As the United States continues to transit an era in which the lines between "war" and "peace" become increasingly blurred and violent adversaries are a constant, the temptation to claim wartime powers - to render the extraordinary ordinary - is significant.

This Notice has argued that, contrary to Dudziak's concerns, the temptation is not absolute. Indeed, in some instances - notably, detention operations in Iraq and Afghanistan - we are still able to differentiate between "war" and "peace" in ways that have hard legal meaning for the actors involved. And, importantly, the executive still feels compelled to abide by these distinctions and act in accordance with the law rather than claim wartime exceptionalism.

That the temptation is not absolute, however, does not mean that it is not real or that Dudziak's concerns have not manifested themselves. This detachment of expansive power from temporally bound periods has opened the door for, and in some ways incentivized, limiting wartime rather than expanding it. While President Obama has recognized the legal constraints that "war" imposes, he has also followed in the footsteps of executives who have attempted to manipulate the definition of "war" itself (and now the definition of "hostilities") in order to evade those constraints as much as possible. To the extent he has succeeded in that evasion, he has confirmed what seems to be Dudziak's greatest fear: that "military engagement no longer seems to require the support of the American people, but instead their inattention" (p. 132).

### AT: Drone Norms—China

#### Zero chance that U.S. self-restraint causes any other country to give up their plans for drones

Max Boot 11, the Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations, 10/9/11, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, <http://www.commentarymagazine.com/2011/10/09/drone-arms-race/>

The New York Times engages in some scare-mongering today about a drone ams 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.

### 1NC—No Drone Wars (Miscalc)

#### No risk of drone wars—deterrence will hold

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

In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology.

Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team.

Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones.

What’s more, the very states whose use of drones could threaten U.S. security—countries like China—are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use.

Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best.

Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations.

Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

### 1NC—AT: Lowers Threshold

#### Drones don’t lower the threshold for conflict.

Samuel Issacharoff and Richard H. Pildes, 6/1/2013. NYU School of Law. “Drones and the Dilemma of Modern Warfare,” New York University Public Law and Legal Theory Working Papers, Paper 404, http://lsr.nellco.org/nyu\_plltwp/404/.

In our view, there are four myths about the modern use of drones to target specific, identifiable individuals for lethal force. The first myth is that targeting specific individuals for death is a modern innovation in military practice. But targeted killings have long been a part of military practice; the invention of the long rifle, for example, gave snipers the ability to pick off opposing field officers. The modern practice, however, begins with the discrete act of seeking out military enemies outside normal wartime engagements based on an individualized assessment of the threat they present. The use of lethal force is not incidental to a battlefield objective of capturing a particular piece of territory but becomes a distinct response to the generalized threat posed by a particular individual. Killing is now not secondary to a distinct military objective but becomes the objective itself because of a specific determination about the threat posed by the continued operation of an individual. At a more fundamental level, as Eyal Benvenisti argues, the laws of war had two major premises that fail in modern asymmetric conflict. First, it was possible to distinguish military and civilian objectives, and, second, battle could be directed to military objectives, as with the capturing of territory or overtaking a military installation. Neither premise necessarily characterizes military engagements in asymmetric war—or put another way, the military objective becomes killing itself. 28 The object of the targeted attack changes as well, in a way that seems morally defensible. Drones enable military planners to focus on high-level targets, and there is a further morality in that—we should appreciate a technology that can discriminate between low-level and high-level combatants, and minimize the loss of life to foot soldiers of the other side by concentrating fire on the leaders. Precision targeted killings should be seen as a substantial humanitarian advance in warfare, assuming that use of force is justified in the first place. Whereas the tradition LOAC placed the foot soldier at greatest risk of being killed in combat, the new targeted killing regime initially redirected lethal force to the command structure of the enemy. In our view, it is a mistake to focus exclusively on the level of force being used without also understanding that the targets (if accurately identified) bear a moral culpability for unlawful warfare completely distinct from anything that could be attributed to conventional soldiers in a stateauthorized war, especially in the case of conscript armies. As the technology improved, most notably with drones, the targets could expand from the command structure to operational centers, as with attacks on remote sites at which enemy combatants trained or assembled. A second myth concerning targeted killings as a new form of warfare is that this ability to project force from a distance itself raises new legal issues. But this view is simply an exercise at drawing a technological line that, in our view, has little moral or legal force in and of itself. Drones present the same legal issues as any other weapons system involving the delivery of lethal force. Advances in military technology have always been about the ability to project force from a distance. Drones are a technology, the latest technological development in the history of warfare, but they do not change the legal issues, under either domestic or international law, relevant to deciding whether particular uses of force are justified. In technologically advanced countries, militaries have long been in the business of delivering lethal force at great distances from their targets. The U.S. Navy has engaged enemy personnel by firing cruise missiles from ships in the Mediterranean into Libya, Iraq, and Sudan. Air Force pilots frequently take off from bases far removed from the actual theater of conflict and drop their bombs based on computer-generated targeting information from thousands of feet above the ground; the bombing campaign over Serbia during the Kosovo war, for example, involved pilots taking off from the Midwest in the United States and returning there. Ancient advances, such as catapults and longbows, involved the delivery of force from a distance, instead of hand-to-hand personalized combat. U.S. drone operations reportedly follow the same rules of engagement and use the same procedures as manned aircraft that use weapons to support ground troops. 29 At least the military’s use of drones operates within the same military chain of command, subject to civilian oversight, as all other uses of military force. 30 One can view the technological advances that make drone warfare possible with horror or with fascination, but the idea of projected force beyond hand-to-hand warfare does not of itself present radically new legal issues. As the philosopher David Luban rightly concludes, targeted killings “are no different in principle from other wartime killings, and they have to be judged by the same standards of necessity and proportionality applied to warfare in general: sometimes they are justified, sometimes not.” 31 A third prevalent misconception, in our view, is that drones and targeted killing pose a major threat to the humanitarian purposes and aims of the laws of war. The key principles of the laws of war are the principles of necessity, distinction and proportionality—the principles that force should intentionally be used only against military targets and that the damage to individual citizens should be minimized and proportionate. Drones, as against other uses of military force, better realize these principles than any other technology currently available. Indeed, they allow for the most discriminating uses of force in the history of military technology and warfare, in contexts in which the use of force is otherwise justified. If the alternative is sending US ground forces into Yemen or the frontier regions of Pakistan, the result will be far greater loss of civilian life, and far greater loss of combatant lives, than with drone technology. A more subtle concern that perhaps underlies the humanitarian critique of targeted killings is that drone warfare might make the use of force “too easy.” Since powerful states do not have to put their own pilots or soldiers directly at risk, will they resort to force and violence more easily? This is a serious issue, but **some historical perspective might help put this concern in a broader frame**. Throughout the modern history of warfare, there has been concern that humanitarian developments in the way war is conducted will, perversely, make it more likely that states will go to war. The argument is essentially that there is a Faustian tradeoff between the laws of war and the initial decision to go to war. This is an enduring, moral complex issue that has attended virtually every effort in the paradoxical-sounding project of making warfare more humane; pacifists in the 19th century objected to the formation of the International Committee of the Red Cross and its efforts to mitigate the horrors of war. 32 Moreover, the same paradox surrounds even purely humanitarian aid during wartime; in some contexts, access to such aid has become a strong economic incentive to continue the war, for the very purpose of extracting more of this financial assistance. 33 A more complicated picture emerges if we shift from the perspective of the civilian leaders who authorize the use of force to those who actually deliver that force. One of the consequences created by individuating the responsibility of specific enemies, combined with drone technology, is the possibility of a much greater sense of personal responsibility and accountability on the part of drone operators for lethal uses of force than that exhibited by prior generations of fighters. At least some drone operators **report exactly this kind of experience of personal responsibility for their actions**, including their mistakes, that was much less likely in earlier generations when “the enemy” was faceless and undifferentiated in most circumstances. 34 Of course, if such a perverse tradeoff does end up driving state practice, the same concern could be applied to the use of force for humanitarian purposes, as in Libya. Did the use of drones in the Libya operation make humanitarian interventions “too easy?” The right question, it seems to us, should focus on whether the use of force is justified in the first place. Moreover, one should be careful not to romanticize traditional combat and the pressures toward excessive violence it nearly always unleashes. To the extent the humanitarian critique of the use of drones is that sending in ground troops acts as a restraint on the use of force, compared to the use of force from remote locations, such as with drones technology, this idea might have matters backwards, at least once the decision to use force at all has been made (and made, hopefully, for appropriate and lawful reasons). Dramatic overuse of force is most likely when scared kids come under attack on an active battlefield and respond with massive uses of force directed at only vaguely identified targets. Remoteness from the immediate battlefield—with operators able to see much more of what is going on—almost **surely enables much more deliberative responses**. One Air Force combat officer who became a drone operator supports this conclusion; he comments that compared to conventional combat, both in the air and on the ground, the distance involved with drones enable operations to be “deliberate instead of reactionary;” 35 compared to manned combat flights, he experienced drones as affording “the ability to think clearly at zero knots and one G”; 36 and he observed that other “methods of warfare could be, and often were, much more destructive” 37 —indeed, he goes so far as to comment that when marines were sent into operations, they “broke things and killed people” while drones enabled U.S. military force to be “less brutal.” 38 Whether one accepts or not this particular self-reported drone operator experience, a realistic appraisal of all the costs and benefits of the use of drones must confront the “compared to what” question. Perhaps in some contexts, if drones were not available, no force would be used; but in many cases, it seems likely that much greater force would be used instead. Put another way, powerful nation-states are unlikely to remain passive in the face of significant risks to the physical security of their citizens and property that emanate from other nations that are unwilling or unable to control these threats. Nor is it clear why states should be understood to have a moral obligation to permit their citizens and territory to be attacked. If states have the capacity to do so, they will neutralize these threats through killing or capture; and at times, the humanitarian costs of capture, in terms of harm to and loss of innocent life will be great, and at other times, capture might not be practicable for any number of reasons (a complex issue to which we return below). As a result, it seems to us that any general humanitarian critique of the targeted killing has a moral obligation to offer a credible, practical alternative that a state can realistically employ to protect the lives of its citizens and that better serves the humanitarian aims of the laws of war.

### 1NC No China War

#### China will not risk war—economics and diplomacy

Fravel 12—Associate Professor of Political Science and member of the Security Studies Program at MIT. Taylor is a graduate of Middlebury College and Stanford University, where he received his PhD. He has been a Postdoctoral Fellow at the Olin Institute for Strategic Studies at Harvard University, a Predoctoral Fellow at the Center for International Security and Cooperation at Stanford University, a Fellow with the Princeton-Harvard China and the World Program and a Visiting Scholar at the American Academy of Arts and Sciences(M. Taylor, “All Quiet in the South China Sea,” March 22nd, 2012, http://www.foreignaffairs.com/articles/137346/m-taylor-fravel/all-quiet-in-the-south-china-sea)

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.

### 1NC AT: Pak Collapse

#### No Pakistan collapse and it doesn't escalate

Dasgupta 13 [Sunil Dasgupta is Director of the University of Maryland Baltimore County Political Science Program at the Universities at Shady Grove and non-resident Senior Fellow at the Brookings Institution, East Asia Forum, February 25, 2013, "How will India respond to civil war in Pakistan?", http://www.eastasiaforum.org/2013/02/25/how-will-india-respond-to-civil-war-in-pakistan/]

As it is, India and Pakistan have gone down to the nuclear edge four times — in 1986, 1990, 1999 and 2001–02. In each case, India responded in a manner that did not escalate the conflict. Any incursion into Pakistan was extremely limited. An Indian intervention in a civil war in Pakistan would be subject to the same limitations — at least so long as the Pakistani army maintains its integrity.

Given the new US–India ties, the most important factor in determining the possibility and nature of Indian intervention in a possible Pakistani civil war is Washington. If the United States is able to get Kabul and Islamabad to work together against the Taliban, as it is trying to do now, then India is likely to continue its current policy or try to preserve some influence in Afghanistan, especially working with elements of the Northern Alliance.

India and Afghanistan already have a strategic partnership agreement in place that creates the framework for their bilateral relationship to grow, but the degree of actual cooperation will depend on how Pakistan and the Taliban react. If Indian interests in Afghanistan come under attack, New Delhi might have to pull back. The Indian government has been quite clear about not sending troops to Afghanistan.

If the United States shifts its policy to where it has to choose Kabul over Islamabad, in effect reviving the demand for an independent Pashtunistan, India is likely to be much more supportive of US and Afghan goals. The policy shift, however, carries the risk of a full-fledged proxy war with Pakistan in Afghanistan, but should not involve the prospect of a direct Indian intervention in Pakistan itself.

India is not likely to initiate an intervention that causes the Pakistani state to fail. Bill Keller of the New York Times has described Pakistani president Asif Ail Zardari as overseeing ‘a ruinous kleptocracy that is spiraling deeper into economic crisis’. But in contrast to predictions of an unravelling nation, British journalist-scholar Anatol Lieven argues that the Pakistani state is likely to continue muddling through its many problems, unable to resolve them but equally predisposed against civil war and consequent state collapse. Lieven finds that the strong bonds of family, clan, tribe and the nature of South Asian Islam prevent modernist movements — propounded by the government or by the radicals — from taking control of the entire country.

Lieven’s analysis is more persuasive than the widespread view that Pakistan is about to fail as a state. The formal institutions of the Pakistani state are surprisingly robust given the structural conditions in which they operate. Indian political leaders recognise Pakistan’s resilience. Given the bad choices in Pakistan, they would rather not have anything to do with it. If there is going to be a civil war, why not wait for the two sides to exhaust themselves before thinking about intervening? The 1971 war demonstrated India’s willingness to exploit conditions inside Pakistan, but to break from tradition requires strong, countervailing logic, and those elements do not yet exist. Given the current conditions and those in the foreseeable future, India is likely to sit out a Pakistani civil war while covertly coordinating policy with the United States.

### 1NC—AT: Indo-Pak

#### Peace process solves

**First Post 1/1**/14 [Peace process may make some headway before polls in India: Pakistan,” First Post India, Jan 1, 2014, pg. <http://www.firstpost.com/india/peace-process-may-make-some-headway-before-polls-in-india-pakistan-1318255.html?utm_source=ref_article>

Islamabad: Pakistan today said that though the full Indo-Pak composite dialogue may not start before the general elections in India, peace process will make some headway. Advisor to Pakistan Prime Minister on Foreign Affairs and National Security, Sartaj Aziz said initiative has been taken to improve relations with India. Tensions prevailed due to some incidents on the LOC but now situation has stabilised. The DGMOs of the two countries have met and peace is restored, he said.   
In an interview to state-run Radio Pakistan, Aziz said full composite dialogue may not be started before elections in India but hoped that some groups will meet and peace process will make headway to some extent. He said peaceful neighbourhood is the first priority of the country's foreign policy and sufficient progress has been made in this direction. Aziz said without peaceful neighbourhood, Pakistan cannot achieve agenda of economic development. He said to achieve these objectives "some basic changes has been made in the foreign policy during the last six months".

#### Structural barriers prevent instability

Weitz 12—Richard, writes a weekly column on Asia-Pacific strategic and security issues. He is director of the Center for Political-Military Analysis and a Senior Fellow at the Hudson Institute. His commentaries have appeared in the International Herald Tribune, The Guardian and Wall Street Journal (Europe), among other publications [“Stabilizing the Stans,” 6/1, http://www.project-syndicate.org/commentary/stabilizing-the-stans]

Social disorder in Tunisia, Egypt, Libya, and other Arab countries has invariably led observers to regard Central Asia’s autocracies as potentially vulnerable to similar upheaval. Some Central Asian leaders have been in power for many years, and only Kyrgyzstan, the most impoverished of the five, has developed a competitive multi-party political system. Elsewhere, political parties are weak or are tools of the regime. But other factors make the Arab scenario less plausible in Central Asia. ­­Security forces are more closely aligned with ruling elites; independent political groups and social-media networks are less well developed; economic performance remains high in some countries; and a previous wave of revolutions produced disappointing results in Ukraine and Kyrgyzstan.

### 1NC AT: Terror

#### Terror threat has markedly declined—most recent study proves

**Bergen 12/3**/13 - CNN's national security analyst [Peter Bergen, “Hyping the terror threat?,” CNN, updated 2:16 PM EST, Tue December 3, 2013, http://www.cnn.com/2013/12/03/opinion/bergen-u-s-terror-risk/]

Both Feinstein and Rogers are able public servants who, as the heads of the two U.S. intelligence oversight committees, are paid to worry about the collective safety of Americans, and they are two of the most prominent defenders of the NSA's controversial surveillance programs, which they defend as necessary for American security.

But is there any real reason to think that Americans are no safer than was the case a couple of years back? Not according to a study by the New America Foundation of every militant indicted in the United States who is affiliated with al Qaeda or with a like-minded group or is motivated by al Qaeda's ideology.

In fact, the total number of such indicted extremists has declined substantially from 33 in 2010 to nine in 2013. And the number of individuals indicted for plotting attacks within the United States, as opposed to being indicted for traveling to join a terrorist group overseas or for sending money to a foreign terrorist group, also declined from 12 in 2011 to only three in 2013.

Of course, a declining number of indictments doesn't mean that the militant threat has disappeared. One of the militants indicted in 2013 was Dzhokhar Tsarnaev, who is one of the brothers alleged to be responsible for the Boston Marathon bombings in April. But a sharply declining number of indictments does suggest that fewer and fewer militants are targeting the United States.

Recent attack plots in the United States also do not show signs of direction from foreign terrorist organizations such as al Qaeda, but instead are conducted by individuals who are influenced by the ideology of violent jihad, usually because of what they read or watch on the Internet.

None of the 21 homegrown extremists known to have been involved in plots against the United States between 2011 and 2013 received training abroad from a terrorist organization -- the kind of training that can turn an angry, young man into a deadly, well-trained, angry, young man.

Of these extremists, only Tamerlan Tsarnaev, one of the alleged Boston bombers, is known to have had any contact with militants overseas, but it is unclear to what extent, if any, these contacts played in the Boston Marathon bombings.

In short, the data on al-Qaeda-linked or -influenced militants indicted in the United States suggests that the threat of terrorism has actually markedly declined over the past couple of years.

Where Feinstein and Rogers were on much firmer ground in their interview with Crowley was when they pointed to the resurgence of a number of al Qaeda groups in the Middle East.

Al Qaeda's affiliates in Syria control much of the north of the country and are the most effective forces fighting the regime of Bashar al-Assad.

In neighboring Iraq, al Qaeda has enjoyed a renaissance of late, which partly accounts for the fact that the violence in Iraq today is as bad as it was in 2008.

The Syrian war is certainly a magnet for militants from across the Muslim world, including hundreds from Europe, and European governments are rightly concerned that returning veterans of the Syrian conflict could foment terrorism in Europe.

But, at least for the moment, these al Qaeda groups in Syria and Iraq are completely focused on overthrowing the Assad regime or attacking what they regard as the Shia-dominated government of Iraq. And, at least so far, these groups have shown no ability to attack in Europe, let alone in the United States.

## \*\*\* 2NC

### AT: Lowers Threshold

#### Drones don’t lower the threshold for conflict.

Samuel Issacharoff and Richard H. Pildes, 6/1/2013. NYU School of Law. “Drones and the Dilemma of Modern Warfare,” New York University Public Law and Legal Theory Working Papers, Paper 404, http://lsr.nellco.org/nyu\_plltwp/404/.

In our view, there are four myths about the modern use of drones to target specific, identifiable individuals for lethal force. The first myth is that targeting specific individuals for death is a modern innovation in military practice. But targeted killings have long been a part of military practice; the invention of the long rifle, for example, gave snipers the ability to pick off opposing field officers. The modern practice, however, begins with the discrete act of seeking out military enemies outside normal wartime engagements based on an individualized assessment of the threat they present. The use of lethal force is not incidental to a battlefield objective of capturing a particular piece of territory but becomes a distinct response to the generalized threat posed by a particular individual. Killing is now not secondary to a distinct military objective but becomes the objective itself because of a specific determination about the threat posed by the continued operation of an individual. At a more fundamental level, as Eyal Benvenisti argues, the laws of war had two major premises that fail in modern asymmetric conflict. First, it was possible to distinguish military and civilian objectives, and, second, battle could be directed to military objectives, as with the capturing of territory or overtaking a military installation. Neither premise necessarily characterizes military engagements in asymmetric war—or put another way, the military objective becomes killing itself. 28 The object of the targeted attack changes as well, in a way that seems morally defensible. Drones enable military planners to focus on high-level targets, and there is a further morality in that—we should appreciate a technology that can discriminate between low-level and high-level combatants, and minimize the loss of life to foot soldiers of the other side by concentrating fire on the leaders. Precision targeted killings should be seen as a substantial humanitarian advance in warfare, assuming that use of force is justified in the first place. Whereas the tradition LOAC placed the foot soldier at greatest risk of being killed in combat, the new targeted killing regime initially redirected lethal force to the command structure of the enemy. In our view, it is a mistake to focus exclusively on the level of force being used without also understanding that the targets (if accurately identified) bear a moral culpability for unlawful warfare completely distinct from anything that could be attributed to conventional soldiers in a stateauthorized war, especially in the case of conscript armies. As the technology improved, most notably with drones, the targets could expand from the command structure to operational centers, as with attacks on remote sites at which enemy combatants trained or assembled. A second myth concerning targeted killings as a new form of warfare is that this ability to project force from a distance itself raises new legal issues. But this view is simply an exercise at drawing a technological line that, in our view, has little moral or legal force in and of itself. Drones present the same legal issues as any other weapons system involving the delivery of lethal force. Advances in military technology have always been about the ability to project force from a distance. Drones are a technology, the latest technological development in the history of warfare, but they do not change the legal issues, under either domestic or international law, relevant to deciding whether particular uses of force are justified. In technologically advanced countries, militaries have long been in the business of delivering lethal force at great distances from their targets. The U.S. Navy has engaged enemy personnel by firing cruise missiles from ships in the Mediterranean into Libya, Iraq, and Sudan. Air Force pilots frequently take off from bases far removed from the actual theater of conflict and drop their bombs based on computer-generated targeting information from thousands of feet above the ground; the bombing campaign over Serbia during the Kosovo war, for example, involved pilots taking off from the Midwest in the United States and returning there. Ancient advances, such as catapults and longbows, involved the delivery of force from a distance, instead of hand-to-hand personalized combat. U.S. drone operations reportedly follow the same rules of engagement and use the same procedures as manned aircraft that use weapons to support ground troops. 29 At least the military’s use of drones operates within the same military chain of command, subject to civilian oversight, as all other uses of military force. 30 One can view the technological advances that make drone warfare possible with horror or with fascination, but the idea of projected force beyond hand-to-hand warfare does not of itself present radically new legal issues. As the philosopher David Luban rightly concludes, targeted killings “are no different in principle from other wartime killings, and they have to be judged by the same standards of necessity and proportionality applied to warfare in general: sometimes they are justified, sometimes not.” 31 A third prevalent misconception, in our view, is that drones and targeted killing pose a major threat to the humanitarian purposes and aims of the laws of war. The key principles of the laws of war are the principles of necessity, distinction and proportionality—the principles that force should intentionally be used only against military targets and that the damage to individual citizens should be minimized and proportionate. Drones, as against other uses of military force, better realize these principles than any other technology currently available. Indeed, they allow for the most discriminating uses of force in the history of military technology and warfare, in contexts in which the use of force is otherwise justified. If the alternative is sending US ground forces into Yemen or the frontier regions of Pakistan, the result will be far greater loss of civilian life, and far greater loss of combatant lives, than with drone technology. A more subtle concern that perhaps underlies the humanitarian critique of targeted killings is that drone warfare might make the use of force “too easy.” Since powerful states do not have to put their own pilots or soldiers directly at risk, will they resort to force and violence more easily? This is a serious issue, but **some historical perspective might help put this concern in a broader frame**. Throughout the modern history of warfare, there has been concern that humanitarian developments in the way war is conducted will, perversely, make it more likely that states will go to war. The argument is essentially that there is a Faustian tradeoff between the laws of war and the initial decision to go to war. This is an enduring, moral complex issue that has attended virtually every effort in the paradoxical-sounding project of making warfare more humane; pacifists in the 19th century objected to the formation of the International Committee of the Red Cross and its efforts to mitigate the horrors of war. 32 Moreover, the same paradox surrounds even purely humanitarian aid during wartime; in some contexts, access to such aid has become a strong economic incentive to continue the war, for the very purpose of extracting more of this financial assistance. 33 A more complicated picture emerges if we shift from the perspective of the civilian leaders who authorize the use of force to those who actually deliver that force. One of the consequences created by individuating the responsibility of specific enemies, combined with drone technology, is the possibility of a much greater sense of personal responsibility and accountability on the part of drone operators for lethal uses of force than that exhibited by prior generations of fighters. At least some drone operators **report exactly this kind of experience of personal responsibility for their actions**, including their mistakes, that was much less likely in earlier generations when “the enemy” was faceless and undifferentiated in most circumstances. 34 Of course, if such a perverse tradeoff does end up driving state practice, the same concern could be applied to the use of force for humanitarian purposes, as in Libya. Did the use of drones in the Libya operation make humanitarian interventions “too easy?” The right question, it seems to us, should focus on whether the use of force is justified in the first place. Moreover, one should be careful not to romanticize traditional combat and the pressures toward excessive violence it nearly always unleashes. To the extent the humanitarian critique of the use of drones is that sending in ground troops acts as a restraint on the use of force, compared to the use of force from remote locations, such as with drones technology, this idea might have matters backwards, at least once the decision to use force at all has been made (and made, hopefully, for appropriate and lawful reasons). Dramatic overuse of force is most likely when scared kids come under attack on an active battlefield and respond with massive uses of force directed at only vaguely identified targets. Remoteness from the immediate battlefield—with operators able to see much more of what is going on—almost **surely enables much more deliberative responses**. One Air Force combat officer who became a drone operator supports this conclusion; he comments that compared to conventional combat, both in the air and on the ground, the distance involved with drones enable operations to be “deliberate instead of reactionary;” 35 compared to manned combat flights, he experienced drones as affording “the ability to think clearly at zero knots and one G”; 36 and he observed that other “methods of warfare could be, and often were, much more destructive” 37 —indeed, he goes so far as to comment that when marines were sent into operations, they “broke things and killed people” while drones enabled U.S. military force to be “less brutal.” 38 Whether one accepts or not this particular self-reported drone operator experience, a realistic appraisal of all the costs and benefits of the use of drones must confront the “compared to what” question. Perhaps in some contexts, if drones were not available, no force would be used; but in many cases, it seems likely that much greater force would be used instead. Put another way, powerful nation-states are unlikely to remain passive in the face of significant risks to the physical security of their citizens and property that emanate from other nations that are unwilling or unable to control these threats. Nor is it clear why states should be understood to have a moral obligation to permit their citizens and territory to be attacked. If states have the capacity to do so, they will neutralize these threats through killing or capture; and at times, the humanitarian costs of capture, in terms of harm to and loss of innocent life will be great, and at other times, capture might not be practicable for any number of reasons (a complex issue to which we return below). As a result, it seems to us that any general humanitarian critique of the targeted killing has a moral obligation to offer a credible, practical alternative that a state can realistically employ to protect the lives of its citizens and that better serves the humanitarian aims of the laws of war.

### 2NC Circumvention Turns Case

#### Obama rejects the idea that Congress and Courts have a right to check his strike decisions

**Weber 13** [Peter Weber, “Will Congress curb Obama's drone strikes?,” The Week, | February 6, 2013, pg. http://theweek.com/article/index/239716/will-congress-curb-obamas-drone-strikes

One problem for lawmakers, says The New York Times in an editorial, is that when it comes to drone strikes, the Obama team "utterly rejects the idea that Congress or the courts have any right to review such a decision in advance, or even after the fact." Along with citing the law authorizing broad use of force against al Qaeda, the white paper also "argues that judges and Congress don't have the right to rule on or interfere with decisions made in the heat of combat." And most troublingly, Obama won't give Congress the classified document detailing the legal justification used to kill American al Qaeda operative Anwar al-Awlaki.

### 2NC—K Prior

#### Legalization of warfare is the point at which bio-politics merges with geopolitics—this allows militarism to continue unabated

John MORRISSEY, Lecturer in Political and Cultural Geography, National University of Ireland, 11 [“Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” *Geopolitics*, 16:280–305, 2011]

The sheer extent of the current US military forward presence in the GCC/Persian Gulf region is new in the American experience. For the first time, there now appears the contour of a continuous US ground presence, which has been further facilitated by the ongoing Iraq War and broader war on terror. And, of course, a host of US foreign policy strategists and security experts have enthusiastically scripted the geostrategic and geoeconomic opportunities attained under the rubric of the long war.57 Indeed, as Asli Bâli and Aziz Rana underline, both the Republicans and Democrats “continue to take as given the centrality of pacification and global omnipresence for the promotion of American interests, despite the extent to which the experience of the last decade underscores the counter-productivity of these policies”.58 Today, as the long war continues unabated across the Middle East and Central Asia, the United States holds an unprecedented number of bases and access facilities across the most energy-rich region on earth. In Iraq, the US military has 45 major bases and well over 100 forward operating bases in total; in Afghanistan, it utilises over a dozen major base and airfield facilities; and, in addition, key bases and access facilities are maintained in Bahrain, Djibouti, Egypt, Jordan, the Kyrgyz Republic, Oman, Pakistan, Qatar, Saudi Arabia and the United Arab Emirates.59 It has become clear too that the Pentagon is intent on establishing at least 14 “enduring bases” as the spoils of the Iraq War;60 and there are various other ‘projects of securitization’ being planned for that reveal the ‘long-term’ vision for a permanent US ground presence across the Persian Gulf.61 For the ‘long war of securitization’, the Pentagon’s contingency plans for maintaining and extending its global ground presence – what it calls ‘full-spectrum dominance’ – can be read as a stark warning that on the US military’s Zulu Time the sun never sets. But all of its ‘land power’ must still be secured and capacitated by extending the architecture and operation of the US military’s biopolitical power on the ground. This is where biopolitics merges with geopolitics.

The US military’s geostrategic forward presence in the Persian Gulf and elsewhere becomes only fully realised when its ‘geopolitical operational capacity’ is paralleled by a ‘biopolitical operational capacity’ on the ground. The latter must be enabled by a legal architecture allowing for, and governing, land access, troop circulation and conduct. This is the “toxic combination of geopolitics and biopolitics” that Michael Dillon has in mind when he observes the securitization practices of the war on terror.62 For Dillon, the “geopolitics of security” revolve around the space of “territory”, while the “biopolitics of security” revolve around the space of “population”, yet both are indelibly intertwined.63 Dillon’s observation has been echoed by many. For Derek Gregory, for example, “biopolitics is not pursued outside the domain of sovereign power but is instead part of a protracted struggle over the right to claim, define and exercise sovereign power”.64 Of course, it could be argued that geo-politics has always centrally involved bio-politics too and that any recent drawing out of the multiple overlaps between the two simply reflects inadequate prior definitions of both classical and critical geopolitics.65 In any case, what undoubtedly remains a challenge is the task of revealing and expounding how biopolitical strategies “relate to broader scale issues such as geopolitics and national economic and political policy, and vice versa”.66 It is this theorising of the complex relations between ‘micro’ and ‘macro’ scales of power that is key to Schlosser’s call to “avoid dualistic notions of bio-political and sovereign power”.67

Reflecting on the character of late modern war, Derek Gregory draws a useful distinction between the ‘object-ontology’ of traditional geopolitics, with its customary territorial concerns, and the ‘event-ontology’ of contemporary biopolitics, where battlefields are “composed of events rather than objects” and biopolitical arguments are concerned with making interventionary military violence “appear to be intrinsically therapeutic”.68 The battle zones of the war on terror may well be “visibly and viscerally alive with death” (when, as Gregory observes, ‘biopolitics’ becomes ‘necropolitics’) but the US military are adept at navigating such potentially damning biopolitical registers in its dealings with the media. Long scripted geopolitical registers quickly become mobilised at press briefings, which reinstate “optical detachment” by reductively re-mapping battle spaces back into “an abstract geometry of points”.69 Discursively, the US military is certainly attuned to an expedient entwining of its biopolitical and geopolitical operations. And as I argue below, this discernible conflation of biopolitical and geopolitical strategies applies to the material securitization practices of the US military as well.

#### Debating the rhetorical *frame* for war-fighting decisions is the only way to address the source of war-fighting abuses.

Jeremy ENGELS Communications @ Penn St. AND William SAAS PhD Candidate Comm. @ Penn ST. 13 [“On Acquiescence and Ends-Less War: An Inquiry into the New War Rhetoric” *Quarterly Journal of Speech* 99 (2) p. 230-231]

The **framing** of public discussion facilitates acquiescence in contemporary wartime: thus, both the grounds on which war has been **justified** and the ends toward which war is **adjusted** are **bracketed** and hence made infandous. The rhetorics of acquiescence bury the grounds for war under nearly impermeable layers of political presentism and keep the ends of war in a state of **perpetual flux** so that they cannot be **challenged**. Specific details of the war effort are excised from the public realm through the rhetorical maneuver of ‘‘occultatio,’’ and the authors of such violence\*the president, his administration, and the broader national security establishment\*use a wide range of techniques to displace their own responsibility in the orchestration of war.28 Freed from the need to cultivate assent, acquiescent rhetorics take the form of a status update: hence, President Obama’s March 28, 2011 speech on Libya, framed as an ‘‘update’’ to Americans ten days after the bombs of ‘‘Operation Odyssey Dawn’’ had begun to fall. Such post facto discourse is a new norm: Americans are called to acquiesce to decisions already made and actions already taken. The Obama Administration has obscured the very definition of ‘‘war’’ with euphemisms like ‘‘limited kinetic action.’’ The original obfuscation, the ‘‘war on terror,’’ is a perpetually shifting, ends-less conflict that denies the very status of war. How do you dissent from something that seems so overwhelming, so inexorable? It’s hard to hit a perpetually shifting target. Moreover, as the government has become increasingly secretive about the details of war, crucial information is kept from citizens\*or its revelation is branded ‘‘treason,’’ as in the WikiLeaks case\*making it much more challenging to dissent. Furthermore, government surveillance of citizens cows citizens into quietism. So what’s the point of dissent? After all, this, too, will pass. Thus even the most critical citizens come to rest in peace with war. The confidence game of the new war rhetoric is one of perpetually shifting ends. In this ‘‘post-9/11’’ paradigm of war rhetoric, citizens are rarely asked to harness their civic energy to support the war effort, but instead are called to passively cede their wills to a greater Logos, the machinery of ends-less war. President Obama has embodied the dramatic role of wartime caretaker more adeptly than his predecessor, repeatedly exhorting citizens to ‘‘look forward’’ rather than to examine the historical grounds upon which the present state of ends-less war was founded and institutionalized.29 All the while, that forward horizon is constantly being reshaped\*from retribution, to prevention, to disarmament, to democratization, to intervention, and so on, as needed. What Max Weber called ‘‘charisma of office’’\*the phenomenon whereby extraordinary political power is passed on between charismatically inflected leaders\*is here cast in bold relief: until and unless the grounds of the new war rhetoric are meaningfully represented and unapologetically challenged, ends-less war can only continue unabated.30 War rhetoric is a mode of display that aims to dispose audiences to certain ways and states of being in the world. This, in turn, is the essence of the new war rhetoric: authorities tell us, don’t worry, we’ve got this, just go about your everyday business, go to the mall, and take a vacation. What we are calling acquiescent rhetorics aim to disempower citizens by cultivating passivity and numbness. Acquiescent rhetorics facilitate war by shutting down inquiry and deliberation and, as such, are anathema to rhetoric’s nobler, democratic ends. Rhetorical scholars thus have an important job to do.We must bring the objective violence of war out into the open so that all affected by war can meaningfully question the grounds, means, and ends of battle.We can do this by describing, and demobilizing, the rhetorics used to promote acquiescence. In sum, we believe that by making the seemingly uncontestable contestable, rhetorical critics can and should begin to invent a pedagogy that would reactivate an acquiescent public by creating space for talk where we have previously been content to remain silent.

### Util

#### Overreliance on utility principles to justify executive power turns the lesser evil into the greater by obliterating restraints on the conduct of war – balancing legal checks and balances with security is necessary to create optimal outcomes for both

Richard Ashby Wilson 5, the Gladstein Distinguished Chair of Human Rights and Director of the Human Rights Institute at the University of Connecticut, Human Rights in the War on Terror, p. 19-21

Michael Ignatieff’s ‘lesser evil’ ethics and overreliance on a consequentialist ethics place him much closer to the anti-rights philosophical tradition of utilitarianism than the liberal tradition of human rights. Philosophically and politically, utilitarian consequentialism is about as far from an ethics of human rights as one can travel, and this is borne out in the DOJ memo’s dramatic bolstering of executive power and the sweeping away of the rights of prisoners of war. Jonathan Raban might have a point in suggesting that Ignatieff has become the ‘in-house philosopher’ of the ‘terror warriors’ (2005: 22). Lesser evil reasoning makes a virtue out of lowering accepted standards and surrendering safeguards on individual liberties. In the hands of government officials, it enables unrestrained presidential authority and a disregard for long-standing restraints on the conduct of war. Anyone remotely familiar with the history of twentieth-century Latin America will also be accustomed to ‘lesser evil’ excuses for human rights abuses, given their pervasiveness in the National Security Doctrine of numerous military dictatorships. Ignatieff is aware that a lesser evil ethics can take us down a slippery slope: ‘If a war on terror may require lesser evils, what will keep them from slowly becoming the greater evil? The only answer is democracy itself . . . The system of checks and balances and the division of powers assume the possibility of venality or incapacity in one institution or the other’ (2004: 10-11). This argument now seems rather credulous. Evidence gathered from Abu Ghraib, Guantanamo Bay and U.S. prisons in Afghanistan suggests that torture, the keeping of ‘ghost detainees’ and other violations of the Geneva Conventions were endemic within the system of military custody. By the time government officials weakly diverted blame to by denouncing a few low-ranking ‘bad apples’ in the 272nd Military Police Company, the damage had already been done, to the prisoners and to America’s standing in Iraq and the world. Even if the connection between a lesser evil ethics and a disregard for prisoners’ human rights is coincidental rather than intrinsic, lesser evil advocates have been wildly overconfident about the probity of government and the ability of democratic institutions to monitor closely the boundary between coercion and torture. The evidence points to the contrary view; that the executive branch, at the very least, fostered a legal setting in which prisoner abuse could flourish and excluded any congressional oversight. The monitoring procedures that were in place did not prevent such abuse from becoming widespread and symptomatic. The ‘lesser evil’ moral calculus that simplifies difficult decision making in an ‘age of terrorism’ is a little more complicated for others, and the DOJ memo should have at least demonstrated an awareness that the standard necessity defence case has been challenged comprehensively in jurisprudence and moral philosophy. In the 1970s, the late philosopher Bernard Williams carried out a critique of utilitarianism’s philosophy of the law so devastating that he concluded ‘the simple-mindedness of utilitarianism disqualifies it totally…the day cannot be far off in which we hear no more of it’ (1973: 150). Alas, this was the only part of Williams’ critique that was wide of the mark, since utilitarianism will probably always appeal to those longing for greater executive power. Williams examines a scenario analogous to the necessity defence cases found in the DOJ memo. He considers the case of a man, Jim, who is dropped into a South American village where he is the guest of honor. There, a soldier, Pedro, presents him with the dilemma of intentionally killing one man and saving another nineteen souls, whom Pedro was about to execute. Williams finds the utilitarian answer, that obviously Jim should kill one man to save nineteen, inadequate on a number of grounds. Generally stated, Williams’ position is that utilitarianism ignores individual integrity in its quest for the general good and it neglects the point that each of us are morally responsible for what we do, not what others do. Jim is responsible for his own actions and his not killing one man is not causal to Pedro’s subsequent killing of twenty. To advise Jim to torture or kill the one to save the many is to treat Jim as an impersonal and empty channel for effects in the world, or in Williams’ words, as a janitor of a system of values whose role is not to think or feel, but just to mop up the moral mess. The utilitarian perspective portrays an anxiety about the long-term psychological effects on the agent, say, a person’s feelings or remorse for an act of murder, as self-indulgent. It ignores the life projects to which Jim is committed, and his obligations to friends and family to act in a certain way It treats these commitments as irrational and of no consequence in its moral calculus of the greater good. In this critique, utilitarianism, of the kind that has characterized the legal counsel to President Bush in the ‘war on terror’, ignores individual moral agency and strips human life of what makes it worthwhile. Seeing persons as ends in themselves and not as means to other ends corresponds with a Kantian defence of human rights and liberal democracy more generally. In the struggle against Islamist terrorists, we are well advised to temper our desire for good consequences (which can seldom be predicted in advance) with an equal concern with intentions and integrity of motives. Consequences matter and integrity and good intentions are not in themselves sufficient. Yet developing an approach that is not overreliant on consequentialism and which foregrounds human agency, motivations and intentions could provide enduring grounds for defending human rights in the present climate. It could better equip us with the fundamental ethical principles to go about recombining human rights and security, and work through more carefully which suspensions of ordinary domestic laws and international rule of law are defensible, and which are not.

### ALT—Anti-Subordination Framing

#### We should frame the question of executive power in terms of racialized harm and otherization. Refusing accommodation with values of the security state is a *precondition* for preventing racialized hierarchy.

Gil GOTT Int’l Studies @ DePaul 5 “The Devil We Know: Racial Subordination and National Security Law” Villanova Law Review, Vol. 50, Iss. 4, p. 1075-1076

Anti-subordinationist principles require taking more complete account of how enemy groups are racialized, and how they come to be constructed as outsiders and the kinds of harms that may befall them as such. Group-based status harms include those that have been inscribed in law and effectuated through state action, and those that arise within civil society, through social structures, institutions, culture and habitus. Familiarity with the processes of racialization is a necessary precondition for appreciating and remedying such injuries. Applying anti-subordinationist thinking to national security law and policy does not require arguing that only race-based effects matter, but does require affording significant analytical and normative weight to the problems of such status harms. Racial injuries require racial remedies. Foregrounding anti-subordinationist principles in national security law and policy analysis departs significantly from traditional approaches in the field. Nonetheless, arguments based in history, political theory and pragmatism suggest that such a fundamental departure is warranted. Historically, emergency-induced "states of exception" 6 that have suspended legal protections against governmental abuses have tended to be identitybased in conception and implementation. 7 Viewed from the perspective of critical political theory, the constellation of current "security threats" rests on the epochal co-production of identity-based and market-driven global political antagonisms, referred to somewhat obliquely as civilization clashes or perhaps more forthrightly as American imperialism. Pragmatically, it makes no sense to fight terrorism by alienating millions of Muslim, Arab and South Asian residents in the United States and hundreds of millions more abroad through abusive treatment and double standards operative in identity-based repression at home and in selective, preemptive U.S. militarism abroad. Such double standards undermine the democratic legitimacy of the United States both in its internal affairs and in its assertions of global leadership. Indeed, there seems to be no shortage of perspectives from which liberal legal institutions would be enjoined from embracing a philosophy of political decisionism precisely at the interface of law and security, an anomic frontier along which are likely to arise identity-based regimes of exception and evolving race-based forms of subordination. Part I analyzes accommodationist approaches that variously incorporate security-inflected logic in truncating the regulative role law plays in national security contexts. I will seek to understand the accommodationist thrust of these interventions in light of the authors' operative assumptions regarding the proper array of interests and exigencies to be balanced. I will argue that the interests of demonized "enemy groups" facing racebased status harm-Muslims, Arabs and South Asians in the United States-are ineffectively engaged through accommodationist frameworks. The decisionist impulse of these analyses, that is, the tendency to acquiesce in the outcomes of non-substantively constrained statist and/or majoritarian political process, results from an incomplete grasp of the racialization processes. In short, more race consciousness is needed in national security law and policy in order to cement substantive commitments and procedural safeguards against historical and ongoing racebased subordination through the racialization of "security threats."

### Norm-Setting Link

#### Norm-setting for the legitimate use of force reflects colonial dominance by Western states. Non-western forms of warfare, identity, and authority are granted no standing.

Jeremy BLACK History @ Exeter 5 [“War and international relations: a military-historical perspective on force and legitimacy” *Review of Int’l Studies* 31 p. 128-131]

In response in both cases, these anti-methods are presented by critics as unacceptable and illegal, and indeed unheroic, and thus the legitimacy of the cause with which they are linked is denied. This can be seen in the treatment of terrorism, but also, more generally, in practices, real or alleged, of eroding the distinctions between ‘civilian’ and ‘military’. An instance of this was provided by allegations that military targets, such as missile-launchers, were located by Serbia in 1999 and Iraq in 2003 in civilian areas, and, in the latter case, by the employment of irregulars who did not wear uniform. As much of the legitimacy of the modern Western practice of force, and the legalisation of Western high-technology warfare,7 is held to rest on drawing a distinction between military and civilian, these moves affected both the character of Western warmaking, especially in the case of the ease of target acquisition, and its apparent legitimacy. Attacks on ‘civilian’ targets indeed became a basic text in public debate concerned about the morality of Western interventions and the nature of Western warmaking. This problem challenged pro-interventionist governments in their attempts to influence domestic and international opinion, as doing so in part rested on the argument that there was a distinction between the legitimate use of force directed against the military (and government targets), and usage that was illegitimate, whether by states, such as Iraq gassing Kurdish civilians, or by terrorist movements.8 There was a parallel here with weapons of mass destruction, with conflicting views on which powers could legitimately possess them. Legitimacy in this case was a response to perceptions of governmental systems and strategic cultures; and the imprecision of the concept of the rogue state does not satisfactorily address the issue.9 Instead, the ability of the world’s strongest power to propose the concept and define its application was seen by many as a challenge both to the sovereignty of states and to international norms. This will become a more serious problem as the rise of China and India leads to a decline in America’s relative strength. The notion of the morality of military usage as depending in part on the uneasy relationship between the doctrine of target allocation and acquisition, and the technology permitting the successful practice of this doctrine, is an instance of the way in which theories of force and legitimacy move in a problematic relationship with shifts in military capability and also in the type of wars being undertaken. This was not the sole instance of this process. To return to the point made at the outset, the nature of the military power wielded by the US (as well as the assumptions underlying its use) is crucial to modern discussion of force and legitimacy across at least much of the world. The historical perspective In historical terms, there is a marked and unprecedented contrast today between the distribution of military force and the notion of sovereign equality in international relations. There have been major powers before, but only the Western European maritime states – Portugal, Spain, The Netherlands, France and Britain – could even seek a global range, and, prior to that of Britain in the nineteenth century, the naval strength of these states was not matched by a land capability capable of competing with those of the leading military powers in the most populous part of the world: South and East Asia, nor, indeed, with an ability to expand into Africa beyond coastal enclaves. The success of the Western European powers in the Americas and at sea off India, did not mean that there was an equivalent success elsewhere, and this suggests that aggregate military capacity is a concept that has to be employed with care.10 East and South-East Asian powers, particularly China, were, in turn, not involved in an international system that directly encompassed the Western maritime states. In some respects, there was a curious coexistence as, from the 1630s, Spanish, Russian and Dutch military powers were all present in East Asian waters, but, in practice, this did not lead to the creation of a new system. The Europeans were insufficiently strong to challenge the East Asian powers seriously, and local advances were repelled by the most powerful, China: in the seventeenth century, the Dutch being driven from the Pescadore Islands and Taiwan, and the Russians from the Amur Valley,11 while the English in Bombay were forced to propitiate the Mughal Emperor; and were also unable to sustain their position in Tangier. The assumptions generally summarised as strategic culture also played a major role, as, despite their strength, none of the local powers sought to contest the European position in the Western Pacific: the Spaniards spread their control in the Philippines, and, from there, to the Mariana and Caroline Islands, and the Russians in north-east Asia and, across the North Pacific, to the Aleutians and Alaska. This was not challenged by China; nor Japan or Korea, both of which were weaker states. The absence of any such conflict ensured that relations between East Asian and Western European powers did not develop and become important, let alone normative, in the context of warfare or international relations. Instead, although trade with China was important for the West, there was scant development in such norms. The same was true of relations between the Mughal empire in India and European coastal positions in the sixteenth and seventeenth centuries, and also in South-East Asia, where major, aggressive states, such as Burma and Thailand in the eighteenth century, were able to operate with little reference to Western power (and indeed are largely ignored in Western historiography).12 This is a reminder of the late onset of modernity, understood in terms both of Western dominance, specifically of readily-evident superior Western military capability, and of Western international norms; although this definition of modernity is questionable, and increasingly so, as Asian states become more powerful. This late onset of modernity clashes with the conventional interpretation of the international order that traces an early establishment of the acceptance of sovereignty in a multipolar system, an establishment usually dated to the Peace of Westphalia of 1648.13 However appropriate for Europe, and that can be debated, this approach has far less meaning on the global level. The idea of such a system and of the associated norms outlined in Europe were of little relevance elsewhere until Western power expanded, and then they were not on offer to much of the world, or only on terms dictated by Western interests. This was true not only of such norms but also of conventions about international practices such as the definition of frontiers, or rights to free trade, or responses to what was presented as piracy.14 The question of frontiers was an aspect of the employment of the Western matrix of knowledge in ordering the world on Western terms and in Western interests. Force and legitimacy were brought together, for example, in the drawing of straight frontier and administration lines on maps, without regard to ethnic, linguistic, religious, economic and political alignments and practices, let alone drainage patterns, landforms and biological provinces. This was a statement of political control, judged by the West as legitimate and necessary in Western terms,15 and employed in order to deny all other existing indigenous practices, which were seen either as illegitimate, or, in light of a notion of rights that drew on social-Darwinianism, as less legitimate. The global military situation, specifically the Western ability to defeat and dictate to land powers, had changed in the nineteenth century, especially with the British defeat of the Marathas in India in 1803–6 and 1817–18, and, subsequently, with the defeats inflicted on China in 1839–42 and 1860, and with the Western overawing of Japan in 1853–4. In terms of the age, the speed and articulation offered British power by technological developments (especially, from mid-century, the steamship and the telegraph), by knowledge systems (particularly the accurate charting and mapping of coastal waters),16 and by organisational methods (notably the coaling stations on which the Royal Navy came to rely), all provided an hitherto unsurpassed global range and reach.17 Within this now globalised world, force and force projection came to define both the dominant (yet still contested) definition of legitimacy, and its application. Indeed, the capacity to direct the latter proved crucial to the development of the practice of legitimacy as related to its impact on non-Western states.

### Stability/Conflict Framing

#### Framing criticism of the war on terror in terms of threats to U.S. national security generates a militarized paradigm. We orient ourselves towards “failing” states like Pakistan in a militaristic manner—we need more precise forms of killing to solve instability—that’s their whole solvency contention

Neil COOPER Peace Studies @ Bradford ‘5 “Picking out the Pieces of the Liberal Peaces: Representations of Conflict Economies and the Implications for Policy” *Security Dialogue* 36 (4) p. 471-

The political economies of contemporary conflicts have also been the object of analyses influenced by critical theory and post-structuralism. Mark Duffield, in particular, has identified shadow trade in the developed world as a form of really existing development taking place outside the formal structures of the global economy, from which large parts remain excluded. Much of this literature has also emphasized the need to distinguish between different kinds of economies that exist in the same environment, for instance the combat economy of the warlords, the shadow economy of the mafiosi and the coping economy of ordinary citizens (Pugh, Cooper & Goodhand, 2004). A key feature in this work, however, has been a concern with the way in which weak and failed states have been incorporated into a discourse that has re-inscribed underdevelopment as the source of multiple instabilities for the developed world—what Luke & Ó Tuathail (1997) term ‘the virus of disorder’. Duffield’s work, in particular, has identified the processes by which the securitization of underdevelopment has underpinned the new ‘liberal peace’ aid paradigm, centred around the restoration of order through the application of neoliberalism and the formal accoutrements of democracy and civil (but not economic) rights (Duffield, 2001). Indeed, for Duffield, development has become a form of biopolitics concerned with addressing the putative threats posed to effective states by transborder migratory flows, shadow economies, illicit networks and the global insurgent networks of ineffective states (Duffield, 2005). And, in contrast to the Cold War, the geopolitics of effective states is concerned less with arming Third World allies and more with transforming the populations inside ineffective states. In this view, development represents a ‘security mechanism that attempts through poverty reduction, conditional debt cancellation and selective funding to insulate [developed] mass society from the permanent crisis on its borders’ (Duffield, 2005: 157).

While Duffield’s analysis arguably understates the continuities between the Cold War and the post-Cold War era, these insights are nevertheless of particular relevance when examining both shifts in discourse and policy on development and security in general and the political economy of conflict in particular, and it is to these that we will now turn.

Towards a Synthesis of Difference or a Difference in Synthesis?

In the aftermath of 9/11, weak and failed states have become the object of a heightened discourse of threat that represents them as actual or potential nodal points in global terrorist networks. In this conception, the absence of state authority and the persistence of disorder creates local societies relatively immune to technologies of surveillance, making them ideal breeding grounds for terrorist recruitment, training, money-laundering and armstrafficking, as well as organized crime more generally. As Collier et al. (2003: 41) note, civil war generates territories outside the control of governments that have become ‘epicentres of crime and disease’ and that export ‘global evils’ such as drugs, AIDS and terrorism.

This has produced an element of synthesis between new-right critiques of the current aid paradigm and at least some critics from the liberal left. In particular, the idea that the neoliberal project has been taken too far and has had the counterproductive effect of eroding state capacity and legitimacy—a traditional refrain of the left—has now been taken up by realists. Thus, Fukuyama’s State Building signs up to earlier analyses that have emphasized the way in which neopatrimonial regimes used external conditionality as an excuse for cutting back on modern state sectors while expanding the scope of the neopatrimonial state (Fukuyama, 2004: 22). Fukuyama has also become a belated convert to the idea that, under the Washington Consensus, the state-building agenda was given insufficient emphasis (Fukuyama, 2004: 7). Thus, the new-right analysis is one that emphasizes strong states and local empowerment. Even (especially) the Bush administration concluded in its National Security Strategy of 2002 that ‘America is now threatened less by conquering states than we are by failing states’ (White House, 2002: 1).

However, this apparent consensus between the new-right analysis and the liberal critique raises a number of concerns. First, the new-right analysis is situated as a response to the apparently new global dangers unleashed by 9/11. As Fukuyama (2004: 126) notes, ‘the failed state problem . . . was seen previously as largely a humanitarian or human rights issue’, whereas now it has been constructed as a problem of Western security///

. This dichotomy between the situation preceding and that after 9/11 is most certainly an exaggeration. Underdevelopment has always been securitized, just in different ways; and even its post-Cold War manifestation was firmly in place well before 9/11. Indeed, this historical amnesia can be understood as an intrinsic element of a securitizing discourse that justifies regulatory interventions as a response to a specific global emergency rather than as part of longer-term trends.

Nevertheless, it is also the case that the securitization of underdevelopment highlighted by Duffield has become acutely heightened post-9/11, and it is in this context that current debates about the need to eradicate debt, increase aid and reform trading structures are taking place. Thus, the cosmopolitan emphasis on responding to the plight of other global citizens has been merged with the security imperatives of the war on terror to create something of a monolithic discourse across left and right that justifies intervention, regulation and monitoring as about securing both the poor and the developed world.

Consequently, what structures the debate about addressing abuse or underdevelopment in this perspective is not the abuse or underdevelopment per se but its links with multiple threats posed to the developed world. A continuum is thus created for external intervention, entailing not merely the overthrow of Saddam Hussein in Iraq but also structuring debate about Somalia or the need to address shadow trade. Moreover, this discourse is by no means unique to new-right perspectives. Thus, the recent Barcelona Report on a Human Security Doctrine for Europe deploys much the same kind of language, despite being situated in an explicitly cosmopolitanist analysis that emphasizes the importance of human security. For the authors, regional conflicts and failed states are ‘the source of new global threats including terrorism, weapons of mass destruction and organised crime’ and consequently ‘no citizens of the world are any longer safely ensconced behind their national border’ (Study Group on Europe’s Security Capabilities, 2004: 6–7).

Interventionary strategies, whether designed to address weapons of mass destruction, AIDS or the shadow trade emanating from civil conflict, are thus explicitly framed as prophylactic strategies designed to protect the West from terror, disease, refugees, crime and disorder. In the words of an IISS (2002: 2) report on Somalia, the concern is with ‘inoculating failed or failing states against occupation by al-Qaeda’.

This is not to suggest there is now complete synthesis between new-right analyses and liberal critiques. As already noted, analyses such as the Barcelona Report are located in a cosmopolitanist perspective that still emphasizes the importance of providing human security to the citizens of weak states and stresses the need for a bottom-up approach that empowers locals. In contrast, for Fukuyama (2004: 115), state-building and local ownership somehow manage to encompass approval for the idea that, on key areas such as central banking, ‘ten bright technocrats can be air-dropped into a developing country and bring about massive changes for the better in public policy’. The emphasis is also on state capacity for enforcement, ‘the ability to send someone with a uniform and a gun to force people to comply with the state’s laws’ (Fukuyama, 2004: 8) and to maintain the integrity of borders too easily traversed by networked crime and terror.

However, the promise inherent in this monolithic discourse is of a potential synthesis between solidarism and security—one in which welfare, representation and security (for both rich and poor) can really be combined. The risk, though, is that security will delimit solidarism in terms of both the breadth of its reach and the depth of its implementation. For example, following US allegations of support for terrorism, the operations of a Saudi charity operating in Somalia were suspended, throwing over 2,600 orphans onto the streets (ICG, 2005a: 15). Similarly, while the USA has increased aid, much of the direction of this aid has been determined by the priorities of the war on terror, while bilateral trade arrangements have been used to reward key allies in the war on terror, such as Pakistan (Tujan, Gaughran & Mollett, 2004). A further notable feature of the post-9/11 environment is that while the ‘war on terror’ framing has colonized the representation of a wide variety of topics, including discussion of conflict trade and shadow war economies, insights from this literature have not always travelled in the reverse direction. Thus, even the most basis lessons from the literature on the economic challenges of peacebuilding were ignored in Iraq. What was notable here was the failure of imagination to conceive pre-invasion Iraq as an entity that exhibited many features of a war economy—for example, high levels of corruption, weak infrastructure, a shadow trade in oil and other forms of sanctions-busting, and a militarized society. Similarly, concern at the way porous borders and informal economies may have been exploited by terror networks in the Sahel has led the USA to develop a Pan-Sahel Initiative focused on reinforcing borders and enhancing surveillance. In other words, cutting off networks that have ‘become the economic lifeblood of Saharan peoples’ (ICG, 2005b: i) has been prioritized rather than dealing with the underlying dynamics driving such networks.

Conclusion

In some respects, then, there has been a degree of convergence in at least the mainstream discourse and language deployed to discuss weak states and their various features, including shadow economies. The current emphasis is on reversing the excesses of neoliberal reforms that are deemed to have undermined the state in the 1980s and 1990s. The consensus is on the need for strong states and local empowerment (see the contribution by Rolf Schwarz in this edition of Security Dialogue). However, while the discourse and terminology are the same, the meaning applied to them is often very different. How these commonalities and differences will play themselves out in the development of policy remains to be seen. What is nonetheless clear is that much of the discussion of civil war economies has become infected by the virus that is the language of the war on terror. A key concern that this gives rise to is that such framings will structure all or much policy on inconflict and post-conflict societies as being about providing hermetic protection for the West, rather than really addressing the lessons about the local economic dynamics driving shadow economies. The risk is that post-9/11 post-conflict reconstruction may fuse the liberal peace aid paradigm (a continued emphasis on the rigours of neoliberalism, albeit mitigated by a nod towards poverty reduction) with elements of more traditional Cold War interventions that emphasized formal state strength: powerful militaries and intelligence services (albeit mitigated by a nod to civil society). The ways in which this synthesis between the security imperatives of the developed world, cosmopolitanist concerns with the poor and the current reworking of the neoliberal model play themselves out will only really become clear with the test of time. However, what seems to be emerging is a variable-geometry approach to weak states. Some, like Iraq and Afghanistan, may become the object of heightened discourses of threat, producing highly militarized intervention strategies that prioritize order and security issues while failing to address other factors such as the nature of shadow economies and their relationship to occupation and regulation. Indeed, at their extreme, as in Iraq, rather than witnessing the modification of discredited neoliberal models, such objects of intervention may experience even more virulent versions (Klein, 2005). Others, such as Sudan, may find themselves subject to a post-9/11 variant of the new barbarism thesis, in which the anarchy and extremes of violence they are deemed to exhibit are simultaneously presented not only as a rationale for intervention but also as a reason for severely delimiting intervention in the absence of acute imperatives for action provided by the logic of the war on terror. In between, there may be a broad swathe of states, from Sierra Leone to Angola to Liberia, where specific intervention policies may be less strongly influenced by the logic of war on terror and the more general securitization of underdevelopment, but where broader policies that influence such interventions are mediated via the dictates of both solidarism and the security and economic interests of the developed world. Thus, it is perhaps more appropriate to refer not to the imposition of the liberal peace on post-conflict societies but to the imposition of a variety of liberal peaces (Richmond, 2005), albeit ones still imposed within the broad constraints of neoliberalism and within the context of profoundly unequal global trading structures that contribute to underdevelopment.

## \*\*\* 1NR

### Overview

#### Their interp turns the targeted killing area into regulating any type of drone use—massively expands both the amount of topical affs and the lit base we have to research

Mellor 13—Ewan E. Mellor – European University Institute [“Why policy relevance is a moral necessity: Just war theory, impact, and UAVs,” Paper Prepared for BISA Conference 2013]

Despite some of the problems with the specific figures, an impressive amount of research has been done by scholars and journalists on the policies related to the use of drones and this research provides a basis for judging these policies in the light of the principles of the just war tradition. To begin with it is necessary to disaggregate the types of drone strikes that are carried out, as they have different implications and raise different questions.

The first, and perhaps best known, types of strike are the personality strikes.24 These are strikes on a specific individual who is being targeted due to evidence linking them directly to militant activity. Whilst these are often portrayed as strikes on senior leaders or individuals involved in important terrorist operations, the evidence suggests that the majority of those targeted are low level members with little role in ongoing operations.25 Whilst these low level members may be legitimate targets under the laws of armed conflict, they would not be under international human rights law. Even under the laws of armed conflict questions arise regarding the proportionality of such strikes.

The second type of attack is the signature strike. These strikes target unknown and unidentified individuals based on a pattern of activity that is believed to be associated with membership of a militant organisation.26 The US has never acknowledged these types of strikes and has never detailed the criteria for assessing whether behaviour is suspicious enough to warrant targeting and killing; however, the joke within the US State Department that if the CIA saw three men exercising in a field they would consider it a terrorist training camp suggests that there were concerns within the administration that the criteria were not discriminating enough.27

The third type of attack is the double-tap strike. In these attacks a drone will attack a target on the basis of either personality or signature criteria and will then remain in the area and a second strike (and potentially more follow-up strikes) will be carried out against those who come to the aid of the victims of the first strike.28 As a result, researchers and journalists have learnt that locals will often wait a substantial period of time before going to the site a drone strike, delaying aid from reaching any injured survivors.29 These types of strikes make no effort to distinguish between combatants and non-combatants and seem to be designed specifically to ensure that those originally targeted will be killed, either in the follow up strike or through lack of medical care. These strikes have also never been officially acknowledged by the US so it is impossible to ascertain how and under what body of law these strikes are justified or what the decision making procedure is for authorising such a strike.

#### Second is ground—signature strikes and targeted killings are different strategies with different literature bases. The distinction is important because it allows the aff to regulate a less controversial area and bypass core negative ground

Dunn and Wolff 13—\*David Hastings Dunn, Reader in International Politics and Head of Department in the Department of Political Science and International Studies at the University of Birmingham, UK, AND \*\*Stefan Wolff, Professor of International Security at the University of Birmingham in the UK [March 2013, “Drone Use in Counter-Insurgency and Counter-Terrorism: Policy or Policy Component?,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf]

Yet an important distinction needs to be drawn here between acting on operational intelligence that corroborates existing intelligence and confirms the presence of a specific pre-determined target and its elimination – so-called ‘targeted strikes’ (or less euphemistically, ‘targeted killings’) – and acting on an algorithmic analysis of operational intelligence alone, determining on the spot whether a development on the ground suggests terrorist activity or association and thus fulfils certain (albeit, to date, publicly not disclosed) criteria for triggering an armed response by the remote pilot of a drone – so-called ‘signature strikes’.6

Targeted strikes rely on corroborating pre-existing intelligence: they serve the particular purpose of eliminating specific individuals that are deemed crucial to enemy capabilities and are meant to diminish opponents’ operational, tactical and strategic capabilities, primarily by killing mid- and top-level leadership cadres. To the extent that evidence is available, it suggests that targeted strikes are highly effective in achieving these objectives, while simultaneously generating relatively little blowback, precisely because they target individual (terrorist) leaders and cause few, if any, civilian casualties. This explains, to a significant degree, why the blowback effect in Yemen – where the overwhelming majority of drone strikes have been targeted strikes – has been less pronounced than in Pakistan and Afghanistan.7

Signature strikes, in contrast, can still be effective in diminishing operational, tactical and strategic enemy capabilities, but they do so to a certain degree by chance and also have a much higher probability of causing civilian casualties. Using drones for signature strikes decreases the dependence on pre-existing intelligence about particular leaders and their movements and more fully utilises their potential to carry out effective surveillance and respond to the conclusions drawn from it immediately. Signature strikes have been the predominant approach to drone usage in Pakistan and Afghanistan.8 Such strikes have had the effect of decimating the rank and file of the Taliban and their associates – but they have also caused large numbers of civilian casualties and, at a minimum, weakened the respective host governments’ legitimacy and forced them to condemn publicly, and in no uncertain terms, the infringement of their states’ sovereignty by the US. In turn, this has strained already difficult relations between countries which have more common than divergent interests when it comes to regional stability and the fight against international terrorist networks. That signature strikes have a high probability of going wrong and that such failures prove extremely counterproductive is also illustrated by a widely reported case from Yemen, in which twelve civilians were killed in the proximity of a car identified as belonging to an Al-Qa’ida member.9

The kind of persistent and intimidating presence of a drone policy geared towards signature strikes, and the obvious risks and consequences involved in repeatedly making wrong decisions, are both counterproductive in themselves and corrosive of efforts that seek to undercut the local support enjoyed by insurgent and terrorist networks, as well as the mutual assistance that they can offer each other. Put differently, signature strikes, in contrast to targeted killings, do anything but help to disentangle the links between insurgents and terrorists.

#### Framing issue—precision is key to predictability. Even if you think their definition is reasonable and provides some valuable education, it’s not predictable because it blurs an important distinction grounded in the lit base. That causes topic explosion

Sebastian Jose Silva, 2003. University of Montreal Master’s candidate. “Death for life : a study of targeted killing by States in international law,” https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/2372/11474222.PDF;jsessionid=4D1530E8E8F2DEE3B4C68BA4B7997F3B?sequence=1.

As defined by Steven R. David, targeted killing is the "intentional slaying of a specific individual or group of individuals undertaken with explicit governmental approval.,,25 Though concise, the problem with this definition is that it fails to specify the intended targets and ignores the context in which they are carried out. By failing to define targeted killings as measures of counter-terrorism, killings of all types may indiscriminately fall under its mantle with devastating consequences. As such, the killing of political leaders in peacetime, which amounts to assassination, can fall within its scope. The same can be said about the killing of specific enemy combatants in armed conflict, which amounts to targeted military strikes, and the intentional slaying of common criminals, dissidents, or opposition leaders. Actions carried-out by governments within their jurisdictions can also be interpreted as targeted killings. Although the killing of terrorists abroad may constitute lawful and proportionate self-defense in response to armed attacks, the use of such measures by states for an unspecified number of reasons renders shady their very suggestion. David's definition is essentially correct but over-inclusive.

### AT: We Meet/Tpc Edu (Zenko)

#### Zenko concedes the government also draws a distinction between the two

Zenko 12—Micah Zenko, the Douglas Dillon Fellow at the Council on Foreign Relations [July 16, 2012, “Targeted Killings and Signature Strikes,” http://blogs.cfr.org/zenko/2012/07/16/targeted-killings-and-signature-strikes/]

Although signature strikes have been known as a U.S. counterterrorism tactic for over four years, no administration official has acknowledged or defended them on-the-record. Instead, officials emphasize that targeted killings with drones (the official term is “targeted strikes”) are only carried out against specific individuals, which are usually lumped with terms like “senior” and “al-Qaeda.”

Harold Koh: “The United States has the authority under international law, and the responsibility to its citizens, to use force, including lethal force, to defend itself, including by targeting persons such as high-level al-Qaeda leaders who are planning attacks.”

John Brennan: “This Administration’s counterterrorism efforts outside of Afghanistan and Iraq are focused on those individuals who are a threat to the United States.”

Jeh Johnson: “In an armed conflict, lethal force against known, individual members of the enemy is a long-standing and long-legal practice.”

Eric Holder: “Target specific senior operational leaders of al Qaeda and associated forces.”

In April, Brennan was asked, “If you could address the issue of signature strikes, which I guess aren’t necessarily targeted against specific individuals?” He replied: “You make reference to signature strikes that are frequently reported in the press. I was speaking here specifically about targeted strikes against individuals who are involved.” Shortly thereafter, when the White House spokesperson was asked about drone strikes, he simply stated: “I am not going to get into the specifics of the process by which these decisions are made.”

#### Best consensus definition of targeted killings excludes signature strikes—identification of individual targets is the key defining factor throughout the lit

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

As with many terms that have entered the popular consciousness as though they had a clear and defined meaning, there is no established or formally agreed upon legal definition of the term "targeted killings" and scholarly definitions vary widely. Some commentators have sought to "call a spade a spade" and used terms such as "leadership decapitation," n30 which clearly captures only some of the practices at stake, assassinations, n31 or "extrajudicial executions," which has the downside of building per se illegality into the description of the process, or "targeted pre-emptive actions," which is designed to characterize a killing as a legal exercise of the right of self-defense. n32 But these usages have not caught on and do not seem especially helpful in light of the range of practices generally sought to be covered by the use of the term-targeted killing.

The term was brought into common usage after 2000 to describe Israel's self-declared policy of "targeted killings" of alleged terrorists in the Occupied Palestinian Territories. n33 But influential commentators also sought to promote more positive terminology. The present head of the [\*296] Israeli Military Intelligence Directorate, for example, argued that they should be termed "preventive killing," which was consistent with the fact that they were "acts of self-defense and justified on moral, ethical and legal grounds." n34 Others followed suit and adopted definitions designed to reflect Israeli practice. n35 Kremnitzer, for example, defined a "preventative (targeted) killing" as "the intended and precise assassination of an individual; in many cases of an activist who holds a command position in a military organization or is a political leader." n36 For Kober, it is the "selective execution of terror activists by states." n37 But such definitions reflect little, if any, recognition of the constraints imposed by international law, a dimension to which subsequent definitions have, at least in theory, been more attuned. Most recently, Michael Gross has defined such killing as "an unavoidable, last resort measure to prevent an immediate and grave threat to human life." Although this too remains rather open-ended, Gross relies on international standards to defend it when he suggests that it tracks "exactly the same rules that guide law enforcement officials." n38 He cites as authority for that proposition the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, n39 but these principles contain no such provisions. The quotation he uses is, in fact, a rough summary of the text of Article 2(2) of the European Convention on Human Rights, a standard that was adopted in 1950 and has since been interpreted in a much more restrictive manner than he suggests. n40 Gross then goes on to suggest that the approach he proposes is "like that of the Israeli courts," when in fact the key judgment of the Israeli Supreme Court on the question [\*297] of targeted killings does not apply international human rights law at all, but instead uses the customary law applicable to international armed conflicts. n41

At the other end of the definitional spectrum is a five-part definition proposed by Gary Solis. For there to be a targeted killing: (i) there must be an armed conflict, either international or non-international in character; (ii) the victim must be specifically targeted; (iii) he must be "beyond a reasonable possibility of arrest"; (iv) the killing must be authorized by a senior military commander or the head of government; (v) and the target must be either a combatant or someone directly participating in the hostilities. n42 But whereas Gross seeks to use a human rights-based definition, Solis proposes one which is unsuitable outside of international humanitarian law.

A more flexible approach is needed in order to reflect the fact that "targeted killing" has been used to describe a wide range of situations. They include, for example: the killing of a "rebel warlord" by Russian armed forces, the killing of an alleged al Qaeda leader and five other men in Yemen by a CIA-operated Predator drone using a Hellfire missile; killings by both the Sri Lankan government and the Liberation Tigers of Tamil Eelam of individuals accused by each side of collaborating with the other; and the killing in Dubai of a Hamas leader in January 2010, allegedly carried out by a team of Israeli Mossad intelligence agents. Targeted killings therefore take place in a variety of contexts and may be committed by governments and their agents in times of peace as well as armed conflict, or by organized armed groups in armed conflict. The means and methods of killing vary, and include shooting at close range, sniper fire, firing missiles from helicopters or gunships, firing from UAVs, the use of car bombs, and poison.

There are thus three central requirements for a workable definition. The first is that it be able to embrace the different bodies of international law that apply and is not derived solely from either IHRL or IHL. The second is that it should not prejudge the question of the legality or illegality [\*298] of the practice in question. And the third is that it must be sufficiently flexible to be able to encompass a broad range of situations in relation to which it has regularly been applied.

The common element in each of the very different contexts noted earlier is that lethal force is intentionally and deliberately used, with a degree of pre-meditation, against an individual or individuals specifically identified in advance by the perpetrator. n43 In a targeted killing, the specific goal of the operation is to use lethal force. This distinguishes targeted killings from unintentional, accidental, or reckless killings, or killings made without conscious choice. It also distinguishes them from law enforcement operations, e.g., against a suspected suicide bomber. Under such circumstances, it may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but the goal of the operation, from its inception, should not be to kill.

Although in most circumstances targeted killings violate the right to life, in the exceptional circumstance of armed conflict, they may be legal. This is in contrast to other terms with which "targeted killing" has sometimes been interchangeably used, such as "extrajudicial execution," "summary execution," and "assassination," all of which are, by definition, illegal. n44 Consistent with the detailed analysis developed by Nils Melzer, n45 this Article adopts the following definition: a targeted killing is the intentional, premeditated, and deliberate use of lethal force, by States or their agents acting under color of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator. n46

### 2NC Definition of T.K.

#### Targeting and signature strikes are distinct—each has a different process which affects both aff and neg ground

Greenberg and Leiter 13—\*Karen J. Greenberg, Director, Center on National Security, Fordham Law School AND \*\*Michael E. Leiter, Senior Counsel to the Chief Executive Officer, Palantir Technologies; Former Director, National Counterterrorism Center [March 1, 2013, “Assessing U.S. Drone Strike Policies,” http://www.cfr.org/counterterrorism/assessing-us-drone-strike-policies/p30144]

GREENBERG: Mike, can you just clarify a question that I think is underlying a couple of the questions from members, and that is, we keep using the term "targeted killing" and "individuals." But there's been a lot of writing about the fact that these targeted killings are not about individuals, but are about areas where individuals who are assumed to be part of the al-Qaida network congregate. In other words, signature killings. And while it may sound like it's very specific, when you actually read what it is, it's not about targeting an individual, which is different than collateral damage. And I just -- can you clarify that for people?

LEITER: I can clarify some of it. Some of it is appropriately still classified and I don't talk about that stuff because I don't want to go to jail. But you really have three things. As you described, you have targeting individuals. This is something that we've been quite open about in the Bush administration and the Obama administration. It's knowing who the person is and going after that individual.

You then have signature strikes, which are not targeting an area, as you describe, but understanding a set of characteristics that consistently identify individuals as being associated with al-Qaida. Now, that's going to be involved in who those people are communicating with, how they're behaving, where they're operating, what they're doing when they're operating. But you still have -- you have intelligence that they're associated with al-Qaida. You just don't know that it's Bob Smith of al-Qaida. You may not know the person's name at all. That is a signature strike.

And then you have collateral damage. And collateral damage can occur in either one of those two previous ones, when you're targeting an individual or you're targeting via signature. Collateral damage is what you have to avoid. I think Jameel would say that signature strikes, if they're done properly, can be consistent with the laws of war, but my take is that he doesn't think that they are now. I do think, consistent with what Micah said, that the administration should be clear about how any of these strikes and all the rules about collateral damage, no matter who is doing them, are consistent with the laws of war, and are -- (custom or ?) international law and treaty obligations.

### AT: Topic Education

#### They say topic education—our interpretation solves best—maintaining the distinction between TK and drone use in general is key

Anderson 11—Kenneth Anderson, Professor of International Law at American University [August 29, 2011, “Distinguishing High Value Targeted Killing and “Signature” Attacks on Taliban Fighters,” http://www.volokh.com/2011/08/29/distinguishing-high-value-targeted-killing-and-signature-attacks-on-taliban-fighters/]

Moreover, to the extent that one can have confidence in counts of civilian casualties (though there is a convergence on accepting that drone warfare is gradually producing far lower civilian casualty counts than alternative means), it is still crucial to distinguish between the two types of strategic uses of drones. Totals that run the two activities together are not analytically very useful. Moreover, there is some reason to believe that the kind of targeting that might produce the most civilian casualties is, under some circumstances (and perhaps counterintuitively) targeting a single, individual terrorist leader, rather than a larger group of fighters. The reason is that a terrorist leader in Al Qaeda might well deliberately surround himself with many women and children all the time, as human shields, thus raising at least the possibility of greater civilian harm, should political authorities decide that a strike is warranted despite the civilian presence. The Taliban formation might consist of more fighters, but fewer civilians.

These are analytic possibilities; the publicly available data does not seem to me sufficiently robust to draw strong conclusions about the kind of activity and civilian casualties. My point is an analytic one – one has not said very much about drone warfare without disentangling the distinct strategic uses to which the weapon is put.