# 1nc v. northwestern mp

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#### Ex ante judicial review necessitates rulings on international law grounds

Chehab 12 (Ahmad, Georgetown University Law Center, 3/30/12, “

Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review”, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572)

Part I examines the current body of international humanitarian law that addresses the question of targeted assassinations. Part II in turn examines American domestic law with respect to targeted assassinations. Part III sets forth a proposed judicial review mechanism to challenge executive branch designations of “terrorist” eligibility for targeted assassinations. To be sure, employing force to prevent future harms can never be done in an optimal fashion. Errors are inevitable, for no military can choose the right target every time, nor can any military hit its target every time. With this basic recognition, I argue that an institutional review body could help assuage potential error rates while ensuring targeting remains with rule of law constraints. This section delineates two specific features of this judicial review body: First, it argues in favor of incorporating basic international law constraints into the adjudication process. On this understanding, in addition to imminence, the United States needs to account for the degree of expected harm, the probability of being attacked, the estimated collateral damage (including civilian life), the related requirement of military necessity (which in this context may preclude the possibility of safe arrest), the prohibitions against perfidy and treachery, and other pertinent norms of customary international and treaty law.

#### Even a single ruling causes a flood of future global ATS suits – ex-post ruling avoids this

Bates, 10 (John, United States District Judge for the US District Court for the District of Columbia, DC Circuit Court Decision, Civil Acton No. 10-1496, “Nasser Al-Aulaqui Vs Barack H. Obama et al: Memorandum Opinion”, <http://www.aclu.org/files/assets/2010-12-7-AulaqivObama-Decision.pdf>)

Plaintiff maintains that his alleged tort -- extrajudicial killing - - meets the high bar of Sosa, since there is a customary international law norm against state-sponsored extrajudicial killings, which has been "consistently recognized by U.S. courts" and " indeed codified in domestic law under the Torture Victim Protection Act." See Pl.'s Opp. a t 39. Plaintiff is 1 0 correct insofar as many U.S. courts have recognized a customary international law norm against past state-sponsored extrajudicial killings as the basis for an ATS claim. See, e.g ., Wiwa, 626 F Supp. 2d at 383 n.4; Mujica, 381 F . Supp. 2d at 1178-79; Kadic, 70 F .3d at 241-45; Forti v. Suarez-Mason, 672 F . Supp. 1531, 1542 (N.D. Cal. 1987), recons. granted in part on other grounds , 694 F. Supp. 707 (N.D . Cal. 1988). Significantly, however, plaintiff cites no case in which a court has ever recognized a "customary international law norm" against a threatened future extrajudicial killing, nor does he cite a sing lease in which a n alien has ever been permitted to rec over under the ATS for the extrajudicial killing of his U.S. citizen child. These two features of plaintiff's ATS claim -- that it is based on a threat of a future extrajudicial killing, not an actual extrajudicial killing , that is directed not to plaintiff or to his alien relative, but to his U.S. citizen son -- render plaintiff' s ATS claim fundamentally distinct from all extrajudicial killing claims that courts have previously held cognizable under the A TS. Even assuming that the threat at issue were directed to plaintiff (rather than to plaintiff' s U.S. citizen son), there is no basis for the assertion that the threat of a future state-sponsored extrajudicial killing -- as opposed to the commission of a past state- sponsored extrajudicial killing -- constitutes a tort in violation of the " law of nations." A threatened extrajudicial killing could possibly -- de pending on the precise nature of the threat -- for m the basis of a state tort law claim for assault, see R E S T . (S E C O N D ) O F T O R T S § 21 (1965) (explaining that an actor is subject to liability for assault if he acts "with the intent to cause a harmful or offensive contact, or a n imminent apprehension of such a contact," and the other person " is thereby put in such imminent apprehension" ), or f or intentional infliction of emotional distress, see id. § 46( 1) (stating that "[o]ne who by extreme and outrageous conduct intentionally or recklessly cause s sever e emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm" ). But common law tort claims for assault and intentional infliction of emotional distress do not rise to the level of inter national torts that are "sufficiently definite and accepted ' among civilized nations' to qualify for the A TS jurisdictional g rant." See Ali Shafi, 686 F . Supp. 2d at 29 (quoting Sosa, 542 U.S. at 732) . Plaintiff cites no treaty or international document that recognizes assault or intentional infliction of emotional distress as a violation of the "present-day law of nations," nor doe she cite any case in which a court ha s ever found such common law torts cognizable under the A TS. Indeed, there appear s to be only one case in which a court ha s even considered whether "fear " and "anguish" could form the basis of a n ATS claim. See Mujica, 381 F . Supp. 2d at 1183. There , the court expressly rejected the plaintiffs' contention that psychic, e motional harms were sufficient to state a claim under the ATS. As that court explained, " [i ]t would be impractical to recognize these allegations as constituting a n ATS claim because it would allow foreign plaintiffs to litigate claims in U.S. courts that bear a strong resemblance to intentional infliction of emotional distress." I d. Such a holding, the court noted, would make "broad swaths of conduct" actionable by aliens under the ATS, id., which is precisely what the Supreme Court in Sosa warned against. I n Sosa, the Supreme Court instructed federal courts to exercise " great caution" in recognizing new causes of action under the ATS as violations of the " present-day law of nations," and urged courts to consider " the practical consequences" of making such causes of action available to litigants worldwide . See Sosa, 542 U.S. at 728, 732-33. I f this Court were to conclude that alleged government threats -- no matter how plausible or severe the y may be -- constitute international torts committed in violation of the law of nations, federal courts could be flooded with ATS suits from persons a cross the g lobe who alleged that they were somehow place d in fear of danger as a result of contemplated government action. Surely, as interpreted in Sosa, the ATS was not intended to provide a federal forum for such speculative claims.

#### Expansion of human rights litigation decimates UN effectiveness.

**Bradley**, Hunton and Williams Professor of Law at the University of Virginia, **01**

(Curtis A., Fall, The Costs of International Human Rights Litigation, 2 Chi. J. Int’l L. 457, lexis)

Another more concrete danger of this litigation concerns the US role as host to the United Nations. Most proponents of international human rights litigation are also strong supporters of the UN, yet some aspects of this litigation may undermine the effective functioning of that organization. The defendants in these suits ordinarily must be served with court papers in the United States. In an increasing number of cases, plaintiffs are attempting to serve foreign government representatives with court papers when they make official visits to the UN in New York, often while they are under guard by State Department employees. This is precisely what happened in the suits against Li Peng, Robert Mugabe, and Radovan Karadzic. The international agreement that brought the UN to the United States contains immunities for government officials visiting the UN on official business, but the federal circuit court for New York, which is the same court that decided *Filartiga*, has construed these immunities very narrowly. The UN can hardly serve its function as a forum for international exchange if foreign leaders risk US litigation from disgruntled foreign nationals any time they set foot in this country.

#### UN credibility key to stop global preemption

**Steinberg ‘03** (Deputy National Security Adviser to Clinton and Current Head of the Foreign Policy Studies Program at Brookings Institution, James, The Bush Foreign Policy Revolution, New Perspectives Quarterly, Lexis)

However justified, a doctrine of early use of force poses enormous risks not only for the stability of the global system, but also for our national security itself because of the destabilizing and unintended consequences of war**.** There is also a problem in making this a US doctrine because it legitimates it for others as well**.** What is to prevent India or Pakistan from employing the American precedent in their own conflict, for example? The danger of letting go of UN legitimacy is that it may lead to a free-for-all in the international system where each country's judgment counts for the same and there is no objective principle that others can point to.

### 1nc

#### A. Definition – the Oxford Dictionary in 2013, defines restriction as “a rule or law that limits what you can do or what can happen.”

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

restriction NOUN

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

* import/speed/travel, etc. restrictions
* restriction on something to impose/place a restriction on something
* The government has agreed to lift restrictions on press freedom.
* There are no restrictions on the amount of money you can withdraw.

#### B. Violation: The plan does not substantially increase a restriction on the war powers authority of the President. The aff violates this interpretation because TORT LIABILITY IS NOT A RESTRICTION. Our interpretation requires the aff to place a limit on the war powers authority of the President.

#### The aff compensates victims but not does restrict or limit what the President can do or how he can do it.

#### That is because liability is not a restriction so long as the defendant is willing to pay compensation for every injury – THE AFF IS JUST A TAX ON INJURING PEOPLE.

**Abelkop ’13**

(Adam, Associate Instructor in law and public affairs, JD, PhD candidate in public policy and political science at Indiana University School of Public and Environmental Affairs, “Tort Law as an Environmental Policy Instrument,” 92 Oregon Law Review 381, p. 398)

Under a strict liability standard, a court may find a defendant liable regardless of whether she exercised reasonable care.85 Thus, whereas a negligence rule operates as a type of regulatory standard, strict liability functions more like a judicially imposed Pigouvian tax: the defendant must pay the penalty for every injury she causes.86 Strict liability therefore provides redress for harms caused by activities for which due care cannot mitigate the risk.87

(Note from Adam: strict liability is a type of tort liability that the plan applies—see their authors).

#### C. Standards

1. **Predictable Limits – Allowing new enforcement mechanisms unreasonably unlimits the topic, and civil damages is not even a predictable enforcement mechanism because it doesn’t change status quo targeted killing policy. Civil is compensation, but criminal is punishment to deter usage**
2. **Core Ground – Disad links comes from the aff requiring legal limits on the President’s use of targeted killing. Their interpretation makes the topic bidirectional because they can claim drones good.**
3. **Brightline test: does the aff absolutely REQUIRE by law that Obama stop or in any way change the way he conducts targeted killing? If not, the aff is not topical.**
4. **Effects topicality is illegitimate because it justifies unpredictable affirmatives – any aff that has the effect of lowering US drone use becomes topical.**

#### D. Topicality is a voting issue for fairness, education, and jurisdiction.

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Plan destroys the entire targeted killing program and chain of command—collapses military effectiveness

Richard Klingler, 7/25/12, Bivens and/as Immunity: Richard Klingler Responds on Al-Aulaqi–and I Reply, www.lawfareblog.com/2012/07/bivens-andas-immunity-richard-klingler-responds-on-al-aulaqi-and-i-reply/

Steve’s post arguing that courts should recognize Bivens actions seeking damages from military officials based on wartime operations, including the drone strikes at issue in al-Aulaqi v. Obama, seemed to omit some essential legal and policy points. The post leaves unexplained why any judge might decline to permit a Bivens action to proceed against military officials and policymakers, but a fuller account indicates that barring such Bivens actions is sensible as a matter of national security policy and the better view of the law. A Bivens action is a damages claim, directed against individual officials personally for an allegedly unconstitutional act, created by the judiciary rather than by Congress. The particular legal issue is whether a suit addressing military operations implicates “special factors” that “counsel hesitation” in recognizing such claims (injunctions and relief provided by statute or the Executive Branch are unaffected by this analysis). In arguing that the answer is ‘no,’ the post (i) bases its Bivens analysis on how the Supreme Court “has routinely relied on the existence of alternative remedial mechanisms” in limiting Bivens relief; (ii) argues that the Bivens Court “originally intended” that there be some remedy for all Constitutional wrongs in the absence of an express statutory bar to relief; (iii) invokes the policy interest in dissuading military officials from acting unlawfully, and (iv) argues that courts should ensure that a remedy exists if an officer has no defenses to liability (such as immunity). The post’s first point, which underpins the legal analysis, is simply not correct. United States v. Stanley, the Supreme Court’s most recent and important Bivens case in the military context, directly rejected that argument: “it is irrelevant to a ‘special factors’ analysis whether the laws currently on the books afford Stanley, or any other particular serviceman, an ‘adequate’ federal remedy for his injuries. The ‘special factor’ that ‘counsels hesitation’ is … the fact that congressionally uninvited intrusion into military affairs by the judiciary is inappropriate.” Wilkie v. Robbins, too, expressly indicated that consideration of ‘special factors’ is distinct from consideration of alternative remedies and may bar a Bivens claim even where no remedy exists (and that in a Souter opinion for eight Justices). Similarly, the Bivens Court’s original intention is a poor basis for implying a damages claim in the military context. Justice Brennan in 1971 no doubt would have resisted the separation of powers principles reflected in cases that have since limited Bivens relief, especially for military matters. Instead, the relevant inquiry needs to address either first principles (did Congress intend a remedy and personal liability in this particular context? should judges imply one?) or the line of Supreme Court cases beginning with, but also authoritatively limiting, Bivens. There’s considerable support for denying a Bivens remedy under either of those analyses: for the former, support in the form of the presumptions deeply rooted in precedent and constitutional law that disfavor implied causes of action, as well as the legal and policy reasons that have traditionally shielded military officials from suit or personal liability; for the latter, Stanley, Chappell v. Wallace, Wilkie, the last thirty years of Supreme Court decisions that have all limited and declined to find a Bivens remedy, and various separation of powers cases pointing to a limited judicial role in military affairs. The post’s policy point regarding incentives that should be created for military officers to do no wrong is hardly as self-evident as the post claims. Congress has never accepted it in the decades since Stanley and has instead generally shielded military officials from personal financial liability for their service. Supreme Court and other cases from Johnson v. Eisentrager to Stanley to Ali v. Rumsfeld have elaborated the strong policy interest in not having military officials weigh the costs and prospects of litigation and thus fail to act decisively in the national interest. Many other Supreme Court cases have emphasized the potential adverse security consequences and limited judicial capabilities when military matters are litigated. The post criticizes Judge Wilkinson’s view of the adverse incentives that Bivens liability would create. That view is, however, supported by decades of Supreme Court and other precedent (and strong national security considerations) and was joined in that particular case, as in certain others, by a liberal jurist — while the post’s view is, well, popular in faculty lounges and among advocacy groups that would relish the opportunities to seek damages against military officers and policymakers. As for the post’s proposed test, it fails to account for either the Bivens case law addressed above or the separation of powers principles and litigation interests identified in the cases. It would simply require courts to determine facts and defenses, often in conditions of great legal uncertainty and following discovery, which begs the question whether Congress intended such litigation to proceed at all and fails to account for the costs of litigating military issues — to the chain of command, confidentiality, and operational effectiveness. As noted in Stanley, those harms arise whether the officer is eventually found liable or prevails. Those costs and the appropriate limits on the judicial role are recognized, too, in the separation of powers principles that run throughout national security cases – principles that jurists, even jurists sympathetic to the post’s perspective, should and will weigh as they resolve cases brought against military officials and policymakers.

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

Kenneth **Anderson 13**, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities -- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties.

Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership.

If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature.

Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

#### Drones prevent Pakistan collapse

**Curtis** 7/15/**13**

Lisa Curtis is a senior research fellow at the Heritage Foundation, The National Interest, July 15, 2013, "Pakistan Makes Drones Necessary", http://nationalinterest.org/commentary/pakistan-makes-drones-necessary-8725?page=show

But until Islamabad cracks down more aggressively on groups attacking U.S. interests in the region and beyond, drones will remain an essential tool for fighting global terrorism. Numbering over three hundred and fifty since 2004, drone strikes in Pakistan have killed more than two dozen Al Qaeda operatives and hundreds of militants targeting U.S. and coalition forces. President Obama made clear in his May 23 speech at the National Defense University that Washington would continue to use drones in Pakistan’s tribal border areas to support stabilization efforts in neighboring Afghanistan, even as it seeks to increase transparency and tighten targeting of the drone program in the future. Obama also defended the use of drones from a legal and moral standpoint, noting that by preemptively striking at terrorists, many innocent lives had been saved. The most compelling evidence of the efficacy of the drone program came from Osama bin Laden himself, who shortly before his death contemplated moving Al Qaeda operatives from Pakistan into forested areas of Afghanistan in an attempt to escape the drones’ reach, according to Peter Bergen, renowned author of Manhunt: The Ten-Year Search for Bin Laden from 9/11 to Abbottabad. How to Reduce the Need for Drones The continuation of drone strikes signals U.S. frustration with Pakistan’s unwillingness to crack down consistently and comprehensively on groups that find sanctuary in Pakistan’s tribal areas. There continue to be close ties between the Pakistan military and the Taliban-allied Haqqani Network, which attacks U.S. forces in Afghanistan and undermines the overall U.S. and NATO strategy there. The most recent U.S. drone attack inside Pakistani territory occurred last week against militants from the Haqqani Network located in North Waziristan, along the border with Afghanistan. In early June, drone missiles also targeted a group of fighters in Pakistan that were preparing to cross over into Afghanistan. On both occasions, the Pakistani Foreign Ministry condemned the attacks as counterproductive and said they raised serious questions about human rights. No doubt a better alternative to the drones would be Pakistani action against terrorist sanctuaries. But Pakistan has stonewalled repeated U.S. requests for operations against the Haqqani network. In addition to continuing drone strikes as necessary, the U.S. should further condition military aid to Pakistan based on its willingness to crack down on the Haqqani Network. In early June, the House of Representatives approved language in the FY 2014 National Defense Authorization Act that conditions reimbursement of Coalition Support Funds (CSF) pending Pakistani actions against the Haqqani network. Hopefully, the language will be retained in the final bill. The United States provides CSF funds to reimburse Pakistan for the costs associated with stationing some one hundred thousand Pakistani troops along the border with Afghanistan. Pakistan has received over $10 billion in CSF funding over the last decade. One must question the worth of having troops stationed in this region if they refuse to go after one of the most dangerous terrorist groups. Details of the relationship between the Pakistan military and the Haqqani Network are laid out in a recent book, Fountainhead of Jihad: The Haqqani Nexus, 1973–2012 by Vahid Brown and Don Rassler. The book highlights that Pakistan is actively assisting the Haqqani network the same way it has over the last twenty years, through training, tactical field advice, financing and material support. The assistance, the authors note, helps to sustain the Haqqani group and enhance its effectiveness on the battlefield. Drones Help Pakistan It is no secret that the drone strikes often benefit the Pakistani state. On May 29, for example, a drone missile strike killed the number two leader of the Pakistani Taliban (also referred to as the Tehrik-e-Taliban Pakistan or TTP), Waliur Rehman. The TTP has killed hundreds of Pakistani security forces and civilians in terrorist attacks throughout the country since its formation in 2007. Furthermore, the group conducted a string of suicide attacks and targeted assassinations against Pakistani election workers, candidates, and party activists in the run-up to the May elections, declaring a goal of killing democracy. Complicating the picture even further is the fact that Pakistan’s support for the Haqqani network indirectly benefits the Pakistani Taliban. The Haqqanis play a pivotal role in the region by simultaneously maintaining ties with Al Qaeda, Pakistani intelligence and anti-Pakistan groups like the TTP. With such a confused and self-defeating Pakistani strategy, Washington has no choice but to rely on the judicious use of drone strikes. Complicated Relationship The U.S. will need to keep a close eye on the tribal border areas, where there is a nexus of terrorist groups that threaten not only U.S. interests but also the stability of the Pakistani state. Given that Pakistan is home to more international terrorists than almost any other country and, at the same time, has one of the fastest growing nuclear arsenals, the country will remain of vital strategic interest for Washington for many years to come. Though the drone issue will continue to be a source of tension in the relationship, it is doubtful that it alone would derail ties. The extent to which the United States will continue to rely on drone strikes ultimately depends on Islamabad’s willingness to develop more decisive and comprehensive counterterrorism policies that include targeting groups like the Haqqani Network.

#### Extinction---equivalent to full-scale nuclear war

Owen B. **Toon 7**, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

#### Extinction

William Pitt 9 is a New York Times and internationally bestselling author of two books: "War on Iraq: What Team Bush Doesn't Want You to Know" and "The Greatest Sedition Is Silence”, 5/8, “Unstable Pakistan Threatens the World,” <http://www.arabamericannews.com/news/index.php?mod=article&cat=commentary&article=2183>,

But a suicide bomber in Pakistan rammed a car packed with explosives into a jeep filled with troops today, killing five and wounding as many as 21, including several children who were waiting for a ride to school. Residents of the region where the attack took place are fleeing in terror as gunfire rings out around them, and government forces have been unable to quell the violence. Two regional government officials were beheaded by militants in retaliation for the killing of other militants by government forces. As familiar as this sounds, it did not take place where we have come to expect such terrible events. This, unfortunately, is a whole new ballgame. It is part of another conflict that is brewing, one which puts what is happening in Iraq and Afghanistan in deep shade, and which represents a grave and growing threat to us all. Pakistan is now trembling on the edge of violent chaos, and is doing so with nuclear weapons in its hip pocket, right in the middle of one of the most dangerous neighborhoods in the world. The situation in brief: Pakistan for years has been a nation in turmoil, run by a shaky government supported by a corrupted system, dominated by a blatantly criminal security service, and threatened by a large fundamentalist Islamic population with deep ties to the Taliban in Afghanistan. All this is piled atop an ongoing standoff with neighboring India that has been the center of political gravity in the region for more than half a century. The fact that Pakistan, and India, and Russia, and China all possess nuclear weapons and share the same space means any ongoing or escalating violence over there has the real potential to crack open the very gates of Hell itself. Recently, the Taliban made a military push into the northwest Pakistani region around the Swat Valley. According to a recent Reuters report: The (Pakistani) army deployed troops in Swat in October 2007 and used artillery and gunship helicopters to reassert control. But insecurity mounted after a civilian government came to power last year and tried to reach a negotiated settlement. A peace accord fell apart in May 2008. After that, hundreds — including soldiers, militants and civilians — died in battles. Militants unleashed a reign of terror, killing and beheading politicians, singers, soldiers and opponents. They banned female education and destroyed nearly 200 girls' schools. About 1,200 people were killed since late 2007 and 250,000 to 500,000 fled, leaving the militants in virtual control. Pakistan offered on February 16 to introduce Islamic law in the Swat valley and neighboring areas in a bid to take the steam out of the insurgency. The militants announced an indefinite cease-fire after the army said it was halting operations in the region. President Asif Ali Zardari signed a regulation imposing sharia in the area last month. But the Taliban refused to give up their guns and pushed into Buner and another district adjacent to Swat, intent on spreading their rule. The United States, already embroiled in a war against Taliban forces in Afghanistan, must now face the possibility that Pakistan could collapse under the mounting threat of Taliban forces there. Military and diplomatic advisers to President Obama, uncertain how best to proceed, now face one of the great nightmare scenarios of our time. "Recent militant gains in Pakistan," reported The New York Times on Monday, "have so alarmed the White House that the national security adviser, Gen. James L. Jones, described the situation as 'one of the very most serious problems we face.'" "Security was deteriorating rapidly," reported The Washington Post on Monday, "particularly in the mountains along the Afghan border that harbor al-Qaeda and the Taliban, intelligence chiefs reported, and there were signs that those groups were working with indigenous extremists in Pakistan's populous Punjabi heartland. The Pakistani government was mired in political bickering. The army, still fixated on its historical adversary India, remained ill-equipped and unwilling to throw its full weight into the counterinsurgency fight. But despite the threat the intelligence conveyed, Obama has only limited options for dealing with it. Anti-American feeling in Pakistan is high, and a U.S. combat presence is prohibited. The United States is fighting Pakistan-based extremists by proxy, through an army over which it has little control, in alliance with a government in which it has little confidence." It is believed Pakistan is currently in possession of between 60 and 100 nuclear weapons. Because Pakistan's stability is threatened by the wide swath of its population that shares ethnic, cultural and religious connections to the fundamentalist Islamic populace of Afghanistan, fears over what could happen to those nuclear weapons if the Pakistani government collapses are very real. "As the insurgency of the Taliban and Al Qaeda spreads in Pakistan," reported the Times last week, "senior American officials say they are increasingly concerned about new vulnerabilities for Pakistan's nuclear arsenal, including the potential for militants to snatch a weapon in transport or to insert sympathizers into laboratories or fuel-production facilities. In public, the administration has only hinted at those concerns, repeating the formulation that the Bush administration used: that it has faith in the Pakistani Army. But that cooperation, according to officials who would not speak for attribution because of the sensitivity surrounding the exchanges between Washington and Islamabad, has been sharply limited when the subject has turned to the vulnerabilities in the Pakistani nuclear infrastructure." "The prospect of turmoil in Pakistan sends shivers up the spines of those U.S. officials charged with keeping tabs on foreign nuclear weapons," reported Time Magazine last month. "Pakistan is thought to possess about 100 — the U.S. isn't sure of the total, and may not know where all of them are. Still, if Pakistan collapses, the U.S. military is primed to enter the country and secure as many of those weapons as it can, according to U.S. officials. Pakistani officials insist their personnel safeguards are stringent, but a sleeper cell could cause big trouble, U.S. officials say." In other words, a shaky Pakistan spells trouble for everyone, especially if America loses the footrace to secure those weapons in the event of the worst-case scenario. If Pakistani militants ever succeed in toppling the government, several very dangerous events could happen at once. Nuclear-armed India could be galvanized into military action of some kind, as could nuclear-armed China or nuclear-armed Russia. If the Pakistani government does fall, and all those Pakistani nukes are not immediately accounted for and secured, the specter (or reality) of loose nukes falling into the hands of terrorist organizations could place the entire world on a collision course with unimaginable disaster. We have all been paying a great deal of attention to Iraq and Afghanistan, and rightly so. The developing situation in Pakistan, however, needs to be placed immediately on the front burner.

### 1nc

**Text: The United States Congress should announce the development of clear criteria for lethal targeted killing legal permissibility according to the following standards:**

**a). Targeted must be of military necessity**

**b). Targeted must distinguish military targets from civilians**

**c). There is no alternative mean that would minimize necessary suffering**

**d). Targeted is assessed to cause collateral damage that is proportional to the expected advantage to be gained by the attack.**

**e.) Congress should release holds on the Pakistani Civilian Assistance Fund and create a similar fund for Yemen.**

**CP solves – it is the best middle ground – judges whether targeted killing strikes should be conducted on a case by case basis as opposed to a broad based restriction**

Ophir **Falk**, PhD. candidate at the University of Haifa, a Research Fellow at the International Institute of Counter-terrorism at Herzliya and a licensed lawyer, **14** “Permissibility of Targeted Killing,” Studies in Conflict & Terrorism (2014), <http://www.tandfonline.com/doi/pdf/10.1080/1057610X.2014.879380>) GANGEEZY

Conclusions: Criteria for Permissibility Clear criteria concerning targeted killing legal permissibility are imperative. Today it is most widely accepted that under certain circumstances targeted killings are permissible. However, they are only permissible when conducted under specific criteria, and the parameters need to be evaluated on a case by case basis. As such, in line with the above discussed criteria, the legal and moral targeted killing compliance criteria, common to all arenas, which should be applied to any case-by-cases analysis, include: a. Targeting must be of military necessity; b. Targeting must distinguish military targets from civilians; c. There is no alternative mean that would minimize necessary suffering148; and d. Targeting is assessed to cause collateral damage that is proportional to the expected advantage to be gained by the attack.149 Having said that, given the varying interpretations and lack of shared definitions – that the legal principles concerning targeted killing often remain largely ambiguous. On paper, the U.S. and Israel seem to have adhered to the principles premising targeted killing as detailed in the article, but in practice, discrepancies in implementation exist. The discrepancies are most evident in the implementation of the 'distinction' and 'proportionality' principles. Most specifically, the US, Israeli and the ICRC diverge on the interpretation of direct and indirect participation and the idea of unlawful combatant. This is of highest importance, because distinction and proportionality are of the greatest importance in assessing the legality of a specific operation. One possible explanation for the divergence is that the US defined the theater they are acting in as a ‘war on terror’150, whereas Israel depicted its theater as an ‘armed conflict short of war’151 concept. While the targeted killings carried out by Israel and the U.S. have never been ruled illegal by any authoritative court, there were targeted killing cases that raised more questions than others – especially as they relate to the proportionality and distinction criteria. Some were seen as having crossed the constraints of the law or at least the tacit rules of the game. These cases should serve as a source of further study. Examples of questionable case studies could include the Israeli targeting of Shaleh Shadeh that resulted in the inadvertent deaths of 14 noncombatants,152 and an American incident referred to by many as the “wedding party incident”, when an US reconnaissance team hunting a Taliban leader came under attack and returned fire on a wedding party, causing between 48 and hundreds of civilian deaths.153 A violation of one of the core principles raises a violation of another, usually two, and sometimes three additional principles.154 Under certain conditions, a specific legal and moral principle - namely proportionality - may have greater weight than other principles. If a case meets the first three criteria, it can then be judged on the basis of to what extent it adhered to the principle of proportionality. If the balance does not seem right, a case would be considered questionable in its legality. It is most probable that the domestic courts will find past targeted killings to have been legal, nevertheless some case are more questionable to others. One of the conclusions that arise from this paper is that ‘justice’ is an ambiguous term. It is never agreed upon by all and often difficult to completely achieve. It must however be pursued in full. At the end of the day, complete compliance with every principle, in accordance to everyone’s standards, is difficult if not impossible. Therefore, beyond formal legality, the principle of 'justice, justice shall be pursued'155 should be the approach embraced by all. Governments should make their best effort of complying with the principles of distinction, least suffering and proportionality. In order to conduct evaluations of compliance, the principle of proportionality must be more clearly defined and perhaps even quantified to whatever extent possible. Only with such clear guidelines can an objective and internationally shared conclusion be drawn. Without such a conclusion, it is very difficult to determine if the balance of proportionality is met in difficult cases. In closing his final judgment, in what has become commonly referred to as the ‘Targeted Killing Judgment’, Israeli Chief Justice Aharon Barak reiterated the following observation: “At times democracy fights with one hand tied behind her back. Despite that, democracy has the upper hand, since preserving the rule of law and recognition of individual liberties constitute an important component of her security stance. At the end of the day, they strengthen her and her spirit, and allow her to overcome her difficulties”156 . The closer to justice one reaches in his counterterrorism campaigns, the more effective such counterterrorism measures will be, is a principle that needs to be substantiated and will hopefully be done so in future studies.

**Funding allocations solve. CIA will co-operate and avoids the DA.**

**Benjamin 13** (10/23/13, Madea, M.A. from Columbia, Founder of “Code Pink” and “Global Exchange” activism groups. “$40 million allocated for drone victims never reaches them” <http://codepink.org/blog/2013/10/40-million-allocated-for-drone-victims-never-reaches-them/>)

Recent reports on US drone strikes by Amnesty International, Human Rights Watch and the UN have heightened international awareness about civilian casualties and have resulted in new calls for redress. The Amnesty International drone report “[Will I be next](http://www.amnestyusa.org/research/reports/will-i-be-next-us-drone-strikes-in-pakistan)?” says the US government should ensure that victims of unlawful drone strikes, including family members, have effective access to remedies, including restitution, compensation and rehabilitation. The Human Rights Watch report “[Between a Drone and Al-Qaeda](http://www.hrw.org/reports/2013/10/22/between-drone-and-al-qaeda)” calls on the US government to “implement a system of prompt and meaningful compensation for civilian loss of life, injury, and property damage from unlawful attack.” Several human rights groups have approached lawmakers asking them to sponsor legislation calling for such a fund. But congresspeople have been reluctant to introduce what they consider a losing proposition. Even maverick Congressman Alan Grayson, who is hosting a congressional briefing for drone victims from Pakistan on October 29, turned down the idea. “There’s no sympathy in this Congress for drone strike victims,” he said. But unbeknownst to Grayson, the human rights groups and drone strike victims themselves, Congress already has such a fund. The peace group CODEPINK recently discovered that every year for the past four years, a pot of $10 million has been allocated for Pakistani drone strike victims. That would make a total of $40 million, quite a hefty sum to divide among a few hundred families. But it appears that none of this money has actually reached them. The Pakistani Civilian Assistance Fund was modeled after the ones that exist in Iraq and Afghanistan, where money was allocated to help alleviate the suffering of civilians harmed by US military operations as part of a strategy to “win hearts and minds.” In the case of Pakistan, where the CIA operates its drones, the money is supposed to go directly to the families of innocent drone victims, or for needs like medical expenses or rebuilding homes. But Tim Rieser, the long-time staffer for Senator Patrick Leahy who has worked to get this Pakistani civilian assistance fund included in the yearly Foreign Operations budget, expressed his exasperation about the use of the funds. “It’s been like hitting a brick wall every time we push the administration to use these funds for drone victims, since for years they wouldn’t even acknowledge the existence of drone strikes,” said Rieser. “I seriously doubt that any of this money has reached the victims it was intended to help.” Instead, it appears that the [Conflict Victims Support Fund](http://www.grants.gov/web/grants/view-opportunity.html?oppId=144413) gets farmed out to US-based non-governmental organizations like [International Relief and Development](http://www.ird.org/about-us) that, after taking their cut, provide humanitarian assistance for Pakistanis who are not drone victims and are not even living in the tribal areas of Waziristan where the US is carrying out the strikes. Sarah Holewinski, the executive director of Civilians in Conflict, agrees with Rieser that the funds are being misused. “Sure, it’s not easy to assess damage and compensate families in Pakistan where there are no boots on the ground to do a military investigation and where the drone operations are covert,” said Holewinski. “But the State Department does have personnel in Pakistan, including AID staff, and they could work with communities to figure out what harm occurred, why, by whom, and then determine what the civilians need/want/expect in order to feel dignified and assisted.”

1. Doing this, however, would require cooperation from the CIA, which carries out the drone strikes while refusing to talk about them, and it would contradict the US government assertion that the drone strikes have caused only a handful of civilian casualties. To make up for the US lack of help, the Pakistani government says it steps in to offer assistance. But the victims covered in the Amnesty report said they either did not receive compensation from the Pakistani government or that it was inadequate. The family of 68-year-old Mamana Bibi, who was killed in North Waziristan while tending her crops, [was furious](http://www.amnestyusa.org/research/reports/will-i-be-next-us-drone-strikes-in-pakistan) when they were offered $100, given that their costs for medical expenses, repairs to their home and loss of livestock totaled about $9,500. A 45-year-old Pakistani farmer told investigators of another report, [Living Under Drones](http://www.livingunderdrones.org/wp-content/uploads/2013/10/Stanford-NYU-Living-Under-Drones.pdf#page=4&zoom=auto,0,792), that after his home was destroyed by a drone, he didn’t have the $1,000,000 rupees [US $10,500] to build a new house, so he and his family live in a rented room. “I spent my whole life in that house, my father had lived there was well….I belong to a poor family. I’m just hoping that I somehow recover financially,” he said. If this farmer had lived in Afghanistan and had been harmed by a drone, he would have been entitled to compensation for loss of life, medical problems and/or property damage. The payments in Afghanistan are usually small (about $5,000 for a death or injury or $5,000 for property damage), but this can make a big difference to a poor family. But next door in Pakistan, there is no help. This inconsistency is the reason staffer Tim Reiser pushed for the Pakistan fund and now thinks a Yemen fund should be created. “Anywhere innocent people are harmed due to our mistakes, we should help them out,” says Rieser. Even John Brennan, CIA chief who is the mastermind of President Obama’s drone policy, [said during his confirmation hearing](http://www.propublica.org/article/hearts-minds-and-dollars-condolence-payments-in-the-drone-strike-age) that he thought the US should offer condolence payments—in fact, he thought the US was already doing that. Most activists in the US and abroad are focusing, rightly so, on trying to stop the drone killing spree. But those already harmed deserve help. Mohamad al-Qawli, who just formed a network of drone strike victims in Yemen, thinks it’s the least the US should do. [Al-Qawli’s brother was killed in a drone strike](https://www.youtube.com/watch?v=qEX5c8N1v1I), leaving behind a distraught wife and three young children. “In our tribal culture, if someone commits a crime or makes a terrible mistake, they have to acknowledge the wrongdoing, apologize and provide restitution. The US government won’t even acknowledge the wrongful death of my brother, much less apologize and compensate his family. Could it be that my tribal culture is more evolved than the justice system of the United States,?” Al-Qawli asks.

### 1nc preventative war doctrine adv.

#### No international law modeling – countries don’t follow the us anymore

**Law & Versteeg 12**—Professor of Comparative Constitutional Law @ Washington University & Professor of Comparative Constitutional Law @ University of Virginia [David S. Law & Mila Versteeg, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, 2012

The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly attention has thus far focused on global judicial practice: There is a growing sense, backed by more than purely anecdotal observation, that foreign courts cite the constitutional jurisprudence of the U.S. Supreme Court less frequently than before.267 But the behavior of those who draft and revise actual constitutions exhibits a similar pattern. Our empirical analysis shows that the content of the U.S. Constitution is¶ becoming increasingly atypical by global standards. Over the last three decades, other countries have become less likely to model the rights-related provisions of¶ their own constitutions upon those found in the Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best stable and at worst declining. In sum, rather than leading the way for global¶ constitutionalism, the U.S. Constitution appears instead to be losing its appeal as¶ a model for constitutional drafters elsewhere. The idea of adopting a constitution may still trace its inspiration to the United States, but the manner in which constitutions are written increasingly does not. If the U.S. Constitution is indeed losing popularity as a model for other countries, what—or who—is to blame? At this point, one can only speculate as to the actual causes of this decline, but four possible hypotheses suggest themselves: (1) the advent of a superior or more attractive competitor; (2) a general decline in American hegemony; (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism. With respect to the first hypothesis, there is little indication that the U.S. Constitution has been displaced by any specific competitor. Instead, the notion that a particular constitution can serve as a dominant model for other countries may itself be obsolete. There is an increasingly clear and broad consensus on the types of rights that a constitution should include, to the point that one can articulate the content of a generic bill of rights with considerable precision.269 Yet it is difficult to pinpoint a specific constitution—or regional or international human rights instrument—that is clearly the driving force behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national constitutions that are often cited as influential, such as those of Canada and South Africa, or leading international and regional human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Although Canada in particular does appear to exercise a quantifiable degree of constitutional influence or leadership, that influence is not uniform and global but more likely reflects the emergence and evolution of a shared practice of constitutionalism among common law countries.270 Our findings suggest instead that the development of global constitutionalism is a polycentric and multipolar¶ process that is not dominated by any particular country.271 The result might be likened to a global language of constitutional rights, but one that has been collectively forged rather than modeled upon a specific constitution. Another possibility is that America’s capacity for constitutional leadership is at least partly a function of American “soft power” more generally.272 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover effect into the constitutional arena. The popularity of American culture, the prestige of American universities, and the efficacy of American diplomacy can all be expected to affect the appeal of American constitutionalism, and vice versa. All are elements of an overall American brand, and the strength of that brand helps to determine the strength of each of its elements. Thus, any erosion of the American brand may also diminish the appeal of the Constitution for reasons that have little or nothing to do with the Constitution itself. Likewise, a decline in American constitutional influence of the type documented in this Article is potentially indicative of a broader decline in American soft power. There are also factors specific to American constitutionalism that may be¶ reducing its appeal to foreign audiences. Critics suggest that the Supreme Court has undermined the global appeal of its own jurisprudence by failing to acknowledge the relevant intellectual contributions of foreign courts on questions of common concern,273 and by pursuing interpretive approaches that lack acceptance elsewhere.274 On this view, the Court may bear some responsibility for the declining influence of not only its own jurisprudence, but also the actual U.S. Constitution: one might argue that the Court’s approach to constitutional issues has undermined the appeal of American constitutionalism more generally, to the point that other countries have become unwilling to look either to American constitutional jurisprudence or to the U.S. Constitution itself for inspiration.275 It is equally plausible, however, that responsibility for the declining appeal of American constitutionalism lies with the idiosyncrasies of the Constitution itself rather than the proclivities of the Supreme Court. As the oldest formal constitution still in force, and one of the most rarely amended constitutions in the world,276 the U.S. Constitution contains relatively few of the rights that have become popular in recent decades,277 while some of the provisions that it does contain may appear increasingly problematic, unnecessary, or even undesirable with the benefit of two hundred years of hindsight.278 It should therefore come as little surprise if the U.S. Constitution¶ strikes those in other countries–or, indeed, members of the U.S. Supreme Court279–as out of date and out of line with global practice.280 Moreover, even if the Court were committed to interpreting the Constitution in tune with global fashion, it would still lack the power to update the actual text of the document. Indeed, efforts by the Court to update the Constitution via interpretation may actually reduce the likelihood of formal amendment by rendering such amendment unnecessary as a practical matter.281 As a result, there is only so much that the U.S. Supreme Court can do to make the U.S. Constitution an¶ attractive formal template for other countries. The obsolescence of the Constitution, in turn, may undermine the appeal of American constitutional jurisprudence: foreign courts have little reason to follow the Supreme Court’s lead on constitutional issues if the Supreme Court is saddled with the interpretation of an unusual and obsolete constitution.282 No amount of ingenuity or solicitude for foreign law on the part of the Court can entirely divert attention from the fact that the Constitution itself is an increasingly atypical document. One way to put a more positive spin upon the U.S. Constitution’s status as a global outlier is to emphasize its role in articulating and defining what is unique about American national identity. Many scholars have opined that formal constitutions serve an expressive function as statements of national identity.283 This view finds little support in our own empirical findings, which suggest instead that constitutions tend to contain relatively standardized packages of rights.284 Nevertheless, to the extent that constitutions do serve such a function, the distinctiveness of the U.S. Constitution may simply reflect the uniqueness of America’s national identity. In this vein, various scholars have argued that the U.S. Constitution lies at the very heart of an “American creed of exceptionalism,” which combines a belief that the United States occupies a unique position in the world with a commitment to the qualities that set the United States apart from other countries.285 From this perspective, the Supreme Court’s reluctance to make use of foreign and international law in constitutional cases amounts not to parochialism, but rather to respect for the exceptional character of the nation and its constitution.286 Unfortunately, it is clear that the reasons for the declining influence of American constitutionalism cannot be reduced to anything as simple or attractive as a longstanding American creed of exceptionalism. Historically, American exceptionalism has not prevented other countries from following the example set by American constitutionalism. The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S. Constitution does in fact capture something profoundly unique about the United States, it has surely been doing so for longer than the last thirty years. A complete explanation of the declining influence of American constitutionalism in other countries must instead be sought in more recent history, such as the wave of constitution-making that followed the end of the Cold War.287 During this period, America’s newfound position as lone superpower might have been expected to create opportunities for the spread of American constitutionalism. But this did not come to pass. Once global constitutionalism is understood as the product of a polycentric evolutionary process, it is not difficult to see why the U.S. Constitution is playing an increasingly peripheral role in that process. No evolutionary process favors a specimen that is frozen in time. At least some of the responsibility for the declining global appeal of American constitutionalism lies not with the Supreme Court, or with a broader penchant for exceptionalism, but rather with the static character of the Constitution itself. If the United States were to revise the Bill of Rights today—with the benefit of over two centuries of experience, and in a manner that addresses contemporary challenges while remaining faithful to the nation’s best traditions—there is no guarantee that other countries would follow its lead. But the world would surely pay close attention. Pg. 78-83

#### No escalation – they can’t get their nukes off the ground before we’d destroy them

**Lewis 05**, research fellow @ CISS & Cooperative Security Program Post- Doctorate fellow @ U of Md, 2005 (Jeffery, Bulletin of the Atomic Scientists, No 3 Vol 61 p 52, accessed through Galileo)

So, let's review: China deploys just 30 ICBMs, kept unfueled and without warheads, and another 50-100 MRBMs, sitting unarmed in their garrisons. Conventional wisdom suggests this posture is vulnerable and invites preemptive attack during a crisis. This minimal arsenal is clearly a matter of choice: China stopped fissile material production in 1990 and has long had the capacity to produce a much larger number of ballistic missiles." The simplest explanation for this choice is that the Chinese leadership worries less about its vulnerability to a disarming first strike than the costs of an arms race or what some Second Artillery officer might do with a fully armed nuclear weapon. In a strange way, Beijing placed more faith in Washington and Moscow than in its own military officers.

### 1nc accountability (aqap scenario)

#### AQAP is only conducting small-scale attacks that result in security countermeasures, not war

**Riedel 11** – Senior Fellow in the Saban Center for Middle East Policy at the Brookings Institution and a professor at Georgetown University (Bruce, 08/01, “AQAP’s ‘Great Expectations’ for the Future,” http://www.ctc.usma.edu/posts/aqap%E2%80%99s-%E2%80%98great-expectations%E2%80%99-for-the-future)

Strategy of a Thousand Cuts

AQAP devoted the third issue of Inspire to the parcel bomb plot and to outlining its strategy for defeating the United States. It expanded beyond traditional al-Qa`ida strategic thinking. AQAP claims it now has a team of crafty bombmakers producing its wares that can supposedly get through the most sophisticated airport surveillance equipment in the world. It says its goal is to “hemorrhage” the U.S. economy by conducting waves of **small-scale attacks** similar to the parcel bombs (a “thousand cuts”) and the Christmas Day plot that force added **security countermeasures**. The cover proudly proclaimed that the parcel plot cost just $4,200 to execute. The Detroit operation has already produced expensive new security measures at airports from Amsterdam to Auckland.

These new attacks are notable for their relatively small footprint. They are harder to defeat because they are less complex. Unlike the 9/11 plot or the 2006 failed attempt to blow up 10 airliners en route from London to North America, these efforts are conducted by a small number of people. Only a few participated in the planning and execution, and the plots went from concept to action in a few months. Abdulmutallab, for example, was recruited and trained for his mission in Shabwa Province only a few weeks before his attack.[6]

The recent intelligence on AQAP’s attempts to acquire ricin fit within this strategy. According to U.S. officials cited in the New York Times, “evidence points to efforts to secretly concoct batches of the [ricin] poison, pack them around small explosives, and then try to explode them in contained spaces, like a shopping mall, an airport or a subway station.”[7]

As part of this strategy, AQAP is using its propaganda message to inspire American Muslims to act on their own to attack targets on U.S. territory. Al-`Awlaqi says he encouraged Major Nidal Malik Hasan to conduct his carnage at Fort Hood in Texas on November 5, 2009, an attack that killed 13 people. More recently, another U.S. soldier of Palestinian descent, Naser Abdo, tried to carry out an attack at the same base.[8] The police found a copy of an article from Inspire in his possession.[9]

**No solvency – terrorists can find safe havens anywhere.**

**Preble 2010** (Christopher, director of foreign policy studies at CATO, “When Do We Go to War in Yemen?” CATO Blog 1/5/10, http://www.cato-at-liberty.org/when-do-we-go-to-war-in-yemen/)

While impeding al Qaeda’s ability to carry out major terrorist attacks has and will entail multiple fronts in many countries, **it is not obvious** how this fight should be conducted, nor is it obvious **that the fronts in Yemen and Somalia and Saudi Arabia** (or Afghanistan and Pakistan, even) **are instrumental to success or failure**. **Safe havens exist in many places, including stable democratic countries**. Are we really committed to preventing any country from providing a safe haven? Does the concept of a physical safe haven even make sense in the virtual world of globalized communications and the Internet? Leaving aside the dubious safe haven argument, Carfano’s either/or proposition (fight them there or fight them here) is equally flawed. We should think of security in layers. A man from Nigeria who trained in Yemen and attempted to detonate his underwear bomb in Detroit was thwarted by his own incompetence and the alertness of the airliner’s passengers. Too close for comfort, to be sure, and we have since learned of numerous points along the way where his travels could have been interdicted. But what we’ve learned about this failed attack doesn’t confirm that our only option is to focus on the one layer (Yemen = terrorist training ground) at the expense of the other layers. An equally compelling case could be made for ignoring Yemen, per se, and focusing on other means of interdicting terrorists that are not so heavily dependent upon unwilling and duplicitous allies, or that burden our overtaxed military with an open-ended mission in yet another failed state.

#### Water outweighs any other concerns in Yemen

Juneau 2010 (Thomas, Middle East Policy Council Journal Essay, “Yemen: Prospects for State Failure - Implications and Remedies” Volume 17, Issue 3, pages 134–152, Fall 2010)

Yemen is the poorest country in the Arab world with a per capita GDP of less than $900. By many socioeconomic indicators, it ranks alongside the most destitute countries in sub-Saharan Africa: 45 percent of the population lives on less than $2 per day, unemployment hovers around 35-40 percent, and child malnutrition rates are among the highest in the world.

Yemen’s water crisis may be its most fatal weakness. Freshwater availability is less than 200 cubic meters per capita per year, five times below the water-poverty line and 3 percent of the global average. Yemen has no major permanent river, and so relies on rainwater and underground water tables. But its aquifers are rapidly depleting, as extraction is about 30 percent above sustainable yields. Water management is inefficient and wasteful, with 40-50 percent of water in piped systems unaccounted for. This is especially the case in agriculture, which uses more than 90 percent of the country’s water. The situation is notably dire in cities and rural areas high in the western mountain range. Sanaa, where the population is growing at a rate of 7 percent per year, could run out of water as soon as 2017, and there is already talk of having to move it to a lower altitude.6 As a result, water prices have more than tripled in some cities since 2005. As water becomes scarcer and more expensive, agricultural yields suffer, while conflict over its possession and trade will increase.

### 1nc accountability (me)

#### Middle East war would be short and small-scale

**FERGUSON 2006** (Niall, Professor of History at Harvard University, Senior Research Fellow of Jesus College, Oxford, and Senior Fellow of the Hoover Institution, Stanford, LA Times, July 24)

Could today's quarrel between Israelis and Hezbollah over Lebanon produce World War III? That's what Republican Newt Gingrich, the former speaker of the House, called it last week, echoing earlier fighting talk by Dan Gillerman, Israel's ambassador to the United Nations. Such language can — for now, at least — safely be dismissed as hyperbole. This crisis is not going to trigger another world war. Indeed, I do not expect it to produce even another Middle East war worthy of comparison with those of June 1967 or October 1973. In 1967, Israel fought four of its Arab neighbors — Egypt, Syria, Jordan and Iraq. In 1973, Egypt and Syria attacked Israel. Such combinations are very hard to imagine today. Nor does it seem likely that Syria and Iran will escalate their involvement in the crisis beyond continuing their support for Hezbollah. Neither is in a position to risk a full-scale military confrontation with Israel, given the risk that this might precipitate an American military reaction. Crucially, Washington's consistent support for Israel is not matched by any great power support for Israel's neighbors. During the Cold War, by contrast, the risk was that a Middle East war could spill over into a superpower conflict. Henry Kissinger, secretary of State in the twilight of the Nixon presidency, first heard the news of an Arab-Israeli war at 6:15 a.m. on Oct. 6, 1973. Half an hour later, he was on the phone to the Soviet ambassador in Washington, Anatoly Dobrynin. Two weeks later, Kissinger flew to Moscow to meet the Soviet leader, Leonid Brezhnev. The stakes were high indeed. At one point during the 1973 crisis, as Brezhnev vainly tried to resist Kissinger's efforts to squeeze him out of the diplomatic loop, the White House issued DEFCON 3, putting American strategic nuclear forces on high alert. It is hard to imagine anything like that today. In any case, this war may soon be over. Most wars Israel has fought have been short, lasting a matter of days or weeks (six days in '67, three weeks in '73). Some Israeli sources say this one could be finished in a matter of days. That, at any rate, is clearly the assumption being made in Washington.

# 2nc v. northwestern mp

## 2nc cp

### 2nc a/t: perm do both

#### The CP alone is key to send a signal that the U.S. won’t negotiate the particulars of its targeted killing policy with the international soft-law community---the plan means targeted killing will die a death of a thousand legal cuts---independent disad to the plan

Kenneth **Anderson 10**, Professor of International Law at American University, 3/8/10, “Predators Over Pakistan,” The Weekly Standard, <http://www.weeklystandard.com/print/articles/predators-over-pakistan>

So the legal basis for targeted killing, Predator drone strikes, and covert action involving the CIA is not really the “combatancy” standard under armed conflict into which we have mistakenly subsided. The United States today needs to reassert and reaffirm something it has never given up—but also not reiterated for a generation—the traditional standard of self-defense. As customary law doctrine, it is not (as some might reasonably fear) utterly discretionary, empty, and standardless. On the contrary, while self-defense does not invoke the technical rules of armed conflict, it does have to conform to the usual, fundamental customary law requirements of necessity and proportionality. Note, too, that insofar as the U.S. military carries out any such attacks, they already adhere to international laws of war and their standards, irrespective of whether the operation is part of an armed conflict in a legal sense. Whether necessity or proportionality, however, the legal standard for the CIA cannot be lower than the equivalent standard in armed conflict for launching an attack upon a lawful target (and might under many circumstances be higher). But proportionality with respect to collateral damage always raises a special problem. It is customarily stated that anticipated harms, including innocent deaths, must not be “excessive” in relation to the anticipated benefits (to paraphrase from the laws of war). It should never be lower and in some instances possibly higher. Beyond that, however, one cannot go—if for no other reason than that the international legal standards on proportionality are not more specific. Human rights groups sometimes talk as if there were some decreed standard of proportionality. One to one? Two to one? One to two? Fifty to one? One to fifty? Sometimes they sound as though they have a special moral faculty to spot “disproportionality.” But in fact there is no fixed legal standard that goes beyond this obligation on the part of commanders. The law requires a good faith effort to weigh anticipated benefits against anticipated harms. It provides no mathematical formulas, and it is disingenuous, though common, to suggest to credulous journalists and the public that it is more definitive than it is. For that reason—quite apart from operational security—the CIA has to resist getting into a pissing match with the soft-law community over collateral damage numbers. The best nonofficial, non-CIA-leaked estimates are found at the blog Long War Journal, which keeps a running count based on a wide range of public reporting. Long War Journal’s tabulations suggest far lower collateral damage rates than the global press seems to believe. Leaks by government officials to journalists on a couple of occasions have expressed the same view—in even stronger terms. (When I have asked reporters about this, they appear to take the view that the more “conservative” way to report civilian casualty figures is to err on the high side, if necessary through that weaselly journalistic locution, “as high as.”) Perhaps some mechanism could be worked out for overtly informing the press about the aggregate collateral damage from the now obviously overt targeted killings campaign in Afghanistan and Pakistan. But the U.S. government can’t fall into the losing game of arguing with the press and human rights groups over proportionality. The standards and mechanisms for review should be tailored as closely as possible to military standards of review, and left at that. Making clear that the U.S. government is operating under the legal standard of self-defense would not quiet critics who believe it is all just murder, anyway. But it would provide a public, principled legal position by which this administration and future administrations could defend themselves against the charge of lawlessness. Congress has an important legitimating role to play in this—to show that the two political branches of government have policies in place that they regard as lawful and defensible, to occupy a ground of lawful national security that would otherwise invite inappropriate judicial entry, and to offer a check on covert actions that sometimes achieve momentum within the executive but, seen by congressional outsiders, raise commonsense questions. The U.S. government should, moreover, defend what its officers in fact believe to be the case—that targeted killing from drone platforms is not merely a question of hard-edged military necessity, but is also a humanitarian step forward in technology. The president believes that and so does the vice president, and they are correct. These technologies are lessening, not increasing, civilian damage, are being applied in ways (because it is killing that is, indeed, targeted) that lessen collateral damage from what it would otherwise be in traditional war. The U.S. government should react with outrage to the charge, implied or express, of American cowardice or some abstract increased propensity to violence on account of drone strikes, and assert its humanitarian moral ground. For that matter, hostile journalists ought to be pressed to explain why drone attacks are significantly different from missiles fired from aircraft or offshore naval vessels​—save for the vastly greater ability to monitor the circumstances of firing through sensor technologies. Senior officials believe that drone warfare allows the United States to take far greater measure and care with collateral damage than it can using either conventional war or attack teams on the ground. The U.S. government should say so, rather than simply falling back on narrow arguments of military necessity, operational convenience, and force protection, while ceding the moral high ground to the international soft-law community. But in making its case, the United States government has to be clear that it is reaffirming self-defense as its legal basis, not simply combatancy and not simply armed conflict. Congress—Republicans and Democrats—should endeavor to get the senior legal officials of the Obama administration to say so, on the public record. This will be important down the road for U.S. officials not protected by the aura of the Nobel Peace laureate now in the Oval Office. The administration itself might consider that a narrow justification of drone strikes under combatancy with respect to al Qaeda and the Taliban, rather than a broader legal basis in self-defense, is most likely to work for it under one circumstance—a one-term presidency. Indeed, the silence of the administration’s senior international lawyers, and in particular their failure to defend the practice on a basis broad enough to encompass the circumstances under which it might be used in the next seven years, rather than the next three, might be taken as their implied view of the administration’s life expectancy. The U.S. government ought to consider that, over time, terrorist groups the United States will believe itself compelled to attack will not always be al Qaeda. They may also be found in places beyond Yemen and Somalia, without obvious connection to the existing theaters of armed conflict in Iraq and South Asia. Unless the United States moves to self-defense as its fundamental legal basis for using force against terrorists, it will find itself pushed to revive the discredited “global” war on terror. Finally, future administrations, long beyond the Obama administration, may one day have to confront nonstate enemies that are not al Qaeda, have no relation whatever to 9/11, and are not jihadists but espouse some other violent cause against the United States. Future presidents will also have to respond with force, sometimes covert force, to such threats. The Obama administration has an obligation to itself and its successors to preserve their legal powers of national security. The United States must use these legal powers or lose them.

### 2nc accountability solvency

#### 1ac – Farley – just need to dissuade from excessive risk-taking -

#### legal accountability "make[] leaders reluctant to engage in foolhardy military expeditions

#### Disclosing target criteria builds diplomatic credibility and domestic accountability

Gregory **McNeal 13**, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Related to defending the process, and using performance data is the possibility that the U.S. government could publish the targeting criteria it follows. That criteria need not be comprehensive, but it could be sufficiently detailed as to give outside observers an idea about who the individuals singled out for killing are and what they are alleged to have done to merit their killing. As Bobby Chesney has noted, "Congress could specify a statutory standard which the executive branch could then bring to bear in light of the latest intelligence, with frequent reporting to Congress as to the results of its determinations."521 What might the published standards entail? First, Congress could clarify the meaning of associated forces, described in Part I and II. In the alternative, it could do away with the associated forces criteria altogether, and instead name each organization against which force is being authorized,522 such an approach would be similar to the one followed by the Office of Foreign Assets Control when it designates financial supporters of terrorism for sanctions.523¶ The challenge with such a reporting and designation strategy is that it doesn’t fit neatly into the network based targeting strategy and current practices outlined in Parts I-III. If the U.S. is seeking to disrupt networks, then how can there be reporting that explains the networked based targeting techniques without revealing all of the links and nodes that have been identified by analysts? Furthermore, for side payment targets, the diplomatic secrecy challenges identified in Part I remain --- there simply may be no way the U.S. can publicly reveal that it is targeting networks that are attacking allied governments. These problems are less apparent when identifying the broad networks the U.S. believes are directly attacking American interests, however publication of actual names of targets will be nearly impossible (at least ex ante) under current targeting practices.¶ As was discussed above, the U.S. government and outside observers may simply be using different benchmarks to measure success. Some observers are looking to short term gains from a killing while others look to the long term consequences of the targeted killing policy. Should all of these metrics and criteria be revealed? Hardly. However, the U.S. should articulate what strategic level goals it is hoping to achieve through its targeted killing program. Those goals certainly include disrupting specified networks. Articulating those goals, and the specific networks the U.S. is targeting may place the U.S. on better diplomatic footing, and would certainly engender mechanisms of domestic political accountability.

### 2nc preventative war solvency

**CP solves preventative war – this is really embarrassing – I am probably going to end up reading more of their evidence as CP solvency than I will my own because most of their evidence says we need clarify self-defense now –**

#### 1ac – martin

#### cites abandonment and lack of clarification of the exact principles that our CP clarifies -

The current conditions for a legitimate use of force in self-defense, namely the occurrence or imminence of an armed attack, necessity, and proportionality, would be significantly diluted or abandoned.

#### The uniqueness argument is that the jus ad bellum principle is being used to justify all state force – the CP reverses that by clarification

#### The problem is that the jus ad bellum regime applies to all state use of force, and it is not being adjusted in some tailored way to deal with terrorism alone.

#### And this is the killer line – it says unless there is a qualification and clarification of how the targeted killing program is executed – legal constraints will continue to be relaxed – the CP does just that – it might even solve better than the aff -

But no clear criteria or qualifications are in fact tied to the modifications that are being advanced by the targeted killing policy. Relaxing the current legal constraints on the use of force and introducing new but poorly defined standards, will open up opportunities for states to use force against other states for reasons that have nothing to do with anti-terrorist objectives.

#### Even if the reading of their evidence is not sufficient, here is specific evidence that clarification of the principles of the TK program solves conflation of LOAC principles

Ophir **Falk**, PhD. candidate at the University of Haifa, a Research Fellow at the International Institute of Counter-terrorism at Herzliya and a licensed lawyer, **14** “Permissibility of Targeted Killing,” Studies in Conflict & Terrorism (2014), <http://www.tandfonline.com/doi/pdf/10.1080/1057610X.2014.879380>)

3.1. International Law In the sphere of international law, the legal advisors and judicial systems in the US and Israel determined that, the Laws of Armed Conflict, rather than law enforcement paradigms, are the most applicable legal framework to evaluating targeted killing.46 In an attempt to simplify the complexity of this legal setting, Michael Gross said that the Law of Armed Conflict’s objective, in a nutshell, is to limit harm to non-combatants and combatants47, whereby: “Non-combatants may not suffer unnecessary direct or excessive harm; and Combatants may not suffer superfluous injury or unnecessary suffering”.48 These two short statements encompass the principles of military necessity, discrimination, unnecessary suffering and proportionality as they pertain to the Law of Armed Conflict. These principles have been depicted as the four core criteria in the Law of Armed Conflict49, and while other terms may be used interchangeably to refer to the same principles, their observation remains the duty of all those taking part in armed conflict.50 This section discusses the Laws of Armed Conflict criteria, their relevance to targeted killing, and the manner in which the United States and Israel interpret them in practice. a.) Military Necessity: To many military professionals, ‘Military Necessity’ describes needs that are operational in nature51, while it also constitutes a core principle in the Laws of Armed Conflict.52 The principle proscribes that measures not forbidden by international law and that are indispensable for securing the complete submission of the enemy as quickly as possible, can be viewed as being of military necessity.53 Well before the Geneva Conventions were drafted, the essence of this principle was phrased by Napoleon Bonaparte, who presumably said “My great maxim has always been, in politics and war alike, that every injury done to the enemy, even though permitted by the rules, is excusable only so far as it is absolutely necessary.”54 Military necessity is referred to in Article 23 (g) of the 1907 Hague Regulations55 but is not explicitly codified in the Geneva conventions.56 In what some consider his “greatest contribution to the modern law of war”57, Francis Lieber defined military necessity in Articles 14 of his 1863 Lieber Code.58 It should be noted that the concept of military necessity is intertwined with other legal principals - namely, the principles of unnecessary suffering and proportionality.59 In the Israeli arena, the Israeli High Court of Justice (HCJ) in a 2006 landmark ruling called for targeted killings carried out by Israel in the “territories” to be subject to the Law of Armed Conflict. By doing so, the court accepted the principles of the Law of Armed Conflict whilst adding its own interpretation.60 It should be noted that, in its ruling, the HCJ - which hitherto is the only Supreme national court in the world to tackle the thorny issue of targeted killing - may have set a model for permissibility of this tactic.61 In fact, the HCJ, under Justice Barak’s “liberalized” doctrine of standing and “expanded view of justiciability”, agreed to hear a case which may very well not have been allowed in similar circumstances in the United States.62 Although Barak’s approach here has been criticized as "judicial activism"63 , with the lack of case law on the issue outside of Israel, the HCJ decision is the most authoritative judgment made on this issue hitherto. It guides the IDF operational credo on the matter and has become a widely accepted international reference, perhaps setting an international standard.64 As such, and along the lines of the criteria set forth under the Law of Armed Conflict principles, the IDF, in its routine practice, considers six conditions prior to carrying out targeted killing operations - a) arrest is not reasonably possible; b) targets are combatants; c) senior cabinet members approve the attack; d) civilian casualties are minimized; e) operations are limited to areas not under Israel’s physical control; and that f) targets are identified as a future threat. The HCJ proscribed that if less drastic measures, such as arrests, could be applied to stop the potential target from posing a security threat, the State must use them unless that alternative poses too great a risk to the lives of the soldiers.65 U.S. policy makers have emphasized on numerous occasions that targeted killing operations can be lawful only if they comply with the four fundamental principles of international law governing the use of force, and on a number of occasions have provided interpretations of these principles for practical implementation.66 In determining the military necessity of a given operation, US policy makers have indicated that military commanders are required to assess if a target poses either an “imminent” or “significant” threat, whether the individual’s activities “rise to a certain threshold for action, and whether taking action will, in fact, enhance our security,” as described by John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism.67 The principle of ‘last alternative’ is a legal and ethical norm that has been extensively debated and adopted by a number of ethicists over the last decade.68 This issue is further discussed under the Unnecessary Suffering section below. In light of the damage inflicted by suicide bombings and insurgency warfare to Israel and the U.S. between 2000 and 2010, the military necessity of preventing such attacks seems self-evident. Therefore, in such cases where alternative, non-lethal means were not feasible, the targeted killing campaigns were determined to be of military necessity by both Israel and the United States so as to mitigate the pertinent threats, unless the solution to a specific case proved otherwise. 69 b) Distinction (often termed ‘Discrimination’): The principle of distinction between combatants and civilians is one of the most fundamental tenets of international humanitarian law and is a core principle of the Law of Armed Conflict.70 It requires attacks be limited to military objects rather than civilians or civilian objects.71 This principle can be traced back to the 1868 St. Petersburg Declaration.72 Other legal sources include Article XXII of the Lieber Code, the first Geneva Convention in 1864 and the 1949 Geneva Convention. This principle is also echoed by the 1998 Statute of the International Criminal Court, The International Committee of the Red Cross and others.73 Ultimately, the principle of distinction details who should and who should not be targeted under the Laws of Armed Conflict. According to the Hague Regulations, in times of war, combatants are legitimate targets, whereby "the laws, rights, and duties of war apply not only to armies but also to militia and volunteer corps fulfilling the following conditions: a. To be commanded by a person responsible for his subordinates; b. To have a fixed distinctive emblem recognizable at a distance; c. To carry arms openly; and d. To conduct their operations in accordance with the laws and customs of war.” 74 While the criterion is simple and straightforward, its interpretation in actual situations is difficult and its applicability to asymmetric wars may be unclear. Indeed, the introduction of non-traditional actors in armed conflicts makes the issue of distinction more complicated. Ultimately, the principle of distinction details who should and who should not be targeted under the laws of armed conflict. In the Israeli arena, the lion’s share of the HCJ judgment addressed that specific issue. Justice Barak discussed the terms “combatants,” “civilians” and “unlawful combatants” and how they applied to targeted killing. In the process, the Court outlined the fundamental point that combatants and civilians must be distinguished during the conduct of hostilities, as only the former are lawful targets.75 Furthermore, it stated that the terrorist does not have to be physically engaged in an attack in order to be a legitimate target.76 However, the court also emphasized that as a precondition to targeted killing, the State must have strong evidence that the potential target meets the conditions for having lost his/her protected status. 77 Justice Barak stated that the terrorists and the organizations that send them to carry out attacks are unlawful combatants.78 Nevertheless, contrary to the State’s suggestion, he chose not to introduce a new legal category of ‘unlawful combatant’.79 Barak found it difficult to see how a third category (along with civilian and combatant) could be recognized in the framework of the Hague and Geneva Conventions. 80 Therefore, he categorized the targets in question as civilians who constitute unlawful combatants. The basic principle set by Barak was that civilians taking ‘direct part’ in hostilities do not enjoy the protection that civilians are otherwise entitled to.81 Notwithstanding his rejection of the legal category of ‘unlawful combatants’, the use of the term in the context of the judgment creates confusion.82 The HCJ’s interpretation has not been beyond criticism. For example, Ben-Naftali and Michaeli criticize the judgment’s ambiguity.83 They both acknowledge that the HCJ judgment is the first comprehensive judicial attempt to clarify the legal status of, and the rules applicable to, civilians who take direct part in hostilities and as such plays a valuable role in the development of contemporary Law of Armed Conflict. Nevertheless, their criticism focuses on the issue of lack of definition for unlawful combatants. They argue that “by simultaneously giving a narrow interpretation to combatants entitled to privileges and a broad interpretation to the category of civilians who lose immunity, the court has, in effect, created a broad category of ‘unlawful combatants’ who are not entitled to the privileges of combatants, nor to the immunities of civilians.”84 The Israeli HCJ determined that a civilian is considered to be taking a direct part in hostilities when he/she a) uses weapons in an armed conflict, b) while gathering intelligence, or c) while preparing oneself for hostilities. There is no prerequisite that the civilian use his/her weapon, nor that he/she bear arms (openly or concealed).85 As for the issue of direct participation, there is no legally accepted definition of this term and therefore the issue needs to be examined on a case-by-case basis, as prescribed by the HCJ. At the time of the above decision the ‘direct involvement scale’ formulated by Asa Kasher and Amos Yadlin was adopted by the IDF.86 Cassese suggested that 'direct participation' should be construed narrowly.87 Specifically, Cassese argued that only those individuals who actually engaged in armed action, such as planting a bomb or firing a missile, or in the process of deployment while openly carrying arms, are directly participating in combat.88 Arguably, Cassese’s narrow construction of 'direct participation' does not adequately address the actual threats to citizens of victim states nowadays89 . The HCJ adopted a much broader approach than that of Additional Protocol I Article 51(3) and examined the whole chain of command involved in an attack, suggesting general guidelines.90 The table below collates what the court constitutes as taking direct or indirect part in hostilities91: Error! Bookmark not defined. The court concluded that the "direct” nature of the part taken should not be narrowed merely to the person committing the physical act of attack. Those who had sent him take "a direct part" as well. The same goes for the person who decided upon the act and the person who planned it. “Their contribution is direct (and active)”.92 This analysis of international law jurisprudence is the first of its kind,93 being the first in-depth analysis of the notion of direct participation in hostilities in International Humanitarian Law.94 While there is an abundance of theoretical cases in which “direct participation” may be debated (e.g., Solis), it should be noted that the U.S. Navy Commander’s Handbook on the Law of Naval Operations, which is the most recent American military operational manual, considers that civilians serving as lookouts or guards, or intelligence agents for military forces, may also be regarded as directly participating in hostilities.95 In general, U.S. policymakers have selected targets on both status and conduct-based determinations – whether the target is considered an operational participant in a terrorist group or as an al-Qaeda operative, or based on whether its conduct poses an imminent threat of future attacks. Targeted killings are not to be launched out of vengeance for past crimes but in order to “mitigate an actual ongoing, significant threat,” like one posed by: “(A)n individual who is an operational leader of al-Qa’ida or one of its associated forces. Or perhaps the individual is himself an operative—in the midst of actually training for or planning to carry out attacks against U.S. interests. Or perhaps the individual possesses unique operational skills that are being leveraged in a planned attack.” Bush’s list of pre-approved, legitimate targets seems to have included al Qaeda leaders responsible for propaganda, recruitment, religious affairs and planning attacks.96 President Bush’s list of legitimate targets that includes leaders responsible for religious affairs seems to be longer than the one Chief Justice Barak subscribed. It is not clear whether these targets, deemed legitimate by Bush, would qualify under the “unlawful combatant” title by Barak. This perhaps is the main difference between the American and Israeli targeted killings policies – the American list is considered much broader when it comes to defining who is considered to be taking an active part in hostilities and thus can be targeted for attack. One possible reason for such discrepancy in interpretation is due to the difference in definition of setting. While the US considers the theater in which they are in conflict with al- Qaeda and their ilk as a War setting, whereby any member of the said organization can, ostensibly, be targeted. The IDF suggested, at the time that targeted killing was under legal scrutiny, that the setting of the conflict between Israel and the different Palestinian organization be referred to as a “state of armed conflict short of war”97 - a state that on the one hand is more than a police action that necessitates a law enforcement paradigm, and less than a ‘total war’ that would not have been acceptable on the international community. Guidelines concerning targeted killing, as it may be applied to an American citizen who may be considered an ‘unlawful combatant’ and therefore a legitimate target if it were not feasible to take him alive, were provided to President Obama in a legal memo drafted by White House legal counsel.98 In essence, the memorandum’s legal analysis concluded that Anwar al-Awlaki, a militant cleric who was an American citizen residing in Yemen, could be legally killed if it was not feasible to capture him. The document provided two reasons: a) intelligence agencies said he was taking part in the war between the United States and Al Qaeda and posed a significant threat to Americans; and b) Yemeni authorities were unable or unwilling to stop him.99 Al-awlaki was killed by a US drone strike in Yemen in September 2011. White house officials claimed that al- Awlaki was a legitimate military target because he was part of the enemy force and posed an imminent threat because of his operational role in al-Qaeda. Al-Awlaki was placed on a capture-or-kill list in early 2010, after intelligence officials determined that he had a “direct role” in an earlier plot to blow up a civilian aircraft over Detroit, known as the underwear bomber.100 It should be noted that President Obama subsequently clarified that targeted killings should not be permissible on American soil.101 The International Committee of the Red Cross (ICRC) also views the list of legitimate type of targets to be potentially longer where the distinction is between combatants and civilians, and not necessarily the level of participation of one combatant in comparison to the participation of another. Anton Camen, the head of the ICRC legal department for Israel and the Occupied Territories, says that it might seem ironic to some, but the ICRC has a less demanding distinction criteria than what is detailed by Israel’s HCJ in terms of actual participation at the time, being a key criteria.102 Pnina Sharvit Baruch, the former Head of the International Law Department at IDF Military Advocate General’s Office and current Law Professor, is of the opinion that notwithstanding the HCJ ruling, according to International Law the distinction should be made between combatants and non-combatants whereby a person’s level of participation is less relevant.103 If one belongs to a militant group he should be considered a combatant and if not, he should be considered a civilian. Avihai Mandelblit, the former IDF Military Advocate General, however, clarified that although he might not personally agree with everything the High Court of Justice decides, as the Military Advocate General of the IDF he was completely bound by its rulings and guidelines.104 As for the question concerning the timeframe of “for such time” as it is referred to in Article 51 (3) of the First Protocol, here too the guidelines need to be reviewed on a case-by-case relevant to targeted killing where combatants are specifically targeted. The focus of this article concerns the legal compliance of targeted killing and therefore the legal interpretations of this principle are highlighted. c.) Unnecessary Suffering (often termed Humanity) The Law of Armed Conflict dictates that unnecessary suffering should be avoided. 110 The principle is codified in Additional Protocol I, Article 35.2 which reads: “It is prohibited to employ weapons, projectiles and material or methods of warfare of a nature to cause superfluous injury or unnecessary suffering.”111 From a moral perspective, in addition to preventing the use of certain types of weapons in targeted killing operations, this principle also relates to the preemptive and preventative nature of targeted killing operations. It could be considered that killing a target is a case of unnecessary suffering and superfluous injury if other less harmful means of attaining the same goal were available, such as detaining and arresting the target alive. From a moral perspective, most would agree that taking a life should be a tactic of last resort, and only be used in cases in which the operation is conducted in order to thwart an anticipated attack that would cause significant loss of life. Targeted killings should therefore only be conducted when arrest is not an option – when there are no practical alternate means to this measure – and when the operation is preemptive in nature. In David Rodin’s words, preemptive is “anticipating an aggressor who is literally poised to attack”. 112 Preemptive war and preemptive attacks arguably fall within the U.N. charter and are thus permissible under international law as a form of self-defense. However, many scholars argue that “preventive” wars, in which attacks are initiated against “emerging threats before they are fully formed”, do not have clear grounds in international law and are seen by Rodin as rather radical.113 Such preventative attacks – in which a clearly imminent threat and thus urgent military necessity does not exist – may be considered to be a case of unnecessary suffering. It is thus necessary to address the question of whether a targeted killing operation is considered to be a preemptive attack – in which an imminent threat exists – or rather a preventative attack - in which the threat is far off in the future. 114 The latter is construed by some to be extrajudicial killing,115 and therefore illegal. However, others consider both to be within moral justification. In practice, Mandelblit attests that according to IDF policy and in fact, all targeted individuals were believed to be imminent threats prior to being targeted.116 According to Liam Collins, the U.S. considers al Qaeda operatives as legitimate targets for killing, whether the threat they pose is imminent or merely ongoing.117 Pnina Sharvit Baruch, former Head of the International Law Department at IDF Military Advocate General’s Office and current Law Professor, is of the opinion that notwithstanding the HCJ ruling, according to International Law, combatants can be targeted if they are ongoing threats, but that in practice the IDF targeted terrorists that are imminent threats.118 Drawing that fine line between preemptive and preventive targeted killing requires intelligence and a clear understanding of the actual intentions of the targeted perpetrators. In the context of this study, therefore, the test of determining whether unnecessary suffering occurred would be whether there was a reasonable alternative or reasonably foreseeable alternative that would cause less suffering but that would still thwart the anticipated suicide attack or lethal insurgency. Surely, in the event a non-lethal weapon would be developed which could effectively impede or stop the terrorist, such a weapon should serve as the alternative, but it has yet to present itself. Aside from the moral reasoning of preferring arrest to killing, there are also operational justifications for favoring arrest. The arrest of an operative and his/her interrogation may lead to more arrests, which in turn may lead to more exposures, arrests, prevention or preemption of attacks. Targeted killing prevents a specific attack but it can also cut the chain of prevention by creating intelligence void. Therefore, according to former head of the Israel Security Agency (ISA) Avi Dichter, “targeted killing is a preventative measure for the poor.” Hence, any time it is possible, the IDF prefers to arrest suspects rather than conduct targeted killings. Or, in the words of Dichter, we would rather “snatch him than scratch him.”119 In fact, the arrest of suspected terrorists is the beginning and core of every thwarting activity. “The chain of prevention,” as former head of the IDF’s Operations Branch and deputy chief of staff, Dan Harel coins it, is composed of “the arrest of terrorists, their interrogation, using the findings to arrest the rest of the members of the plot, trial and incarceration.”120 Many ISA interrogations produce intelligence that leads to the capture of terrorist squads and the thwarting of potential attacks. According to ISA’s data, approximately 5,000 Palestinians were arrested in the West Bank in 2006, 279 of which were categorized as potential suicide bombers (men or women on their way to commit a suicide attack or that had agreed to commit one). This high figure (compared with 154 in 2005) may be related to the lower number of suicide bombings in that year (5 compared with 7 and 15 in 2005 and 2004, respectively).121 From both a moral and operational perspective, targeted killing is viewed by many, and most importantly by the HCJ, as an option of last resort. The HCJ determined that one of the criteria of targeted killing permissibility is that there be no practical alternate means to this measure. Using an analogy of a police officer at a bank robbery, Kasher says that: “If a robber is holding a toy gun, he shouldn’t be shot. He should be arrested. But if it’s a real gun, and the robber has already killed hostages and he’s about to kill more, and the only way to stop him and save the hostages is to shoot him, the policeman should shoot him. It’s not a case of: he’ll shoot so I’ll shoot, or he’ll do terrible things so I’ll also do terrible things, or he doesn’t care about killing hostages so I won’t care about killing robbers. That’s absolutely not the point at all. He doesn’t care about killing hostages, but I do care: I don’t want to kill him unless there’s truly no alternative. This robber is threatening people’s lives, so we will shoot him if there is no other alternative. If we arrest him without firing on him at all, excellent. If we can arrest him by injuring him and without killing him, excellent. If there’s no alternative, it’s a tragedy to shoot him but that’s what has to be done.”122 This relates again to the categorization of imminent threats which require immediate action, and threats which are ongoing or more long-term in nature. For US military commanders, the difference between whether a target poses either an “imminent” versus “ongoing” threat is less significant than the severity of the threat the target poses, but the notion of it being an option of last resort is still clear. Brennan, Assistant to the President for Homeland Security and Counterterrorism,123 stated in a speech: “The purpose of a strike against a particular individual is to stop him before he can carry out his attack and kill innocents. The purpose is to disrupt his plots and plans before they come to fruition.” Brennan furthermore suggested that legality of a targeted killing operation could be based on a broadened understanding of the concept of “imminence,” but noted that the Administration’s “unqualified preference” is to capture when feasible.124 Attorney General Eric Holder in 2012 discussed the question of how to define a threat considered “imminent”, noting that due to the nature of the conflict and modus operandi of the target group, military commanders would not be required to define imminence only as being at a late end-stage of planning, when the precise details of an anticipated attack were clear: “such a requirement would create an unacceptably high risk that our efforts would fail, and that Americans would be killed.” Therefore, he defines that prevention of “future disastrous attacks against the U.S.” would necessitate action. d.) Proportionality Along with the principle of distinction, proportionality is the key standard in the legal and moral compliance of targeted killing.125 Proportional use of force is the obligation to refrain from excessive civilian harm in the course of armed conflict. According to Additional Protocol I, 51(5)(b): “Disproportionate attack: an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” Defining what attacks can be considered disproportionate is quite ambiguous, with factors such as expected collateral damage and expected military advantage that are difficult, or perhaps impossible, to quantify. Michael Gross raises the question of whether the 'proportionality concept' is different in asymmetric conflicts compared with symmetric conflicts.126 Furthermore, aside from the question of what collateral damage resulting from an attack can be considered proportional and what is beyond the proportional threshold, there are other very complex issues such as the use of ‘human shields’ that might shift the responsibility for the collateral damage from one side to another under certain circumstances. Although this may not be directly related to targeted killing, it is very much relevant to proportional use of force. Despite setting a legal framework, the principle of proportionality - perhaps the most testing of the four principles outlined in this paper - remains ambiguous and its case-by-case interpretation continues to be controversial. The principle of proportionality is a pillar of customary international and humanitarian law.127 There seems, however, to be a lack of a common standard that is binding to all nation states.128 Can it be defined? Can common standards be set to this principle? Can it be quantified? Can killing a given number of civilians by one state in an attempt to achieve a legitimate military goal comply with the principle of proportionality, whereas a similar strike by another state is considered disproportional? There are numerous other sources that proscribe to proportionality in attack, including specific articles of international treaties,129 other instruments of legal guidance130 and military manuals of at least 30 different countries. For example, Canada’s military manual states that if a targeted killing attack does not meet the proportionality principle, it must be cancelled or suspended. 131 There are many more sources that address the issue of proportionality of an attack, as outlined by the International Committee of the Red Cross.132 The main problem with these sources is that their ambiguity leaves vast room for interpretation. An important question is whether proportionality can be quantified, and if so, under what criteria? Several scholars have attempted to build tools for the analysis and measurement of proportionality of a given military operation, suggesting both mathematical and qualitative models. 133 In one attempt to quantify the analysis, Thomas Hurka says: "If the nation is trying to prevent terrorist attacks like those of September 11, 2001, then tragic though the result may be, and assuming the nation makes serious efforts to minimize collateral harm, it may kill somewhat more enemy civilians if that is unavoidable in saving a smaller number of its own."134 At the end of the day, the question of human life is the one of highest importance. How many Israeli lives saved are proportional to the number of Palestinian civilian lives taken? Alternatively, how many American lives saved are proportional to the number of Pakistani civilian lives taken? Some said the ratio should be 1:1, others said 30:1. Others still argued it is impossible and unethical to give a specific number and one said the ratio should be set at the rate the sides set in their negotiations over the release of an Israeli soldier held hostage - i.e., 1027:1.135 Notwithstanding their importance, attempts to quantify the proportionality equation are highly contested. Indeed, as stated by Michael Gross, algorithms for proportionality quantification will inevitably be controversial and contested and will unlikely reach international consensus.136 When asked about targeted killing proportionality, Pnina Sharvit Baruch said “it cannot and should not be formulated”. She also emphasized that based on the actual targeted killings carried out, it is clear that the Israeli proportionality threshold ratio is much lower than the American one.137 Indeed, critics of the US practice of drone strikes - which have been the principle tool of the U.S. military in launching targeted killing - have argued that such attacks have resulted in a disproportionate number of civilian deaths, and that by October 2009, “the ratio was about 20 leaders killed for 750-1000 unintended victims, raising serious questions about compliance with the principle of proportionality.”138 According to the Israeli High Court of Justice, in the case of targeted killing, proportionality is determined according to a values-based test intended to balance the military advantage [to the army that perpetrates the targeted killing] and the [collateral] civilian damage [caused by the killing].139 The HCJ proscribed that the State must assess in advance whether the collateral damage to innocent civilians involved in a targeted killing is expected to be greater than the advantage gained by the operation. If it is, the state must not carry out the operation. The damage must withstand the proportionality test.140 Notably, the HCJ had previously addressed the need to find the said balance of proportionality in a long list of cases relating to counterterrorism measures (other than targeted killing),141 while applying a “values based test, intended to balance between the military advantage and the civilian damage.”142 These counterterrorism methods include expulsion, physical pressure in interrogation, the erection of a security fence, house demolition, neighbor procedure, as well as targeted killing. In each of its judgments the principle of proportionality was considered using different parameters. Notwithstanding, a 'proportionality equation' was never formulated. In an effort to clarify matters and demonstrate the principle of proportionality of attack, the HCJ made reference to a certain scenario. In it, the target is described as shooting at soldiers or civilians from the porch of his home. The HCJ concluded that: “Shooting at him is proportionate even if as a result an innocent civilian neighbor or passerby is harmed. That is not the case if the building is bombed from the air and scores of its residents and passersby are harmed.”143 If, in fact, shooting at the target is feasible, then the principle of proportionality is clear in this specific case. However, as the HCJ stated, “The hard cases are those which are in the space between the extreme examples.”144 By changing the pretext of the scenario to include huge amounts of weapons stored in the building or a number of important leaders hiding in one of the apartments, the proportionality of an air raid becomes more acceptable. In practice, the principle of proportionality of punishment was examined in a notable case that addressed the question of expulsion.145 In this decision, the HCJ unanimously approved (by nine Justices) the expulsions of Intissar and Kipah Ajouri, sister and brother of Ali Ajouri, convicted of ordering several suicide bombings. That is, the HCJ approved the expulsion of relatives of the terror suspect. The Court was convinced that Amtassar and Kipah were directly involved to a certain degree in the terrorist act and that they presented a clear danger that could be averted if they were removed from their place of residence. In this case, the HCJ attempted to address the issue of proportionality, attained a "balance" which was specific to this particular case, but could not, or did not, formulate a set standard. Other notable cases in which the HCJ used the principle of proportionality include the case of physical pressure during interrogations (HCJ 5100/94), the issue of positioning the security fence (HCJ 2056/04), and the matter of using civilians as means of early warnings of a terrorist attack (HCJ 3799/02). In all these cases, the principle of proportionality was applied in the HCJ judgment. While the conditions and specific considerations differ, the same principle also applied to targeted killing. In 2002, Amos Yadlin, Israel’s Chief of Military Intelligence, along with Prof. Asa Kasher, a distinguished ethics professor, asked a mathematician to suggest a formula to help determine the acceptable civilian casualties per targeted terrorist. The effort was unsuccessful.146 In a different context that does not involve an attack but rather a sort of resolution, the Hamas, Egypt and Israel set a certain standard for proportionality in 2011. The freedom of one Israeli hostage was agreed by the sides to be proportional to the release of 1027 Palestinian prisoners. Can a proportional response to Palestinian terror be formulated in a similar manner? At the end of 2008, after years of Palestinian rocket fire, the IDF launched Operation Cast Lead. The fighting resulted in more than 1,000 Palestinian casualties compared to fewer than 10 on the Israeli side. At the onset of this paper a notional scenario was described in which there is concrete intelligence that a team of terrorists is planning to carry out a suicide attack in a nation’s capital. Similar scenarios were discussed in the past by IDF legal advisors and other high-ranking officials in different forums in an effort to enhance the thought process on the issue. Asa Kasher, who at the time took part in formulating these simulation exercises, subsequently depicted them as “being silly” because they do not truly provide parameters for proportionality. 147 Instead, targeted killings must be looked at on a case-by-case basis. In essence, when trying to evaluate the principle of proportionality, one must consider the anticipated military benefits on the one hand and the expected loss to civilians on the other hand. Criteria and weight of criteria need to be set for each factor, and if the assessed military benefits outweigh the assessed loss to civilians, then the attack is theoretically proportional.

#### b). Congressional oversight is effective – just not publicly discussed – the CP solves international legitimacy by disclosing the criteria

Gregory **McNeal 13**, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Congressional oversight of executive branch activities is believed to be a core constitutional duty.443 Arthur Schlesinger wrote that this duty, while not written into the Constitution, existed because “the power to make laws implied the power to see whether they were faithfully executed.”444 Founding-era actions support this view, with Congress conducting in 1792 its first oversight investigation into America’s military campaign against Indians on the frontier.445 In 1885, future president Woodrow Wilson (at the time an academic) wrote in Congressional Government that Congressional oversight was just as important as lawmaking.446 Oversight is a form of accountability, but what exactly is oversight? Moreover, how can we know what “good” oversight is? Amy Zegart argues that defining good oversight is difficult for three reasons.447 First, “‘good’ oversight is embedded in politics and intertwined with policy advocacy on behalf of constituents and groups and their interests.”448 Second, “many agencies are designed with contradictory missions that naturally pull them in different directions as the power of contending interest groups waxes and wanes.”449 Third, “good oversight is hard to recognize because many important oversight activities are simply invisible or impossible to gauge.”450 In a particularly salient example, Zegart notes: Telephone calls, e-mails and other informal staff oversight activities happen all the time, but cannot be counted in data sets or measured in other systematic ways. Even more important, the very possibility that an agency’s action might trigger a future congressional hearing (what some intelligence officials refer to as ‘the threat of the green felt table’) or some other sort of congressional response can dissuade the executive branch officials from undertaking the proposed action in the first place. This kind of anticipatory oversight can be potent. But from the outside, it looks like no oversight at all.451 If oversight of targeted killings is a form of political accountability, it may be one that is difficult to see from the outside. This fact is borne out by Senator Diane Feinstein’s release of details regarding congressional oversight of the targeted killing program. Those details were largely unknown and impossible to gauge until political pressure prompted her to issue a statement. In that statement she noted: The committee has devoted significant time and attention to targeted killings by drones. The committee receives notifications with key details of each strike shortly after it occurs, and the committee holds regular briefings and hearings on these operations—reviewing the strikes, examining their effectiveness as a counterterrorism tool, verifying the care taken to avoid deaths to non-combatants and understanding the intelligence collection and analysis that underpins these operations. In addition, the committee staff has held 35 monthly, in-depth oversight meetings with government officials to review strike records (including video footage) and question every aspect of the program.452

### a/t: cherrypick

#### Transparency solves allied perception and blowback while maintaining the CT benefits of targeted killings

Michael Aaronson 13, Professorial Research Fellow and Executive Director of cii – the Centre for International Intervention – at the University of Surrey, and Adrian Johnson, Director of Publications at RUSI, the book reviews editor for the RUSI Journal, and chair of the RUSI Editorial Board, “Conclusion,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf

The Obama administration faces some tough dilemmas, and analysts should be careful not to downplay the security challenges it faces. It must balance the principles of justice and accountability with a very real terrorist threat; and reconcile the need to demonstrate a credibly tough security policy with the ending of a long occupation of Afghanistan while Al-Qa’ida still remains active in the region. Nevertheless, more transparency would provide demonstrable oversight and accountability without sacrificing the necessary operational secrecy of counter-terrorism. It might also help assuage the concern of allies and their publics who worry about what use the intelligence they provide might be put to. A wise long-term vision can balance the short-term demands to disrupt and disable terrorist groups with a longer-term focus to resolve the grievances that give rise to radicalism, and also preclude inadvertently developing norms of drone use that sit uneasily with the civilised conduct of war. Drones are but one kinetic element of a solution to terrorism that is, ultimately, political.

## 2nc preventative doctrine

### 2nc norms fail

#### Past the tipping point – norms will fail

**Brooks 13.** “Duck-Rabbits and Drones: Legal Indeterminacy in the War on Terror” Rosa Brooks. 9/28/13.<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2297&context=facpub&seiredir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D10%26q%3Ddrone%2Bnorms%2Bchina%26hl%3Den%26as_sdt%3D0%2C18%26as_ylo%3D2013#search=%22drone%20norms%20china%22>

**Soon**, warned Qiao and Wang, **warfare will “transcend all boundaries and limits**…. [T]he battlefield will be everywhere....[and] all the boundaries lying between the two worlds of war and non-war, of military and non-military, will be totally destroyed.” **In consequence**, “visible national boundaries, invisible internet space, international law, national law, **behavioral norms,** and ethical principles **[will] have absolutely no restraining effects**.” Outside of some narrow military and intelligence circles, Unrestricted Warfare attracted very little attention at the time of its publication. Today, it looks remarkably prophetic.

### 2nc no impact to china war

#### U.S.-China war won’t happen – multiple warrants

**Hampson 12** (Fen Osler Hampson joined CIGI as distinguished fellow and director of the global security program in July 2012, and oversees the research direction of the program, “Could the United States and China go to war?” NOVEMBER 19, 2012, <http://www.cigionline.org/articles/2012/11/could-united-states-and-china-go-war>) GANGEEZY

The first is that China and the U.S. are two of the most highly economically interdependent economies in the world. China is heavily invested in the U.S. economy and U.S. Treasury Bills. The U.S., in turn, is heavily invested in China. Any kind of major disruption in relations or escalation of tensions would cost both countries dearly. Unlike the U.S. and Russia during the Cold War, or even the relationship between Germany and Britain prior to the First World War, China and the United States are joined at the hip by mutual trade and investment. They may be strategic rivals, but any kind of surgical separation would almost certainly kill off both of these Siamese twins. Second, China is militarily in no position to challenge the U.S. Its military power and projection capabilities pale in comparison to that of the U.S., notwithstanding recent increases in Chinese defense spending and China’s acquisition of a blue-water navy. Nor is it at all clear that China wants to go head-to-head with the U.S. by challenging its global military supremacy. Third, most countries of the Asia Pacific, including ASEAN, won’t join the States in a U.S.-led anti-China coalition. Incidentally, this is one of the reasons why some countries are ambivalent about the security thrust of the TPP and go out of their way to pitch it as a trade deal. Fourth, Americans have no stomach for opening up another military front. Beset by vast domestic challenges and still recovering from their bloody and inconclusive experiences in Iraq and Afghanistan, Americans in general will be disinclined to look for fresh conflicts. The Chinese have their own domestic worries to distract them; if hostilities open, expect to see them limited to trade disputes, or to bloodless (and publicly deniable) strikes in cyberspace. The fifth is recent history. The record of Sino-American relations since the Kissinger-Nixon opening in the early 1970s has largely been one of cooperation. China and America cooperated on the withdrawal of Vietnamese troops from Cambodia in the Paris Peace Accords of 1992. America was a strong supporter of China’s entry into the World Trade Organization. American companies have invested hugely in China and now Chinese companies are trying to do the same in the U.S. (and Canada). Although China and the U.S. have their differences on how to deal with the consequences of the Arab Spring, especially in Syria, they have shared interests in promoting stability in the Middle East and securing safe passage for the 20 per cent of the world’s oil supplies that pass through the straits of the Persian Gulf, much of it to China. The U.S. and China simply have too much at stake to replay the war between Athens and Sparta. The rest of us also must ensure that history does not repeat itself. Canada, Australia, the U.S. and others, for example, might begin by adopting a common, not competitive, approach to investments by Chinese SOEs in their respective resource bases and to the shared threat from cyberspace, thereby making the “Asian pivot” more than a trendy pirouette.

**No risk Zero risk of war – cites experts**

**Citing Dibb, 13**

[Nicholson, Staffer at the Australian, Citing Paul Dibb, Prof Emeritus at the Australian National University’s Strategic and Defense Studies Centre. “Talk of US-China war 'is a dangerous miscalculation'” The Australian, 4/23/13 <http://www.theaustralian.com.au/national-affairs/defence/talk-of-us-china-war-is-a-dangerous-miscalculation/story-e6frg8yo-1226626378665> //GBS-JV]

The emeritus professor at the Australian National University's Strategic and Defence Studies Centre says a major war between China and the US is unlikely, though a minor conflict that could be contained is possible if territorial disputes escalated. "Is China going to be the dominant military power in our region any time in the foreseeable future?" he will ask. "The answer to that is no."¶ And should the US therefore make strategic space to allow China to have a sphere of influence in Southeast Asia?¶ "The answer to that is also no," he will say.¶ Professor Dibb will say analysts need to understand China's weaknesses before beating the drum about its military power. It has been noted that China is a fragile superpower highly dependent on trade, and "If you go to war, any guarantees of international trade continuing vanish overnight," he will say. "While China is developing its military, it is not the former Soviet Union and it is not exporting revolution///

n and it is most unlikely to invade other countries."¶ While there may be incidents at sea between Chinese and Japanese warships that could involve the Americans, Professor Dibb does not believe such incidents will trigger a full scale war.¶ The nations involved are aware that such a conflict is likely to turn nuclear and their economies are so interlinked that they simply cannot afford to let it happen.

## 2nc accountability

### 2nc aqap defense

#### Extend 1nc aqap attacks are too small – since it only conducts small attacks it won’t be able to gain from instability because it can’t generate sufficient support anyways.

#### --AQAP won’t gain influence from instability—experts agree

Dylan **Welch**, “CIA action may backfire in Yemen”, Sydney Morning Herald, 9-9-**11**, http://www.smh.com.au/world/cia-action-may-backfire-in-yemen-20110908-1jzso.html

Increasing instability in Yemen as a result of the Arab Spring is also worrying Western governments, who fear that AQAP could become, in effect, the next Taliban, and Yemen the next Afghanistan. Sarah Phillips, a lecturer at Sydney University's Centre for International Security Studies, is **a leading expert on AQAP and the political situation in Yemen**. She says the chaos the country is enduring is not necessarily the gift to AQAP some analysts and media commentators say it is. ''There is a strong tendency among intelligence analysts and Western media commentators to see the turmoil in the Yemeni periphery as providing a likely victory for AQAP, but **it is not as black and white as this.** There's many competing social forces and agendas and AQAP is one of these.'' As Dr Phillips points out, while AQAP has worked to craft a narrative that is appealing to a domestic Yemeni audience, it has sometimes appeared **less than astute** when trying to foist its brand of Salafist Islam on sections of Yemeni tribal society.

#### --Alt causes—Pakistan and state-sponsors

Dr Shanthie Mariet **D'Souza** is a Visiting Research Fellow at the Institute of South Asian Studies, National University of Singapore, “Al Qaeda after 9/11: More thriving than dead”, 9-9-**11**, <http://www.todayonline.com/Commentary/EDC110909-0001129/Al-Qaeda-after-9/11--More-thriving-than-dead>, CMR

Notwithstanding the public posturing, on closer examination of the trends identified by several other assessments by different American agencies and authorities, the organisation's capacity to survive and even thrive does not, however, appear to be enormously bleak.

Firstly, Al Qaeda's **core leadership** and **structure** is **intact in Pakistan**. The new chief, Ayman al-Zawahiri, is suspected to be hiding in Pakistan's mountainous tribal regions, mostly because of the safety the region provides. Even after Atiyah Abd al-Rahman's death, attempts to get these top leaders would prove difficult, especially with **a bickering US-Pakistan relationship in the backdrop**.

Even with the Sept 5 arrest of Younis al Mauritani, which appeared to have introduced some much needed sobriety into their bilateral relations, it is appears unlikely that a period of normalcy would return soon. This would provide the terrorist leadership a fair chance to **survive** and **resuscitate**.

Second, while the Al Qaeda in Iraq and Al Qaeda in the Islamic Maghreb might have weakened considerably, the terrorist group's Algerian-based North African affiliate, the Al Qaeda in Arabian Peninsula (AQAP), remains the organisation's most dangerous affiliate.

US Defence Secretary Robert Gates in March termed the AQAP "the most active and at this point perhaps the most aggressive branch of Al Qaeda". The 2010 State Department Country Report on Terrorism released in August highlighted the growing dangers from the AQAP and noted that the group's abilities to hatch terrorist plots outside of its stomping grounds. AQAP was behind the December 2009 failed attempt to blow up a Detroit-bound airliner and a 2010 plot to destroy several US-bound cargo planes.

Third, Al Qaeda continues to be supported by several anti-US regimes (Iran and North Korea in Bush administration's "axis of evil" being the prominent ones) and will, thus, **continue to survive the US military onslaughts**.

Iran has been accused by the US of aiding Al Qaeda. On July 28, documents filed by the US Treasury Department accused Iran of facilitating an Al Qaeda- run support network that transfers large amounts of cash from Middle East donors to Al Qaeda's top leadership in Pakistan's tribal region - debunking the myth that radical Shiites and Sunnis would never cooperate. The Treasury Department blacklisted six members of Al Qaeda working with Iran.

In earlier times, Washington had accused Tehran of supporting militias inside Afghanistan and Iraq that carry out attacks against the American forces.

### 2nc yemen alt cause

Yemen running out of water now-multiple warrants

**Boucek 2010**

[Dr. Christopher, Associate, Middle East Program Carnegie Endowment for International Peace Written Testimony U.S. House of Representatives Committee on Foreign Affairs February 3, 2010 YEMEN ON THE BRINK: IMPLICATIONS FOR U.S. POLICY, http://www.carnegieendowment.org/files/0203\_transcript\_boucek\_testimony.pdf]

While Yemen’s dwindling oil reserves are a major concern, ultimately more worrisome is the rapidly depleting water supply. Shortages are acute throughout the country, and Sanaa, whose population is growing at 7 percent a year as a result of increased urbanization, may become the first capital city in the world to run out of water. This crisis is the result of several factors, including rising domestic consumption, poor water management, corruption, absence of resource governance, and wasteful irrigation techniques. Until five years ago, there was no Water and Environment Ministry, and today legal oversight remains limited. According to a 2009 UN Food and Agriculture Organization report, Yemen is among the world’s most water-scarce nations, with one of the lowest rates of per capita fresh water availability. Because of an absence of any serious or enforceable legal oversight, water is being extracted from underground aquifers faster than it is being replaced.///

The water basin in Taiz, one of the largest cities, collapsed in 1998. Water extraction rates in Sanaa are now estimated at four times that of replenishment, and the basin there and in Amran are close to collapse, with the Saada basin estimated to follow shortly thereafter. According to one recent analysis, nineteen of the country’s 21 aquifers are not being replenished.i In some cases, nonrenewable fossil water is now being extracted. In recent years, the water table in Yemen has fallen about 2 meters, or 6.6 feet, per year, forcing wells to be dug deeper. This affects the quality of the water—the British think tank Chatham House noted in a sobering analysis that it is deteriorating because of increased concentration of minerals.ii The falling water table also often necessitates the use of oil drilling rigs. While a legal regime now exists to assure the fair and equitable usage of surface water, there is no such legal regime for groundwater. As a result, anyone who wants water (and can afford to do so) digs a well and draws out as much water as possible. Abdul Rahman al-Iryani, the minister of water and environment, has estimated that 99 percent of all water extraction is unlicensed.

Yemen is on the brink of a water crisis that causes internal conflict

**Bipartisan Policy Center 2011**

Project Co-Chairs: Ambassador Paula Dobriansky, former Undersecretary of State

Admiral (Ret.) Gregory Johnson, former Commander, U.S. Naval Forces, Europe

*Fragility and Extremism in Yemen*, Bipartisan Policy Center, January 2011 pg 46

***Water*** Yemen has always suffered from meager water resources, but the current situation is quickly going from bad to worse. Rainwater has never fallen in abundance, so Yemen has had to look underground for a significant portion of its water. However, the combination of desertification, population growth and qat cultivation has placed enormous strains on the country’s water supply. Qatrelated agriculture consumes twice the amount of water annually as Yemen’s citizens, and requires 50 percent more water per acre than wheat farming. Not surprisingly, around 30 percent of the country’s groundwater is used for qat-growing.142 Currently, 19 of the country’s 21 water basins and all of its alluvial aquifers are not being replenished; farmers, tribes and the government simply use fossil water instead. This is highly unsustainable, inefficient and costly. In addition, some of Yemen’s principal aquifers are in the conflict-torn Sa’dah governorate, and engineers in Sana’a now have to drill 3,000 feet to reach the last of the capital’s underground supplies.143 Many of the city’s residents receive piped water only once every nine days, and Sana’a could soon become the first capital city in world history to run out of water. On the whole, water availability is only 2 percent of the global average, and resources are expected to dry up by 2015. The U.N. Development Program considers 1000 cubic meters of annual water share per capita its “water poverty line,” but the average Yemeni’s share is only 100 cubic meters per year. One potential solution—desalination plants—is underway on a small scale in Aden and Ta’izz, but pumping this water to major population centers in Upper Yemen would consume large amounts of precious fuel.144 Shortages in southern cities such as Aden have sparked deadly riots, and tribal conflicts have been aggravated over competition for newly-drilled wells. Alternatives— such as drawing Sana’a’s water from remaining basins—would only inflame tensions with provinces and tribes from whose land such precious resources would be drawn. This situation is likely to aggravate Yemen’s myriad other problems—including poverty and tribal tensions—as water scarcity compels rural Yemenis to move to cities where they are unlikely to find work. In one Yemen analyst’s estimate, 80 percent of the country’s conflicts are already about water. The prevalence of these disputes is pushing Yemenis to rely on tribal conflict resolution mechanisms, since the regime is unable to deal with such a massive problem. This problem is likely to be compounded in the future, as water scarcity hits the lucrative qat-growing industry.145

# 1nr v. northwestern mp

### 2nc turns yemen stability

#### Aggressive targeted killing policy’s key to stability in Yemen

Alan W. **Dowd 13**, writes on national defense, foreign policy, and international security in multiple publications including Parameters, Policy Review, The Journal of Diplomacy and International Relations, World Politics Review, American Outlook, The Baltimore Sun, The Washington Times, The National Post, The Wall Street Journal Europe, The Jerusalem Post, and The Financial Times Deutschland, Winter-Spring 2013, “Drone Wars: Risks and Warnings,” Parameters, Vol. 42.4/43.1

At the beginning of President Hadi’s May offensive he, therefore, had a fractured army and a dysfunctional air force. Army leaders from competing factions were often disinclined to support one another in any way including facilitating the movement of needed supplies. Conversely, the air force labor strike had been a major setback to the efficiency of the organization, which was only beginning to operate as normal in May 2012. Even before the mutiny, the Yemen Air Force had only limited capabilities to conduct ongoing combat operations, and it did not have much experience providing close air support to advancing troops. Hadi attempted to make up for the deficiencies of his attacking force by obtaining aid from Saudi Arabia to hire a number of tribal militia fighters to support the regular military. These types of fighters have been effective in previous examples of Yemeni combat, but they could also melt away in the face of military setbacks.

Adding to his problems, President Hadi had only recently taken office after a long and painful set of international and domestic negotiations to end the 33-year rule of President Saleh. If the Yemeni military was allowed to be defeated in the confrontation with AQAP, that outcome could have led to the collapse of the Yemeni reform government and the emergence of anarchy throughout the country. Under these circumstances, Hadi needed every military edge that he could obtain, and drones would have been a valuable asset to aid his forces as they moved into combat. As planning for the campaign moved forward, it was clear that AQAP was not going to be driven from its southern strongholds easily. The fighting against AQAP forces was expected to be intense, and Yemeni officers indicated that they respected the fighting ability of their enemies.16

Shortly before the ground offensive, drones were widely reported in the US and international media as helping to enable the Yemeni government victory which eventually resulted from this campaign.17 Such support would have included providing intelligence to combatant forces and eliminating key leaders and groups of individuals prior to and then during the battles for southern towns and cities. In one particularly important incident, Fahd al Qusa, who may have been functioning as an AQAP field commander, was killed by a missile when he stepped out of his vehicle to consult with another AQAP leader in southern Shabwa province.18 It is also likely that drones were used against AQAP fighters preparing to ambush or attack government forces in the offensive.19 Consequently, drone warfare appears to have played a significant role in winning the campaign, which ended when the last AQAP-controlled towns were recaptured in June, revealing a shocking story of the abuse of the population while it was under occupation.20 Later, on October 11, 2012, US Secretary of Defense Leon Panetta noted that drones played a “vital role” in government victories over AQAP in Yemen, although he did not offer specifics.21 AQAP, for its part, remained a serious threat and conducted a number of deadly actions against the government, although it no longer ruled any urban centers in the south.

### A/T No Pakistan support

#### Pakistan has to act like they’re kicking us out---but if they were going to, they would have already

Gregory **McNeal 13**, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Granted, “lawyers at the State Department, including top legal adviser Harold Koh, believe this rationale veers near the edge of what can be considered permission” and are concerned because “[c]onducting drone strikes in a country against its will could be seen as an act of war.”62 Nevertheless, the notion of consent is one that is hotly debated by opponents of targeted killings. The Bureau of Investigative Journalism reports that Pakistan “categorically rejects” the claim that it tacitly allows drone strikes in its territory63 and in the same New York Times article discussed above an official with Pakistani intelligence “said any suggestion of Pakistani cooperation was ‘hogwash.’”64 However, these protests lack credibility as Pakistan has not exercised its rights under international law to prevent strikes by asking the U.S. to stop, intercepting American aircraft, targeting U.S. operators on the ground, or lodging a formal protest with the UN General Assembly or the Security Council. If the strikes are truly without consent, are a violation of Pakistani sovereignty, and are akin to acts of war, one would expect something more from the Pakistani government. With regard to Yemen, the question of consent is far clearer as Yemeni officials have gone on the record specifically noting their approval of U.S. strikes.65

#### Pakistan secretly supports the strikes

Miller and Woodward 13. Greg Miller and Bob Woodward 10-23-13. “Secret Memos reveal explicit nature of U.S., Pakistan agreement on drones” <http://www.washingtonpost.com/world/national-security/top-pakistani-leaders-secretly-backed-cia-drone-campaign-secret-documents-show/2013/10/23/15e6b0d8-3beb-11e3-b6a9-da62c264f40e_story.html>

Despite repeatedly denouncing the CIA’s drone campaign, top officials in Pakistan’s government have for years secretly endorsed the program and routinely received classified briefings on strikes and casualty counts, according to top-secret CIA documents and Pakistani diplomatic memos obtained by The Washington Post.The files describe dozens of drone attacks in Pakistan’s tribal region and include maps as well as before-and-after aerial photos of targeted compounds over a four-year stretch from late 2007 to late 2011 in which [the campaign](http://www.washingtonpost.com/world/national-security/documents-reveal-nsas-extensive-involvement-in-targeted-killing-program/2013/10/16/29775278-3674-11e3-8a0e-4e2cf80831fc_story.html) intensified dramatically. Markings on the documents indicate that many of them were prepared by the CIA’s Counterterrorism Center specifically to be shared with Pakistan’s government. They tout the success of strikes that killed dozens of alleged al-Qaeda operatives and assert repeatedly that no civilians were harmed Pakistan’s tacit approval of the drone program has been one of the more poorly kept national security secrets in Washington and Islamabad. During the early years of the campaign, the CIA even used Pakistani airstrips for its Predator fleet. But the files expose the explicit nature of a secret arrangement struck between the two countries at a time when neither was willing to publicly acknowledge the existence of the drone program. The documents detailed at least 65 strikes in Pakistan and were described as “talking points” for CIA briefings, which occurred with such regularity that they became a matter of diplomatic routine. The documents are marked “top ­secret” but cleared for release to Pakistan.

### Link-judicial review-generic

#### Judicial review would result in all targeted killings being ruled unconstitutional---courts would conclude they don’t satisfy the requirement of imminence for use of force in self-defense

Benjamin **McKelvey 11**, J.D., Vanderbilt University Law School, November 2011, “NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, 44 Vand. J. Transnat'l L. 1353

In the alternative, and far more broadly, the DOJ argued that executive authority to conduct targeted killings is constitutionally committed power. n101 Under this interpretation, the President has the authority to defend the nation against imminent threats of attack. n102 This argument is not limited by statutory parameters or congressional authorization, such as that under the AUMF. n103 Rather, the duty to defend the nation is inherent in the President's constitutional powers and is not subject to judicial interference or review. n104

The DOJ is correct in arguing that the President is constitutionally empowered to use military force to protect the nation from imminent attack. n105 As the DOJ noted in its brief in response, the Supreme Court has held that the president has the authority to protect the nation from "imminent attack" and to decide the level of necessary force. n106 The same is true in the international context. Even though Yemen is not a warzone and al-Qaeda is not a state actor, international law accepts the position that countries may respond to specific, imminent threats of harm with lethal force. n107 [\*1367] Under these doctrines of domestic and international law, the use of lethal force against Aulaqi was valid if he presented a concrete, specific, and imminent threat of harm to the United States. n108

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the "imminence" standard. n109 However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants of authority. n110 In the context of targeted killing, a federal court could evaluate the targeted killing program to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. Targeted killing, by its very name, suggests an entirely premeditated and offensive form of military force. n111 Moreover, the overview of the CIA's targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval. n112 While the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat to the nation, the judiciary has the authority to define "imminence" as a legal standard. n113 These [\*1368] are general concepts of law, not political questions, and they are subject to judicial review. n114

Under judicial review, a court would likely determine that targeted killing does not satisfy the imminence standard for the president's authority to use force in defense of the nation. Targeted killing is a premeditated assassination and the culmination of months of intelligence gathering, planning, and coordination. n115 "Imminence" would have no meaning as a standard if it were stretched to encompass such an elaborate and exhaustive process. n116 Similarly, the concept of "defensive" force is eviscerated and useless if it includes entirely premeditated and offensive forms of military action against a perceived threat. n117 Under judicial review, a court could easily and properly determine that targeted killing does not satisfy the imminence standard for the constitutional use of defensive force. n118

### Link-judicial review-intel

#### It’s impossible to litigate a case over drone policy without disclosing highly sensitive military and intelligence data---implicates allies as well

Richard D. **Rosen 11**, Professor of Law and Director, Center for Military Law and Policy, Texas Tech University School of Law. Colonel, U.S. Army (retired), 2011, “PART III: ARTICLE: DRONES AND THE U.S. COURTS,” William Mitchell Law Review, 37 Wm. Mitchell L. Rev. 5280

Not only will the state secrets doctrine thwart plaintiffs from acquiring or introducing evidence vital to their case,96 it could result in dismissal of the cases themselves. Under the doctrine, the courts will dismiss a case either because the very subject of the case involves state secrets,97 or a case cannot proceed without the privileged evidence or presents an unnecessary risk of revealing protected secrets.98 Employing drones as a weapons platform against terrorists and insurgents in an ongoing armed conflict implicates both the nation’s military tactics and strategy as well as its delicate relations with friendly nations.99 As such, lawsuits challenging the policy cannot be tried without access to and the possible disclosure of highly classified information relating to the means, methods, and circumstances under which drones are employed.

### Link-judicial review-aumf

#### Judicial review would result in limiting AUMF drone strikes to declared zones of armed conflict---that functionally bans drones

Milena **Sterio 12**, Associate Professor of Law, Cleveland-Marshall College of Law, Fall 2012, “Presidential Powers and Foreign Affairs: Rendition and Targeted Killings of Americans: The United States' Use of Drones in the War on Terror: The (Il)legality of Targeted Killings Under International Law,” Case Western Reserve Journal of International Law, 45 Case W. Res. J. Int'l L. 197

After the terrorist attacks of 9/11, President George W. Bush, in his capacity as Commander-in-Chief, authorized the use of drones against leaders of al-Qaeda forces, pursuant to Congress' Authorization for Use of Military Force (AUMF). n1 Pursuant to AUMF, drones could be utilized against al-Qaeda forces to target or to kill enemies. It has been reported that the United States possesses two types of drones: smaller ones, which predominantly carry out surveillance missions, and larger ones, which can carry hellfire missiles and have been used to conduct strikes and targeted killings. n2 Drone strikes have been carried out by both the military as well as the CIA. As Jane Mayer famously noted in her article:

The U.S. government runs two drone programs. The military's version, which is publicly acknowledged, operates in the recognized war zones of Afghanistan and Iraq, and targets enemies of U.S. troops stationed there. As such, it is an extension of conventional warfare. The C.I.A.'s program is aimed at terror suspects around the world, including in countries where U.S. troops are not based. n3

[\*199]

Moreover, although the President had designated Afghanistan and its airspace as a combat zone, the United States has used drones in other areas of the world, such as Yemen, where al-Qaeda forces have been targeted and killed. n4 In fact, the U.S. approach for the use of drones is that members of al-Qaeda forces may be targeted anywhere in the world: that the battlefield follows those individuals who have been designated as enemies due to their affiliation with al-Qaeda. n5 While many in the international community have criticized the United States' expansive geographical use of drones against al-Qaeda forces, n6 officials in the Bush Administration have defended the drone program as consistent and conforming to international law. n7 President Obama has continued this approach and has expanded the use of drones in the war on terror. n8 Moreover, high-level officials in the Obama Administration have offered detailed legal justifications for the legality of the American drone program.

Harold Koh, State Department Legal Advisor, justified the use of drones at the American Society of International Law Annual Meeting on March 25, 2010, arguing "it is the considered view of this Administration . . . that U.S. targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable law, including the laws of war." n9 In his speech, Koh cited both domestic law (AUMF) and international law as proof that the United States is engaged in armed conflict with al-Qaeda, the Taliban, and "associated forces." n10 Targeted killings, according to Koh, are justified because they are performed in [\*200] accordance with the laws of war. n11 In other words, the United States conducts targeted strikes consistent with the well-known principles of distinction and proportionality to ensure that the targets are legitimate and collateral damage minimized. n12

Koh offered four reasons supporting the legality of targeted drone killings. First, enemy leaders are legitimate targets because they are belligerent members of an enemy group in a war with the United States. n13 Second, drones can constitute appropriate instruments for such missions, so long as their use conforms to the laws of war. n14 Third, enemy targets are selected through "robust" procedures; as such, they require no legal process and are not "unlawful extrajudicial" killings. n15 Finally, Koh argued that using drones to target "high level belligerent leaders" does not violate domestic law banning assassinations. n16

The Obama Administration has continued to use drones in Pakistan, as well as in Yemen. Increasingly, however, the American drone program has been run by the CIA. n17 Leon Panetta, the CIA Director, has praised the drone program stating that drones were "the only game in town." n18 On September 30, 2011, a CIA-operated drone targeted and killed an American citizen in Yemen, Anwar al-Awlaki. n19 Al-Awlaki had been accused of holding prominent roles within the ranks of al-Qaeda and had been placed on a hit list, authorized by President Obama. n20 His assassination marked the first time in history an American citizen had been targeted abroad without any judicial involvement or proceedings to determine guilt of any crime.

In a subsequent speech, Attorney General Eric Holder confirmed the Obama Administration's view on the legality of targeted killings, including killings of American citizens. On March 5, 2012, in a speech at Northwestern University, Holder claimed targeted killings of American citizens are legal if the targeted citizen is located abroad, a [\*201] senior operational leader of al-Qaeda or associated forces, actively engaged in planning to kill Americans, poses an imminent threat of violent attack against the United States (as determined by the U.S. government), and cannot be captured; such operations must be conducted in a manner consistent with applicable law of war principles. n21

Despite Koh's and Holder's justifications, many have questioned the legality of the American use of drones to perform targeted killings of al-Qaeda members and of U.S. citizens. Philip Alston, UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, has famously stated his concerns that drones "are being operated in a framework which may well violate international humanitarian law and international human rights law." n22 This article highlights some of the most relevant issues surrounding the (il)legality of targeted killings under the current approach of the Obama Administration. This article concludes that most targeted killings are illegal under international law; only a very small number of such killings, performed under carefully crafted circumstances, could potentially comply with the relevant rules of jus ad bellum and jus in bello, and only if one accepts the premise that the United States is engaged in an armed conflict against al-Qaeda. This article discusses the following issues related to the use of drones to perform targeted killings: the definition of the battlefield and the applicability of the law of armed conflict (Part II); the identity of targetable individuals and their status as combatants or civilians under international law (Part III); the legality of targeted killings under international humanitarian law (Part IV); and the location and status of drone operators (Part V).

II. What and Where is the Battlefield? Which Laws Apply?

Under the Bush Administration approach, the United States post 9/11 was engaged in a global war against terrorists. Under this expansive approach, the war had no geographic constraints, and the battlefield was of a global nature. n23 In other words, the war followed [\*202] the terrorist enemies, and wherever they were located was where the battlefield could be temporarily situated. According to the Bush Administration, as well as the U.S. Supreme Court case Hamdan v. Rumsfeld, the United States was at war against al-Qaeda and Taliban forces, and the applicable laws were the laws of war. n24 Thus, military force, including the use of drones, could be used if consistent with the laws of war.

Under the Obama Administration, the rhetoric has slightly changed: the United States is no longer engaged in a global war on terror but rather, in a war against al-Qaeda, the Taliban, and associated forces. n25 However, the Obama Administration, by conducting drone strikes in a variety of locations, including Pakistan and Yemen, has followed the Bush Administration view of the global battlefield. The Obama Administration believes, like the Bush Administration, that the laws of war apply to the use of drone strikes because the United States is engaged in an armed conflict. n26 Moreover, the Obama Administration has claimed drones can be used in countries that harbor terrorist enemies and are unwilling or unable to control territory where such enemies are located. n27 This rationale would likely exclude places like England and France from the possible definition and localization of the battlefield, but would purport to justify the use of drones in places like Pakistan and Yemen, where remote territories are hard to control and where central governments cannot claim to possess effective control. n28 [\*203]

The above described terminology ("global war on terror" and "war against al-Qaeda, the Taliban, and associated forces") is vastly important, as it designates the applicable legal framework surrounding targeted killings and drone strikes. If one accepts the premise that the United States is engaged in armed conflict against al-Qaeda terrorists, then one has to conclude that laws of war apply. n29 If laws of war apply, then the rules of jus ad bellum determine whether military force is utilized in a lawful way. In fact, laws of war permit targeted killings if two particular requirements of jus ad bellum are satisfied: the use of force is necessary and the use of force is proportionate.

First, a state resorting to force must prove its decision to resort to force was a result of an armed attack and necessary to respond to such attack. n30 It is possible to argue that al-Qaeda's campaign of terrorist attacks against the United States, including 9/11, corresponded to an armed attack. However, it is also possible to argue that "al Qaeda's campaign against the United States does not trigger the right of self-defensive force . . . because al Qaeda has not launched a full scale military offensive." n31 Another difficulty in this context is that al-Qaeda is not a state, and under traditional international law, only states could initiate armed attack against states, thus triggering the right to self-defense. n32 While some commentators have argued that the use of force in self-defense against a non-state actor should be [\*204] permissible, "in an era where non-state groups project military-scale power," n33 this view remains controversial. n34

Second, a state resorting to the use of force must prove its use of force was proportionate to the military campaign's objective. n35 The proportionality test of jus ad bellum should "be applied contextually, to determine whether the overall goal of a use of force . . . is a proportionate objective." n36 Because the CIA operates the drone program in Pakistan in secrecy, it is impossible to determine conclusively whether the program meets the proportionality requirement of jus ad bellum. It is possible to argue the resort to targeted killings through the use of drones is at least sometimes necessary and proportionate (for example, when a U.S. military commander possesses information that a high-value al-Qaeda operative, engaged in planning armed attacks against Americans, is located in a specific location which is relatively easily reachable via drones, and the commander decides that neutralization of the al-Qaeda target is necessary to prevent attacks against Americans). It is probable that many drone strikes do not meet the requirements of jus ad bellum, but it is nonetheless difficult to conclude, under this approach, that the entire drone program is per se illegal. Should the U.S. government--specifically the CIA--release more facts regarding the drone program, it may become plausible to assess the lawfulness of this type of force through the jus ad bellum prism.

If, however, one rejects the conclusion that the United States is engaged in armed conflict, then the legality of the entire drone program becomes questionable. One could logically conclude the United States is not fighting a true war, but chasing terrorists. Under this view, the law of armed conflict would no longer apply, and the United States could use force against such terrorists only under a law enforcement paradigm--only when the use of force is absolutely necessary. Moreover, if the laws of war do not apply, then international human rights law dictates that targeted killings are legal only if a threat imminent and the reaction necessary, because under human rights law, "it is never permissible for killing to be the sole [\*205] objective of an operation." n37 "A killing is only legal to prevent a concrete and imminent threat to life, and, additionally, if there is no other non-lethal means of preventing that threat to life." n38 The International Covenant on Civil and Political Rights (ICCPR) prohibits "arbitrary" killing, as well as punitive or deterrent killings of terrorists. n39 The very nature of the American drone program, where targeted killings are utilized to neutralize al-Qaeda operatives, even though such killings are not absolutely necessary, is contrary to international human rights law. Under this paradigm, one must conclude that the drone program is illegal.

### 1NC A/T: Recruitment Tool

**No correlation between drone use and recruitment levels.**

**Etzioni 13**, Professor of International Relations @ George Washington University

(Aimtai Etzioni, senior adviser to the Carter administration, “Everything Libertarians and Liberals Get Wrong About Drones”, The Atlantic, 4/30/13, http://www.theatlantic.com/politics/archive/2013/04/everything-libertarians-and-liberals-get-wrong-about-drones/275356/)

Some critics worry that relying upon drones will engender significant resentment and potentially aid terrorist recruitment efforts. However, those who are inclined towards terrorism already loathe the United States for a thousand other reasons. Pew surveys show that anti-Americanism thrives in regions where there have been no drone strikes (for example, in Egypt) and, where drones have been active, high levels of anti-Americanism predated their arrival (for instance in Pakistan).

**Drones aren’t a recruitment tool – Al Qaeda uses money to recruit and anti-drone propaganda is elitist hype.**

**Axe 13**

(David Axe, quoting Christopher Swift, fellow at the University of Virginia’s Center for National Security Law,“Expert: No Drone Backlash in Yemen”, http://christopher-swift.com/th\_gallery/expert-no-drone-backlash-in-yemen)

Lethal strikes by armed drones are America’s best and less obtrusive method of killing Islamic militants and dismantling their terror networks while minimizing civilian casualties. Or they’re a misguided and counter-productive attempt at sterilizing the dirty work of counter-terrorism — one that serves as a rallying cry for terrorist recruiters and ends up creating more militants than it eliminates.¶ Those are the opposing views in one of the most urgent debates in military, policy and humanitarian circles today. Now a new, ground-level investigation by a daring American researcher adds a fresh wrinkle to the controversy. Chris Swift, a fellow at the University of Virginia’s Center for National Security Law, spent a week in late May interviewing around 40 tribal leaders in southern Yemen, one of the major drone battlegrounds.¶ What he found might disappoint activists and embolden counter-terrorism officials. “Nobody in my cohort [of interview subjects] drew a causal link between drones on one hand and [militant] recruiting on other,” Swift says.¶ Tweets, blog posts and news reporting from Yemen seem to contradict Swift’s conclusion. Drone strikes in Yemen have gone up, way up, from around 10 in 2011 to some two dozen so far this year. No fewer than 329 people have died in the Yemen drone campaign, at least 58 of whom were innocent civilians, according to a count by the British Bureau of Investigative Journalism.¶ But some Yemenis believe the civilian body count is much higher. “For every headline you read regarding ‘militants’ killed by drones in #Yemen, think of the civilians killed that are not reported,” NGO consultant Atiaf Al Wazir Tweeted.¶ Another Yemeni Twitter user drew the link between the drone war’s innocent victims in a Tweet directed at top U.S. counterterrorism adviser John Brennan. “Brennan do you hear us?!!! We say #NoDrones #NoDrones #NoDrones. You are killing innocent people and creating more enemies in #Yemen.”¶ Reporters have run with the claim that drone strikes breed terrorists. “Drones have replaced Guantánamo as the recruiting tool of choice for militants,” Jo Becker and Scott Shane wrote in The New York Times.¶ “Across the vast, rugged terrain of southern Yemen, an escalating campaign of U.S. drone strikes is stirring increasing sympathy for Al Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States,” The Washington Post‘s Sudarsan Raghavan reported.¶ But the narrative embraced by Yemeni Tweeters the Times and the Post originated in, and is sustained by, a comparatively wealthy, educated and English-speaking community based in Yemen’s capital city Sana’a, Swift explains. He calls them the “Gucci jean-wearing crowd.” But cosmopolitan Sana’a isn’t breeding many terrorists, and popular opinions in the city don’t necessarily reflect the reality in Yemen’s embattled south.¶ To get to the sources that really mattered, Swift sensed he had to “get out of the Sana’a political elite,” he says. He teamed up with an experienced fixer — a combined guide, translator and protector — and slipped into heavily-armed Aden in Yemen’s south in the back of pickup trucks. “I always expected that my next checkpoint was going to be my last,” Swift says.¶ Swift survived some close calls and brought back what is arguably the freshest and most relevant data on militant recruiting in southern Yemen. He has since written articles for Foreign Affairs and the Sentinel counterterrorism journal. In southern Yemen “nobody really gets excited about drones,” he explains. He says his sources were “overwhelming saying that Al Qaeda is recruiting through economic inducement.” In other words, for the most part the terror group pays people to join.¶ Which isn’t to say Yemen’s militants don’t fear the American killer robots. In fact, they’re “terrified of drones,” Swift says. “They make a big deal of surviving drones in their propaganda videos.”¶ The militants’ fear of drones perhaps underscores the robots’ effectiveness. It does not argue for widespread resentment among everyday people in southern Yemen that compels them to join the terrorists’ ranks. At least, that’s what Swift believes.

#### Drones are key---militants can’t replace senior leaders

Patrick B. **Johnston 13**, Associate Political Scientist, RAND Corporation, and Anoop Sarbahi, postdoctoral scholar in the Department of Political Science at the University of California, Los Angeles, July 2013, “The Impact of U.S. Drone Strikes on Terrorism in Pakistan and Afghanistan,” <http://patrickjohnston.info/materials/drones.pdf>

We expect drone strikes that kill terrorist leaders will be associated with reductions in terrorist attacks. Previous research convincingly demonstrates that conducting effective terrorist attacks requires skilled individuals, many of whom are well-educated and come from upper middle- class backgrounds. 21 Indeed, captured documents containing detailed biographical data on foreign al Qa’ida militants in Iraq illustrate that among the foreign terrorists—who are conventionally known to be more sophisticated than local fighters—their most commonly listed “occupation” prior to arriving in Iraq was that of “student.” For militants for whom information on “experience” was available, “computers” was the most commonly listed experience type, just ahead of “weapons.”22

In the context of northwest Pakistan, where militant freedom of movement is limited by the threat of drone strikes, we expect that militant groups will be unable to replace senior leaders killed in drone strikes because recruiting and deploying them, perhaps from a foreign country with a Salafi jihadist base, will be costly and difficult. This is not to say that leaders killed in drone strikes are irreplaceable. On the contrary, other militants are likely to be elevated within their organization to replace them. But we also anticipate that those elevated to replace killed leaders will be, on average, of lower quality to the organization than their predecessors. Thus, we predict that the loss of leaders will be associated with the degradation of terrorists’ ability to produce violence. This logic implies Hypothesis 3:

H3: All else equal, drone strikes that kill one or mor e terrorist leader(s) will lead to a decrease in terrorist violence.

### 2nc uq - al-qaeda strength

#### Core Al-Qaeda’s been devastated by successful U.S. CT---but maintaining an aggressive approach is key---their ev mistakes short-term tactical conditions for overall trends

Andrew **Liepman 1-6**, former principal deputy director of the National Counterterrorism Center and a senior policy analyst at the nonprofit, nonpartisan RAND Corporation; and Philip Mudd, former Senior Intelligence Advisor at the FBI and Deputy Director of the CIA Counterterrorist Center, director of Global Risk at SouthernSun Asset Management, 1/6/14, “Al Qaeda is down. Al Qaedism isn't,” <http://globalpublicsquare.blogs.cnn.com/2014/01/06/al-qaeda-is-down-al-qaedism-isnt/>

The recent New York Times investigation into the deadly 2012 attack on the U.S. diplomatic mission in Benghazi has reignited the debate over the nature and trajectory of al Qaeda. The conclusion of the report – that there was no evidence of an al Qaeda role in the attack – reinforces our view that the organization that attacked the United States more than 12 years ago is in decline. But it also serves as a reminder that the threat has not disappeared. Rather, it is morphing into a new, more dispersed, less predictable, but still lethal enemy.

The 9/11 attacks on the World Trade Center and the Pentagon showed al Qaeda at its deadliest. At the same time, though, 9/11 also represented the beginning of al Qaeda’s decline as an organized terror enterprise that would ultimately lead to its emergence as a decentralized, factious amalgam of freelance groups, each with its own methods and agenda. This new organization may lack the infrastructure to plan and carry out attacks like the one that occurred in Benghazi (and certainly attacks like 9/11), but today’s al Qaeda remains a threat to strike where and when it can and to fan the flames of extremism.

The decade that followed the 9/11 attack saw the gradual decline of bin Laden’s core al Qaeda. The architects of 9/11 were largely killed or detained, the remnants were in hiding in Pakistan, and the revolutionary message had lost ground globally in the face of relentless al Qaeda killings of Muslims across the Islamic world. Some of its most promising potential successors experienced similar declines, from Jemaah Islamiyya in Indonesia to al-Shabaab in Somalia, along with al Qaeda cells in Saudi Arabia and Europe.

But what of the current generation of Salafist militants – the offspring of bin Laden’s al Qaeda? For them, the signs may not be so bleak. Though they may lack the organizational structure, the focus on attacking the West and the charismatic leadership of yesterday’s al Qaeda killers, today’s militants do not lack its homicidal audacity. Or its wide reach.

Affiliated groups have risen across the Middle East and South Asia and into Africa and Europe. Homegrown plots have emerged in the United States in Europe, carried out by individuals zealously donning the al Qaeda mantle, even with little or no contact with terror networks. And the killing hasn’t stopped. Indeed, in many areas of the Middle East, murder in al Qaeda’s name is sharply increasing. In Iraq, Shia are being murdered at a shocking rate. In Pakistan, Shia are frequent targets and across the Middle East groups inspired by bin Laden’s old message continue to sacrifice innocents – from mall shoppers in Kenya and a teacher in Benghazi, to students in Nigeria and oil workers in Algeria. These are the victims of the new breed of al Qaeda terrorists.

So we have conflicting trends. In broad strategic terms, al Qaeda is diminished. Numerous acts of terror against the United States have been prevented. It is clear that the American homeland is safer than it was, and it’s hard to conceive of a 9/11-style attack occurring today. At the same time, though, this emerging generation of militants poses its own threat to regional stability. We would be remiss if we assumed this jihadi phoenix could never rise again to threaten American cities.

America’s attention span tends to be shorter than that of its adversaries. Americans may evaluate the changing terror landscape as they would the NASDAQ stock exchange, defining success by watching swings over a month or even a year. For al Qaeda, success is something that is defined over decades, or even centuries.

Looking at the landscape through this lens might yield a different picture, one that offers hope to the current generation of Salafist extremists. From this perspective, the al Qaeda cause has endured even as the post-9/11 years brought setbacks to its leadership, its globalist message, and many of its affiliates and adherents. But periodic attacks – London, Bali, and even Ft. Hood, Texas – meant the decline was not a linear downward slope.

The United States has reason to worry, as Sen. Dianne Feinstein (D-Calif.) Rep. Mike Rogers (R-Mich.), the chairs of the Senate and House Intelligence Committees, pointed out recently. Events in the region – the unremitting violence in Syria, the collapse of any authority in Libya, and the continued instability and infighting in Yemen, Somalia, and elsewhere – appear to be emboldening al Qaeda sympathizers. Instability in Syria has opened the door for al Qaedists to broaden their sway among oppositionists, and instability in Iraq – and potentially Lebanon – offers further opportunities for radical jihadis.

There are too many breeding grounds. While much of today’s violence is localized – Yemeni extremists are interested in Yemen, Somalis in Somalia, and Syrians in Syria – any of these hot spots could become the next launching ground for a resurgence of anti-western targeting. Neither the inevitable decline of al Qaedism nor the rise of disparate al Qaedist groups in Africa and the Middle East is a full picture, though, and frequent assessments and reassessments might suggest that the al Qaeda phenomenon is morphing more quickly than it actually is.

At the same time, the United States can take some comfort in the progress that has been made at home – in the knowledge that a concerted and consistent counterterrorism campaign has made the country safer and largely eliminated the scourge that hatched the 9/11 plot. Because the al Qaeda revolutionary ideology is so resonant and resilient, the United States should be cautious about translating this comfort into a judgment that it is out of the woods. The picture is neither as positive as it looked even two years ago, nor as bleak as alarmists suggest.

Terror leaders with a target horizon that reaches Europe and the United States are uncommon. Carrying out successful plots against the West requires stout leadership, loyal and focused operatives, and a safe haven to plan without diverting attention to more immediate battles against local security services, other competing groups, or U.S. drones. At the moment, the al Qaeda offshoots do not possess these assets, and America is safer because of that.

At the same time, though, the United States must not allow this fragile sense of security to become complacency. The terrorist threat is still there, morphing over time from local or regional threats to international conspiracies and back again. Measuring progress threat- by-threat, or month by month, would lead to the mistaken belief that tactical gains or losses represent major shifts in this long, painful counterterror campaign. The campaign is a marathon run against a slowly declining revolutionary idea, al Qaedism, which will take many more years to stamp out fully.

The United States should not lose sight of the fact that while 12 years of counterterrorism efforts have helped keep it safe, many more years of vigilance lie ahead. Measuring progress in a counterterrorism war against the al Qaeda group may be straightforward; measuring progress against the morphing idea of al Qaedism isn’t.

### 2nc uq – goldilocks

#### Recent shifts make current policy goldilocks---increasing preference for capture missions solves drone overreliance, but preserves the flexibility to use drones when they’re the best option---shifting to sole reliance on capture missions triggers huge international crises

**WT 10-9** – Washington Times, 10/9/13, “Drone strikes plummet as U.S. seeks more human intelligence,” http://www.washingtontimes.com/news/2013/oct/9/drone-strikes-drop-as-us-craves-more-human-intelli/print/

The number of drone strikes approved by the Obama administration on suspected terrorists has fallen dramatically this year, as the war with al Qaeda increasingly shifts to Africa and U.S. intelligence craves more captures and interrogations of high-value targets.

U.S. officials told The Washington Times on Wednesday that the reasons for a shift in tactics are many — including that al Qaeda's senior ranks were thinned out so much in 2011 and 2012 by an intense flurry of drone strikes, and that the terrorist network has adapted to try to evade some of Washington's use of the strikes or to make them less politically palatable.

But the sources acknowledged that a growing desire to close a recent gap in actionable human intelligence on al Qaeda's evolving operations also has renewed the administration's interest in more clandestine commando raids like the one that netted a high-value terrorist suspect in Libya last weekend.

Capturing and interrogating suspects can provide valuable intelligence about a terrorist network that has been morphing from its roots with a central command in Pakistan and Afghanistan (known as intelligence circles as the FATA) to more diverse affiliates spread most notably across North Africa, officials and analysts said.

"Al Qaeda's senior leadership in Pakistan has been steadily degraded. What remains of the group's core is still dangerous but spends much of its time thinking about personal security///

," one senior counterterrorism official told The Times, speaking on the condition of anonymity because of the secret nature of the drone program. "As the nature of the threat emanating from the FATA changes, it follows that the U.S. government's counterterrorism approach is going to shift accordingly."

The decreased reliance on drones was in full view last weekend when one team of commandos from the Army's Delta Force captured long-sought al Qaeda operative Abu Anas al-Libi in Tripoli and a Navy SEAL team failed to take down an al Qaeda affiliate leader in Somalia.

The U.S. has carried out nearly 400 drone strikes over the past decade in Pakistan, Yemen and Somalia, a tactic that killed numerous senior operatives. But al Qaeda leaders have been increasing their own counterintelligence activities and moving to more populated areas in order to increase the risks of civilian casualties, two developments that have made the strikes less politically palatable and effective, analysts and intelligence sources say.

As a result, the number of drone strikes carried out against al Qaeda suspects in the Middle East and South Asia has dropped by half over the past year. There were 22 drone strikes on targets in Pakistan during the first 10 months of this year, compared with 47 carried out during 2012 and 74 in 2011, according to data compiled by the London-based Bureau of Investigative Journalism, the leading independent body examining the U.S. government's secretive drone program.

But intelligence officials and some national security analysts cautioned against reading too deeply into such data, saying the U.S. remains committed to using drones when it makes sense.

"Given the clandestine nature of the program, it's impossible to assess the reasons why the number of strikes has decreased over time," said Seth Jones, a political scientist who specializes in counterterrorism studies at the Rand Corp., a research institution with headquarters in California.

"We just don't have access to the information," he said.

Thirst for new intelligence

With U.S. counterterrorism officials eager to pin down fresh and actionable intelligence on what several sources described as a gradually metastasizing and complex network of al Qaeda affiliate groups concentrated in North Africa, most analysts say it would make sense for the Obama administration to begin favoring capture-and-interrogate missions.

"Raids allow you to both potentially capture a high-value target and exploit his knowledge through interrogations," said Daniel R. Green, an al Qaeda and Yemen analyst at the Washington Institute for Near East Policy. When U.S. soldiers are on the ground for a raid, Mr. Green said, it means they can "collect additional materials of intelligence value from the dwelling, further assisting in the planning of follow-on operations."

Others said heavy reliance on drones has only added to America's potentially dangerous deficit of human intelligence on al Qaeda. "If you're not capturing guys to get that intel, then, yeah, you're going to be missing a part of the picture — if not a large part of the picture," said Thomas Joscelyn, a senior fellow focusing on al Qaeda and North Africa at the Foundation for Defense of Democracies.

"You can rely extensively on electronic intelligence, but you still need that [human intelligence]to put the full picture together," said Mr. Joscelyn, who added that recent years have fostered a "fetish within some parts of the intelligence community for drone attacks because they've succeeded in taking out some very high-level targets.

"There are other parts of the American military and intelligence community that understand that drones are not going to win this war," he said. "Drones are a necessary tactic, but they are not a strategy."

Last weekend's raids in Libya and Somalia are "evidence that there's more emphasis now on capture than on kill," said Linda Robinson a senior international policy analyst at the Rand Corp.

"It is an indication of the shift that was alluded to by the president in May," said Mrs. Robinson, referring to a speech President Obama gave at the National Defense University in which he stressed that "as a matter of policy, the preference of the United States is to capture terrorist suspects."

Mrs. Robinson said there is "recognition that, frankly, you get something from raids, which you don't get from drones." Raids allow for capturing a suspect and can lead to an "incredible intelligence dump" from that individual, she said.

Drones still on the table

During the May speech on terrorism, Mr. Obama acknowledged the use of drones as a central tactic within his administration's war strategy and suggested it will continue.

At the time, Mr. Obama said it "not possible for America to simply deploy a team of Special Forces to capture every terrorist."

Citing instances in which doing so "would pose profound risks to our troops and local civilians" and where "putting U.S. boots on the ground may trigger a major international crisis," Mr. Obama said the secret May 2011 Navy SEAL operation that resulted in the killing of al Qaeda leader Osama bin Laden "cannot be the norm."

In the shadow of such remarks from the president, some analysts say, such raids likely would pose challenges in Yemen, where the Obama administration has relied heavily on the use of drones.

A raid such as the one that netted al-Libi in Tripoli would be "much more difficult" in Yemen "in part because potential targets are far more inland, thus complicating an attack from the sea," said Mr. Green, at the Washington Institute for Near East Policy.

"Also, the Yemeni government is much more capable and would likely detect such a raid, as compared to Libya's anarchic conditions, and al Qaeda is a much more developed force in Yemen, which will have already adapted to this new tactic by U.S. forces," he said.

Mrs. Robinson said that "with a raid, of course, you incur more risk for those U.S. forces usually, special operations forces that you're putting on the ground."

"I don't think there's a big appetite to go around launching raids unless there is a clear U.S. national security interest to do so," she said. "The political and diplomatic and atmospheric risks or counterproductive effects have to be very much weighed in the equation."