# 1NC

## 1NC Politics

#### CIR will pass- vote is coming and republicans support it.

Fox News, 10/28 (Republican lobbying groups step up push on House to pass immigration reform, <http://www.foxnews.com/politics/2013/10/28/republican-lobbying-groups-step-up-push-on-house-to-pass-immigration-reform/>)

Republicans who back immigration reform are ramping up their push to get the House to bring legislation to the floor, as the issue threatens to potentially create a public divide within the GOP. The Wall Street Journal reports the group Republicans for Immigration Reform is building up its lobbying efforts in Washington, releasing a web ad last week urging the House to act that has been viewed over 600,000 times, according to the group. This week, the New York Times reports a coalition of about 600 mostly Republican leaders in business and agriculture will begin an effort to lobby 80 GOP representatives on the issue. Some GOP donors are also reportedly privately withholding their contributions from members of Congress who oppose action of immigration reform. The issue has the potential to divide GOP lawmakers again after public in-party fighting over the recent budget negotiations. The New York Times reports that while some House members and House Speaker John Boehner are pushing for the lower chamber of Congress to pass its own immigration legislation before the end of the year; some conservative lawmakers have said they will not act on the issue regardless of pressure. “I care about the sovereignty of the United States of America and what it stands for, and not an open-door policy,” Rep. Ted Yoho, R-Fla., who is opposing all of the bills the House is currently considering, told the New York Times. However, both President Obama and Boehner expressed optimism last week that the House could pass immigration legislation. Obama on Thursday told an audience of business, community and labor leaders that the time to pass the Senate-passed reform bill is now, and urged the House to do so soon. “Everybody knows our current immigration system is broken; across the political spectrum people understand that,” he said. “We’ve known that for years it’s not smart to invite some of the brightest minds in the world to study here and not start businesses here and we send them back to their home countries to create jobs, invent new products someplace else.”

#### A reduction in presidential war powers saps Obama’s PC

**Kriner 10** (Douglas L. Kriner, assistant professor of political science at Boston University, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives . Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Consistent pressure and Dem unity are key to make Boehner allow a vote

**Sullivan, 10/24/13** (Sean, “John Boehner's next big test: Immigration” Washington Post Blogs, The Fix, lexis)

President Obama delivered remarks Thursday morning to renew his call for Congress to pass sweeping immigration reform. The prevailing sentiment in Washington is that it’s not going to happen this year, and may not even happen next year. But because of the last few weeks, it just might get done by early next year. It’s all up to House Speaker John A. Boehner (R-Ohio), who by political necessity, must now at least consider leaning in more on immigration. “Let’s see if we can get this done. And let’s see if we can get it done this year,” Obama said at the White House. Fresh off a decisive defeat in the budget and debt ceiling showdown that cost the GOP big and won the party no major policy concessions from Democrats, Boehner was asked Wednesday about whether he plans to bring up immigration legislation during the limited time left on the 2013 legislative calendar. He didn’t rule it out. “I still think immigration reform is an important subject that needs to be addressed. And I’m hopeful,” said Boehner. The big question is whether the speaker’s hopefulness spurs him to press the matter legislatively or whether the cast-iron conservative members who oppose even limited reforms will dissuade him and extinguish his cautiously optimistic if noncommittal outlook. Months ago, as House Republicans were slow-walking immigration after the Senate passed a broad bill, the latter possibility appeared the likelier bet. But times have changed. The position House Republicans adopted in the fiscal standoff badly damaged the party's brand. The GOP is reeling, searching desperately for a way to turn things around. That means Boehner, too, must look for ways to repair the damage. And that's where immigration comes in. Even before the government shutdown showdown, a vocal part of the GOP (think Sen. John McCain) had been talking up the urgent need to do immigration reform or risk further alienating Hispanic voters. Now, amid hard times for the party driven by deeper skepticism from Democrats, independents and even some Republicans following the fiscal standoff, the political imperative is arguably even stronger. The policy imperative already exists for some House Republicans -- perhaps enough of them that if Boehner allowed a vote, reform of some type could pass with a majority of House Democrats and a minority of House Republicans, as did last week's deal to end the government shutdown and raise the debt ceiling. (What specifically could pass and whether Obama could accept it is another question.) What's not clear is whether Boehner would be willing to chart a path with less than majority GOP support again so soon after the last time and without his back against the wall as it was in the fiscal standoff. This much we know: The White House and Senate Democrats will keep applying pressure on Boehner to act on immigration. Obama's planned remarks are the latest example of his plan. The speaker will be feeling external and internal pressure to move ahead on immigration. But he will also feel pressure from conservatives to oppose it. Here's the thing, though: Boehner listened to the right flank of his conference in the fiscal fight, and that path was politically destructive for his party. That's enough to believe he will at least entertain the possibility of tuning the hard-liners out a bit more this time around.

#### Reform key to remittances

**Oppenheimer**, writer for the Miami Herald, 1/19/**2013**

(Andres, “Andres Oppenheimer: Obama may help Latin America - without trying,” <http://www.miamiherald.com/2013/01/19/3189668/obama-may-help-latin-america-without.html#storylink=cpy>)

Let’s start with the obvious: Obama doesn’t have a history of special interest in Latin America. When I interviewed him for the first time in 2007, he had never set foot in the region. And during his first term, unlike most of his predecessors, he didn’t come up with any grand plan for Latin America — granted, he had to focus on resurrecting the U.S. economy — and instead stated that his top foreign policy priority is Asia’s Pacific rim. Still, he may end up being great for Latin America, for reasons that have very little to do with Latin America. First, there are better-than-even chances that — emboldened by his 71-27 victory margin among Latino voters in the 2012 elections — Obama will be able to pass an immigration reform plan that could legalize many of the estimated 11 million undocumented residents in the United States. That would be a godsend to the economies of Mexico, Central America, the Caribbean, Colombia and Ecuador. **Most experts agree that once undocumented workers get legal status**, **they get better jobs and can send more money to their relatives back home**.

#### Remittances from the U.S. key to Indian econ

Khan, Adjunct Professor Business and Law – Edith Cowan University, ‘9

(Amir Ullah, “NRIs remittances going up,” <http://www.thomex.com/article/resources_details.aspx?ID=R_2007060414180&catid=C_200903101421&flag=1>, date at <http://www.free-press-release.com/news/200905/1243487071.html>)

[Note: NRI = Non-Resident Indian]

The Reserve Bank of India has announced that NRI repatriation to India has already crossed $39 billion mark during the first nine months of 2008. This means that the total for 2008 will easily be more than 40 billion dollars and even close to 50 billion dollars. If 39 billion dollars have been received during the period January to September 2008, the last quarter would have received at least 20 per cent of the total which would take the total close to 50 billion dollars. The World Bank had projected that India would receive 30 billion dollars from NRIs in 2008. This higher figure of at least 40 million dollars in 2008 will mean that NRIs would have sent money that is **more than 5 per cent of the GDP of the country**. It is followed by Maharashtra. The increase in remittance is not surprising given the fact that the rupee has been depreciating in value against almost all foreign currencies. In addition, Indian banks now offer very high interest rates and have been allowed to offer the same high interest returns to Foreign Currency Non Resident accounts and the nonresident rupee accounts. Two years ago, Non Resident Indians left Non Resident Chinese in the second position when in 2006; NRIs sent back 27 billion dollars and the nonresident Chinese contributed 23 billion dollars to the Chinese economy. What is important to note is that there are at least twice as many nonresident Chinese in the world as non resident Indians. Of the total 20 million Indian abroad, it is estimated that about 8 million NRIs worldwide send money back home. While West Asia constitutes most of the volumes in terms of the number of transactions, **the US leads in terms of absolute value**. The obvious questions is that with IT and allied sectors being hit by the crisis, would many people still go abroad and would they still send as much money back home? The answer is a clear ‘Yes’ due to a variety of reasons: people will always migrate for better opportunities; the dollar is at a high and is expected to be so for a while; Indian banks are considered much ‘safer’ options to keep money since the recent crisis; interest rates overseas are abysmally low coupled with the fact that the RBI too had increased NRE deposit rates, making it more sensible to park the money in India. Also, even though the share market and real estate markets in India have taken beatings of late, the valuations are at such amazing levels that any investor would find it an extremely lucrative option to enter. A combination of the last two points would mean that there would probably be a short term shift from the equity and realty markets to risk-free, capital guaranteed deposits in India. Remittance of funds by expatriates to their home country depends principally on the origin factors and destination factors. Non-resident Indians are, in some cases, big earners and in most cases inclined towards savings. These have resulted in India taking the leadership position in inward remittances from its expatriates. The US economy is passing through a recessionary phase which in turn is affecting most countries in the world. The financial sector is in turmoil with major banks and financial institutions (FIs) in a bad shape. These events have caused loss of jobs. NRIs too are affected by this. However, there are many Indians abroad who will be in jobs. Compared to the major developed countries, **the Indian economy is still on rails and** is **likely to sustain** a **7% GDP growth** in the current fiscal year. The **banks** and financial institutions in India **are** in a much better and **stable** shape. Notwithstanding the volatile situation in the stock market, there are good investment opportunities in the country. The increase in the exchange rate of the dollar makes the situation attractive. While loss of jobs and consequent loss of income will somewhat reduce the momentum but this will also see NRIs returning to India. This will again result in a shift of their funds back to the country. The regular remittances, for family maintenance and festivals will anyhow continue.

#### Indian unity and economic strength are key to human survival—also turns every other impact

**KAMDAR 2007** (Mira Kamdar, World Policy Institute, 2007, Planet India: How the fastest growing democracy is transforming America and the world, p. 3-5)

No other country matters more to the future of our planet than India. There is no challenge we face, no opportunity we covet where India does not have critical relevance. From combating global terror to finding cures for dangerous pandemics, from dealing with the energy crisis to averting the worst scenarios of global warming, from rebalancing stark global inequalities to spurring the vital innovation needed to create jobs and improve lives—India is now a pivotal player. The world is undergoing a process of profound recalibration in which the rise of Asia is the most important factor. India holds the key to this new world. India is at once an ancient Asian civilization, a modern nation grounded in Enlightenment values and democratic institutions, and a rising twenty-first-century power. With a population of 1.2 billion, India is the world’s largest democracy. It is an open, vibrant society. India’s diverse population includes Hindus, Muslims, Sikhs, Christians, Buddhists, Jains, Zoroastrians, Jews, and animists. There are twenty-two official languages in India. Three hundred fifty million Indians speak English. India is the world in microcosm. Its geography encompasses every climate, from snowcapped Himalayas to palm-fringed beaches to deserts where nomads and camels roam. A developing country, India is divided among a tiny affluent minority, a rising middle class, and 800 million people who live on less than $2 per day. India faces all the critical problems of our time—extreme social inequality, employment insecurity, a growing energy crisis, severe water shortages, a degraded environment, global warming, a galloping HIV/AIDS epidemic, terrorist attacks—on a scale that defies the imagination. India’s goal is breathtaking in scope: transform a developing country of more than 1 billion people into a developed nation and global leader by 2020, and do this as a democracy in an era of resource scarcity and environmental degradation. The world has to cheer India on. If India fails, there is a real risk that our world will become hostage to political chaos, war over dwindling resources, a poisoned environment, and galloping disease. Wealthy enclaves will employ private companies to supply their needs and private militias to protect them from the poor massing at their gates. But, if India succeeds, it will demonstrate that it is possible to lift hundreds of millions of people out of poverty. It will prove that multiethnic, multireligious democracy is not a luxury for rich societies. It will show us how to save our environment, and how to manage in a fractious, multipolar world. India’s gambit is truly the venture of the century.

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#### Restrictions are prohibitions on action --- the aff is a reporting requirement

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Restrictions must be enforceable

Elizabeth Boalt 5, Professor of Law Emeritus, University of California, Berkeley, University of Arkansas at Little Rock School of Law The Journal of Appellate Practice and Process Fall, 20035 J. App. Prac. & Process 473, lexis

Four questions follow: (1) Are discouraging words "restrictions" on citation under Rule 32.1? (2) What difference, if any, does it make? (3) What is the risk of judicial resistance to [\*493] no-citation rules, through discouraging words or other means? and (4) Should discouraging words be forbidden?

1. Are Discouraging Words "Restrictions" under Rule 32.1?

The committee's statement notwithstanding, it is not clear that discouraging words have to be considered "restrictions" on citation under the proposed Rule 32.1. These words may be wholly admonitory - and unenforceable. The Fourth Circuit's rule, for example, states that citing unpublished opinions is "disfavored," but that it may be done "if counsel believes, nevertheless, that [an unpublished opinion] has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well." n129 On the question of what counsel "believes," surely counsel should be taken at her word; counsel's asserted belief that an unpublished opinion has precedential or persuasive value should not be considered a falsifiable fact. Hence no sanction should be available for violating the Fourth Circuit's rule, and the rule's discouraging language in turn would not be a "prohibition or restriction" that was barred by Rule 32.1 as presently drafted.

In the rules of some other circuits, however, the language disfavoring citation of unpublished opinions is unmoored from anyone's "belief" and arguably does impose an objective "prohibition or restriction" determinable by a court. n130 A court might find, for example, that the required "persuasive value with respect to a material issue that has not been addressed in a published opinion" n131 was not present, and hence that the citation was not permitted by the circuit rule.

With what result? It would follow, paradoxically, that the opinion could be cited - because the circuit rule would be struck down under Rule 32.1 as a forbidden "restriction" on citation.

The committee's double-negative drafting thus creates a Hall of Mirrors in which citation of an unpublished opinion [\*494] would be allowed either way. If the local rule's discouraging language is merely hortatory, it is not a "restriction" forbidden by Rule 32.1; but that doesn't matter, because such a rule does not bar the citation in the first place. If, on the other hand, the local rule's language has bite and is a "restriction," then Rule 32.1 strikes it down, and again the citation is permitted.

#### Vote neg---

#### Only prohibitions on authority guarantee neg ground---their interpretation lets affs no link the best neg offense like deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

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#### The United States Federal Government should condition the use of the President’s authority for targeted killing as a first resort outside zones of active hostilities in response to attack by a non-state actor located within a state has consented to the United States’ use of force within its borders, or that is unwilling or unable to prosecute or neutralize such actors.

#### The standard of “unable or unwilling” should require offering notice, when feasible, to the targeted state and allowance of time for a good-faith effort to neutralize the threat to the United States. “Ability” should be defined by analysis of the level of sovereign control the state exercises over the territory in which the relevant non-state groups are located.

#### Competes---it’s functionally distinct from the plan because it makes no reference to active hostilities or geographical limits on targeted killing authority.

#### Solves the case---no other legal model will ever achieve status as a norm---the plan forfeits the ability to shape that norm by clarifying its criteria

Ashley S. **Deeks 12,** Academic Fellow, Columbia Law School, Spring 2012, “ARTICLE: "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense,” Virginia Journal of International Law, 52 Va. J. Int'l L. 483

In an August 2007 speech, then-Presidential candidate Barack Obama asserted that his administration would take action against high-value leaders of al-Qaida in Pakistan if the United States had actionable intelligence about them and President Musharraf would not act. n1 He later clarified his position, stating, "What I said was that if we have actionable intelligence against bin Laden or other key al-Qaida officials ... and Pakistan is unwilling or unable to strike against them, we should." n2 On May 2, 2011, the United States put those words into operation. Without the consent of Pakistan's government, U.S. forces entered Pakistan to capture or kill Osama bin Laden. In the wake of the successful U.S. military operation, the Government of Pakistan objected to the "unauthorized unilateral action" of the United States. n3 U.S. officials, on the other hand, suggested that the United States declined to provide Pakistan with advance knowledge of the raid because it was concerned that doing so might have compromised the mission. n4 This failure to notify suggests that the United States determined that Pakistan was indeed "unwilling or unable" to suppress the threat posed by bin Laden. n5 Unfortunately, international law currently gives the United States (or any state in a similar position) little guidance about what factors are relevant when making such [\*486] a determination. Yet the stakes are high: the U.S.-Pakistan relationship has come under serious strain as a result of the operation. If, in the future, a state in Pakistan's position deems another state's use of force in its territory pursuant to an "unwilling or unable" determination to be unlawful, the territorial state could use force in response. The lack of guidance therefore has the potential to be costly. President Obama's speech invoked an important but little understood legal standard governing the use of force. More than a century of state practice suggests that it is lawful for State X, which has suffered an armed attack by an insurgent or terrorist group, to use force in State Y against that group if State Y is unwilling or unable to suppress the threat. n6 Yet there has been virtually no discussion, either by states or scholars, of what that standard means. What factors must the United States consider when evaluating Pakistan's willingness or ability to suppress the threats to U.S. (as well as NATO and Afghan) forces? Must the United States ask Pakistan to take measures itself before the United States lawfully may act? How much time must the United States give Pakistan to respond? What if Pakistan proposes to respond to the threat in a way that the United States believes may not be adequate? Many states agree that the "unwilling or unable" test is the correct standard by which to assess the legality of force in this context. For example, Russia used force in Georgia in 2002 against Chechen rebels who had conducted violent attacks in Russia, based on Russia's conclusion that Georgia was unwilling or unable to suppress the rebels' attacks. n7 Israel has invoked the "unwilling or unable" standard periodically in justifying its use of force in Lebanon against Hezbollah and the Palestine Liberation Organization, noting, "Members of the [Security] Council need scarcely be reminded that under international law, if a State is unwilling or unable to prevent the use of its territory to attack another State, that latter State is entitled to take all necessary measures in its own defense." n8 Similarly, [\*487] Turkey defends its use of force in Iraq against the Kurdish Workers' Party (PKK) by claiming that Iraq is unable to suppress the PKK. n9 Several U.S. administrations have stated that the United States will inquire whether another state is unwilling or unable to suppress the threat before using force without consent in that state's territory. n10 Given that academic discussion of the test has been limited thus far, we may describe what "unwilling or unable" means only at a high level of generality. n11 In its most basic form, a state (the "victim state") suffers an armed attack from a nonstate group operating outside its territory and concludes that it is necessary to use force in self-defense to respond to the continuing threat that the group poses. The question is whether the state in which the group is operating (the "territorial state") will agree to suppress the threat on the victim state's behalf. The "unwilling or unable" test requires a victim state to ascertain whether the territorial state is willing and able to address the threat posed by the nonstate group before using force in the territorial state's territory without consent. If the territorial state is willing and able, the victim state may not use force in the territorial state, and the territorial state is expected to take the appropriate steps against the nonstate group. If the territorial state is unwilling or unable to take those steps, however, it is lawful for the victim state to use [\*488] that level of force that is necessary (and proportional) to suppress the threat that the nonstate group poses. A test constructed at this level of generality offers insufficient guidance to states. Although many inquiries in the use of force area lack precision, including questions about what constitutes an "armed attack" and when force is proportional, states and commentators have discussed the possible meanings of these terms at length and in great detail. n12 The same is not true for the "unwilling or unable" test; strikingly little attention has been paid to the nature and consequences of -- or solutions to -- the imprecision surrounding the "unwilling or unable" test. The test's lack of content undermines the legitimacy of the test as it currently is framed and suggests that it is not, in its current form, imposing effective constraints on a state's use of force. n13 To address this flaw, this Article first identifies the test's historical parentage in the law of neutrality and then conducts an original analysis of two centuries of state practice in order to develop normative factors that define what it means for a territorial state to be "unwilling or unable" to suppress attacks by a nonstate actor. Identifying the test's pedigree demonstrates the legitimacy of the core test and helps to frame the relevant law that should inform the test's content. As Thomas Franck has noted, "Pedigree ... pulls toward rule compliance by emphasizing the deep rootedness of the rule." n14 Embedded in this argument is an assumption that states are reasonable actors, that they develop particular rules for good reasons, and that rules with a long pedigree may be seen as particularly instructive because they draw from the collective wisdom of states over time. While following precedent and tradition does not always result in the ideal normative outcome, n15 this Article will demonstrate why it is useful to consider the historical development and applications of the test in ascertaining what its meaning should be. It is worth noting that this test is not the only standard around which states could have coalesced. Although it is possible to imagine a range of [\*489] alternative regimes, it is beyond the scope of this Article to explore those other regimes in detail. n16 Instead, this Article takes as a given that states currently view the "unwilling or unable" test as the proper test. The fact that states currently are acclimated to using the "unwilling or unable" test suggests that any other test would have to overcome a high bar to become the preferred test, a hurdle no other option is poised to meet. In considering the appropriate content of the test, I argue that the "unwilling or unable" test, properly conceived, should advance three goals, derived from Abram Chayes's articulation of how international law can influence foreign policy decisions. n17 First, the "unwilling or unable" test should constrain victim state action by reducing the number of situations [\*490] in which a victim state resorts to force. Second, the test should be clear and detailed enough to serve to justify or legitimate a victim state's use of force when that force is consistent with the test. Third, the test should establish procedures that will improve the quality of decision-making by the victim and territorial states and by those international bodies that are seized with use of force issues. In considering these goals, I identify the relevance of the "rules versus standards" debate and discuss why, in this context, we should favor a more precise rule over a less determinate standard. A test that promotes the goals I have described within the framework of the UN Charter is likely to be seen as a credible international legal norm. It therefore will legitimize those uses of force that are consistent with the test's requirements and delegitimize (and possibly reduce the frequency of) those that stand in tension with the test.

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#### Next off is the flex DA -

#### Restricting targeted killing as a first resort outside active hostilities collapses counter-terrorism by signaling availability of safe havens and immunity from strikes---the “unable-unwilling” framework’s a distinct and better alternative

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

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

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

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

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

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

#### Retaining the legal option of first resort killing is key to military training---breaking that paradigm collapses operational effectiveness

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

Furthermore, while it might be tempting to assume that shifting from one use of force paradigm to another is a simple task, those familiar with the relationship between training and operational eﬀectiveness know this is a highly complex process. As a result, eﬀective training must be mission driven, which means that preparation for armed conﬂict must focus primarily on developing a warrior ethos derived from the armed conﬂict use of force paradigm: deadly force as a measure of ﬁrst resort. 134 Therefore, soldiers are trained to employ deadly force against such targets, irrespective of the conduct they encounter. Furthermore, based on the relative clarity provided by the rule of military objective pursuant to which operational opponents are subject to attack with maximum lethality and all other individuals are the object of protection, it is the minimization of the harmful eﬀects of lawful targeting of military objectives that is the focus or proportionality analysis.

#### Specifically, special forces conduct first-resort targeted killings outside of armed conflict zones

Sascha-Dominik Bachmann 13, Reader in International Law (University of Lincoln), 2013, “Targeted Killings: Contemporary Challenges, Risks and Opportunities,” Journal of Conflict and Security Law, doi: 10.1093/jcsl/krt007

Targeted killing has also been used by the USA in theatres of actual combat operations, such as Afghanistan and Iraq, as well as outside these theatres of war and as part of CIA and US military run covert operations in Pakistan. The USA is using drone strikes and Special Forces there to conduct pre-emptive as well as defensive targeted killing operations against Al-Qaeda and the Taliban. The argument is brought forward that such operations are necessary to protect US forces and its allies in Afghanistan and to disrupt the existent terrorist infrastructure. The focus of such operations is on the so-called ‘Tribal Areas’ of Pakistan, Waziristan, where the Taliban have effectively established an autonomous sphere of influence to the exclusion of the central government in Peshawar.32 Other such covert operations have seen CIA operated drone strikes in Yemen, Somalia as well Sudan, where a lack of cooperation and/or relative capabilities of the respective governments have created areas which are outside effective state control.33

#### Special forces readiness is key to counter-prolif---solves nuclear war

Jim Thomas 13, Vice President and Director of Studies at the Center for Strategic and Budgetary Assessments, and Chris Dougherty is a Research Fellow at the Center for Strategic and Budgetary Assessments, 2013, “BEYOND THE RAMPARTS THE FUTURE OF U.S. SPECIAL OPERATIONS FORCES,” http://www.csbaonline.org/wp-content/uploads/2013/05/SOF-Report-CSBA-Final.pdf

WMD do not represent new threats to U.S. security interests, but as nascent nuclear powers grow their arsenals and aspirants like Iran continue to pursue nuclear capabilities, the threat of nuclear proliferation, as well as the potential for the actual use of nuclear weapons, will increase. Upheaval in failing or outlaw states like Libya and Syria, which possess chemical weapons and a range of missiles, highlights the possibility that in future instances of state collapse or civil war, such weapons could be used by failing regimes in an act of desperation, fall into the hands of rebel forces, or be seized by parties hostile to the United States or its interests. SOF can contribute across the spectrum of counter-WMD efforts, from stopping the acquisition of WMD by hostile states or terrorist groups to preventing their use. The global CT network SOF have built over the last decade could be repurposed over the next decade to become a global counter-WMD network, applying the same logic that it takes a network to defeat a network. Increasing the reach and density of a global counter-WMD network will require expanding security cooperation activities focused on counter-proliferation. Finally, SOF may offer the most viable strategic option for deposing WMD-armed regimes through UW campaigns should the need arise.

#### Special forces are key to disarm rogues’ nuclear programs---the alternative is U.S. counterforce nuclear strikes

Jim **Thomas 13,** Vice President and Director of Studies at the Center for Strategic and Budgetary Assessments, and Chris Dougherty is a Research Fellow at the Center for Strategic and Budgetary Assessments, 2013, “BEYOND THE RAMPARTS THE FUTURE OF U.S. SPECIAL OPERATIONS FORCES,” http://www.csbaonline.org/wp-content/uploads/2013/05/SOF-Report-CSBA-Final.pdf

Finally, if the United States goes to war with a nuclear-armed adversary, SOF may offer the least-worst option for regime change. In 2011, former Secretary of Defense Robert Gates famously said that, “…future defense secretary who advises the president to again send a big American land army into Asia or into the Middle East or Africa should ‘have his head examined,’ as General MacArthur so delicately put it.” 209 While current and future American political leaders may be reluctant to dispatch large-scale forces to conduct regime change operations akin to Operation Iraqi Freedom, SOF offer a viable strategic option for deposing WMD-armed regimes through UW campaigns should the need arise. Using UW may represent the best alternative to using nuclear weapons or large ground forces to invade and occupy a country possessing WMD. The traditional downside of UW is that preparations for such campaigns could take years to put in place, if not longer. The United States would do well to begin developing limited UW options in advance - by using SOF and intelligence assets to build relationships with groups that could threaten WMD-armed regimes - so that future presidents have a viable unconventional regime-change option when confronting WMD-armed adversaries.

#### Rogues will locate their WMD in cities---U.S. nuclear strikes cause mass casualties

Gormley 9 – Dennis Gormley, Senior Fellow in the James Martin Center for Nonproliferation Studies at the Monterey Institute for International Studies, Fall 2009, “The Path to Deep Nuclear Reductions: Dealing with American Conventional Superiority,” online: http://www.ifri.org/files/Securite\_defense/PP29\_Gormley.pdf

Attacking strategic underground targets seems superficially to be the role for which nuclear weapons are most indispensable. According to the U.S. Intelligence Community, there are roughly 2,000 of these targets of interest to U.S. military planners. Due to their burial depth, a good number of these facilities are beyond the reach of existing conventional earth-penetrator weapons.24 Many are susceptible to destruction by one or more nuclear earth penetrators, but not without unwanted consequences. Because more than half of these strategic underground targets are located near or in urban areas, a nuclear attack could produce significant civilian casualties (depending on yield, between thousands and more than a million, according to the U.S. National Academy of Sciences); even in more remote areas, casualties could range between a few hundred to hundreds of thousands, depending on yield and wind conditions.25 A new nuclear earthpenetrator weapon, which the Bush administration favored studying and their NPR endorsed but Congress rejected, would effectively capture a few hundred of these strategic underground targets but some uncertain number would presumably remain beyond reach, and such weapons would still produce unwanted collateral effects.26

## Battlefield Norms

#### No one will model- countries already developed insentivces- no reason to give them up

#### No risk of drone wars

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

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

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

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

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

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

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

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

#### No risk of war in the Caucasus

Friedfeld 12(Alex Friedfeld, “USEUCOM: Rising Tensions in the Caucasus Will Not Lead to War,” [GLOBAL SECURITY MONITOR](http://c4ads.org/latest/) , the blog of the Center for Advanced Defense Studies, September 14, 2012, <http://c4ads.org/latest/?p=840>)

Despite rising tension between Azerbaijan and Armenia, it is unlikely that the conflict will escalate beyond small skirmishes at the Nargorno-Karabakh border. Though Azerbaijan has superior military capabilities, it would find it difficult to overcome Armenia’s control of the high-ground in the Nagorno-Karabakh territory and it lacks the resources necessary to sustain an extended conflict. Yusef Agayev, an Azerbaijani military expert and a veteran of the last war between the two nations, noted that the army could only fight for a month or two as anything beyond that would have to involve the Azerbaijani society. As Agayev [said](http://www.reuters.com/article/2012/09/11/us-azerbaijan-armenia-conflict-idUSBRE88A0DQ20120911): “I don’t think the society of my country is ready for war.” Without outside assistance, an all-out war would most likely end in a deadly stalemate. Azerbaijan will not start a war it is unlikely to win. The international community is concerned that if fighting does break out, outside forces would get involved and provide assistance. Armenia is currently partaking in a collective security agreement with Russia, and Azerbaijan is participating in a collective security agreement with Turkey, which is a NATO member. However, Russia and NATO have shown little interest in the matter and have not gone beyond issuing public condemnations of Azerbaijan. While Russia currently has a strong relationship with Armenia, it is working on improving its relations with Azerbaijan as well. On September 12, the two nations[inaugurated the Bridge of Azerbaijani-Russian Friendship](http://www.news.az/articles/politics/68054), the latest in a series of attempts by Russia to increase its influence in Baku. For NATO countries like Turkey, Azerbaijan is an important source of energy, and it will not want to do anything that could jeopardize this flow. Several Western oil companies – such as British Petroleum and ExxonMobil – operate in the Azerbaijani oil fields and would be strongly opposed to any act that would damage their holdings. Any conflict between Azerbaijan and Armenia could also disrupt the Baku-Tbilisi-Erzurum natural gas pipeline and the Baku-Tbilisi-Ceyhan crude oil pipeline, each of which is essential to European attempts to reduce dependence on Russian energy. Though the language employed by officials has become increasingly aggressive since the Safarov pardon, it is important to consider the actual actions – or in this case the lack thereof – of the two states. It has been two weeks since the pardon and neither side has taken any steps that would provoke a war. Perhaps most importantly, there has been no military mobilization by either country. Azerbaijan has publicly insisted for months that it is strong enough to take back the contested territory through force, and yet it has given no physical indication that it intends to do so at this time. Despite its rhetoric and unhappiness with the process, Azerbaijan still considers negotiation a viable alternative to armed conflict

## Europe Advantage

**Other nations will still cooperate with the U.S. even if it’s unpopular – empirically proven by Bush   
Kagan, ‘6**

[Robert Kagan, a senior associate at the Carnegie Endowment for International Peace and transatlantic fellow at the German Marshall Fund, writes a monthly column for The Post., “Still the Colossus,” The Washington Post, January 15, 2006, http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=17894&prog=zgp&proj=zusr]

**The striking thing about** the present international situation **is the degree to which America remains** what Bill Clinton once called "**the indispensable nation." Despite global opinion polls registering broad hostility to** George W. **Bush's** **U**nited **S**tates, **the behavior of governments and political leaders suggests America's position in the world is not** all that **different from what it was before Sept. 11 and** the **Iraq** war.  **The much-anticipated global effort to balance against** American **hegemony** -- which the realists have been anticipating for more than 15 years now -- **has** simply **not occurred**. On the contrary, in Europe the idea has all but vanished. European Union defense budgets continue their steady decline, and even the project of creating a common foreign and defense policy has slowed if not stalled. Both trends are primarily the result of internal European politics. But if they really feared American power, Europeans would be taking more urgent steps to strengthen the European Union's hand to check it.  **Nor are Europeans refusing to cooperate, even with an administration they allegedly despise**. Western Europe will not be a strategic partner as it was during the Cold War, because Western Europeans no longer feel threatened and therefore do not seek American protection. Nevertheless, **the current trend is toward closer cooperation**. **Germany's** new **government, while still dissenting from U.S. policy in Iraq, is working hard** and ostentatiously **to improve relations**. It is bending over backward to show support for the mission in Afghanistan, most notably by continuing to supply a small but, in German terms, meaningful number of troops. It even trumpets its willingness to train Iraqi soldiers. Chancellor Angela Merkel promises to work closely with Washington on the question of the China arms embargo, indicating agreement with the American view that China is a potential strategic concern. For Eastern and Central Europe, the growing threat is Russia, not America, and the big question remains what it was in the 1990s: Who will be invited to join NATO?

**Cooperation dependent on other facets of war on terrorism – detention controversies are periodic.**

**Archick ‘13**

(Kristin, Specialist in European Affairs @ CRS, “U.S.-EU Cooperation Against Terrorism”, May 21, <http://www.fas.org/sgp/crs/row/RS22030.pdf>, DZ)

U.S.-EU **cooperation against terrorism has led to a new dynamic** in U.S.-EU relations by fostering¶ dialogue on law enforcement and homeland security issues previously reserved for bilateral¶ discussions. **Nevertheless**, some **challenges persist** in fostering closer U.S.-EU cooperation in¶ these fields. Among **the most prominent are data privacy and data protection** concerns. The EU¶ considers the privacy of personal data a basic right and EU rules and regulations strive to keep¶ personal data out of the hands of law enforcement as much as possible. The negotiation of several¶ U.S.-EU information-sharing agreements, from those¶ related to tracking terrorist financial data to¶ sharing airline passenger information, has been complicated by ongoing EU concerns about¶ whether the United States could guarantee a sufficient level of protection for European citizens’¶ personal data. Other **issues that have** led to **periodic tensions include detainee policies**, differences¶ in the U.S. and EU terrorist designation lists (especially regarding Hezbollah), and balancing¶ measures to improve border controls and border se¶ curity with the need to facilitate legitimate¶ transatlantic travel and commerce. **Congressional decisions related to** improving **border controls and transport security**, in particular,¶ **may affect** how future U.S.-EU **cooperation** evolves. In addition, given the European Parliament’s¶ growing influence in many of these policy areas,¶ **Members of Congress may be able to help shape**¶ **Parliament’s views and responses** **through** ongoing **contacts and the** existing Transatlantic¶ Legislators’ Dialogue (**TLD**). This report exam¶ ines the evolution of U.S.-EU counterterrorism¶ cooperation and the ongoing challenges that may be of interest in the 113¶ th¶ Congress.

## Impact defense to EU Relations

#### Alt cause to decline in relations- spying on leaders

#### Primacy undermines relations

Layne 03 – Visiting fellow in Foreign Policy Studies at the Cato Institute in Washington and author of "Casualties of War". (Christopher, “Supremacy Is America's Weakness”, The Financial Times, August 13, 2003, <http://www.cato.org/publications/commentary/supremacy-is-americas-weakness>, Callahan)

Major combat operations in Iraq ended in April but the transatlantic rupture between the US and "old" Europe triggered by the war has not healed. This is because American hegemony remains the cause of the rift. The struggle for supremacy has been a feature of US-European relations since America emerged as a great power in the late 19th century. During the 20th century, the US fought two large wars in Europe to stop a hegemonic Germany from threatening America's backyard. After the second world war, America's strategic ambitions - based primarily on economic self-interest, not cold-war ideology - led it to establish its own hegemony over western Europe. There is a well-known quip that Nato was created to keep the Russians out, the Germans down and the Americans in. It is more accurate to say that America's commitment to the Atlantic alliance is about staying on top - and keeping the Europeans apart. Postwar US policymakers did not forget why the US went to war in 1917 and 1941. When they helped rebuild western Europe after 1945 - and promoted economic and political integration - they also recognised the risk of creating the geopolitical equivalent of Frankenstein's monster. The last thing Washington wanted was to encourage the emergence of a new, independent pole of power that could become a potential rival to the US. As Dean Acheson, then secretary of state, said, Americans wanted to preclude western Europe from "becoming (a) third force or opposing force". US support for European integration has always been conditional on its taking place within the framework of a US-dominated Atlantic community. Rhetoric notwithstanding, the US has never wanted a western Europe of equal power because such a Europe could exercise its autonomy in ways that clashed with Washington's interests. Unsurprisingly, Washington has tried to hamper the EU's moves towards political unity and strategic self-sufficiency. Washington is trying to derail the EU's plans to create, through the European Security and Defence Policy, military capabilities outside Nato's aegis. It has encouraged the expansion of Nato and the EU in the hope that the new members from central and eastern Europe will keep in check Franco-German aspirations for a counterweight to American power. More generally, the Bush administration is playing a game of divide and rule to undermine the EU's sense of common purpose.

#### Lack of human infrastructure and bad attitudes mean the aff can’t solve

Joyner 09 – Managing Editor of the Atlantic Council since September 2007 and editor of the popular political blog Outside The Beltway since January 2003. He has published more than eighty columns for publications including The Atlantic, Foreign Policy, The National Interest, The New Republic, World Politics Review, CNN, Politico, Reason, Legal Affairs, Human Events, The American Conservative, The Washington Examiner, The New Individualist, and TCS Daily and is a regular commentator on world affairs on venues including BBC, NPR, C-SPAN, Al Jazeera, Fox, CNN, and MSNBC. (James, “Europe’s Obama Fatigue”, Foreign Policy, October 29, 2009, <http://www.foreignpolicy.com/articles/2009/10/29/europes_obama_fatigue>, Callahan)

U.S. President Barack Obama is so beloved in Europe that he was nominated for a Nobel Peace Prize (which he later won) just 12 days after taking office for his "extraordinary efforts to strengthen international diplomacy and co-operation between peoples." A Pew survey this summer found that 93 percent of Germans, 91 percent of French people, and 86 percent of Brits believed Obama "will do the right thing in world affairs," a stunning turnaround from their views on the last administration. Yet, this perception belies the reality that Obama has done much less for Europe than his predecessor. Despite George W. Bush's defiant "you're with us or you're against us" public stance, he actively solicited advice and input from his NATO partners. Obama, by contrast, is saying all the right things in public about transatlantic relations and NATO but adopting a high-handed policy and paying little attention to Europe. And Europe is taking a hint. The signs are telling, the most important but least reported of which are Obama's choice of staffing. To be sure, there are some very prominent Atlanticists in the administration. Gen. James Jones, the previous chairman of the Atlantic Council and former supreme allied commander, is national security advisor. And current Atlantic Council Chairman Chuck Hagel (R-Neb.) has just been appointed as co-chair of the President's Intelligence Advisory Board. But many important working-level posts in both the State Department and the National Security Council (NSC) are unfilled. Most notably, the EU portfolio at the State Department has been treated as a political hot potato, currently being handled as an additional duty by the Balkans director. With such a dreadfully weak human infrastructure at home, it's no wonder next week's U.S.-EU summit is expected to be a non-event. The preparations have thus far mostly focused on protocol rather than policy. The Europeans are particularly irritated that the luncheon will be hosted by Vice President Joseph Biden rather than the U.S. president himself. Under the previous administration, Bush regularly presided. On Afghanistan, which all agree is the alliance's most critical mission, the Europeans are also feeling a bit lorded over. As Jackson Diehl put it, the region's leaders are "frustrated that they must watch and wait -- and wait and wait -- for the [U.S.] president to make up his mind." Mark Mardell, BBC's North America editor, reported "a growing sense of frustration" at the NATO defense ministers meeting in Slovakia last week over being held in limbo. Even in Britain, where the public loves Obama, the government has been obsessed, after repeated slights -- the infamous CD set gifted to Prime Minister Gordon Brown, a press conference canceled due to light snow (or was it fatigue?), being denied a private meeting with Obama at the Pittsburgh summit, etc. -- with the notion that the two countries' "special relationship" is over. To be sure, some of this is overblown -- and hardly new -- but Obama has been less solicitous of his country's most natural ally than any U.S. president in memory.

#### Alt cause – attitudes towards China

Gill and Niblett 05 – Gill holds the Freeman chair in China Studies at the Center for Strategic and International Studies in Washington. Niblett is director of the center's Europe Program. (Bates and Robin, “Diverging paths hurt U.S. and Europe”, CSIS, September 6, 2005, <http://csis.org/print/5999>, Callahan)

Washington Divergent U.S. and EU approaches toward China's dramatic political and economic rise carry the danger of misunderstandings not only across the Atlantic, but also with China, and could have negative economic and security consequences in the near and long terms. A resurgence in American China-bashing over the past six months reflects a combination of concerns: competition with China's economy, China's accelerating military modernization, and Beijing's expanding diplomatic and economic presence around the world. These factors foster a rare bipartisan consensus on Capitol Hill, one that the White House has been wary to challenge. In contrast, on Monday, Prime Minister Wen Jiabao of China and members of his government welcomed Prime Minister Tony Blair of Britain and other European Union leaders to the eighth EU-China summit in Beijing. This summit marked another important step in the solidifying strategic relationship between Europe and China. The EU has already become China's leading trade partner, and China is the secondlargest destination in the world for EU exports. But these statistics obscure the scope and depth of the EU-China dialogue. The summit in Beijing last week bolsters an everdeepening set of EU-China relations that includes work on a new and wide-ranging Framework Agreement to further formalize political relations; strengthened scientific and technology cooperation; collaboration on labor, tourism and migration issues; and a specific effort aimed at climate change and energy supply security. EU-China cooperation on space is already far along, as China is a major partner in the development and deployment of the Galileo navigation system. U.S. policy makers are only now waking up to these developments. Instead, over the past year, U.S. attention on the EU-China relationship has focused almost exclusively on preventing EU governments from lifting their 1989 arms embargo against China. Greater scrutiny of European trade with China in high-technology, defense-related and dual-use items is certainly warranted, and U.S. concerns have forcefully supported those in Europe who have advocated a more measured approach to military-technical relations with China. Moreover, with the shelving earlier this summer of EU plans to lift the embargo, EU officials and their U.S. counterparts have belatedly established a formal EU-U.S. dialogue on Asia and China. 1 But U.S. interest in engaging substantively with Europe on China-related issues is halfhearted at best. The administration appears primarily intent on educating Europeans about the security risks that China poses to Asia, a region across which the United States extends important security guarantees and maintains significant numbers of deployed forces. It seems far less interested in discussing the objectives, merits, successes and failures of recent U.S. and European approaches. For their part, Europeans are equally wary about consulting with the United States on their policies toward China. This has been evident in the economic sphere, where Europeans have balked at suggestions that they jointly tackle the Chinese government's frequent failure to protect the intellectual property of Western investors and exporters into China. This ambivalence extends also to the political level, where many Europeans believe that the United States' confrontational attitude toward China will create a self-fulfilling prophecy of Chinese militarism. Overall, Europeans are still sore over the trashing they received from Congress and the White House during the arms embargo uproar earlier this year. But such distrustful standoffishness by both sides serves the interests of neither. Separately, neither U.S. critical detachment nor European engagement efforts have been successful in inducing positive steps from China in critical areas, like ratifying the UN Convention on Civil and Political Rights, halting the passage of the antisecession law aimed at Taiwan, or pursuing less mercantilist trade and technology policies. Instead, Chinese leaders continue to take advantage of divergent U.S. and EU approaches toward China, deftly playing one side off the other. Both the United States and European nations have a shared strategic interest to integrate China beneficially into the international trading and security system, and bring about the kind of domestic social and economic development in China which will make it a more stable, open, and prosperous partner. The absence of a strong trans-Atlantic dialogue regarding China threatens not only rifts in U.S.-EU relations, it also enables Beijing to persist with policies that run counter to U.S., EU and even Chinese long-term interests. U.S. and European leaders need to put as much effort into understanding their respective policies toward China as they are putting into their bilateral discussions with China.

#### Trade means EU relations are resilient

Ahearn et al 08 – Coordinator Foreign Affairs, Defense, and Trade Division for the CRS. Other CRS people too. (“European Union–U.S. Trade and Investment Relations: Key Issues”, Congressional Research Service, February 14, 2008, <http://www.fas.org/sgp/crs/row/RL34381.pdf>, Callahan)

The United States and EU share the largest commercial relationship in the world. Not only are trade and investment ties between the two partners huge in absolute terms, but the EU share of U.S. global trade and investment flows has remained high and relatively constant over time, despite the rise of Asian trade and investment flows. These robust U.S.- EU commercial ties are mutually beneficial and provide consumers on both sides of the Atlantic with major benefits in terms of jobs and access to capital and new technologies. Given the high level of commercial interactions, trade tensions and disputes are not unexpected. In the past, U.S.-EU trade relations have experienced periodic episodes of rising trade tensions and conflicts, only to be followed by successful efforts at dispute settlement. Policymakers and many academics tend to maintain that the U.S. and EU always have more in common than in dispute, and like to point out that trade disputes usually affect a small fraction (often estimated at 1-2 percent) of the trade in goods and services. Currently, Washington and Brussels are working to resolve a number of issues, including a dispute between the aerospace manufacturers, Airbus and Boeing, and conflicts over hormone-treated beef, bio-engineered food products, and protection of geographical indicators. The Airbus-Boeing dispute involves allegations of unfair subsidization while the other disputes are rooted in different U.S.-EU approaches to regulation, as well as social preferences. Simultaneously, the two sides have cooperated to liberalize the transatlantic air services market and are working to harmonize and/or liberalize financial markets. Agencies in the U.S. and EU are also moving towards substantial convergence in some areas of antitrust enforcement. A new institutional structure, the Transatlantic Economic Council (TEC), was established in 2007 to advance bilateral efforts to reduce regulatory and other barriers to trade. Congress has taken a strong interest in many of these issues. By both proposing and passing legislation, Congress has supported the efforts of U.S. industrial and agricultural interests to gain better access to EU markets. Congress has pressured the executive branch to take a harder line against the EU in resolving some disputes, but has also cooperated with the Administration in crafting compromise solutions.

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## Corn DA

### Yes Prolif Impact

#### Prolif causes rational crisis escalation---causes accidents

Kroenig 12 – Matthew Kroenig is an Assistant Professor of Government at Georgetown University and a Stanton Nuclear Security Fellow on the Council on Foreign Relations, May 26th, 2012, “The History of Proliferation Optimism: Does It Have A Future?” <http://www.npolicy.org/article.php?aid=1182&tid=30>

What’s Wrong with Proliferation Optimism?

**The proliferation optimist position**, while having a distinguished pedigree, **has several major flaws**. Many of these weaknesses have been chronicled in brilliant detail by Scott Sagan and other contemporary proliferation pessimists.34 Rather than repeat these substantial efforts, I will use this section to offer some original critiques of the recent incarnations of proliferation optimism.¶ First and foremost, proliferation optimists do not appear to understand contemporary deterrence theory. I do not say this lightly in an effort to marginalize or discredit my intellectual opponents. Rather, I make this claim with all due caution and sincerity. A careful review of the contemporary proliferation optimism literature does not reflect an understanding of, or engagement with, the developments in academic deterrence theory over the past few decades in top scholarly journals such as the American Political Science Review and International Organization.35 While early optimists like Viner and Brodie can be excused for not knowing better, the writings of contemporary proliferation optimists **ignore much of the past fifty years of academic research on nuclear deterrence theory.**¶In the 1940s, Viner, Brodie, and others argued that the advent of Mutually Assured Destruction (MAD) rendered war among major powers obsolete, but nuclear deterrence theory soon advanced beyond that simple understanding.36 After all, great power political competition does not end with nuclear weapons. And nuclear-armed states still seek to threaten nuclear-armed adversaries. States cannot credibly threaten to launch a suicidal nuclear war, but they still want to coerce their adversaries. This leads to a credibility problem: how can states credibly threaten a nuclear-armed opponent? Since the 1960s academic nuclear deterrence theory has been devoted almost exclusively to answering this question.37 And, unfortunately for proliferation optimists, the answers do not give us reasons to be optimistic.¶ Thomas Schelling was the first to devise a rational means by which states can threaten nuclear-armed opponents.38 He argued that leaders cannot credibly threaten to intentionally launch a suicidal nuclear war, but they can make a “threat that leaves something to chance.”39 They can engage in a process, the nuclear crisis, which increases the risk of nuclear war in an attempt to force a less resolved adversary to back down. As states escalate a nuclear crisis there is an increasing probability that the conflict will spiral out of control and result in an inadvertent or accidental nuclear exchange. As long as the benefit of winning the crisis is greater than the incremental increase in the risk of nuclear war, threats to escalate nuclear crises are inherently credible. In these games of nuclear brinkmanship, the state that is willing to run the greatest risk of nuclear war before backing down will win the crisis as long as it does not end in catastrophe. It is for this reason that Thomas Schelling called great power politics in the nuclear era a “competition in risk taking.”¶ 40 This does not mean that states eagerly bid up the risk of nuclear war. Rather, they face gut-wrenching decisions at each stage of the crisis. They can quit the crisis to avoid nuclear war, but only by ceding an important geopolitical issue to an opponent. Or they can the escalate the crisis in an attempt to prevail, but only at the risk of suffering a possible nuclear exchange.¶ Since 1945 there were have been many high stakes nuclear crises (by my count, there have been twenty) in which “rational” states like the United States run a frighteningly-real risk of nuclear war.41 By asking whether states can be deterred or not, therefore, proliferation optimists ask the wrong question. The right question to ask is: what risk of nuclear war is a specific state willing to run against a particular opponent in a given crisis? Optimists are likely correct when they assert that Iran will not intentionally commit national suicide by launching a bolt-from-the-blue nuclear attack on the United States or Israel. This does not mean that Iran will never use nuclear weapons, however. Indeed, it is almost inconceivable to think that a nuclear-armed Iran would not, at some point, find itself in a crisis with another nuclear-armed power. It is also inconceivable that in those circumstances, Iran would not be willing to run any risk of nuclear war in order to achieve its objectives. If a nuclear-armed Iran and the United States or Israel have a geopolitical conflict in the future, over, for example, the internal politics of Syria, an Israeli conflict with Iran’s client Hezbollah, the U.S. presence in the Persian Gulf, passage through the Strait of Hormuz, or some other issue, do we believe that Iran would immediately capitulate? Or is it possible that Iran would push back, possibly even brandishing nuclear weapons in an attempt to coerce its adversaries? If the latter, there is a real risk that proliferation to Iran could result in nuclear war.¶ An optimist might counter that nuclear weapons will never be used, even in a crisis situation, because states have such a strong incentive, namely national survival, to ensure that nuclear weapons are not used. But, this objection ignores the fact that **leaders operate under competing pressures.** Leaders in nuclear-armed states also have very strong incentives to convince their adversaries that nuclear weapons could very well be used. Historically we have seen that leaders take actions in crises, such as **placing nuclear weapons on** high alert **and** delegating **nuclear** launch authority **to low level commanders**, to purposely increase the risk of accidental nuclear war in an attempt to force less-resolved opponents to back down.

### 2NC Link Wall

#### Our link destroys all their spin about the plan merely codifying current policy---the current approach makes limits on first-resort killings part of the rules of engagement, not a legal restriction on authority---legally codifying them would destroy flexibility

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

Ironically, when Professor Gabrielle Blum proposed such a limitation in her article The Dispensable Lives of Soldiers,76 I was quite skeptical. However, my skepticism focused primarily on two considerations. First, her proposal extended to “hot zones”. I remain opposed to such an extension, as I believe it would inject a dangerous dilution of tactical initiative into the ex-ecution of combat operations.77 Second, it was unclear whether Professor Blum was proposing a legal norm, or a policy constraint on permissible legal authority. Once it was clear that we shared opposition to modifying the existing legal authority to attack even an inoffensive enemy belligerent operative (such as an enemy soldier sleeping in a barracks or assembly area or attempting to retreat from an ongoing attack), and that she was in fact proposing consideration of policy limits on that authority, we were much more closely aligned in our views.78

This latter aspect of the “capture or kill” debate is critical, and in my opinion, if such a limitation on targeting authority is justified, it must be framed as a policy limit on otherwise lawful authority: a rule of engagement.79 This is because there may be situations, even where these conditions are satisfied, when an attack is justified because of the influence it will produce on enemy leadership and other belligerent operatives. It is this corporate, as opposed to individualized, approach to attack justification that distinguishes targeting belligerent operatives from targeting civilians taking a direct part in hostilities. It therefore requires strictly limiting any “capture or kill” obligation to a policy applique restricting underlying legal authority. In short, even when capture is a completely feasible option to incapacitate an enemy belligerent operative, there still are times when attack is preferred because of the shock effect it will produce on the corporate enemy capability.80

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

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

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

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

#### The plan causes massive resistance and backlash by the executive:

#### a) The U.S. views itself as in an armed conflict with al-Qaeda, regardless of the geographical zone of combat

Laurie R. Blank 10, Director, International Humanitarian Law Clinic, Emory Law School, 9/16/10, “DEFINING THE BATTLEFIELD IN CONTEMPORARY CONFLICT AND COUNTERTERRORISM: UNDERSTANDING THE PARAMETERS OF THE ZONE OF COMBAT,” Georgia Journal of International and Comparative Law, Vol. 39, No. 1, 2010, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677965>

This Article will focus on a related question, but one that has not yet been asked: where can we conduct an armed conflict against terrorist groups? Questions of whether the law of armed conflict applies to conflicts with al Qaeda or other terrorist groups are beyond the scope of this Article. Rather, accepting that the United States views itself as engaged “in an armed conflict with al-Qaeda, as well as the Taliban and associated forces,”16 this Article will focus on two hitherto unexamined issues—when and for how long is an area part of the zone of combat, and how far does this designation extend geographically. Although questions of applicable law have been central to legal and policy discussions for the past several years, these issues have remained below the surface and in the shadows. These questions of where and when with regard to the zone of combat are critical foundational questions that bear directly on the applicable law within (and without) the zone of combat.

#### b) The plan applies the human rights law framework to areas that the U.S. currently understands as governed by the law of armed conflict---that causes military backlash against both the plan and any broader effort to make battlefield conduct comply with human rights law---that’s net offense against both advantages

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

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

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

### Surrender link

#### Restricting targeted killing as a first resort establishes a requirement that the U.S. offer opportunities for surrender before targeting

Laurie R. Blank 12, Director, International Humanitarian Law Clinic, Emory Law School, 2012, “NATIONAL SECURITY: PART II: ARTICLE: TARGETED STRIKES: THE CONSEQUENCES OF BLURRING THE ARMED CONFLICT AND SELF-DEFENSE JUSTIFICATIONS,” William Mitchell Law Review, 38 Wm. Mitchell L. Rev. 1655

In the immediate aftermath of the May 1, 2011 raid that killed Osama bin Laden, one issue that dominated news stories and blogs for several days was the question of whether the Navy Seals executing the mission were obligated to attempt to capture bin Laden before killing him and, as a subsidiary question, whether bin Laden attempted to surrender before he was killed. n92 This issue highlights the distinction between the armed conflict and self-defense regimes and the dangers of conflating them most directly.

Under the LOAC, an individual who is a legitimate target can be targeted with deadly force as a first resort. Once an individual is hors de combat, either through injury, sickness or capture, he or she may not be attacked. n93 Furthermore, the LOAC outlaws any [\*1684] denial of quarter. n94 Indeed, killing or wounding an enemy fighter who has laid down his arms and surrendered is a war crime under Article 8(2)(b)(vi) of the Rome Statute of the International Criminal Court. n95 The prohibition on killing or harming detained persons, whether prisoners of war or other detainees, does not extend to an obligation to seek to capture before killing, however. Rather, "combatants and civilians directly participating in the hostilities must be hors de combat ... before an obligation to capture attaches." n96 Thus, while combatants must not attack persons who have surrendered (technically there is no obligation to actually capture persons who surrender; the law prohibits attacking persons who have surrendered), they have no obligation to offer opportunities for surrender. n97 As one scholar has explained,

Once an armed conflict exists, it is not incumbent on the army of the one party to inquire whether members of a military unit of the other party wish to surrender before attacking it. The onus is on the party that wishes to surrender and thereby prevent attack to make this clear. n98

At the heart of the matter, therefore, the legal issue centers on a clear expression of the intent to surrender. n99 Surrender must be [\*1685] accepted but need not be solicited. By all accounts, for example, this appeared to be the rules of engagement for the bin Laden raid. According to then-CIA director Leon Panetta's explanation,

The authority here was to kill bin Laden. And obviously, under the rules of engagement, if he had in fact thrown up his hands, surrendered and didn't appear to be representing any kind of threat, then they were to capture him. But they had full authority to kill him. n100

In contrast, human rights law's requirement that force only be used as a last resort when absolutely necessary for the protection of innocent victims of an attack creates an obligation to attempt to capture a suspected terrorist before any lethal targeting. n101 A state using force in self-defense against a terrorist cannot therefore target him or her as a first resort but can only do so if there are no alternatives - meaning that an offer of surrender or an attempt at capture has been made or is entirely unfeasible in the circumstances. Thus, if non-forceful measures can foil the terrorist attack without the use of deadly force, then the state may not use force in self-defense. n102 The supremacy of the right to life means that "even the most dangerous individual must be captured, rather than killed, so long as it is practically feasible to do so, bearing in mind all of the circumstances." n103 No more, this obligation to capture first rather than kill is not dependent on the target's efforts to surrender; the obligation actually works the other way: the forces [\*1686] may not use deadly force except if absolutely necessary to protect themselves or innocent persons from immediate danger, that is, self-defense or defense of others. As with any law enforcement operation, "the intended result ... is the arrest of the suspect," n104 and therefore every attempt must be made to capture before resorting to lethal force.

#### Al Qaeda is weak now but could recover if the US allows them the opportunity

**McLaughlin 13** (John McLaughlin was a CIA officer for 32 years and served as deputy director and acting director from 2000-2004. He currently teaches at the Johns Hopkins University's School of Advanced International Studies and is a Non-Resident Senior Fellow at the Brookings Institution, ¶ 06:00 AM ET¶ Terrorism at a moment of transition7/12, http://security.blogs.cnn.com/2013/07/12/terrorism-at-a-moment-of-transition/)

A third major trend has to do with the debate underway among terrorists over tactics, targets, and ways to correct past errors.¶ On targets, jihadists are now pulled in many directions. Many experts contend they are less capable of a major attack on the U.S. homeland. But given the steady stream of surprises they’ve sprung – ranging from the 2009 “underwear bomber” to the more recent idea of a surgically implanted explosive – it is hard to believe they’ve given up trying to surprise us with innovations designed to penetrate our defenses.¶ We especially should remain alert that some of the smaller groups could surprise us by pointing an attacker toward the United States, as Pakistan’s Tehrik e Taliban did in preparing Faizal Shazad for his attempted bombing of Times Square in 2010.¶ At the same time, many of the groups are becoming intrigued by the possibility of scoring gains against regional governments that are now struggling to gain or keep their balance – opportunities that did not exist at the time of the 9/11 attacks.¶ Equally important, jihadists are now learning from their mistakes, especially the reasons for their past rejection by populations where they temporarily gained sway.¶ Documents from al Qaeda in the Islamic Maghreb, discovered after French forces chased them from Mali, reveal awareness that they were too harsh on local inhabitants, especially women. They also recognized that they need to move more gradually and provide tangible services to populations – a practice that has contributed to the success of Hezbollah in Lebanon.¶ We are now seeing a similar awareness among jihadists in Syria, Tunisia, Libya, and Yemen. If these “lessons learned” take hold and spread, it will become harder to separate terrorists from populations and root them out.¶ Taken together, these three trends are a cautionary tale for those seeking to gauge the future of the terrorist threat.¶ Al Qaeda today may be weakened, but its wounds are far from fatal. It is at a moment of transition, immersed in circumstances that could sow confusion and division in the movement or, more likely, extend its life and impart new momentum.¶ So if we are ever tempted to lower our guard in debating whether and when this war might end, we should take heed of these trends and of the wisdom J. R. R. Tolkien has Eowyn speak in “Lord of the Rings”: "It needs but one foe to breed a war, not two ..."

## CP

### 2NC Brooks

Lack of geographical limits means the CP does nothing

Rosa Brooks, Associate Professor of Law, University of Virginia School of Law, December 2004, ARTICLE: WAR EVERYWHERE: RIGHTS, NATIONAL SECURITY LAW, AND THE LAW OF ARMED CONFLICT IN THE AGE OF TERROR, 153 U. Pa. L. Rev. 675

**If the war knows no geographical** or temporal **boundaries, if no one deemed an enemy enjoys any of the protections envisioned by the law of armed conflict**, and if the line between terrorist combatants and terrorist civilians makes no sense, **then there are very few legal constraints on U.S. behavior abroad**. U.S. forces can attack, capture, detain, and kill with impunity, subject, of course, to political and diplomatic constraints, but virtually unfettered by legal constraints. To be sure, it is true that even in earlier periods, there has been no effective international legal enforcement mechanism able to restrain U.S. behavior abroad in matters relating to national security. Nonetheless, the U.S. has to a significant degree internalized the law of armed conflict, and willingly accepted the constraints that flow from this body of law. n247 Now, however, the law of armed conflict appears to dictate very few constraints, either internal or external, and this has had a spillover effect on other areas of the law **that do contain clear guidelines**, such as prohibitions on torture.

### 2NC Solves Norms

#### Only the CP solves norms because it’s based on reforming a long-standing precedent of action by states---the plan isn’t

Ashley S. **Deeks 12**, Academic Fellow, Columbia Law School, Spring 2012, “ARTICLE: "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense,” Virginia Journal of International Law, 52 Va. J. Int'l L. 483

Deriving factors largely from the statements and explanations of victim states means that those factors will be shaped by states that have the political power and military capacity to use force in another state's territory. This means the factors inevitably will contain some bias toward victim state equities, and will be shaped by states willing to use force. n115 However, if one believes that an "unwilling or unable" test that has greater legal content and that is consistent with the objectives in Part III.A will serve as a more effective restraint on the use of force, then the test will impose constraints on the very actors that helped shape the test. In response to skepticism that those actors will abide by such constraints, the fact that many of these factors have their roots in state practice drawn from a range of states across different time periods suggests that states generally will find these factors workable. This matters because state decision-makers, acting in good faith, "are more likely to respect standards rationally related to concerns they recognize as appropriate." n116

### 2NC Daskal

#### There is no definition of a “hot battlefield” and elsewhere – makes it difficult to enact the aff anyways

Jennifer **Daskal**, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 20**13,** ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165

Commentary, political discourse, court rulings, and academic literature are rife with references to the distinction between the so-called “hot battlefield” and elsewhere. Yet, despite the salience of the distinction, there is no commonly understood definition of the term – let alone a common term applied by all. 99 In what follows, I briefly survey the relevant treaty and case law and offer a working definition of what I call the “zone of active hostilities” (or more colloquially the “hot” conflict zone) that takes into account the existing treaty and case law as well as the normative and practical reasons for distinguishing between the two zones. i. Treaty and Case Law While not spelled out in any specificity, the notion of separate zones of hostilities where fighting is underway is implicit in treaty law. The Geneva Conventions, for example, specify that prisoners of war and internees must be moved away from the “combat zone” in order to keep them out of danger;100 and that belligerent parties must conduct searches for the dead and wounded left on the “battlefield.”101 There are no explicit definitions provided, but the context suggests a narrow definition covering those areas where fighting is taking place or is likely to erupt at any moment. The related term “zone of military hostilities” is spelled out in a bit more detail in the Commentaries and is described as applying to not just those areas where fighting is taking place, but also to those areas where there are actual or planned troop movements, even if no fighting.102

# 1NR

### modeling

#### Drone prolif is happening now and is inevitable – US drone policy isn’t modeled

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

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

#### Zero chance of precedent setting – other countries don’t act based on the United States policy

Wright 12

(Robert Wright, finalist for the Pulitzer Prize, former writer and editor at The Atlantic, “The Incoherence of a Drone-Strike Advocate” NOV 14 2012, <http://www.theatlantic.com/international/archive/2012/11/the-incoherence-of-a-drone-strike-advocate/265256/>, KB)

Naureen Shah of Columbia Law School, a guest on the show, had raised the possibility that America is setting a dangerous precedent with drone strikes. If other people start doing what America does--fire drones into nations that house somebody they want dead--couldn't this come back to haunt us? And haunt the whole world? Shouldn't the U.S. be helping to establish a global norm against this sort of thing? Host Warren Olney asked Boot to respond.¶ Boot started out with this observation:¶ I think the precedent setting argument is overblown, because I don't think other countries act based necessarily on what we do and in fact we've seen lots of Americans be killed by acts of terrorism over the last several decades, none of them by drones but they've certainly been killed with car bombs and other means.¶ That's true--no deaths by terrorist drone strike so far. But I think a fairly undeniable premise of the question was that the arsenal of terrorists and other nations may change as time passes. So answering it by reference to their current arsenal isn't very illuminating. In 1945, if I had raised the possibility that the Soviet Union might one day have nuclear weapons, it wouldn't have made sense for you to dismiss that possibility by noting that none of the Soviet bombs dropped during World War II were nuclear, right?¶ As if he was reading my mind, Boot immediately went on to address the prospect of drone technology spreading. Here's what he said:¶ You know, drones are a pretty high tech instrument to employ and they're going to be outside the reach of most terrorist groups and even most countries. But whether we use them or not, the technology is propagating out there. We're seeing Hezbollah operate Iranian supplied drones over Israel, for example, and our giving up our use of drones is not going to prevent Iran or others from using drones on their own. So I wouldn't worry too much about the so called precedent it sets..."

#### The ‘drone precedent’ arg is incoherent---their claim is that other states will use drones in far different ways than the U.S. does---proves our drone policies are irrelevant, and pretexts at best for what states will inevitably do

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

This critique often leads, however, to the further objection that the American use of drones is essentially laying the groundwork for others to do the same. Steve Coll wrote in the New Yorker: "America's drone campaign is also creating an ominous global precedent. Ten years or less from now, China will likely be able to field armed drones. How might its Politburo apply Obama's doctrines to Tibetan activists holding meetings in Nepal?"

The United States, it is claimed, is arrogantly exerting its momentary technological advantage to do what it likes. It will be sorry when other states follow suit. But the United States does not use drones in this fashion and has claimed no special status for drones. The U.S. government uses drone warfare in a far more limited way, legally and morally, and entirely within the bounds of international law. The problem with China (or Russia) using drones is that they might not use them in the same way as the United States. The drone itself is a tool. How it is used and against whom -- these are moral questions. If China behaves malignantly, drones will not be responsible. Its leaders will be.

#### Drone prolif inevitable – it is impossible to rein in their drones – they can’t be put back in the box

**Steigerwald 13** (Lucy Steigerwald, “The Inevitability of Drones in the US and Abroad,” April 29, 2013, <http://antiwar.com/blog/2013/04/29/the-inevitability-of-drones-in-the-u-s-and-abroad/>)

The RCP article also notes that the Department of Homeland Security — serving as the umbrella that covers both war and police issues and helps make them troublingly indistinguishable –will be offering grants to police departments in order to ease purchase of their own drones. No doubt this will prove irresistible to police departments. DHS has already [played a generous part](http://www.vice.com/read/the-cops-military-toys-arent-just-for-catching-terrorists) in the militarization of police in the last ten years with its grants for Bearcat armored vehicles and other SWAT-ready tech. The power of drones abroad is obviously a more frightening animal. Today The Atlantic published an article headlined [“Living in Terror Under a Drone-Filled Sky in Yemen”.](http://www.theatlantic.com/international/archive/2013/04/living-in-terror-under-a-drone-filled-sky-in-yemen/275373/) If that exploration of the psychological (and physical) toll that the drone war puts on civilians looks familiar, perhaps you caught the recent study of the grim effects 24/7 hovering death-robots have on the collective psyche of [Pakistani people.](http://www.livingunderdrones.org/) Drone use abroad continues to be supported by the majority of adult Americans, [however.](http://www.politico.com/blogs/media/2013/04/obamas-drones-eisenhowers-poison-162853.html) The proliferation of drones will not long be an American issue alone. “The number of countries that have acquired or developed drones expanded to more than 75, up from about 40 in 2005, according to the Government Accountability Office, the investigative arm of Congress,” USA Today [reported](http://www.usatoday.com/story/news/world/2013/01/08/experts-drones-basis-for-new-global-arms-race/1819091/) in January. In spite of some heartening legislative attempts to rein in drones here at home, as well as [protests over their international use](http://nodronesnetwork.blogspot.com/2012/12/national-anti-drone-group-calls-for.html), they cannot be fully put back into the box. That’s why endlessly rehashing the concerns that are fundamentally tied in with this technology is a good thing to do, even if it brings up a sense of Deja Vu for anyone even halfway paying attention. The RCP article contains no breaking news about drones, but the moment that such articles disappear, we’re in real trouble. That’s when drones have been fully accepted as the most efficient killing machines abroad, and the ideal mechanisms for surveillance at home.

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#### Drones won’t increase conflict—air power proves

Elkus 11 – Associate editor and foreign policy specialist at Red Team Journal

Adam, 12-5-11, “Weapons Don’t Make War” http://www.democracyarsenal.org/2011/12/weapons-dont-make-war.html

Observers of global security are growing very concerned about flying robots with guns, more commonly known as unmanned aerial systems or drones. As a remotely piloted, automated, and even autonomous weapons leave the realm of science fiction and enter into grimy reality, some worry that taking humans out of the tactical decision cycle and out of danger, will enable a new age of remote (and frequent) warfare. ¶ While there are certainly problematic issues with the emerging military robotics revolution, weapons do not make war. It is likely that future historians will look back on today’s speculations about drones with the same bemusement military historians regard H.G. Wells’ writings about unstoppable strategic bombing today.¶ Human beings make war. Force—whether executed by a human or a robot—is a function of politics and policy. Drones do not change this reality. Unless one is describing Skynet, there is no taking the human being “out of the loop.” Human beings still remotely pilot today’s unmanned aerial systems, and even autonomous systems would still be the creation of human designers and programmers. Tactically or even operationally autonomous systems would still be subordinated to a military chain of command.¶ To be sure, evolution of unmanned aerial systems pose legal and moral problems, such as issues over accountability, compliance with the rules of engagement, and dealing with negative public perceptions. But the introduction of airpower (and other weapons throughout history) caused similar ethical dilemmas—many of which have yet to be resolved. Many critiques of drone targeting are really critiques of airpower writ large that could have been stated with contextual fidelity at many other points in modern military history.¶ As a certain dead Prussian informed us, war is political intercourse, with the addition of violence. Weapons are used because a given set of political and cultural mores and policy decisions set the stage for their employment. Drones did not fly themselves to Waziristan, but were animated by a domestic political and strategic consensus about the utility of killing enemies of the state with standoff firepower. And in that respect they differ little from the conditions under which we use existing technologies.¶ Perhaps the most persuasive critique of drones is that they desensitize us to the costs of war by allowing us to target without risk. But such analysis has seemingly forgotten the mid-90s debate over “post-heroic warfare” in the airpower-centric humanitarian interventions of the 1990s. The capability to wage war with minimal risk goes back to the post-WWI British policy of air control, the standoff bombing of those challenging imperial rule in the Crown’s backwater.¶ Despite the nearly century-long prevalence of airpower, we have not become numb to war. Witness, for example, the powerful desire for retribution after the 9/11 attacks and its impact on domestic and international policy. Airpower—drones included—has not erased emotion from war because war is a complex mixture of irrational forces (emotion, hatred, and enmity), chance (friction and the fog of war) and rational policy. And as long as humans are involved in conflict, these forces will continue to exert themselves on the theory and practice of war. This does not mean that we won’t regret our emotions after the end of hostilities, but placid push-button war is unlikely. Just ask the drone pilots who experience significant emotional turmoil from the consequences of their strikes.

### 1NC No Impact to Prolif

**No impact —aggressors don’t have the intel or experience to be capable of attack**

**Blair 13** (Admiral Dennis Blair, Former Director of National Intelligence, “U.S. Drone Strike Policies: Speakers: Admiral Dennis Blair, Former Director of National Intelligence, and Micah Zenko, Douglas Dillon Fellow,” Conversation at CFR, January 22, 2013.

OPERATOR: Our next question comes from KT McFarland with Fox News.¶ QUESTIONER: Hi. Thank you very much for doing this.¶ Has anybody, either you or others, given thought to what happens next? I mean, the United States owns the drone wars now, but technology tends to only trump temporarily. What happens down the road five years from now when other countries get drones, other countries have the ability to target American diplomats traveling around in cars in rural Yemen? Are we -- are we -- have we really thought through what kind of a world it's going to be when we have proliferating drone powers?¶ BLAIR: I think that --¶ MASTERS: (Micah, you want ?) --¶ BLAIR: This is Dennis Blair again.¶ QUESTIONER: Hi, Dennis.¶ BLAIR: I think we've partly thought that -- thought that through, but this is a -- this is a familiar syndrome in the sort of military technology cycle. When a new weapons program comes in, it's often introduced by the more advanced countries, the high-tech ones, and -- who take full advantage of that while they can and don't worry too much about what happens when others -- when others get it.¶ When you -- when you think about it, there are a couple of things that make me believe that this -- **when drones do proliferate, they will not be** as **effective weapons against us as we are able to use them against others right now.**¶ One is that they are -- that **they are very dependent** on a -- **on an intelligence system which is incredibly worldwide, complicated and expensive**. It uses the entire U.S. global intelligence system. **No other country can afford that**. It's not just the -- **it's not just the money; it's the years of practice** it takes to do that.¶ The second one is that -- what I do fear the most, though, is that a terrorist -- and let me say **I don't fear** too much **other nation- states that gain this capability**. It's very -- you know if another country has it and is using it against you and then you can use the full -- the full array of both **defensive systems and** of **retaliation** to keep it **from being used** against you **effectively**.¶ I do fear that -- and **if al-Qaida can develop a drone, its first thought will be to use it to kill** our president, **senior officials**, senior military officers. **And it's possible, without a great deal of intelligence, to be able to do something with a drone that you can't** do **with a** -- with a high-speed -- with a high-powered **rifle o**r with -- driving a **car full of explosives** or the other ways that terrorists now use to try to kill senior officials¶ And I think that there are ways to deal with that that -- but it -- and I also think that **whether we use them or not -- the way in which we use them or not won't affect the zeal of terrorists groups to be able to get them and to be able to kill senior officials** for all of the reasons that we are familiar with.¶ So I think **this is not opening up a huge Pandora's box** which will make us wish that we'd never invented the drone, but **it will cause us to have to take some more defensive measures in the future.**

**Can’t blow up like a bomb**

Richard **Muller** – physics prof Cal Berkeley – **2010**, Physics and Technology for Future Presidents

**Can a Reactor Explode Like an Atomic Bomb? An atomic bomb requires fast neutrons (not moderated) in order to have the entire 80 generations over with before the bomb blows itself apart. After 80 generations, the temperature reaches many millions of degrees. The only reason the bomb doesn’t blow apart at that point is that there isn’t enough time.** With moderated neutrons, the chain reaction is much slower, since the neutrons are slower. This is an important fact: **Commercial nuclear reactors depend on using slow neutrons.** The reason this is important is that **if the nuclear reactor begins to “run away”**—i.e., if the operator makes a mistake and the chain reaction begins to grow exponentially (doubling)—**then the slowness of the neutrons limits the size of the explosion**. **Once the temperature rises to a few thousand degrees K, the atoms arc moving faster than the neutrons, and so the neutrons can’t catch up to them them; the chain reaction stops**. The energy released will blow up the reactor, but that energy will he about the same that you would get from TNT. **It’s an explosion, but it is a million times smaller than a nuclear** **bomb.** **A chain reaction that depends on slow neutrons cannot give rise to a nuclear explosion**. For that reason**, a commercial nuclear reactor cannot blow up like** **a nuclear bomb.** It is important to know this and to be able to explain the logic to the public, since this fact is not widely known. There are real dangers from nuclear reactors (see the section The China Syndrome,” later in this chapter). Blowing up like a nuclear bomb is not one of them.

### Caucasus War

#### No risk of war in the Caucasus

Friedfeld 12(Alex Friedfeld, “USEUCOM: Rising Tensions in the Caucasus Will Not Lead to War,” [GLOBAL SECURITY MONITOR](http://c4ads.org/latest/) , the blog of the Center for Advanced Defense Studies, September 14, 2012, <http://c4ads.org/latest/?p=840>)

Despite rising tension between Azerbaijan and Armenia, it is unlikely that the conflict will escalate beyond small skirmishes at the Nargorno-Karabakh border. Though Azerbaijan has superior military capabilities, it would find it difficult to overcome Armenia’s control of the high-ground in the Nagorno-Karabakh territory and it lacks the resources necessary to sustain an extended conflict. Yusef Agayev, an Azerbaijani military expert and a veteran of the last war between the two nations, noted that the army could only fight for a month or two as anything beyond that would have to involve the Azerbaijani society. As Agayev [said](http://www.reuters.com/article/2012/09/11/us-azerbaijan-armenia-conflict-idUSBRE88A0DQ20120911): “I don’t think the society of my country is ready for war.

” Without outside assistance, an all-out war would most likely end in a deadly stalemate. Azerbaijan will not start a war it is unlikely to win. The international community is concerned that if fighting does break out, outside forces would get involved and provide assistance. Armenia is currently partaking in a collective security agreement with Russia, and Azerbaijan is participating in a collective security agreement with Turkey, which is a NATO member. However, Russia and NATO have shown little interest in the matter and have not gone beyond issuing public condemnations of Azerbaijan. While Russia currently has a strong relationship with Armenia, it is working on improving its relations with Azerbaijan as well. On September 12, the two nations[inaugurated the Bridge of Azerbaijani-Russian Friendship](http://www.news.az/articles/politics/68054), the latest in a series of attempts by Russia to increase its influence in Baku. For NATO countries like Turkey, Azerbaijan is an important source of energy, and it will not want to do anything that could jeopardize this flow. Several Western oil companies – such as British Petroleum and ExxonMobil – operate in the Azerbaijani oil fields and would be strongly opposed to any act that would damage their holdings. Any conflict between Azerbaijan and Armenia could also disrupt the Baku-Tbilisi-Erzurum natural gas pipeline and the Baku-Tbilisi-Ceyhan crude oil pipeline, each of which is essential to European attempts to reduce dependence on Russian energy. Though the language employed by officials has become increasingly aggressive since the Safarov pardon, it is important to consider the actual actions – or in this case the lack thereof – of the two states. It has been two weeks since the pardon and neither side has taken any steps that would provoke a war. Perhaps most importantly, there has been no military mobilization by either country. Azerbaijan has publicly insisted for months that it is strong enough to take back the contested territory through force, and yet it has given no physical indication that it intends to do so at this time. Despite its rhetoric and unhappiness with the process, Azerbaijan still considers negotiation a viable alternative to armed conflict

### Europe

#### Detention undermines US-EU relations

IBA 9 (International Bar Association, “Detention and trial at Guantánamo Bay and other US detention centres”, January 2009, <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDQQFjAB&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3D172b3a55-2daf-4af7-a2dc-358871e71aca&ei=2KwsUsSsIJKBqQG1wYGYBA&usg=AFQjCNFUVChnvCkmmRZ3T-wNH09G_WEVQw&sig2=smrqbSILoQ5TLxX1xVgC0A&bvm=bv.51773540,d.aWM&cad=rja>)

The US Administration’s actions at Guantánamo Bay have garnered widespread international criticism. As early as April 2002, Amnesty International expressed concerns about the conditions and treatment of detainees, particularly ‘the small size of the cells and the fact that the cells leave the detainees exposed to the elements… that the prisoners are made to wear shackles whenever they are out of their cells… [and] during medical treatment’.48 In February 2004 Amnesty labelled Guantánamo as ‘an affront to the rule of law’.49 A 2005 report by the organisation cautioned that ‘the totality of the detention conditions themselves – hard, indefinite, and isolating – may amount to cruel, inhuman or degrading treatment in violation of international law. These conditions may themselves be coercive’.50 In 2006 five United Nations experts released a report on the conditions of detention at Guantánamo Bay, and called for Guantánamo Bay’s immediate closure.51 The report found that that the excessive violence associated with the ERF Team and the forced feeding sessions constitute torture as defined by Article 1 of the UN Convention Against Torture (CAT).52 It determined that the general conditions of detention (in particular the uncertainty about the length of detention and prolonged solitary confinement) amount to inhuman treatment, a violation of the right to health and a violation of the right of detainees to be treated with respect for the inherent dignity of the human person. It concluded by saying: ‘The treatment and conditions include the capture and transfer of detainees to an undisclosed overseas location; sensory deprivation and other abusive treatment during transfer; detention in cages without proper sanitation and exposure to extreme temperatures; minimal exercise and hygiene; systematic use of coercive interrogation techniques; long periods of solitary confinement; cultural and religious harassment; denial of or severely delayed communication with family; and the uncertainty generated by indeterminate nature of confinement and denial of access to independent tribunals. These conditions have lead in some instances to serious mental illness, over 3 50 acts of self-harm in 2003 alone, individual and mass suicide attempts and widespread, prolonged hunger strikes. The severe mental health consequences are likely to be long term in many cases, creating health burdens on detainees and their families for years to come’. 53 1.13 Members of the European community have individually and collectively expressed their concern at the conditions and treatment of Guantánamo Bay. Finnish Member of the European Parliament (MEP) Matti Wuori called the Guantánamo situation ‘a despotic return to absolute sovereignty underpinned by a logic of permanent martial law’.54 Courts in France and Spain condemned the facility and refused to admit evidence obtained in Guantánamo-based interrogations.55 In April 2005, the Parliamentary Assembly of the Council of Europe adopted Resolution 1433 , which stated that through its actions in Guantánamo Bay, ‘the United States Government has betrayed its own highest principles’ by subjecting ‘many if not all detainees… to cruel, inhuman or degrading treatment… as a direct result of official policy, authorised at the very highest levels of government’.56 In May 2006 the European Union Commissioner for External Relations and European Neighbourhood Policy Benita Ferrero-Waldner indicated the concern of a number of EU Member States in respect of the situation at Guantánamo Bay, and called for various United Nations Special Rapporteurs to visit Guantánamo Bay and to interview detainees in private.57