## \*\*\*1AC

### Plan

#### The United States Federal Judiciary should subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action against the government for damages arising directly out of the constitutional provision allegedly offended.

### 1AC Allied Cooperation

#### Advantage 1 is Allied Cooperation –

#### Domestic and international criticism of the drone program is threatening its effectiveness. Reform is key.

Zenko, CFR Fellow, 13 (Micah, is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR)., “Reforming U.S. Drone Strike Policies,” http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

#### U.S. drone policy is more important than the spying and data scandal to European partners – it threatens the trans-atlantic relationship

Dworkin 7/17/13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “Actually, drones worry Europe more than spying” <http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/>)

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages. Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease. In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change. Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level. But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim. However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time. European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks. First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States. Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes. But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely. For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

#### Accountability over standards of imminence are impossible from executive internal measures – no one trusts Obama on drones – only the plans court action solves

Goldsmith 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

#### Unrestrained drone policy results in collapse of NATO

Parker 9/17/12 (Tom, former policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service (MI5), “U.S. Tactics Threaten NATO” <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461?page=1>)

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention. The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the United States and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future. As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts. The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

#### NATO prevents global nuclear war

Zbigniew Brzezinski 9, former U.S. National Security Adviser, Sept/Oct 2009, “An Agenda for NATO,” Foreign Affairs, 88.5, EBSCO

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

#### Courts don’t leak intel methods or classified information—this fear has been repeatedly dispelled by hundreds of successfully tried terrorism cases

Jaffer-director ACLU’s National Security Project-12/9/08 <http://www.salon.com/2008/12/09/guantanamo_3/> Don’t replace the old Guantánamo with a new one

The contention that the federal courts are incapable of protecting classified information — “intelligence sources and methods,” in the jargon of national security experts — is another canard. When classified information is at issue in federal criminal prosecutions, a federal statute — the Classified Information Procedures Act (CIPA) — generally permits the government to substitute classified information at trial with an unclassified summary of that information. It is true that CIPA empowers the court to impose sanctions on the government if the substitution of the unclassified summary for the classified information is found to prejudice the defendant, and in theory such sanctions can include the dismissal of the indictment. In practice, however, sanctions are exceedingly rare, and of the hundreds of terrorism cases that have been prosecuted over the last decade, none has been dismissed for reasons relating to classified information. Proponents of new detention authority, including Waxman and Wittes, invoke the threat of exposing “intelligence sources and methods” as a danger inherent to terrorism prosecutions in U.S. courts, but the record of successful prosecutions provides the most effective rebuttal.

#### No over-deterrence of military operations- government liability is rooted in the FTCA and it avoids the chilling associated with individual liability.

Kent, Constitutional Law prof, 13 (Andrew, Faculty Advisor-Center on National Security at

Fordham Law School, prof @ Fordham University School of Law- constitutional law, foreign relations law, national security law, federal courts and procedure, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” October 8, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330476>) \*\* Evidence is gender paraphrased

Because of sovereign immunity, federal officials are sued under Bivens in their so-called personal rather than official capacities.43 In theory, persons injured by actions of a federal official could also seek compensation by suing the agent’s employer, the United States Government for damages, but the sovereign immunity of the federal government blocks this route.44 The Federal Tort Claims Act (FTCA), originally enacted in 1946 and frequently amended since,45 effects a partial waiver of sovereign immunity by allowing suits directly against the federal government instead of officers (who might be judgment proof) and making the United States liable for injuries caused by the negligent or wrongful act or omission of any federal employee acting within the scope of ~~his~~ employment, in accordance with the law of the state where the act or omission occurred.46 Under the Westfall Act of 1988, the FTCA is the exclusive remedy for torts committed by federal officials within the scope of their employment, except for suits brought for violations of the Constitution.47 In other words, state law tort claims against individual official defendants are now generally barred. The Supreme Court takes the prospect of individual liability in damages for officials very seriously and has crafted immunity doctrines to soften the blow. The Court’s rulings provide the President of the United States and certain classes of officials defined functionally—prosecutors doing prosecutorial work, legislators legislating, judges doing judicial work and certain persons performing “quasijudicial” functions—with absolute immunity from money damages suits, generally for the reason that such suits would be likely to be frequent, frequently meritless, and uniquely capable of disrupting job performance.48 All other government officials are entitled to only “qualified immunity” from money damages suits. Under the qualified immunity doctrine, officials are liable only when they violate “clearly established” federal rights, that is, when “[t]he contours of [a] right [are] sufficiently clear that every reasonable official would have understood that what ~~he is~~ [they are] doing violates that right.”49 Because qualified immunity is not just a defense to liability but also “a limited entitlement not to stand trial or face the other burdens of litigation,”50 the Court’s doctrine encourages speedy resolution of immunity questions by judges. The policy reasons for the Court’s active protection of federal officials through a robust immunity doctrine, including fear of dampening the zeal with which officials perform their jobs because of fear of personal liability, are discussed below in Section V.A.

### 1AC Blowback

#### Advantage 2 is Blowback –

#### Overuse of drones causes massive blowback in Pakistan-this is the consensus of research and assumes unique Pakistani cultural traits

**Dengler, US Secret service Assistant to the Special Agent in Charge, 2013**

(Judson, “An examination of the collateral psychological and political damage of drone warfare in the FATA region of Pakistan”, September, <http://calhoun.nps.edu/public/bitstream/handle/10945/37611/13Sep_Dengler_Judson.pdf?sequence=1>, ldg)

University of Arizona researchers Hudson, Owens, and Flannes state there are five distinct, yet overlapping, forms of blowback from the use of drones in counter-terror operations: the purposeful retaliation against the United States, the creation of new insurgents, complications in the Afghan-Pakistan theatre, further destabilization of Pakistan and the deterioration of U.S. and Pakistani relations.45 The authors, who are members of the Southwest Initiative for the Study of Middle East Conflicts (SISMEC), capture the main arguments against drone warfare. Most of the literature I reviewed seems to fall into one of the five categories listed above. There is an abundance of scholarly sources which support the findings of these researchers. Definitive statistical support of the negative aspects of drone warfare is difficult to assess due to intervening factors in this volatile region. Many factors can influence the criteria established by Hudson, Owens, and Flannes. In his discussion about the history of the CIA’s covert drone warfare program, University of Massachusetts—Dartmouth history faculty member Brian Glyn Williams adds to the case against drone warfare. He finds the collateral damage of drone strikes gives the media and religious leaders an opportunity to rally anti-American sentiment in Pakistan and the Islamic world in general.46 This article highlights the ability of radicals to easily use drone strikes, regardless if successful or not, to their advantage to manipulate the views of the local population. This view was supported by multiple other materials I reviewed. Writing for the German based Institute for the Study of Labor (IZA), Jaeger and Siddique discuss an example of retaliation by the Taliban which is attributed to drone strikes.47 This is typical of many examples of the Taliban or al-Qaeda directly stating their attack against the local government or U.S. was in response to drone policy in the region. In his Georgetown University Master’s thesis, Luke Olney evaluates the long term effectiveness of drone warfare. He supports the previously mentioned findings with particular emphasis on drones inspiring further radicalization, increased recruitment opportunities and further destabilization of local governments. However, he does note that drones may have some short-term success in disrupting militant groups.48 This seems to be a reoccurring theme in much of the readings I have conducted. Most researchers support the short-term advantage of drone strikes because they eliminate the target but drones have only been used extensively over the last ten years and questions exist about their effectiveness over time. The elimination of the militant is positive. But at what point does this victory become outweighed by the long-term effects of the killing? Support of the argument that drones have a negative political and diplomatic impact is made by Anne L. Oblinger in her 2011 Georgetown University thesis depicting the moral, legal, and diplomatic implications of drone warfare. Her thesis discusses the cultural and religious motivations behind terrorist activities which will be useful in a socio-cultural examination of this topic. She notes that despite their precision, drones still create many diplomatic hurdles for the U.S.49 This is another example of research which states that despite their tactical success, negative consequences still exist when leveraging drones. The majority of the literature indicates that there is a strong possibility of drone strikes having a negative overall influence in the FATA. Researchers from the University of Massachusetts, Dartmouth, Plaw, Fricker, and Williams, find that civilian casualties, real or perceived, will be the primary instigator. No matter how precise drone strikes are executed or how much technology improves, Pakistani press and society will be prone to believe that high percentages of civilians are being targeted. While the U.S. keeps details of the program somewhat secure, this practice allows the targeted groups to report the details of drone strikes to their advantage.50 There are numerous examples available of the collateral damage and devastation that drones inflict on the local community. Even if the strike successfully hits the intended target, statistics can be manipulated by the Taliban or Pakistani government. Investigative journalist Porter Gareth criticizes drone strikes because they are based on “scant evidence” in his article for The Washington Report for Middle East Affairs. He finds that the U.S. is targeting militant groups rather than al-Qaeda planning global terrorism.51 This was one of the few pieces of information which discussed who was being targeted by drone strikes and I found it particularly valuable. There should be more such information available, or forthcoming, because who is being targeted is critical to evaluating drone warfare. Ken Dilanian, of the Los Angeles Times, finds that the U.S. drone program has killed dozens of al-Qaeda operatives and hundreds of low-level militants but is has also infuriated many Pakistanis. Some officials in the State Department and National Security Council say these strikes are counterproductive because they only kill easily replaceable militants and the civilian casualties, which the U.S. disputes, destabilize the government of President Asif Ali Zardari of Pakistan. The number of drone strikes has grown since 2008 and now includes targeting of individuals based on a “pattern of life” that suggests involvement with insurgents. A former senior U.S. intelligence official stated that the CIA maintains a list of the top 20 targets and has at times had difficulty finding high value militants to add to the list. Are lower-level militants being targeted just to fill the list? This official is among those urging the CIA to reconsider its approach because the agency cannot kill all Islamic militants and drones alone will not solve challenge presented in the region. One former senior State Department official stated that drone strikes probably give motivation to those that fight us. Dilanian offers that it is impossible to independently assess the accuracy or effectiveness of the strikes because the program is classified, the Obama administration refuses to release information about the program and Pakistan has barred access to FATA from Western journalists or humanitarian agencies.52 This is one of Dilanian’s many pieces documenting drone warfare in Pakistan. Considering the sources of information he uses for this article, it appears that many in the military and intelligence community are beginning to realize the potential negative aspects of this tactic. He also identifies why it is so difficult to accurately and independently report on the impact of drone strikes and how data can be easily manipulated by the U.S., Pakistan, and militants. The New America Foundation database reflects the aggregation of credible news reports about U.S. drone strikes in Pakistan. The media outlets that New America relies upon are the three major international wire services (Associated Press, Reuters, Agence France Presse), the leading Pakistani newspapers (Dawn, Express Times, The News, The Daily Times), leading South Asian and Middle Eastern TV networks (Geo TV and Al Jazeera), and Western media outlets with extensive reporting capabilities in Pakistan (CNN, New York Times, Washington Post, LA Times, BBC, The Guardian, Telegraph). The New America Foundation makes no independent claims about the veracity of casualty reports provided by these organizations. The purpose of this database is to provide as much information as possible about the covert U.S. drone program in Pakistan. The Obama administration dramatically increased the frequency of the drone strikes, in comparison to the Bush Administration, with the peak number of drone attacks occurring in 2010, but the ratio of civilians killed in drone strikes fell to just over two percent. Despite the record 122 strikes in 2010, an average of 0.3 civilians were killed per strike, the lowest civilian death rate per strike until 2012, which saw only 0.1 civilians killed per attack in the first eight months of the year. According to data collected as of the summer of 2011, only one out of every seven drone strikes killed a militant leader. Under President Bush, about one-third of the militants killed were identified as leaders, but under President Obama, just 13 percent have been militant leaders. Drone strikes dropped sharply in 2011, as the relationship between the United States and Pakistan deteriorated. During the first half of 2012, the rate of strikes continued to fall and the civilian death ratio was close to zero. Since the U.S. drone campaign in Pakistan began in 2004, 84 to 85 percent of those killed were reported to be militants; six to eight percent were reported to be civilians and seven to nine percent remain “unknown.”53 The New America Foundation and Terror Free Tomorrow conducted the first comprehensive public opinion survey covering sensitive political issues in FATA. This survey was conducted from June 30 to July 20, 2010, and consisted of face-to-face interviews of 1,000 FATA residents age 18 or older across 120 villages or sampling points in all seven tribal Agencies of FATA. The respondents were 99 percent Pashtun, and 87 percent Sunni. Among their findings were that nearly nine out of ten opposed the U.S. following al-Qaeda and the Taliban into FATA and most would prefer that the Pakistani military fight these forces in FATA. Seventy-six percent are opposed to U.S. drone strikes, 16 percent believe they accurately target militants and just under half believed that drones predominantly kill civilians. The majority of FATA residents reject the presence of the Taliban or al-Qaeda in their region. Their top priorities included lack of jobs which was closely followed by lack of schools, good roads and security, poor health care and corruption of local official officials.54 Avner uses psychoanalysis, psychology, psychiatry, sociology, anthropology, and Islamic studies to understand Islamic terror. His research discusses the religion and culture of Islam, the psychology of Islam, the Muslim family and Muslim society from which many terrorists originate. Avner finds that terror can originate with emotions such as rage, hatred, fear and surprisingly, love and longing.56 Shame is an excessively painful feeling and is prevalent in Muslim culture. Shame, loss of honor, loss of face, and humiliation are unbearable feelings. Hamady found that shame was the worst and most painful feeling for an Arab. Preserving one’s honor and the honor of their tribe or clan is crucial. Any injury, real or imagined, causes unbearable shame that must be repaired through acts of revenge against those that damaged your honor.57 The importance of pride, honor and dignity is critical in Muslim culture. “Everything must be done to erase one’s humiliations and to regain one’s honor.”58 For Muslims who feel they have been shamed or humiliated, the only way to repair these feelings is by humiliating those that inflicted shame and humiliation on them.59 Avner’s research identifies multiple psychological factors which may explain the existing anger within segments of the Muslim community. Honor and shame is a tremendous motivator in Islam and may provide a solid predisposition for action against the offending party to regain one’s honor. Maintaining your honor or the honor of your tribe is of high importance to the Pashtun tribesmen of FATA. Once this has been violated, retaliation is obligated against those that have humiliated you. Stern reveals that the real or perceived national humiliation of the Palestinian people by Israeli policies gives rise to desperation and uncontrollable rage. Citing Mark Jurgensmeyer, Stern notes that suicide bombers are attempting to “dehumiliate” the deeply humiliated and traumatized. Through their actions, suicide bombers belittle their enemies and provide themselves with a sense of power. Repeated, small humiliations add up to a feeling of nearly unbearable despair and frustration, which can result in atrocities being committed in the belief that attacking the oppressor restores dignity.60 A skilled terrorist leader can strengthen and utilize feelings of betrayal and the desire for revenge.61 Stern shows the extent to which a Muslim will go to in order to restore their honor after being humiliated. The uncontrollable rage may not be proportionate when measured by Western standards. Even small humiliations will build to the point of suicide attacks to repair the loss of dignity. The hopelessness and aggravation many may feel in FATA should not be overlooked or diminished. Charismatic militant leaders can manipulate shame to motivate groups to action against whom they perceive has wronged their group. The most important psychoanalytic idea for understanding terrorism, according to Avner, is Heinz Kohut’s notion of narcissistic rage, “The need for revenge, for righting a wrong, for undoing a hurt by whatever means, and a deeply anchored, unrelenting compulsion in the pursuit of all these aims, which gives no rest to those that have suffered a narcissistic injury. These are the characteristic features of narcissistic rage in all its forms and which set it apart from other kinds of aggression.” This boundless rage, together with unconscious factors and the traditional Muslim family dynamic may explain Islamic terrorism, including suicidal versions.62 Kohut’s finding that narcissistic rage is the most important psychoanalytic factor for understanding is significant. The narcissistic aspect depicts how personal the hostility is and rage shows the intensity of the emotion which drives terrorists. Narcissistic rage allows the militant to pursue those that they perceive have wronged them by using extreme measures to regain their honor.

#### Overuse of drones in Pakistan empowers militants and destabilizes the government

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>

The escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

#### Pakistan collapse risks war with India and loose nukes

Twining 13 (Daniel Twining is Senior Fellow for Asia at the German Marshall Fund, Pakistan and the Nuclear Nightmare, Sept 4, http://shadow.foreignpolicy.com/posts/2013/09/04/pakistan\_and\_the\_nuclear\_nightmare)

The Washington Post has revealed the intense concern of the U.S. intelligence community about Pakistan's nuclear weapons program. In addition to gaps in U.S. information about nuclear weapons storage and safeguards, American analysts are worried about the risk of terrorist attacks against nuclear facilities in Pakistan as well as the risk that individual Pakistani nuclear weapons handlers could go rogue in ways that endanger unified national control over these weapons of mass destruction. These concerns raise a wider question for a U.S. national security establishment whose worst nightmares include the collapse of the Pakistani state -- with all its implications for empowerment of terrorists, a regional explosion of violent extremism, war with India, and loss of control over the country's nuclear weapons. That larger question is: Does Pakistan's nuclear arsenal promote the country's unity or its disaggregation? This is a complicated puzzle, in part because nuclear war in South Asia may be more likely as long as nuclear weapons help hold Pakistan together and embolden its military leaders to pursue foreign adventures under the nuclear umbrella. So if we argue that nuclear weapons help maintain Pakistan's integrity as a state -- by empowering and cohering the Pakistani Army -- they may at the same time undermine regional stability and security by making regional war more likely. As South Asia scholar Christine Fair of Georgetown University has argued, the Pakistani military's sponsorship of "jihad under the nuclear umbrella" has gravely undermined the security of Pakistan's neighborhood -- making possible war with India over Kargil in 1999, the terrorist attack on the Indian Parliament in 2001, the terrorist attack on Mumbai in 2008, and Pakistan's ongoing support for the Afghan Taliban, the Haqqani network, Lashkar-e-Taiba, and other violent extremists. Moreover, Pakistan's proliferation of nuclear technologies has seeded extra-regional instability by boosting "rogue state" nuclear weapons programs as far afield as North Korea, Libya, Iran, and Syria. Worryingly, rather than pursuing a policy of minimal deterrence along Indian lines, Pakistan's military leaders are banking on the future benefits of nuclear weapons by overseeing the proportionately biggest nuclear buildup of any power, developing tactical (battlefield) nuclear weapons, and dispersing the nuclear arsenal to ensure its survivability in the event of attack by either the United States or India. (Note that most Pakistanis identify the United States, not India, as their country's primary adversary, despite an alliance dating to 1954 and nearly $30 billion in American assistance since 2001.) The nuclear arsenal sustains Pakistan's unbalanced internal power structure, underwriting Army dominance over elected politicians and neutering civilian control of national security policy; civilian leaders have no practical authority over Pakistan's nuclear weapons program. Whether one believes the arsenal's governance implications generate stability or instability within Pakistan depends on whether one believes that Army domination of the country is a stabilizing or destabilizing factor. A similarly split opinion derives from whether one deems the Pakistan Army the country's most competent institution and therefore the best steward of weapons whose fall into the wrong hands could lead to global crisis -- or whether one views the Army's history of reckless risk-taking, from sponsoring terrorist attacks against the United States and India to launching multiple wars against India that it had no hope of winning, as a flashing "DANGER" sign suggesting that nuclear weapons are far more likely to be used "rationally" by the armed forces in pursuit of Pakistan's traditional policies of keeping its neighbors off balance. There is no question that the seizure of power by a radicalized group of generals with a revolutionary anti-Indian, anti-American, and social-transformation agenda within Pakistan becomes a far more dangerous scenario in the context of nuclear weapons. Similarly, the geographical dispersal of the country's nuclear arsenal and the relatively low level of authority a battlefield commander would require to employ tactical nuclear weapons raise the risk of their use outside the chain of command. This also raises the risk that the Pakistani Taliban, even if it cannot seize the commanding heights of state institutions, could seize either by force or through infiltration a nuclear warhead at an individual installation and use it to hold the country -- and the world -- to ransom. American intelligence analysts covering Pakistan will continue to lose sleep for a long time to come.

#### Miscalculation means this could escalate to nuclear winter and extinction

Hundley 12 (TOM HUNDLEY, Senior Editor-Pulitzer Center, “Pakistan and India: Race to the End,” http://pulitzercenter.org/reporting/pakistan-nuclear-weapons-battlefield-india-arms-race-energy-cold-war)

Nevertheless, military analysts from both countries still say that a nuclear exchange triggered by miscalculation, miscommunication, or panic is far more likely than terrorists stealing a weapon -- and, significantly, that the odds of such an exchange increase with the deployment of battlefield nukes. As these ready-to-use weapons are maneuvered closer to enemy lines, the chain of command and control would be stretched and more authority necessarily delegated to field officers. And, if they have weapons designed to repel a conventional attack, there is obviously a reasonable chance they will use them for that purpose. "It lowers the threshold," said Hoodbhoy. "The idea that tactical nukes could be used against Indian tanks on Pakistan's territory creates the kind of atmosphere that greatly shortens the distance to apocalypse." Both sides speak of the possibility of a limited nuclear war. But even those who speak in these terms seem to understand that this is fantasy -- that once started, a nuclear exchange would be almost impossible to limit or contain. "The only move that you have control over is your first move; you have no control over the nth move in a nuclear exchange," said Carnegie's Tellis. The first launch would create hysteria; communication lines would break down, and events would rapidly cascade out of control. Some of the world's most densely populated cities could find themselves under nuclear attack, and an estimated 20 million people could die almost immediately. What's more, the resulting firestorms would put 5 million to 7 million metric tons of smoke into the upper atmosphere, according to a new model developed by climate scientists at Rutgers University and the University of Colorado. Within weeks, skies around the world would be permanently overcast, and the condition vividly described by Carl Sagan as "nuclear winter" would be upon us. The darkness would likely last about a decade. The Earth's temperature would drop, agriculture around the globe would collapse, and a billion or more humans who already live on the margins of subsistence could starve. This is the real nuclear threat that is festering in South Asia. It is a threat to all countries, including the United States, not just India and Pakistan. Both sides acknowledge it, but neither seems able to slow their dangerous race to annihilation.

#### Current drone policy will collapse Yemen and lead to civil war

**Cox, Vice, 2013**

(Joseph, “ARE AMERICAN DRONES AL QAEDA'S STRONGEST WEAPON IN YEMEN?”, 8-19, <http://www.vice.com/read/are-us-drones-al-qaedas-strongest-weapon>, ldg)

Things are getting really messy in Yemen at the moment. With soldiers being murdered in their sleep and embassies closing en masse in fear of an imminent wave of attacks and multiple drone strikes, the country seems to be the latest sandbox full of blood in our war on terror. Not that this warz one is all that new. Al Qaeda in the Arabian Peninsula (AQAP) have had a presence in the area for years, their membership rose from around 300 in 2009 up to an estimated 1,000 today. In an attempt to combat this rise in manpower, the US has escalated its infamous drone program, allegedly targeting high-ranking AQAP members. Although, according to reports, they've yet to actually kill any of them. Is this hit-and-hope policy really the best way to fight al Qaeda in Yemen? Or are these drone strikes, which have a habit of killing civilians, exactly the PR ammo al Qaeda need to lure new recruits in a country that is already as politically stable as a gang of jihadists on a bouncy castle? “Drones will always be an easy way for [organizations like al Qaeda] to gain anti-American support,” Alexander Meleagrou-Hitchens, from the International Center for the Study of Radicalization, told me. “When something like a drone strike comes crashing down in people's front bedrooms or front rooms, that's going to help you recruit and radicalize, absolutely.” This is already the case in other places with a heavy US drone presence, such as Pakistan. According to research, the drone policy has caused the majority of the population to see the US as an enemy, with strikes killing civilians, breeding resentment towards the US and undermining Pakistan’s sovereignty. Indeed, the foiled Times Square bomber declared that his attack was intended as payback for the US’ worldwide use of drones, a point that is seldom admitted by advocates of "targeted killings." Depressingly, commentators believe that the use of drone strikes in Yemen could be even more damaging than they have been in Pakistan. Michael Boyle, an expert on terrorism and political violence, and author of The Costs and Consequences of Drone Warfare, told me about some vital differences between the two when it comes to patterns of al-Qaeda affiliation. “The membership of al Qaeda in a place like Pakistan comprises people who come from many areas, such as Russia, the Middle East, Africa, and Asia," he explained. "They come to Pakistan to fight. In Yemen, however, al Qaeda membership is dominated by people who were born and raised in the country, with deep connections to the local tribal structures.” This means that when a drone strike kills an unintended target, it is likely to be someone's brother, father, uncle, or son; sister, mother, aunt, or daughter. This situation is probably going to breed more desire for retribution than the death of a fellow soldier, no matter how strong the thirst for vengeful jihad. There is also the threat of killing someone with strong connections to a clan or tribe and generating a level of public outrage that could destabilize the Yemeni government. It is these close-knit ties of people who may not have any kind of connection to al Qaeda that make Yemen a completely different battlefield to Afghanistan or Pakistan. According to Ibrahim Mothana, a Yemeni youth activist, “Drone strikes are causing more and more Yemenis to hate America and join radical militants. They are not driven by ideology but rather by a sense of revenge and despair.” During the latest escalation of violence, Yemeni bloggers have claimed “there is more hostility now in Yemen against the US because of these attacks.” Even Robert Grenier, a former CIA station head, has said that the US policy in Yemen runs the risk of turning the country into a "safe haven" for al Qaeda. Even as academics, experts and Yemenis themselves are saying that drones may be contributing to a rise in al Qaeda's local fanbase, the US government are seeking to place the blame elsewhere. In the recent sentencing of Bradley Manning, prosecutors claimed that his leak of over 700,000 files to WikiLeaks had aided al Qaeda’s recruitment efforts. However, visit any local Yemeni news website and you’ll be greeted with images of the latest bloodied drone strike victims. As a Yemeni, what's more likely to make you resent the US: Whatever you happen to see of Manning's leaks, or the very real threat of a missile killing your family at any moment? Admittedly, it's difficult to know exactly how many Yemenis have been "radicalized" because of the drones' presence, and how many of these people actually end up joining their local al Qaeda division. It's not something that's particularly easy to research with any kind of authority—there's no bubbly al Qaeda PR girl sat in an office in Sana'a somewhere who will gladly pull the latest membership stats for you. Of course, it's also possible that the tribes will come to blame al Qaeda for attracting drone strikes. “Al Qaeda have a global plan, but they've had to relegate those global concerns in favor of local ones to make these tribal alliances," Meleagrou-Hitchens explained. "But in the end, they will continue to pursue this global strategy and at some point that is going to dawn on their allies [the tribes]: that these guys are going to bring a lot more trouble than they're worth.” If al Qaeda, or the myriad other extremist Islamist groups, can only survive by keeping alliances with the tribes, then it follows that the US might ultimately need the tribes' support to lessen radical Islam's grip on the area. Meleagrou-Hitchens has some ideas about how Obama's administration might go about courting that support: “I think the US would have to encourage the Yemeni government to start helping people outside of the main cities. When al Qaeda come along and say to the tribes that they can help with their running water, their crops, etc., then they'll ally with them. So you have to be able to offer them what al Qaeda is offering—or at least make sure the Yemeni government does.” But by alienating these same tribes through murder of their friends and relatives, the US seems to be making the whole situation worse. "At the moment, the US is the worst and most feared enemy,” a Yemeni-born blogger known as Noon told me over email. “The US drones have claimed the lives of many more people than al Qaeda. While al Qaeda targets military personnel in Yemen, the US drones kill arbitrarily without differentiating between civilians and so called ‘militants.’” One of the main attractions drones hold for the US is that they allow them to wage war remotely, thus avoiding the loss of life to military personnel and the domestic ill-feeling back home that comes with it. However, ultimately the resentment that drone strikes cause has to be focused somewhere and at this stage it looks most likely to turn various factions within the country against each other. With clashes erupting between Yemeni forces and local tribespeople and al Qaeda looking to break their members out of local prisons, the situation in Yemen seems primed for civil war and insurgency.

#### That risks maritime terrorism in critical chokepoints around the Horn of Africa inevitable.

Ulrichsen 11 (Kristian Coates, The Geopolitics of Insecurity in the Horn of Africa and the Arabian Peninsula, Middle East Policy Council, http://www.mepc.org/journal/middle-east-policy-archives/geopolitics-insecurity-horn-africa-and-arabian-peninsula?print)

Multiple fault lines have thus opened up, facilitated by (and accelerating) processes of state weakness and the relative empowerment of non-state actors. The result is more political violence and endemic criminality in and off the coast of Somalia and the Horn. Nevertheless, the new dimension to this nexus of terrorism, piracy, gun-running and people-smuggling is its growing transregional dimension. This defines the core challenge facing the regional and global security agenda, in addition to attempts at diplomatic mediation and conflict resolution throughout the area. Intensifying illicit networks and rent-seeking criminality are part of a broader pressure on fragile state structures. They are already struggling to control and adapt to pressures arising from the accelerated flows of information, communication and migration in a rapidly globalizing environment. The coincidence of these processes in Somalia and Yemen is changing the geopolitics of insecurity in the Horn of Africa and the Arabian Peninsula, as the following sections detail. MARITIME AND ENERGY SECURITY The problem of fragile and collapsed states on both sides of the Bab al-Mandab introduces potent new elements of maritime and energy security into the regional — and global — equation. The incidence of maritime piracy in the Gulf of Aden and the Red Sea more than doubled in 2008-09, and their operational reach steadily increased. Much of the piracy was launched from the semi-autonomous region of Puntland, on Somalia's tip of the Horn, where patterns of rent-seeking and gangsterism converge with the absence of effective state authority and licit sources of income. Moreover, at least one of the seven different groups of pirates operating off the Somali coast is believed to be based in the Socotra archipelago in Yemen, while at least some of the financial proceeds are believed to pass through money-laundering channels in Dubai and Kenya.44 This underlines the growing regional and international risk from both maritime piracy and maritime terrorism. Incidents such as the seizure of the Sirius Star by Somali-based pirates in November 2008 and the attack on the Japanese supertanker M Star in the Strait of Hormuz in July 2010 illustrate both phenomena. Maritime commerce and international shipping that link the oil-exporting Gulf states to Western economies must navigate two regional chokepoints, the Strait of Hormuz and the Bab el-Mandab, in addition to the hazardous waters of the Gulf of Aden and the Red Sea. Pirates' growing aggressiveness has centered on this geostrategically and commercially vital region. It reflects the interlocking dangers stemming from a crisis of governance and spreading conflicts. In 2009, the International Maritime Board recorded a total of 406 actual and attempted attacks, the majority of which occurred in the Gulf of Aden and off the Somali coast.45 However, due to underreporting, often for fear of higher insurance premiums, the figures may be much higher. Numerous factors underlie the rise in maritime piracy off the Somali coast. These include opportunistic motivations, which are among the principal drivers of pirate groups, as well as the ready availability of targets (through high volumes of trade passing by) and means (including inadequate law enforcement and ready access to weaponry). It is contextualized by the impact of conflict, poverty and weak state capacity.46 Indeed, in the Somali case, state collapse is a major determinant of piracy. Piracy declined sharply during the short-lived projection of power and authority by the UIC in 2006 and subsequently resurged following their removal through the reappearance of pirate groups operating under warlord protection.47 With the TFG unable to control its territory, let alone its coastline and territorial waters, increased naval patrolling activity by external actors (including the EU, NATO, China, Russia, India and Iran) may offer a degree of protection to shipping but leaves untouched the root causes of piracy as a symptom of state collapse and lack of legitimate economic opportunities. Maritime terrorism presents the second major threat to international security at sea. It has similar causal facilitators to maritime piracy; the erosion of governance in littoral regions creates security gaps that may be exploited by terrorist organizations. The threat from maritime terrorism is low-level yet potentially high-impact. It encompasses subthreats ranging from maritime criminality to better-organized groupings of insurgents or militants who take advantage of the pressure on littoral states to exploit their maritime resources and the fuzzy margins between domestic and international governance of international waterways and shipping lanes. Although the number of maritime terrorist incidents has been relatively small, it does present a challenge to a global supply chain and logistical system increasingly predicated on "just-in-time" deliveries. It also encompasses the role of non-state actors with access to sophisticated weaponry operating in international waters where jurisdiction is unclear and the "seams of globalization" become vulnerable to exploitation.48

#### These attacks risk global economic collapse

Neubauer 13 (Sigurd, Defense and foreign affairs specialist, member of the International Institute for Strategic Studies, Somalia: A Terrorist-Piracy Nexus?, May 22, http://www.huffingtonpost.com/sigurd-neubauer/somalia-piracy\_b\_3320406.html)

Piracy, like terrorism has been a scourge of mankind for centuries and, though its practitioners, real (Blackbeard, Anne Bonny and Henry Morgan) and mythical (Captain Jack Sparrow in the Pirates of the Caribean movie stories) have achieved heroic stature in popular culture, its contemporary manifestations represent a major threat to the global economy and to national security. Significant strides have been made in recent years towards combating piracy, especially off the coast of Somalia, but a robust international grand strategy is urgently needed in order to forestall an ever more dangerous global threat as pirates develop ever more sophisticated organizational structures, many of which are already linked to criminal gangs and even, in some cases to terrorist groups. Their activities already impose heavy financial and human costs not only on the maritime industry but also on the countries from which they operate. Heretofore, the area around Somalia has been the most dangerous area but significant progress has been made in reducing piracy there. Last year, pirates succeeded in capturing 13 vessels, compared to 49 in 2010 and 28 in 2011, according to the International Maritime Organization (IMO). Part of that success can at least be partially explained by the European Union's heavy naval presence around the Horn of Africa, in the Gulf of Aden while improving intelligence sharing with NATO, the Combined Maritime Forces (CMF), the UK Maritime Trade Operations (UKMTO), and the International Maritime Bureau (IMB) Piracy Reporting Center. Additional measures implemented by shipping companies such as providing more armed security aboard merchant vessels while securing the ship's perimeter with razor or barbed wire have also led to the significant decrease in the number of piracy attacks. Equally important, however, was the 2009 implementation of the Djibouti Code of Conduct, a code concerning the repression of piracy and armed robbery against ships. Under the code, aside from committing themselves to abiding by various counter-piracy United Nations Security Council Resolutions, the signatories also pledged to overhaul their domestic counter-piracy legislation. As a result, a record number of pirates were sentenced by local courts around the world last year. The significance of these developments should not, however, be overstated. First, the cost remains enormous -- in 2011, it is estimated that Somali piracy cost the global economy an estimated 7 billion USD through higher insurance premiums, security enhancements, and business disruption and earned the pirates some 160 million USD in ransoms. These figures do not include the psychological burdens borne by the captives or the costs imposed on Somalia. And, the actual costs are probably even higher due to widespread underreporting. Second, while piracy off the coast of Somalia has decreased, pirates are gradually focusing their efforts where patrols are not available for protection, now operating in the wider Indian Ocean. As pirates are extending their reach from Oman to the Maldives, they have also proven to be excellent entrepreneurs, building large well-financed organizations that are able to execute ever more sophisticated attacks such as hijacking oil tankers off the coast of Nigeria and stealing the valuable cargo. Moreover, pirate groups are becoming increasingly international and are extending their reach from national bases to neighbors -- from Nigeria, for example to Benin and the Ivory Coast, usually in cooperation with powerful local elements. Economically speaking, piracy already presents an enormous challenge and it is conceivable that as pirates face stiffer resistance on the high seas by an increasingly stronger international naval presence, their political and ideological motivations could radicalize over time. Currently, terrorist groups already cooperate with criminal gangs to raise funds and piracy could potentially become a lucrative source of income for radical groups. A second plausible scenario is that as pirates struggle to capture more ships, pirates could resort to attacking shipping directly as criminal motivations could subside to radical ideology propagated by al Qaeda and its splinter groups. Hence, it is easy to envision a nightmare scenario wherein terrorists, supported by a pirate group, hijack an oil tanker not just to steal the oil or collect the ransom but to blow it up in a major port with devastating economic consequences across the globe. A separate threat scenario that should not be underestimated entails terrorists capturing a liqueﬁed natural gas carrier that can be used as a ﬂoating bomb, which can either be detonated at a major port or near a flotilla of ships in the open seas. Piracy and terrorism can also be used as means to exert economic warfare against the United States and the international community as maritime attacks oﬀer terrorists an alternate means of causing mass economic destabilization. After all, terrorists have already attacked ships -- al Qaeda, the USS Cole (2000), Abu Sayyaf a ferryboat in the Philippines (2004) and the Mumbai attacks (2008).

#### Nuclear war

Merlini, Senior Fellow – Brookings, 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (~357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

#### The plan solves---creates less strikes with more accuracy

Dragu 13 (Tiberiu Dragu, prof of politics at NYU, and Oliver Board, On Judicial Review in a Separation of Powers System, https://files.nyu.edu/tcd224/public/papers/judicial.pdf)

Whether judicial review should be limited for epistemic reasons has been particularly salient in recent years, as courts have been repeatedly called to determine the meaning of statutes and constitutional provisions on executive officials' powers to prevent terrorist attacks. Some scholars argue that terrorism prevention, just like other national security matters, is an area of questionable judicial competence where executive officials should be afforded considerable discretion to devise counterterrorism policies not only because the pres- ident is elected, but also because the president's agents have superior information about how best to address the terrorist threat (Sunstein 2005; Tushnet 2005; Posner 2006). Similar arguments for limiting judicial review because of asymmetric institutional competence are often voiced in the scholarship on administrative rulemaking (Sunstein 2006). Judicial in-tervention in rulemaking can he at odds, so the argument goes, with the very rationale of creating administrative agencies: to have an institutional repository of expertise in realms in which elected officials lack the necessary information required by complexity of the modern- day governance (Landis 1938). Such arguments approach the question of whether judicial review is desirable or not as a balancing exercise between the rule-of-law ideal of checking the legality of policies and the separat ion-of-powers principle of dispensing policy-making authority to those institutions with superior expertise. As such, the expertise rationale for limiting the scope of judicial review seems simple and intuitive: When questions of law are intertwined with matters of fact and policy choice and when the courts are unsure what consequences will follow from a particular decision, judicial second-guessing can throw governmental policies off course. And if the harm to public policy caused by potentially erroneous judicial decisions outweighs the rule-of-law benefits of assessing the legality of policies, it is allegedly desirable to limit judicial review on grounds of institutional competence, especially in technical and complex policy areas such as national security and administrative action. Notwithstanding the foregoing, restraining the exercise of judicial review for epistemic reasons, some argue, is bound to create a zone of legal unaccountability where governmental power can be deployed in an arbitrary and illegal manner, with potentially deleterious effects for the effectiveness of public law. Because even the most expert body can act unlawfully, foreclosing legal review in certain policy areas amounts to an abdication of the judicial duty to enforce relevant legal limits (Allan 2011). The pressing question then is this: Can we reconcile the review of expert policy decisions by non-expert courts in a manner that is consistent with both the rule-of-law ideal of checking the legality of policies and the separation-of-powers concern for policy expertise? To this end, we develop a game-theoretic analysis to illustrate how the exercise of judicial review can have a beneficial effect on expertise, even if the courts are relatively ill-equipped to evaluate the likely effects of various policies. That is, our analysis proposes a novel ratio-nale for the institution of judicial review. The conventional argument for such institutional arrangement is that it ensures consistency between the actions of governmental officials and preexisting legal provisions. Without disputing the importance of judicial review as a mech-anism of legal accountability, the analysis here underscores another, perhaps less intuitive virtue: judicial review by non-expert courts can foster policy expertise. Our analysis takes as its point of departure the fact that policymakers, those with for-mal power to make decisions, have to rely on expert agents for information regarding the likely consequences of various courses of action. Nothing about this argument is profound: that policymakers depend on experts for policy advice is an institutional fact of modern government. For example, the president relies on the White House staff, bureaucrats and non-governmental experts for policy advice; the House and the Senate depend on staff mem- bers, congressional committees, bureaucrats and lobbyists for valuable information when drafting legislation; the heads of administrative agencies depend on lower-level bureaucrats and the regulated industry, among others, for information regarding the consequences of various regulations; and so on. At the same time, this separation between policy-making and policy expertise implies that the amount of information available for decision-making is endogenous to the institutional structure under which policy-making takes place, observation which leads to, as we shall show, a novel assessment of judicial review expertise perspective. To illustrate the conditions under which judicial review fosters policy expertise, we com-pare a baseline model of an interaction between a policymaker and an expert in the absence of judicial review with an institutional setting in which a court can assess the legality of policies. This analysis shows that the judiciary can be better off without its review power if judicial checks dilute the amount of information available for policy-making, which implies that there are endogenous judicial incentives to limit the detrimental effect of judicial review on expertise. More importantly, the institutional analysis underscores that judicial review can enhance the amount of information available for policy-making, while, under those con- ditions, the judiciary prefers to exercise legal review, even though it lacks the knowledge to precisely assess the likely effects of various policies. In other words, not only that it can be desirable solely on expertise grounds to subject governmental policy to the muster of judi-cial review, but non-expert courts have endogenous incentives to employ judicial review in a manner consistent with both the principle of checking the legality of policies and institutional concern for policy expertise. These results have policy implications for public and scholarly debates regarding how to design the structure of liberal governments to fight terrorism (Cole 2003; Posner 2006). Whether counterterrorism policy should be subjected to the muster of judicial review has been a contentious matter, especially in the aftermath of 9/11 as various liberal democracies made terrorism prevention a pressing objective. The contending views on the appropriate- ness of judicial review of counterterrorism policy are sharply articulated in the recent debate on drone strikes. Some say that judicial review of targeted killings is necessary to put the policy on a better legal foundation, while others argue that it is inappropriate because judges lack the required expertise to review expert executive decisions.1 Our results suggest that non-expert judicial review has the potential to induce more informed policies, an observation that is missing from current discussions on judicial review of drone strikes and other coun- terterrorism policies. In section 7, we discuss in more detail the application of our theory and its policy implications, in the context of counterterrorism policy.

### CMR

#### Executive overreliance on the military is counterproductive and sparks military backlash

Brooks 11/1/13 (Rosa Brooks, a law professor at Georgetown University, served as an Obama appointee at the Defense Department from 2009 to 2011, “Obama vs. the Generals,” http://www.politico.com/magazine/story/2013/11/obama-vs-the-generals-99379\_Page3.html

The military and the White House are not supposed to be on different “sides,” but there’s a long history of mutual recriminations; it’s practically an American tradition. Recall President Harry Truman’s theatrical firing of Gen. Douglas MacArthur amid the dispute over whether to escalate the Korean War; Dwight Eisenhower’s condemnation of the “military-industrial complex,” John F. Kennedy’s struggles with military leaders during the Cuban Missile Crisis; and Bill Clinton’s failed effort to end the ban on gay people serving openly in the military. And that’s just in the post-World War II era. Dubik argues that critics of Obama’s relationship with the military have short memories. “This administration seems more inclusive and willing to listen than the last few,” he says dryly. And, he adds, if anyone imagines that military leaders are more comfortable with Republican administrations, “that’s baloney.” Charles J. Dunlap, an Air Force major general who retired in 2010, agrees: “The longer you’re in the military, the more you realize that there’s not all that much difference between administrations.” Disputes between military leaders and the White House can be healthy for a democratic society. After all, senior commanders have a legal and ethical obligation to provide the president and Congress with honest military advice, and although Dempsey’s openly expressed concerns about Syria may not have sat well with White House officials, says retired Lt. Gen. David Barno, “the chairman does have to say, ‘Here are the risks in that course of action.’” In any case, warns another retired general, the only thing worse than an overtly dissenting military is a covertly dissenting military. “Beware the silence of the generals,” he quips. “Public silence doesn’t mean private inaction.” It is far better, he argues, to have top brass be “out in the open and accountable for what they’re thinking” than for them to be “speaking through proxies and doing back-channel manipulations.” Meanwhile, the president is “right to ask his generals tough questions,” says Dunlap. Every administration prefers to present a united front with the military, but, as another retired senior military leader told me, the president needs to be comfortable if that proves impossible: “There’s nothing wrong with the president saying, ‘The military wanted something, but as president, I decided different, and here’s why.’ The president shouldn’t be afraid of that.” That’s easier said than done. For this White House, the military is the proverbial 800-pound gorilla—more so than ever. After the Sept. 11, attacks, resources and authorities flowed lavishly to the Pentagon, which saw its budget almost double in the following decade. President George W. Bush’s administration “always wanted military guys between themselves and whatever the problem was,” recalls a retired general who served in senior positions during that period. And Bush was more than willing to spend the money needed to make that happen. Meanwhile, budgets for civilian agencies and programs remained largely stagnant. “Ten to 15 years ago, the military was much smaller and less holistic,” notes another retired officer. Today’s military is doing more with more: It sponsors radio and television shows in Afghanistan, operates health clinics in Africa, provides technical assistance to courts and parliaments, engages in cyberdefense, carries out drone strikes in far-flung places, and collects data from our telephone calls and emails. “It’s just the easiest way out of any problem,” says Eaton. “Give money to the military and let them deal with it.” The relentlessly expanding U.S. military, Barno says, is becoming “like a super-Walmart with everything under one roof.” Like Walmart, the military can marshal vast resources and exploit economies of scale in ways impossible for mom-and-pop operations. And like Walmart, the tempting one-stop-shopping convenience the military offers has a devastating effect on smaller, more traditional enterprises—in this case, the outnumbered diplomats of Foggy Bottom. Or the boutique national security shop at the White House, where power lives but resources don’t. And yet no one—least of all Obama—seems to know how to cope with the military’s relentless Walmartization. However committed the president is, in theory, to rebalancing civilian and military roles, Obama has found himself repeatedly turning to the Pentagon in times of crisis, whether in Libya, Syria or Yemen. That, in the end, may be the real story of Obama and his uneasy relationship with a military he came to office determined to rein in. “When the shit hits the fan,” says a former White House official, he’s “racing for that super-Walmart every single bloody time.”

Deference collapses CMR; the court is an essential piece to the triangle, solves a culture of isolation

Gilbert, Lieutenant Colonel, 98 (Michael, Lieutenant Colonel Michael H. Gilbert, B.S., USAF Academy; MSBA, Boston University; J.D., McGeorge School of Law; LL.M., Harvard Law School. He is a member of the State Bars of Nebraska and California. “ARTICLE: The Military and the Federal Judiciary: an Unexplored Part of the Civil-Military Relations Triangle,” 8 USAFA J. Leg. Stud. 197, lexis)

The legislative, executive, and judicial branches of the federal government comprise and form a triangle surrounding the military, each branch occupying one side of the civil-military triangle. Commentators have written countless pages discussing, analyzing, and describing the civil-military relationship that the Congress and the President have with the armed forces they respectively regulate and command. Most commentators, however, have neglected to consider the crucial position and role of the federal judiciary. This article examines the relationship between the judiciary and the military in the interest of identifying the role that the judiciary, specifically the United States Supreme Court, plays in civil-military relations. Without an actual, meaningful presence of the judiciary as a leg of the civil-military triangle, the triangle is incomplete and collapses. In its current structure, the judiciary has adopted a non-role by deferring its responsibility to oversee the lawfulness of the other two branches to those branches themselves. This dereliction, which arguably is created by the malfeasance of the United States Supreme Court, has resulted in inherent inequities to the nation, in general, and to service members, in particular, as the federal courts are reluctant to protect even basic civil rights of military members. Judicial oversight is one form of civilian control over the military; abrogating this responsibility is to return power to the military hierarchy that is not meant to be theirs. [\*198] Under the United States Constitution, Congress has plenary authority over the maintenance and regulation of the armed forces, and the President is expressly made the Commander-in-Chief of the armed forces. The unwillingness of the Court to provide a check and balance on these two equal branches of the federal government creates an area virtually unchallengeable by the public. As a result, a large group of people, members of the military services, lack recourse to address wrongs perpetrated against them by their military and civilian superiors. Ironically, the very men and women dedicating their lives to protect the U.S. Constitution lack many of the basic protections the Constitution affords everyone else in this nation. The weakness in the present system is that the Supreme Court has taken a detour from the Constitution with regard to reviewing military issues under the normally recognized requirements of the Constitution. The federal judiciary, following the lead of the Supreme Court, has created de facto immunity from judicial interference by those who seek to challenge policy or procedure established by the other two branches and the military itself. When the "Thou Shalt Nots" of the Amendments to the Constitution compete with the necessities of the military, the conflict is resolved in favor of the military because it is seen as a separate society based upon the constitutionally granted authority of Congress to maintain and regulate the armed forces. 1 Essentially, the Court permits a separate world to be created for the military because of this regulation, distinguishing and separating the military from society. 2 The Court needs to reexamine their almost complete deference on military matters, which is tantamount to an exception to the Bill of Rights for matters concerning members of the military. Unless the Court begins to provide the oversight that is normally dedicated to many other areas of law fraught with complexity and national importance, judicial review of the military will continue to be relegated to a footnote in the annals of law. Combined with the downsizing and further consequent decline of interaction between the military and general society, 3 this exile from the protection of the Constitution could breed great injustices within the military. Perhaps even more importantly, the military might actually begin to believe that they are indeed second-class citizens, separate from the general [\*199] population, which could create dire problems with civil-military relations that are already the subject of concern by many observers. 4

CMR erosion collapses hegemony

Barnes, Retired Colonel, 11 (Rudy Barnes, Jr., BA in PoliSci from the Citadel, Military Awards: Legion of Merit, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal with Oak Leaf Cluster, Army Reserve Component Achievement Medal, National Defense Service Medal, “An Isolated Military as a Threat to Military Legitimacy,” http://militarylegitimacyreview.com/?page\_id=159)

The legitimacy of the US military depends upon civil-military relations. In Iraq and Afghanistan conflicting religions and cultures have presented daunting challenges for the US military since mission success in counterinsurgency (COIN) operations depends upon public support in those hostile cultural environments; and even in the US, civil-military relations are fragile since the military is an authoritarian regime within a democratic society. This cultural dichotomy within our society creates the continuing potential for conflict between authoritarian military values and more libertarian civilian values that can undermine military legitimacy, especially when there are fewer bridges between the military and the civilian population it serves. The US military is a shield that protects our national security, but it can also be a sword that threatens our national security. After all, the US military controls the world’s most destructive weaponry. Our Founding Fathers understood this danger and provided for a separation of powers to prevent a concentration of power in the military. Still, if the US military were ever to become isolated from the civilian population it serves, then civil-military relations would deteriorate and US security would be at risk. Richard Cohen has opined that we are slowly but inexorably moving toward an isolated military: The military of today is removed from society in general. It is a majority white and, according to a Heritage Foundation study, disproportionately Southern. New England is underrepresented, and so are big cities, but the poor are no longer cannon fodder – if they ever were – and neither are blacks. We all fight and die just about in proportion to our numbers in the population. The all-volunteer military has enabled America to fight two wars while many of its citizens do not know of a single fatality or even of anyone who has fought overseas. This is a military conscripted by culture and class – induced, not coerced, indoctrinated in all the proper cliches about serving one’s country, honored and romanticized by those of us who would not, for a moment, think of doing the same. You get the picture. Talking about the picture, what exactly is wrong with it? A couple of things. First, this distant Army enables us to fight wars about which the general public is largely indifferent. Had there been a draft, the war in Iraq might never have been fought – or would have produced the civil protests of the Vietnam War era. The Iraq debacle was made possible by a professional military and by going into debt. George W. Bush didn’t need your body or, in the short run, your money. Southerners would fight, and foreigners would buy the bonds. For understandable reasons, no great songs have come out of the war in Iraq. The other problem is that the military has become something of a priesthood. It is virtually worshipped for its admirable qualities while its less admirable ones are hardly mentioned or known. It has such standing that it is awfully hard for mere civilians – including the commander in chief – to question it. Dwight Eisenhower could because he had stars on his shoulders, and when he warned of the military-industrial complex, people paid some attention. Harry Truman had fought in one World War and John Kennedy and Gerald Ford in another, but now the political cupboard of combat vets is bare and there are few civilian leaders who have the experience, the standing, to question the military. This is yet another reason to mourn the death of Richard Holbrooke. He learned in Vietnam that stars don’t make for infallibility, sometimes just for arrogance. (Cohen, How Little the US Knows of War, Washington Post, January 4, 2011) The 2010 elections generated the usual volume of political debate, but conspicuously absent were the two wars in which US military forces have been engaged for ten years. It seems that dissatisfaction with the wars in Iraq and Afghanistan has caused the American public to forget them and those military forces left to fight them. A forgotten military can become an isolated military with the expected erosion of civil-military relations. But the forgotten US military has not gone unnoticed: Tom Brokaw noted that there have been almost 5,000 Americans killed and 30,000 wounded, with over $1 trillion spent on the wars in Afghanistan and Iraq, with no end in sight. Yet most Americans have little connection with the all-volunteer military that is fighting these wars. It represents only one percent of Americans and is drawn mostly from the working class and middle class. The result is that military families are often isolated “…in their own war zone.” (See Brokaw, The Wars that America Forgot About, New York Times, October 17, 2010) Bob Herbert echoed Brokaw’s sentiments and advocated reinstating the draft to end the cultural isolation of the military. (Herbert, The Way We Treat Our Troops, New York Times, October 22, 2010) In another commentary on the forgotten military, Michael Gerson cited Secretary of Defense Robert Gates who warned of a widening cultural gap between military and civilian cultures: “There is a risk over time of developing a cadre of military leaders that politically, culturally and geographically have less and less in common with the people they have sworn to defend.” Secretary Gates promoted ROTC programs as a hedge against such a cultural divide. Gerson concluded that the military was a professional class by virtue of its unique skills and experience: “They are not like the rest of America—thank God. They bear a disproportionate burden, and they seem proud to do so. And they don’t need the rest of society to join them, just to support them.” (Gerson, The Wars We Left Behind, Washington Post, October 28, 2010) The Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, has seconded the observations of Secretary Gates and warned of an increasingly isolated military and “…a potentially dangerous gulf between the civilian world and men and women in uniform.” Mullen explained, “To the degree that we are out of touch I believe is a very dangerous force.” And he went on to observe that “Our audience, our underpinnings, our authority, everything we are, everything we do, comes from the American people…and we cannot afford to be out of touch with them.” (Charley Keyes, Joint Chiefs Chair Warns of Disconnect Between Military and Civilians, CNN.com, January 10, 2011) Gerson’s observation that the military are not like the rest of Americans goes to the heart of the matter. An isolated military that exacerbates conflicting military and civilian values could undermine civil-military relations and threaten military legitimacy. The potential for conflicting values is evident in the article by Kevin Govern on Higher Standards of Honorable Conduct Reinforced: Lessons (Re) Learned from the Captain Honors Incident (see article posted under this section) which highlights the “exemplary conduct” standard for military personnel and the need to enforce the unique standards of exemplary conduct to maintain good order and discipline in the military. The communal and authoritarian military values inherent in the standards of exemplary conduct often clash with more libertarian civilian values; but in the past that clash has been moderated by bridges between the military and civilian cultures, most notably provided by the draft, the National Guard and reserve components. The draft is gone and the National Guard and reserve components are losing ground in an all-volunteer military that is withdrawing from Iraq and Afghanistan. The Reserve Officer Training Program (ROTC) has provided most civilian-soldier leaders for the US military in the past, but it is doubtful that will continue in the future. If Coleman McCarthy speaks for our best colleges and universities, then ROTC is in trouble and so are civil-military relations: These days, the academic senates of the Ivies and other schools are no doubt pondering the return of military recruiters to their campuses. Meanwhile, the Pentagon, which oversees ROTC programs on more than 300 campuses, has to be asking if it wants to expand to the elite campuses, where old antipathies are remembered on both sides. It should not be forgotten that schools have legitimate and moral reasons for keeping the military at bay, regardless of the repeal of “don’t ask, don’t tell.” They can stand with those who for reasons of conscience reject military solutions to conflicts. ROTC and its warrior ethic taint the intellectual purity of a school, if by purity we mean trying to rise above the foul idea that nations can kill and destroy their way to peace. If a school such as Harvard does sell out to the military, let it at least be honest and add a sign at its Cambridge front portal: Harvard, a Pentagon Annex. (Coleman McCarthy, Don’t ask, don’t tell has been repealed. ROTC still shouldn’t be on campus, Washington Post, December 30, 2010) McCarthy’s attitude toward ROTC reflects a dangerous intellectual elitism that threatens civil-military relations and military legitimacy. But there are also conservative voices that recognize the limitations of ROTC and offer alternatives. John Lehman, a former Secretary of the Navy, and Richard Kohn, a professor of military history at the University of North Carolina at Chapel Hill, don’t take issue with McCarthy. They suggest that ROTC be abandoned in favor of a combination of military scholarships and officer training during summers and after graduation: Rather than expanding ROTC into elite institutions, it would be better to replace ROTC over time with a more efficient, more effective and less costly program to attract the best of America’s youth to the services and perhaps to military careers. Except from an economic perspective, ROTC isn’t efficient for students. They take courses from faculty almost invariably less prepared and experienced to teach college courses, many of which do not count for credit and cover material more akin to military training than undergraduate education. Weekly drills and other activities dilute the focus on academic education. ROTC was begun before World War I to create an officer corps for a large force of reservists to be mobilized in a national emergency. It has outgrown this purpose and evolved into just another source of officers for a military establishment that has integrated regulars and reservists into a “total force” in which the difference is between part-time and full-time soldiering. The armed services should consider a program modeled in part on the Marine Platoon Leaders Corps to attract the nation’s most promising young people. In a national competition similar to ROTC scholarships, students should be recruited for four years of active duty and four years of reserve service by means of all-expenses-paid scholarships to the college or university of their choice. Many would no doubt take these lucrative grants to the nation’s most distinguished schools, where they would get top-flight educations and could devote full attention on campus to their studies. Youths would gain their military training and education by serving in the reserve or National Guard during college (thus fulfilling their reserve obligation). Being enlisted would teach them basic military skills and give them experience in being led before becoming leaders themselves. As reservists during college, they would be obligated to deploy only once, which would not unduly delay their education or commissioned service. They could receive their officer education at Officer Candidate School summer camps or after graduation from college. This program could also be available to those who do not win scholarships but are qualified and wish to serve. Such a system would cost less while attracting more, and more outstanding, youth to military service, spare uniformed officers for a maxed-out military establishment, and reconnect the nation’s leadership to military service – a concern since the beginning of the all-volunteer armed force. (Lehman and Kohn, Don’t expand ROTC. Replace it. Washington Post, January 28, 2011) The system proposed by Lehman and Kohn would preserve good civil-military relations only if it could attract as many reserve component (civilian-soldier) military officers as has ROTC over the years. Otherwise the demise of ROTC will only hasten the isolation of the US military. As noted by Richard Cohen, Tom Brokaw, Bob Herbert, Michael Gerson, Secretary of Defense Bill Gates and Chairman of the Joint Chiefs Admiral Mike Mullen, the increasing isolation of the US military is a real danger to civil-military relations and military legitimacy. The trends are ominous: US military forces are drawing down as they withdraw from Iraq and Afghanistan and budget cuts are certain to reduce both active and reserve components, with fewer bridges to link a shrinking and forgotten all-volunteer military to the civilian society it serves. The US has been blessed with good civil-military relations over the years, primarily due to the many civilian-soldiers who have served in the military. But with fewer civilian-soldiers to moderate cultural differences between an authoritarian military and a democratic society, the isolation of the US military becomes more likely. Secretary Gates and Admiral Mullen were right to emphasize the danger of an isolated military, but that has not always been the prevailing view. In his classic 1957 work on civil-military relations, The Soldier and the State, Samuel Huntington advocated the isolation of the professional military to prevent its corruption by civilian politics. It is ironic that in his later years Huntington saw the geopolitical threat environment as a clash of civilizations which required military leaders to work closely with civilians to achieve strategic political objectives in hostile cultural environments such as Iraq and Afghanistan. (see discussion in Barnes, Military Legitimacy: Might and Right in the New Millennium, Frank Cass, 1996, at pp 111-115) Today, the specter of an isolated military haunts the future of civil-military relations and military legitimacy. With fewer civilian-soldiers from the National Guard and Reserve components to bridge the gap between our military and civilian cultures, an all-volunteer professional military could revive Huntington’s model of an isolated military to preserve its integrity from what it perceives to be a morally corrupt civilian society. It is an idea that has been argued before. (see Robert L. Maginnis, A Chasm of Values, Military Review (February 1993), cited in Barnes, Military Legitimacy: Might and Right in the New Millennium, Frank Cass, 1996, at p 55, n 6, and p 113, n 20) The military is a small part of our population—only 1 percent—but the Department of Defense is our largest bureaucracy and notorious for its resistance to change. Thomas Jefferson once observed the need for such institutions to change with the times: “Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstance, institutions must advance also, and keep pace with the times.” Michael Gerson noted that the military remains a unique culture of warriors within a civilian culture, and that “it is not like the rest of America.” For that reason a forgotten and isolated military with values that do not keep pace with changing times and circumstances and conflict with civilian values would not only be a threat to military legitimacy but also be a threat to our individual freedom and democracy. In summary, the US military is in danger of becoming isolated from the civilian society it must serve. Military legitimacy and good civil-military relations depend upon the military maintaining close bonds with civilian society. In contemporary military operations military leaders must be both diplomats as well as warriors. They must be effective working with civilians in domestic and foreign emergencies and in civil-military operations such as counterinsurgency and stability operations, and they must be combat leaders who can destroy enemy forces with overwhelming force. Diplomat-warriors can perform these diverse leadership roles and maintain the close bonds needed between the military and civilian society. Such military leaders can help avoid an isolated military and insure healthy civil-military relations.

Loss of mission effectiveness risks multiple nuclear wars

Kagan and O’Hanlon 7 Frederick, resident scholar at AEI and Michael, senior fellow in foreign policy at Brookings, “The Case for Larger Ground Forces”, April 2007, http://www.aei.org/files/2007/04/24/20070424\_Kagan20070424.pdf

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

#### Balanced CMR is essential to democratic modeling

Barnes, Retired Colonel, 11 (Rudy Barnes, Jr., BA in PoliSci from the Citadel, Military Awards: Legion of Merit, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal with Oak Leaf Cluster, Army Reserve Component Achievement Medal, National Defense Service Medal, “Military Legitimacy: Might and Right in the New Millennium”, originally published in 1996, revised Feb 8, 2011, document accessed from: http://militarylegitimacyreview.com/?page\_id=206)

Continuing nation assistance operations have confirmed the importance of human rights and civil-military relations to military legitimacy. Military forces in undemocratic regimes have historically been associated with human rights violations and political oppression. The U.S. has provided security and humanitarian assistance to encourage democratization in many such regimes: first to Latin America in the 1970s and 1980s, and more recently to Eastern Europe and Russia. In most developing countries the military is not separated from domestic politics as in the U.S., and is expected to provide internal as well as external security to the civilian population. This makes it especially important that the requirements of internal security be balanced with the restraint needed to protect human rights. In Latin America the exercise of political power by military forces has had a corrosive influence on military professionalism and civil-military relations. The use of the military to protect or install corrupt regimes has eroded their legitimacy. To build the public support required for military legitimacy, Latin American militaries must limit their political role, constrain the use of force, and focus on improving civil-military relations.21 A joint project between US Army military lawyers and their Peruvian counterparts to promote human rights is discussed in chapter 7. It illustrates how institutionalizing respect for human rights in the military can improve civil-military relations and legitimacy. According to the 1993 UN Truth Commission Report on the civil war in El Salvador the Salvadoran military has a long way to go to achieve legitimacy. The Report indicates gross human rights violations were committed by death squads associated with U.S.-trained military forces. The conviction of two officers for the murder of six Jesuit priests in 1989 was a positive step, but the failure to purge those officers identified with human rights violations indicates military legitimacy remains an elusive goal. In Eastern Europe there have been similar problems with military legitimacy. Promoting the values of democracy, human rights, and the rule of law in former communist countries can contribute to peace, security and military legitimacy in two ways: first, democratic regimes are less likely to misuse their military power than authoritarian regimes; and second, the democratic values of individual liberty and civilian control contribute to better civil-military relations and military professionalism, and professionalism (internal control) is the best defense against the misuse of military power.22 The failure of civil-military relations and military professionalism in the "masterless" armies of the former Yugoslavia has contributed to the unspeakable atrocities in the Bosnian civil war. Better civil-military relations and military professionalism could help protect human rights and prevent the spread of similar violence throughout the region. "Civil-military relations take on a deeper significance and must be viewed as a critical element in the struggle to maintain legitimacy of existing democratic governments as they attempt to deal with the internal and external manifestations of this crisis."23 The future of democracy, human rights, and the rule of law in emerging democracies depends upon better civil-military relations, which will require effective separation of military and political power (ideally civilian control of the military), but this should not preclude domestic military missions with political implications. For U.S. military advisors to help their indigenous counterparts improve civil-military relations, they must understand the requirements and principles of military legitimacy, especially the role of human rights and the rule of law. Civil-military relations in the U.S. There have been important lessons learned in civil-military relations in the U.S. as well as overseas. While they have not involved serious violations of human rights (with the exception of the Indian wars and the Kent State incident) they do provide important lessons in military legitimacy and useful precedents for the future.

#### Democratic backsliding causes great power war

Azar Gat 11, the Ezer Weizman Professor of National Security at Tel Aviv University, 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, the decline of major great power war has deepened further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’, where countries that have so far failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars among themselves, as well as with developed countries.¶ While the trend is very real, one wonders if the near disappearance of armed conﬂict within the developed world is likely to remain as stark as it has been since the collapse of communism. The post-Cold War moment may turn out to be a ﬂeeting one. The probability of major wars within the developed world remains low—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. But the deep sense of change prevailing since 1989 has been based on the far more radical notion that the triumph of capitalism also spelled the irresistible ultimate victory of democracy; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. This notion, however, is fast eroding with the return of capitalist non-democratic great powers that have been absent from the international system since 1945. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist China, whose massive growth represents the greatest change in the global balance of power. Russia, too, is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character.¶ Authoritarian capitalism may be more viable than people tend to assume. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan, particularly the former, were as efﬁcient economically as, and if anything more successful militarily than, their democratic counterparts. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the new non-democratic powers are both large and capitalist. China in particular is the largest player in the international system in terms of population and is showing spectacular economic growth that within a generation or two is likely to make it a true non-democratic superpower.¶ Although the return of capitalist non-democratic great powers does not necessarily imply open conﬂict or war, it might indicate that the democratic hegemony since the Soviet Union’s collapse could be short-lived and that a universal ‘democratic peace’ may still be far off. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, as China grows in power, it is likely to become more assertive, ﬂex its muscles, and behave like a superpower, even if it does not become particularly aggressive. The democratic and non-democratic powers may coexist more or less peacefully, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. But there is also the prospect of more antagonistic relations, accentuated ideological rivalry, potential and actual conﬂict, intensiﬁed arms races, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

### Extra CMR card

#### Balanced CMR is key to democratic consolidation-the relationship is statistically significant

**Tusalem, Arkansas State political science professor, 2013**

(Rollin, “Bringing the military back in: The politicisation of the military and its effect on democratic consolidation”, International Political Science Review, August, SAGE, ldg)

Panel regression results presented in Table 2 confirm the hypothesis that a politicised military infrastructure affects democratic politics. For instance, the military index of politicisation (provided by PRS) is negatively correlated with democratic accountability at (p < .05). Thus, states that have politically active military institutions are more likely to face lower levels of political accountability. We can also infer from Table 2 that the Siaroff index of military activism is positively correlated with higher levels of democratic accountability (p < .01), suggesting that states that have restrictions on “reserved domains” are more likely to be responsive to political rights and civil liberties, and have checks and balances in their political system. The role of institutionalised military intervention, reflected by the occurrence of coup events in the historical past (prior to transition), also has a negative effect on democratic accountability (achieving statistical significance at p < .10), largely confirming how the historical legacy of institutional structures may affect the nature of transitional politics (Pop-Eleches, 2007). Interestingly, none of the military-related variables concerning the size of the national army and spending on the military as an institution are correlated with democratic accountability. We now move to examine the effect of a politicised military on a more substantive and maximalist measure of democracy, the EIU measure. Table 3 conveys how all the relevant measures—the PRS measure (significant at p < .05), the Siaroff index (significant at p < .05), and the coup index prior to transition (significant at p < .01)—have coefficient signs in the expected direction and are statistically significant across the board. Out of all the three variables capturing the politicisation of the military, the variable that has the most salient effect on promoting the politics of inclusion, equality, pluralism, and fairness in governance is the dummy variable of whether or not a state had a coup in its pre-transition history. Hence, states whose militaries were engaged in coups prior to transition are less likely to strengthen the nature of democratic politics, an indication that activist militaries in the pre-transition period are more likely to remain restive and destabilising in the post-transition period, largely affecting and eroding democratic gains. Hence, this comports with Stepan’s (1988) argument that historical legacies of military adventurism matter in shaping how far states move forward in their transitional trajectory toward consolidation. Finally, what effect does an activist military have on the prospects for democratic consolidation? The results presented in Table 4 show that the PRS measure is negatively correlated with democratic consolidation (significant at p < .01) and, based on the predicted estimates shown in Figure 1, we see that the BTI measure of consolidation is at its highest when the PRS measure is 1 (states with apolitical military institutions), while the BTI score is at its lowest when the PRS measure is 6 (states with politicised military institutions), even when holding all control variables constant at their means and modes. These results are mimicked when we look at the effect of the Siaroff index of military activism on democratic consolidation. Table 4 shows a positive relationship between the Siaroff index and democratic consolidation (significant at p < .01), and the predicted estimates illustrated in Figure 2 show that as the restrictions on reserved domains increase, so do the prospects for democratic consolidation. To substantiate further, the BTI transformation index reaches its maximum value when the Siaroff index is 10 (connoting lower levels of reserved domains), while the BTI transformation index reaches its minimum level when the Siaroff index is 2 (connoting higher levels of reserved domains). This shows that states which have militaries that control security, defence, and social policies, particularly those whose post-transitional constitutions gave the military responsibilities and positions in government, are less likely to consolidate or strengthen their democratic institutions. What about the effect of the military’s historical prerogative in ending civilian rule in the past? Does this activism persist even in the post-transition period, producing problems as it relates to democratic consolidation? The results in Table 4 confirm the deleterious effect of prior coup events on the prospects of democratic consolidation, although this time the prior coup variable attains only marginal significance (at p < .10), results which attained a higher level of statistical significance when the EIU measure of democracy was used. It should also be noted here that the reduced models that drop the number of countries from 44 to 39 states also yield results that corroborate the main models in all the regression analyses. Thus, even if we restrict the sampling to states that strictly transitioned to democracy, the pernicious effect of a politicised military on democratic accountability and democratic consolidation remains statistically significant. The empirical findings of this study convey that transitional states where reserved domains granted to the military are high, specifically states where the military apparatus has a large role in shaping national policies, are more likely to have lower levels of democratic accountability and are more likely to reverse democratic gains. Furthermore, politicised military institutions and the institutional legacy of overthrowing civilian regimes in the pre-transitional past have an enduring effect in eroding prospects for democratic consolidation. Scholars provide the normative prescription that reserved domains given to the military should not be provided by the state. In fact, such domains must be immediately dismissed at the onset of roundtable negotiations during “pacted” transitional processes (Diamond, 1999). Civilian governments should not grant the military a “golden parachute” to escape prosecution for human rights violations committed in the authoritarian past. For instance, there is consensus that one reason behind the relative success of Chilean, Brazilian, and Argentinean democratisation is attributed to amendments in their constitution that openly targeted the reserved domains granted to the military. These actions drastically lessened the military’s activism post-transition (Hagopian, 2005). The high-publicity trials of military generals involved in a coup or past human rights violations should be encouraged, to deter the military from pursuing a political role in the affairs of the state. Immunity deals granted to military generals who have denigrated the rule of law should be avoided so as to have a deterrent effect on the military’s potential activism (Siaroff, 2009). In light of democracy-building initiatives of international organisations, Fitch (1998) recommends that new democracies should discourage military generals from participating in constituent assemblies/constitutional conventions. It is also recommended that generals or retired generals not be invited to take positions in the civil service or bureaucracy. Many also recommend that a civil–military equilibrium must be reached in which civilian governments retain control of the economy, especially in determining budgets that affect the military, their pay scales, and issues concerning the promotion and demotion of highly ranked officers. Lastly, the military’s role in influencing public policy and the consultative role it grants to the executive should be restrained or severed altogether as these reserved domains may threaten democratic values and institutions (Alagappa, 2001; Kohn, 1997; Trinkunas, 2001). The results of this study also find that other military-related variables, like the size of the army and the percentage of GDP spent on the military, have no effect on democratic quality and consolidation. This corroborates the empirical findings of McKinlay and Cohan (1975) and Zuk and Thompson (1982), which allude to how the corporate model of greed and grievance coming from the military is not a salient factor in shaping its political agenda and motivations. Thus, the effect of the military on democratic outcomes is largely not a structural issue per se; rather, it is more a function of how the military’s activism in the pre-transitional process leads them to demand reserved domains at the cusp of constructing post-authoritarian constitutions. As these domains accrue over time, it provides the impetus for the military to further erode democratic gains, thus paving the way for the return of creeping authoritarianism.

## \*\*\*2AC

### T

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging

unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually

committed to the courts as claims brought under the Suspension Clause. Both are fundamental

judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir.

1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments

because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene,

553 U.S. 723.

#### Their ex-post evidence concludes aff – we’re a restriction and ex-ante is not

Vladeck 13 (Steve, Professor of Law and the Associate Dean for Scholarship – American University Washington College of Law, JD – Yale Law School, Senior Editor – Journal of National Security Law & Policy, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…,” Lawfare Blog, 2-10, http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/)

That’s why, even though [I disagree](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) with the [DOJ white paper](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf) that ex ante review would present a nonjusticiable political question, I actually agree that courts are ill-suited to hear such cases–not because, as the white paper suggests, they lack the power to do so, but because, in most such cases, they would lack the competence to do so. **III. Drone Courts and the Legitimacy Problem** That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante revew in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea. **IV. Why Damages Actions Don’t Raise the Same Legal Concerns** At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I actually think virtually all of these concerns could be mitigated. For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. Re: adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief (more on that below), it’s hard to see any pure Article III problem with such a suit for retrospective relief. As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what [Tennessee v. Garner](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, [it demonstrates that](http://www.brookings.edu/research/reports/2011/05/guantanamo-wittes) judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances–albeit not always ideally–the government’s interest in secrecy with the detainee’s ability to contest the evidence against him. Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures, so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. More to the point, it should also follow that courts would be far more able to review the questions that will necessary be at the core of these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight–removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc. And in addition to the substantive questions, it will also be much easier for courts to review the government’s own procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go along way toward proving the lawfulness vel non of an individual strike… To be sure, there are a host of legal doctrines that would get in the way of such suits–foremost among them, [the present judicial hostility](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) to causes of action under [*Bivens*](http://supreme.justia.com/cases/federal/us/403/388/case.html); the state secrets privilege; and official immunity doctrine. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that [immunity is constitutionally grounded](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0731_ZS.html)), each of these concerns can be overcome by statute–so long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and official immunity doctrine; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many–if not most–of these cases, these legal issues would be overcome. **V. Why Damages Actions Aren’t Perfect–But Might Be the Least-Worst Alternative** Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists. Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. That said, there are two enormous upsides to damages actions that, in my mind, make them worth it–even if they are deeply, fundamentally flawed: First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability–and, as importantly, precedent–such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution requires at least some form of judicial process–and, compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to get all of the relevant constituencies to the table. That’s a very long way of reiterating what I wrote in [my initial response](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) to the DOJ white paper, but I end up in the same place: If folks really want to provide a judicial process to serve as a check on the U.S. government’s conduct of targeted killing operations, this kind of regime, and not an ex ante “drone court,” is where such endeavors should focus.

#### C/I – Authority is what the president may do not what the president can do

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### Their interpretation is flawed

#### A. Over limits-The core cases on the topic all revolve around regulating executive behavior not banning specific policies. Their interpretation would eliminate the role of most topic literature across the areas.

#### B. Affirmative Ground-Ban specific policies like drones are dead in the water to any type of agent counterplan. You should err affirmative because the range of good affirmatives is very small this year and the negative is strapped with an arsenal of generics.

#### ---Reasonability-competing interpretations causes substance crowd by encouraging debate over Topicality instead of war powers. Good is good enough when the topic is already limited by areas and our affirmative is squarely located in the literature over how to limit executive authority.

### 2AC AUMF

#### AUMF expansion locks in norms of attacking non-imminent threats – cant solve blowback or allies

**Marchand, American University law research fellow, 2013**

(Caitlin, “Expansion of the AUMF: The Only Means to an End?”, 4-5, <http://nationalsecuritylawbrief.com/2013/04/05/expansion-of-the-aumf-the-only-means-to-an-end/>, ldg)

Counter to these worries of an imminent threat to the U.S. from new emerging terrorist groups, opponents to the AUMF expansion ask to be shown where the threat actually lies. Opponents argue that AUMF was narrowly tailored to al Qaeda, the Taliban, and those who aided in attacks on the U.S. home front. They point to the idea that in a time where we are about end our armed conflict with al Qaeda in the name of victory; expansion of AUMF shouldn’t even be on our minds. As well as to the fact that the only new terrorist group that has been found to have the intent and capacity to launch attacks on U.S. soil (al Qaeda in the Arabian Peninsula) falls clearly within the scope of the AUMF’s current authority. Expansion opponents believe this preemptive and sweeping military legislation to combat a faceless, future enemy would be counterproductive since there are already sufficient legal powers in place that give the government power to combat terrorist’s threats. There is no evidence these new terrorist groups will ever pose a threat to the U.S. and to impose new legislation would take the AUMF from a defensive role to an offensive one, which could pose a threat to the international community’s stability. The opponents stand behind the government’s use of military force in situations that merit such action, but find that the other side’s justifications for expanding the AUMF, as of this moment, fall short of such merits. If and when the time comes, and a new terrorist group presents an imminent threat to the U.S., the President can ask for a narrowly tailored expansion of AUMF from Congress to specifically include the threatening group. However, to this day, there is no evidence of any such terrorist groups. So, in the end we have to ask ourselves, is a simple presupposition of danger without proof enough to expand and change the nature of already adequate legislation or is Sen. Corker correct in thinking that expansion is the only legal way to keep the U.S. safe from new terrorist threats?

#### US norm will get modeled-collapses hegemony and guarantees instability

**Barnes, Boston JD and Tufts law and diplomacy MA, 2012**

(Beau, “Reauthorizing the 'War on Terror': The Legal and Policy Implications of the AUMF's Coming Obsolescence”, 211 Military Law Review 57 (2012), <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2150874>, ldg)

The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos.”148 Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration’s national security policy, sapping U.S. credibility. The Administration’s National Security Strategy emphasizes U.S. “moral leadership,” basing its approach to U.S. security in large part on “pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests.”149 Defense Department General Counsel Jeh Johnson has argued that “[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.”150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States “must not make [legal authority] up to suit the moment.”151 The Obama Administration’s global counterterrorism strategy is to “adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy” of “turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation.”152 Widely accepted legal arguments also facilitate cooperation from U.S. allies, especially from the United States’ European allies, who have been wary of expansive U.S. legal interpretations.153 Moreover, U.S. strategy vis-à-vis China focuses on binding that nation to international norms as it gains power in East Asia.154 The United States is an international “standard-bearer” that “sets norms that are mimicked by others,”155 and the Obama Administration acknowledges that its drone strikes act in a quasi-precedential fashion.156 Risking the obsolescence of the AUMF would force the United States into an “aggressive interpretation” of international legal authority,157 not just discrediting its own rationale, but facilitating that rationale’s destabilizing adoption by nations around the world.

#### AUMF expansion guarantees no oversight, lowering the threshold for deadly force and entrenching military overstretch

**Shank et al., GMU Conflict Analysis and Resolution professor, 2013**

(Michael, “Authorization for Use of Military Force: a blank check for war without end”, 5-5, <http://www.theguardian.com/commentisfree/2013/may/05/authorization-use-military-force-blank-check>, ldg)

The consequential nature of these words is self-evident: the AUMF opened the doors to the US wars in Iraq, Afghanistan and Libya; attacks on Pakistan, Yemen, Somalia and Mali; the new drone bases in Niger and Djibouti; and the killing of American citizens, notably Anwar al-Awlaki and his 16-year-old noncombatant son. It is what now emboldens the hawks on the warpath to Syria, Iran and North Korea. Rather than doubling down on war policy, as some senators are inclined to do, Congress should repeal the 2001 law. This "blank check" approach to warfare has to stop. And while the rewrite is being framed by members of both chambers (Senators John McCain and Bob Corker, Representative Buck McKeon and others) as an act of congressional oversight, it is doubtful that these hawks will curb any military authority. They have only ever called for more wars, not fewer. That means more Libyas, Yemens and al-Awlaki's. It is time for members of Congress who truly care about rule of law, oversight and the financial security of this country to speak up. Why? Because, first and foremost, the AUMF continues to contravene congressional oversight. For example, when the Obama administration sent 100 "military advisors" to Uganda in the name of counterterrorism in 2011, Congress received a simple note from President Obama. No oversight. More recently, after unilaterally negotiating a "status of forces" agreement with Niger, the administration sent a note to Congress saying that it was sending 100 troops to the country. This week, we sent troops to Mali. Again, no oversight. This is the new normal. Statistics provided by Special Operations Command (pdf) indicate that special forces groups were operating in 92 different countries in March 2013. The AUMF premise, no matter how it gets tweaked, is enabling a system of eternal warfare, a reality that is not only financially untenable for a nation in deep debt, but also ethically indefensible. Second, the AUMF continues to undermine rule of law. There are clear laws that apply to wartime situations or imminent threats, and a broadened AUMF could undermine these further. That the US already broadly categorizes individuals and groups that are loosely or tacitly associated with extremists – in secret and sometimes without evidence – is already setting a dangerous precedent. As counterterrorism technologies, like drones, expand, the US and international community may soon see these tactics used in intra-state conflicts, with possible violations of human rights law. If targeted killings by drones are justified as acts of war, they must be subject to international law on the use of lethal force within the borders of another sovereign nation. Without a clear showing of permission to use lethal force within another nation, or an imminent threat from that nation, these killings seriously undermine prohibitions in international law against the use of deadly force. Third, given the lack of campaign finance reform, too often defense policy is driven not by military strategy or legitimate threats, but by the defense contractor's bottom line. This is the case with the AUMF and the defense industry. The defense industry spent over $130m on lobbying efforts in 2012 alone, and in the first quarter of 2013, weapons maker Northrop Grumman spent $5.8m on Congress, posting its third biggest lobbying quarter in company history. There's a reason why unnecessary weapons systems like the F-35 joint strike fighter, a program that now costs the American taxpayer hundreds of billions of dollars, never go away. It's the same reason why new systems will be developed to drive policy decisions: money. The industry continues to claim the need for new weapons to face new threats. It is becoming clear that the defense industry's loyalty is first to the financial security of its shareholders, and only secondarily to the security of this country. It is time to send the 2001 AUMF into the sunset, and to return the checks and balances that policy-makers put in place: the executive and legislative branches must deliberate before waging war. We are making enemies through a feckless, dangerous approach, and it is time to return some censure to our defense apparatus. Otherwise, the AUMF will continue to make us hemorrhage – both blood and, especially, treasure.

#### the plan allows the US to justify any intervention as long as they can claim someone is a threat—that gets modeled internationally and risk great power war

Brooks 13 (Rosa Brooks Professor of Law, Georgetown University Law Center, “The Constitutional and Counterterrorism Implications of Targeted Killing Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights,” http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf)

Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter, 43 or in self-defense "in the event of an armed attack." The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime

created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an ill defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

### 2AC WF

#### WE control uniqueness – drones won’t be used for 4th generation conflicts because of domestic and international pressure to scale down the program since it hasn’t maintained accountability

#### CMR turns this – without cohesive practices on part of the courts and the military means that the military will isolate itself and the ensuing backlash by the civilian sector will constrain it in the future – that’s Barnes

#### Judicial review and imminence standards won’t ban drones but will minimize collateral damage

Guiora, University of Utah Law professor & Jurist contributing editor, 13

[Amos, 3-4-13, “Drone Policy: A Proposal Moving Forward”, accessed 10-26-13, AFB]

Targeted killing sits at the intersection of law, morality, strategy and policy. I am a proponent of targeted killing because it enables the state to protect its innocent civilian population. However, my support for targeted killing is conditioned on the process being subject to rigorous standards, criteria and guidelines. My advocacy of both targeted killing and criteria-based decision-making rests largely on 20 years of experience with a "seat at the table" of operational counterterrorism. The dangers inherent in the use of state power are enormous. On the opposite side of the equation, however, is the terrible cost of terrorism; after all, terrorists deliberately target innocent civilians. However, broad definitions of imminence combined with new technological capabilities drastically affect the implementation of targeted killing predicated on legal and moral principles. The recently released US Department of Justice (DOJ) "white paper" regarding the Obama administration's drone policy defines "imminence" so expansively there need not be clear evidence of a specific attack to justify the killing of an individual, including US citizens. This extraordinary broadness creates a targeted killing paradigm akin to interrogation excesses under the Bush administration that followed in the wake of the Bybee Memo. The solution to this search for an actionable guideline is adoption of a strict scrutiny standard which would enable operational engagement of a non-state actor predicated on intelligence information subject to admissibility standards akin to a court of law. Such intelligence would have to be reliable, material and probative. To re-phrase, this strict scrutiny test seeks to strike a balance by enabling the state to act sooner but subjecting that action to significant restrictions. This paradigm would be predicated on narrow definitions of imminence and legitimate targets. Rather than enabling the consequences of the DOJ memo, the strict scrutiny test would ensure implementation of person-specific operational counterterrorism. That is the essence of targeted killing conducted in accordance with the rule of law and morality in armed conflict. This proposal is predicated on the understanding that, while nation states need to engage in operational counterterrorism, mistakes regarding the correct interpretation and analysis of intelligence information can lead to tragic mistakes. Adopting admissibility standards akin to criminal law minimizes operational error. Rather than relying on the executive branch to make decisions in a "closed world" devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information's admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur. The logistics of this proposal are far less daunting than might seem — the court before which the executive would submit the evidence is the US Foreign Intelligence Surveillance Court (FISA Court), established by the Foreign Intelligence Surveillance Act. Presently, FISA Court judges weigh the reliability of intelligence information in determining whether to grant government ex parte requests for wire-tapping warrants. Under this proposal, judicial approval is necessary prior to undertaking a counterterrorism operation predicated solely on intelligence information. The standard the court would adopt in determining the information's reliability is the same applied in the traditional criminal law paradigm. The court would cross-examine the representative of the executive branch and subsequently rule as to the information's admissibility. While some may suggest that the FISA Court is largely an exercise in "rubber-stamping," the importance of this proposal is in requiring the government to present the available information to an independent judiciary as a precursor to engaging in operational counterterrorism. While this proposal explicitly calls for changing the nature of the relationship between the executive and the judicial branches of the government, it would serve to minimize collateral damage in drone attacks predicated on narrow definitions of legitimate target. This proposal does not limit the state's fundamental right to self-defense. Rather, it creates a process seeking to objectify counterterrorism by seeking to establish standards for determining the reliability of intelligence information that is the backbone of targeted killing decision-making. The practical impact? A drone policy predicated on the rule of law and morality rather than the deeply troubling paradigm established by the Obama administration in the DOJ white paper.

#### Deference to the executive encourages whisteblowers, the media, and other countries to backlash – causes volatile restrictions of policy and worse intel leaks

Marguilies ‘10 Peter, Professor of Law, Roger Williams University, “Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law” IOWA LAW REVIEW Vol. 96:195

The categorical-deference approach also fails to acknowledge that those stymied by the lack of formal redress can substitute for litigation other paths that pose greater danger. For example, consider the perspective of the official who leaks a document, not to advance a personal agenda, but to focus public attention on government policy.170 Whistleblowers of this kind, like Daniel Ellsberg, who leaked the Pentagon Papers to the New York Times, 171 are advancing a constitutional vision of their own in which senior officials have strayed from the limits of the original understanding.172 If the courts and Congress do not work to restore the balance, the whistleblower engages in self-help. Because leakers are risk-seekers who believe the status quo is unacceptable, they lack courts’ interest in safeguarding sensitive information. Policy shaped by blowback from leaks is far more volatile than policy reacting to judicial precedent.173 Similarly, the media has a constitutional role to play that includes investigative reporting. The media will step up its efforts if other institutions like courts take a more deferential stance.174 When government hides information, the media’s sense of its own role leads to greater distrust of government and a willingness to both uncover and publish more information. On some occasions, the First Amendment will oblige us to tolerate journalists’ disclosure of operational details of covert programs.175 Journalists will understandably view government’s claims that information is sensitive with greater skepticism when government has methodically locked down information in other settings. Similarly, shutting off damage suits regarding terrorism issues leaves other kinds of litigation, including litigation the government has initiated. Journalists and activists will seek to scrutinize and mobilize around these cases, even if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.

#### Government liability solves speed and flexibility

Sisk 06 (Gregory, holds the Laghi Distinguished Chair in Law at the University of St. Thomas School of Law, with Michael F. Noone, Litigation with the Federal Government, google books, p 395-6)

A number of commentators have argued that there would be substan-tial advantages in shifting liability for both ordinary and constitutional torts from public employees to the government itself. Professor Peter H. Schuck lists a variety of defects that he sees as flowing from imposition of liability directly upon officials rather than upon the government: "its propensity to chill vigorous decisionmaking; to leave deserving victims uncompensated and losses concentrated; to weaken deterrence; to obscure the morality of the law; and to generate high system costs."189 Professor Richard J. Pierce, Jr. contends that "[e]xposing individual government employees to potential tort liability is particularly likely to produce socially undesirable decision- making incentives."190 Because individuals are most likely to fear substantial personal liability, holding government employees liable for ordinary or con- stitutional torts may discourage them from undertaking new initiatives or reforms. Pierce notes that "many public officials routinely act in areas in which the legal constraints on their actions are both dynamic and murky." Even when the conduct is plainly wrongful, Schuck argues that "the costs of wrongdoing [should be] imposed upon the entity responsible for recruiting, training, guiding, constraining, managing, and disciplining" government em- ployees, rather than visiting liability upon individual officials who may be merely "instrument[s] of impersonal bureaucratic, political, and social pro- cesses over which they have little or no effective control." In addition to the effect on government interests and the injustice to public officials, these commentators argue that focusing liability upon gov- ernment officials, rather than the government, weakens the claims of those who have been wronged by government agents. Pierce states the argument this way: Allowing tort actions against government employees, rather than government, has three other adverse effects. First, sympathy for the plight of the public employee defendant often induces courts to adopt unduly narrow interpretations of constitutional and statutory rights... .Second, sympathy for the plight of the pub- lic servant defendant often induces juries to resolve close factual disputes in favor of the defendant and to award lower damages than would otherwise be warranted. Third, plaintiffs who are seri- ously injured by unlawful government conduct rarely can recover their full damages from a government employee defendant because government employees rarely have unencumbered assets sufficient to satisfy a large judgment.'" Indeed, Professor Cornelia T.L. Pillard argues that the "low rate of success- ful claims indicates that, notwithstanding Bivens, federal constitutional vio- lations are almost never remedied by damages."192 Pierce concludes that "[t]ort law would provide a more appropriate constraint on government ac- tion and a more secure source of compensation for victims of torts commit- ted by government if all potential exposure to tort liability were transferred from public employees to government."

#### Ex post review solves speed – the process and execution of the targeted killing is left entirely to the military

Mohamed 2/6/13 (Faisel G., He is a Professor in the Department of English of the University of Illinois at Urbana-Champaign, where he also holds appointments in the Unit for Criticism and Interpretive Theory and the Center for South Asian and Middle Eastern Studies, “The Targeted Killing Memo: What the U.S. Could Learn From Israel” <http://www.huffingtonpost.com/feisal-g-mohamed/the-targeted-killing-memo_b_2634078.html>)

Well, you may say, what's the alternative? In fact there is an alternative that a careful legal brief would have noted: the Supreme Court of Israel's 2005 decision in Public Committee Against Torture in Israel [PCATI] v. Government of Israel (HCJ 769/02). Citing the European Court of Human Rights decision in McCann v. United Kingdom (21 ECHR 97 GC), the Israeli court concludes that while a targeted killing is a military matter in its planning and execution, the courts must be free to conduct post-operational judicial review. This would shed light on the internal deliberations leading up to the targeted killing, assuring sound evidentiary procedures and the absence of a reasonable alternative to the killing. While that remains a form of due process that is less than ideal for the defendant, who is dead when his day in court arrives, it at least exposes military and governmental decision-makers to judicial scrutiny.

#### No nuclear terrorism-even attempts under optimal conditions have failed.

**Bergen, New York University’s Center on Law and Security fellow, 2010**

(Peter, “Reevaluating Al-Qa`ida’s Weapons of Mass Destruction Capabilities,” CTC Sentinel, September, http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=122242, ldg)

Bin Ladin’s and al-Zawahiri’s portrayal of al-Qa`ida’s nuclear and chemical weapons capabilities in their post-9/11 statements to Hamid Mir was not based in any reality, and it was instead meant to serve as psychological warfare against the West. There is no evidence that al-Qa`ida’s quest for nuclear weapons ever went beyond the talking stage. Moreover, al-Zawahiri’s comment about “missing” Russian nuclear suitcase bombs floating around for sale on the black market is a Hollywood construct that is greeted with great skepticism by nuclear proliferation experts. This article reviews al-Qa`ida’s WMD efforts, and then explains why it is unlikely the group will ever acquire a nuclear weapon. Al-Qa`ida’s WMD Efforts In 2002, former UN weapons inspector David Albright examined all the available evidence about al-Qa`ida’s nuclear weapons research program and concluded that it was virtually impossible for al-Qa`ida to have acquired any type of nuclear weapon.8 U.S. government analysts reached the same conclusion in 2002.9 There is evidence, however, that al-Qa`ida experimented with crude chemical weapons, explored the use of biological weapons such as botulinum, salmonella and anthrax, and also made multiple attempts to acquire radioactive materials suitable for a dirty bomb.10 After the group moved from Sudan to Afghanistan in 1996, al-Qa`ida members escalated their chemical and biological weapons program, innocuously code-naming it the “Yogurt Project,” but only earmarking a meager $2,000-4,000 for its budget.11 An al-Qa`ida videotape from this period, for example, shows a small white dog tied up inside a glass cage as a milky gas slowly filters in. An Arabic-speaking man with an Egyptian accent says: “Start counting the time.” Nervous, the dog barks and then moans. After struggling and flailing for a few minutes, it succumbs to the poisonous gas and stops moving. This experiment almost certainly occurred at the Darunta training camp near the eastern Afghan city of Jalalabad, conducted by the Egyptian Abu Khabab.12 Not only has al-Qa`ida’s research into WMD been strictly an amateur affair, but plots to use these types of weapons have been ineffective. One example is the 2003 “ricin” case in the United Kingdom. It was widely advertised as a serious WMD plot, yet the subsequent investigation showed otherwise. The case appeared in the months before the U.S.-led invasion of Iraq, when media in the United States and the United Kingdom were awash in stories about a group of men arrested in London who possessed highly toxic ricin to be used in future terrorist attacks. Two years later, however, at the trial of the men accused of the ricin plot, a government scientist testified that the men never had ricin in their possession, a charge that had been first triggered by a false positive on a test. The men were cleared of the poison conspiracy except for an Algerian named Kamal Bourgass, who was convicted of conspiring to commit a public nuisance by using poisons or explosives.13 It is still not clear whether al-Qa`ida had any connection to the plot.14 In fact, the only post-9/11 cases where al-Qa`ida or any of its affiliates actually used a type of WMD was in Iraq, where al-Qa`ida’s Iraqi affiliate, al-Qa`ida in Iraq (AQI), laced more than a dozen of its bombs with the chemical chlorine in 2007. Those attacks sickened hundreds of Iraqis, but the victims who died in these assaults did so largely from the blast of the bombs, not because of inhaling chlorine. AQI stopped using chlorine in its bombs in Iraq in mid-2007, partly because the insurgents never understood how to make the chlorine attacks especially deadly and also because the Central Intelligence Agency and U.S. military hunted down the bomb makers responsible for the campaign, while simultaneously clamping down on the availability of chlorine.15 Indeed, a survey of the 172 individuals indicted or convicted in Islamist terrorism cases in the United States since 9/11 compiled by the Maxwell School at Syracuse University and the New America Foundation found that none of the cases involved the use of WMD of any kind. In the one case where a radiological plot was initially alleged—that of the Hispanic-American al-Qa`ida recruit Jose Padilla—that allegation was dropped when the case went to trial.16 Unlikely Al-Qa`ida Will Acquire a Nuclear Weapon Despite the difficulties associated with terrorist groups acquiring or deploying WMD and al-Qa`ida’s poor record in the matter, there was a great deal of hysterical discussion about this issue after 9/11. Clouding the discussion was the semantic problem of the ominous term “weapons of mass destruction,” which is really a misnomer as it suggests that chemical, biological, and nuclear devices are all equally lethal. In fact, there is only one realistic weapon of mass destruction that can kill tens or hundreds of thousands of people in a single attack: a nuclear bomb.17 The congressionally authorized Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism issued a report in 2008 that typified the muddled thinking about WMD when it concluded: “It is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013.”18 The report’s conclusion that WMD terrorism was likely to happen somewhere in the world in the next five years was simultaneously true but also somewhat trivial because terrorist groups and cults have already engaged in crude chemical and biological weapons attacks.19 Yet **the prospects of** al-Qa`ida or indeed **any** other **group having access to** a true WMD—**a nuclear device**—**is near zero** for the foreseeable future. If any organization should have developed a serious WMD capability it was the bizarre Japanese terrorist cult Aum Shinrikyo, which not only recruited 300 scientists—including chemists and molecular biologists—but also had hundreds of millions of dollars at its disposal.20 Aum embarked on a large-scale WMD research program in the early 1990s because members of the cult believed that Armageddon was fast-approaching and that they would need powerful weapons to survive. Aum acolytes experimented with anthrax and botulinum toxin and even hoped to mine uranium in Australia. Aum researchers also hacked into classified networks to find information about nuclear facilities in Russia, South Korea and Taiwan.21 Sensing an opportunity following the collapse of the Soviet Union, Aum recruited thousands of followers in Russia and sent multiple delegations to meet with leading Russian politicians and scientists in the early 1990s. The cult even tried to recruit staff from inside the Kurchatov Institute, a leading nuclear research center in Moscow. One of Aum’s leaders, Hayakawa Kiyohide, made eight trips to Russia in 1994, and in his diary he made a notation that Aum was willing to pay up to $15 million for a nuclear device.22 Despite its open checkbook, Aum was never able to acquire nuclear material or technology from Russia even in the chaotic circumstances following the implosion of the communist regime.23 In the end, Aum abandoned its investigations of nuclear and biological weapons after finding them too difficult to acquire and settled instead on a chemical weapons operation, which climaxed in the group releasing sarin gas in the Tokyo subway in 1995. It is hard to imagine an environment better suited to killing large numbers of people than the Tokyo subway, yet only a dozen died in the attack.24 Although Aum’s WMD program was much further advanced than anything al-Qa`ida developed, even they could not acquire a true WMD. It is also worth recalling that Iran, which has had an **aggressive and well-funded nuclear program for almost two decades**, is still some way from developing a functioning nuclear bomb. Terrorist groups simply do not have the resources of states. Even with access to nuclear technology, it is next to impossible for terrorist groups to acquire sufficient amounts of highly enriched uranium (HEU) to make a nuclear bomb. The total of all the known thefts of HEU around the world tracked by the International Atomic Energy Agency between 1993 and 2006 was just less than eight kilograms, well short of the 25 kilograms needed for the simplest bomb;25 moreover, none of the HEU thieves during this period were linked to al-Qa`ida. Therefore, even building, let alone detonating, the simple, gun-type nuclear device of the kind that was dropped on Hiroshima during World War II would be extraordinarily difficult for a terrorist group because of the problem of accumulating sufficient quantities of HEU. Building a radiological device, or “dirty bomb,” is far more plausible for a terrorist group because acquiring radioactive materials suitable for such a weapon is not as difficult, while the construction of such a device is orders of magnitude less complex than building a nuclear bomb. Detonating a radiological device, however, would likely result in a relatively small number of casualties and should not be considered a true WMD.

### 2AC Iran

#### No Iran deal due to centrifuges-that strengthens hardliner backlash

**South China Morning Post 12-28-13**

(“Iran nuclear talks hit an obstacle over enrichment, officials say”,

<http://www.scmp.com/news/world/article/1391829/iran-nuclear-talks-hit-obstacle-over-enrichment-officials-say>, ldg)

Iran is taking steps to improve its ability to speed up uranium enrichment in a development that could delay implementation of a nuclear deal with six world powers because Tehran’s actions are opposed by the United States and its allies. Iran’s nuclear chief, Ali Akbar Salehi, said late on Thursday that his country is building a new generation of centrifuges for uranium enrichment but they need further tests before they can be mass produced. His comments appeared aimed at countering criticism from Iranian hardliners by showing their country’s nuclear programme is moving ahead and has not been halted by the accord. But two officials familiar with Iran’s nuclear activities said Tehran has gone even further by interpreting a provision of the interim Geneva nuclear deal in a way rejected by many, if not all, of the six powers that sealed the deal with Iran. They told reporters on Friday that Iranian technical experts told counterparts from the six powers last week that some of the cutting-edge machines have been installed at a research tract of one of Iran’s enriching sites. They gave no numbers. Iran argued that it had a right to increase its enrichment capabilities in such a manner under the research and development provisions of the November 24 Geneva accord, said the officials, who represent countries that are members of the Vienna-based UN nuclear agency monitoring Tehran’s atomic activities. They spoke on condition of anonymity because they are not authorised to discuss the closed meetings. Iran’s approach is being hotly disputed by the United States and other representatives of the six powers – the United States, Russia, China, Britain, France and Germany – said the officials. They said the six have argued that installing any centrifuge that increases overall numbers, particularly a new model, violates Tehran’s commitment to freeze the amount and type of enriching machines at November 24 levels. In commitments under the Geneva accord, Iran agreed to freeze the number of centrifuges enriching uranium for six months and only to produce models now installed or in operation, so it can exchange them piece by piece for any damaged ones. At the same time, the interim deal allows Iran to continue centrifuge research and development. The disagreement contributed to the decision to adjourn the talks in Geneva last Sunday, the officials said. On Friday night, no one was answering telephone calls for comment at Iran’s mission to the International Atomic Energy Agency, the UN nuclear organisation. Calls to officials in Tehran were not immediately returned on Friday. Two technical meetings about Iran’s nuclear programme since the November agreement have dragged on for several days, but a session planned in Geneva on Monday is scheduled to last only a day. That time scale suggests both sides are anticipating the need to return to their capitals for more consultation on the issue. The development regarding uranium enrichment reflects the difficulties expected in implementing the November 24 deal as the two sides argue over interpretations of the document outlining both Iran’s obligations and moves by the international community to ease economic sanctions in return for Tehran’s nuclear concessions. Such differences could delay the deal past its envisaged January start and strengthen both hardliners in Tehran and congressional sceptics in Washington who argue that the accord doesn’t work and gives Iran too much for too little in return.

#### **A host of other agenda items and scandals crush Obamas political capital and agenda-swamps their link**

Walsh 12/31/13

http://www.usnews.com/news/blogs/Ken-Walshs-Washington/2013/12/31/miscues-of-2013-loom-over-2014-for-obama

Miscues of 2013 Loom Over 2014 for Obama

President Barack Obama listens to a question during his end-of-the-year news conference on Friday, Dec. 20, 2013, in the Brady Press Room at the White House in Washington. A guiding principle for President Barack Obama in 2014 will be using unilateral actions and executive orders to bypass congressional Republicans who have blocked much of his agenda, Democratic advisers say. As he prepares for the political battles of 2014, President Obama is taking a more populist approach and combining it with a more combative attitude toward his adversaries. He is advocating policies that have long been popular on the political left, such as scaling back the economic and social advantages enjoyed by the rich and big corporations, and he has served notice that he will address the problems of income inequality and lack of social mobility in a more aggressive way – all to the consternation of conservatives. Obama is expected to describe his 2014 agenda in his State of the Union address on Jan. 28. But he has already indicated that he will be pushing hard for some long-standing priorities, such as overhauling the immigration laws to give millions of people who entered the United States illegally the chance to gain legal residency or citizenship. He wants to limit climate change, which he feels is a particular danger to future generations. He is eager to protect public lands from excessive development. He is looking for ways to revive the issue of gun control. He is staunchly defending his health care law despite implacable Republican attacks and the many problems associated with its implementation during the past several weeks. And he wants to raise the minimum wage as part of his effort to lift those at the bottom of the economic ladder. A guiding principle for Obama in 2014 will be using unilateral actions and executive orders to bypass congressional Republicans who have blocked much of his agenda, Democratic advisers say. John Podesta, Obama's new senior counselor, is a strong advocate of such end-runs around Congress, and his presence at the White House is expected to fuel Obama's unilateralist instincts. A senior White House official told the Wall Street Journal, "Our approach will be to test as much as possible for principled compromise where Republicans are willing, but also to push ahead with non-legislative solutions where Congress stonewalls." Fighting income inequality is one of Podesta's specific policy goals, along with standing up to ultra-conservatives in the House of Representatives, whom he has compared to a cult. In an article published in Politico just prior to his appointment, Podesta wrote that Obama and the popular Pope Francis are on the same wave length on economic issues, and he pointed out that the pontiff has criticized "trickle-down theories" of economic growth for leaving the poor behind. Podesta, a former White House chief of staff for President Bill Clinton who has spent the past few years running a liberal advocacy group, argued that, "Income inequality in the United States today has reached levels last seen during the Roaring '20s. Over the last three decades, the top 1 percent of incomes have risen by 279 percent, while the bottom fifth of workers have seen an increase of less than 20 percent. In 1979, the middle 60 percent of households took home 50 percent of U.S. income. By 2007, their share was just 43 percent." In a speech Dec. 4, Obama made similar points and declared that addressing the combined trends of increasing inequality and decreasing mobility represent "the defining challenge of our time." He added: "A relentlessly growing deficit of opportunity is a bigger threat to our future than our rapidly shrinking fiscal deficit." He called for a higher minimum wage, higher taxes on corporations and the rich, and more federal investment in research and job-creating infrastructure projects such as building roads, bridges and schools. But Americans are deeply split over the how much the government should do about income inequality. Forty-seven percent consider inequality a "very big" problem, according to a recent Pew Research survey. But only 17 percent want the government to make fighting inequality its top priority, Pew finds; instead, 41 percent say job creation should be the top priority, followed by 28 percent who want to reduce the national debt. A former adviser to a Republican president says, "In talking about economic inequality, President Obama is making it an issue between haves and have-nots. In the past, the saving grace of the United States was that you had the opportunity to be poor or rich. There's still lots of opportunity in the U.S. but the president is making it not the land of opportunity but a place where government gives out everything, like the old Soviet Union. It's a very dangerous, slippery slope, pitting people against each other." Meanwhile, the Republicans in Congress have a different approach. They favor lower taxes on corporations and the rich, less regulation in order to free businesses to make money, invest and expand, and more restrictions on organized labor. Republican leaders say Americans generally don't want to penalize the successful and the wealthy; they want to become successful and wealthy themselves. There was a moment of hope for a new spirit of compromise at the end of 2013 when both major parties in Congress agreed on a modest budget compromise, which Obama endorsed. It did little to solve the country's fundamental fiscal problems but it did avoid another messy confrontation and a government shutdown, so it was deemed progress of a sort. Yet the differences between Democrats and Republicans are so deep, and Obama has shown such an inability to bridge them, that the outlook for 2014 is for more battles on issues ranging from the budget to the debt ceiling and the minimum wage. Senate Republicans also are upset because majority Democrats, with White House support, changed a key rule and made it easier to win approval for Obama's nominations for judgeships and other offices. GOP leaders billed this as a power grab. Dimming the prospects for compromise are the midterm elections in November. The major parties are expected to cater as much as possible to their bases to generate turnout rather than reach out to each other or appeal to the political center. And this will probably harden positions all around. Overall, Obama's popularity is waning. The latest Washington Post-ABC News poll finds that only 43 percent of Americans approve of his job performance, 11 percentage points below his favorable rating from a year ago. Fifty-five percent disapprove. The job approval of Congress is worse, but Obama's poor ratings mean many legislators won't fear him if he takes them on, minimizing his influence. He is also suffering from a decline in the number of Americans who believe he is trustworthy, partly a result of false promises he made that Americans could keep their health insurance policies if they liked them under Obamacare. A Wall Street Journal/NBC News poll found that only 37 percent of Americans believe he is honest and straightforward, a drop of 10 percentage points from the start of 2013. Adding to his problems were leaks of classified information by former National Security Agency contractor Edward Snowden that revealed a vast government surveillance operation that troubled many citizens. At his news conference in mid-December just before he left on his Hawaii vacation, Obama glossed over his low poll ratings. Instead, he tried to focus on the future. "I think 2014 needs to be a year of action," he declared, adding that the economy is getting stronger and he wants to keep the momentum going. The government, in fact, recently reported that the economy grew at a 4.1 percent annual rate from July through September, the fastest rate since late 2011, and the unemployment rate is 7 percent, a five-year low. "I firmly believe that 2014 can be a breakthrough year for America," the president said. But unemployment remains a fundamental concern. Beyond the 7 percent jobless rate, many Americans are under-employed, and millions have joined the ranks of the long-term unemployed. Says Republican strategist Frank Donatelli, former White House political director for President Ronald Reagan: "I always want the economy to get better but by historical standards this is not a robust recovery." He says unemployment remains far too high and the federal debt is still a huge problem. After an embarrassing 16-day government shutdown in October, continuing gridlock over many issues, and the messy implementation of Obama's signature health care law, Americans don't have a lot of faith in Washington, including the president. A recent Gallup Poll finds that 72 percent of Americans say big government is more of a threat to America's future than either big business or big labor, a record high in the 50 years that Gallup has been asking the question. Democratic pollster Geoff Garin said: "The country's expectation is that not a lot will get done [in 2014] and some of that attaches to the president. But the frustration is largely directed at the Congress." On foreign policy, Obama has staked much of his reputation on some major gambles. He has ended the U.S. combat role in Iraq and is winding down the war in Afghanistan, but violence is escalating again in both countries. He has entered a partnership with Russia to pressure the regime of Bashar Assad in Syria to give up its chemical weapons, but Assad remains in power and a brutal civil war still rages. He has embarked on a bold six-month negotiation with the regime in Iran to stop any nuclear weapons program that Tehran may be developing. If it succeeds, Obama will be hailed as a brilliant diplomat. If it fails, he will be condemned as a hopeless naif. Overall, the best opportunity for Obama to lift his presidency out of the trough and build momentum will be his State of the Union address in late January. This is the traditional moment when a president commands the country's attention as he addresses a joint session of Congress to set forth his agenda for the year. The question is whether the damage from 2013 will be an insurmountable obstacle to Barack Obama's recovery and the government's success in 2014.

#### No Court Uniqueness –

#### **NU-Obama is fighting NSA case and this proves lower courts don’t link**

Ackerman and Roberts 12/16/13 (Spencer and Dan, Washington reporters for the Guardian, “NSA phone surveillance program likely unconstitutional, federal judge rules”, http://www.theguardian.com/world/2013/dec/16/nsa-phone-surveillance-likely-unconstitutional-judge)

A federal judge in Washington ruled on Monday that the bulk collection of Americans’ telephone records by the National Security Agency is likely to violate the US constitution, in the most significant legal setback for the agency since the publication of the first surveillance disclosures by the whistleblower Edward Snowden. Judge Richard Leon declared that the mass collection of metadata probably violates the fourth amendment, which prohibits unreasonable searches and seizures, and was "almost Orwellian" in its scope. In a judgment replete with literary swipes against the NSA, he said James Madison, the architect of the US constitution, would be "aghast" at the scope of the agency’s collection of Americans' communications data. The ruling, by the US district court for the District of Columbia, is a blow to the Obama administration, and sets up a legal battle that will drag on for months, almost certainly destined to end up in the supreme court. It was welcomed by campaigners pressing to rein in the NSA, and by Snowden, who issued a rare public statement saying it had vindicated his disclosures. It is also likely to influence other legal challenges to the NSA, currently working their way through federal courts. The case was brought by Larry Klayman, a conservative lawyer, and Charles Strange, father of a cryptologist killed in Afghanistan when his helicopter was shot down in 2011. His son worked for the NSA and carried out support work for Navy Seal Team Six, the elite force that killed Osama bin Laden. In Monday’s ruling, the judge concluded that the pair's constitutional challenge was likely to be successful. In what was the only comfort to the NSA in a stinging judgment, Leon put the ruling on hold, pending an appeal by the government. Leon expressed doubt about the central rationale for the program cited by the NSA: that it is necessary for preventing terrorist attacks. “The government does not cite a single case in which analysis of the NSA’s bulk metadata collection actually stopped an imminent terrorist attack,” he wrote. “Given the limited record before me at this point in the litigation – most notably, the utter lack of evidence that a terrorist attack has ever been prevented because searching the NSA database was faster than other investigative tactics – I have serious doubts about the efficacy of the metadata collection program as a means of conducting time-sensitive investigations in cases involving imminent threats of terrorism.” Leon’s opinion contained stern and repeated warnings that he was inclined to rule that the metadata collection performed by the NSA – and defended vigorously by the NSA director Keith Alexander on CBS on Sunday night – was unconstitutional. “Plaintiffs have a substantial likelihood of showing that their privacy interests outweigh the government’s interest in collecting and analysing bulk telephony metadata and therefore the NSA’s bulk collection program is indeed an unreasonable search under the fourth amendment,” he wrote. Leon said that the mass collection of phone metadata, revealed by the Guardian in June, was "indiscriminate" and "arbitrary" in its scope. "The almost-Orwellian technology that enables the government to store and analyze the phone metadata of every telephone user in the United States is unlike anything that could have been conceived in 1979," he wrote, referring to the year in which the US supreme court ruled on a fourth amendment case upon which the NSA now relies to justify the bulk records program.

#### No link – court action shields Obama from controversy

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

#### Supreme Court Links don’t apply – the plan is the D.C. district court

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so.

#### Iran prolif won’t spread

**Oswald, Global Security Newswire, 2013**

(Rachel, “Saudi Arabia Unlikely to Pursue Nuke: Experts”, 2-21, <http://www.nti.org/gsn/article/saudi-arabia-unlikely-pursue-nuke-should-iran-first-acquire-capability-experts/>, ldg)

Saudi Arabia is not likely to respond to a nuclear-armed Iran by pursuing a corresponding deterrent, but would instead look to boost its conventional military capabilities and acquire an outside nuclear defense guarantee, according to a new report by the Center for a New American Security. The United States and partner nations have warned that Tehran's suspected aim to develop a nuclear-weapon capability could lead to an atomic "domino effect" in the Middle East. A rich Persian Gulf nation with a long-running rivalry with Iran, Saudi Arabia is often cited as the Arab state most likely to pursue a nuclear arsenal. “The Saudis fear that Iran’s acquisition of nuclear weapons would tip the balance of regional leadership decisively in Tehran’s favor,” states the report, whose lead author, CNAS senior fellow Colin Kahl, served as deputy assistant Defense secretary for the Middle East from 2009 to 2011. “Saudi leaders also worry that a nuclear deterrent would enable Iran’s coercive diplomacy, allowing Tehran to run higher risks and more effectively push Arab states to accommodate Iranian interests.” The other two countries most frequently cited as likely to pursue domestic nuclear deterrents to counter Iran -- Egypt and Turkey -- are even less likely to do so than Saudi Arabia, the report says. Egypt lacks the resources to initiate a weapons program and is much less focused on the Iranian nuclear threat than Riyadh, the analysts found. Turkey, meanwhile, is already covered by the NATO nuclear guarantee. Senior Saudi officials have for years dropped hints that their kingdom might pursue a nuclear deterrent. Former Saudi intelligence chief and royal family member Turki al-Faisal early last year warned Riyadh would have to “study carefully all the options, including the option of acquiring weapons of mass destruction” in order to maintain balance with a nuclear-armed Iran. Tehran says its nuclear program has no military aspect. The 49-page report does not discount entirely the possibility that Riyadh might open a nuclear weapons production program or alternatively purchase a ready-made capability from Pakistan. It concludes, though, that the famously deliberative House of Saud would ultimately be steered away from these two scenarios for a number of reasons including not wanting to face punitive international sanctions and the possibility of coming under a neutralizing pre-emptive attack by Israel, which in past years has carried out airstrikes on known or suspected nuclear reactors in Iraq and Syria. There is also the fear of causing critical harm to Riyadh’s decades-long security relationship with Washington. “If Riyadh were to seek nuclear weapons, Saudi leaders would have to expect that U.S. security assistance would be dramatically curtailed. …Because the kingdom relies heavily on U.S. contracts for maintenance and spare parts, this would severely undermine the Saudi military’s ability to function and protect the kingdom from internal and external threats. The effect on core Saudi security interests would be immediate and severe,” concludes the report. Saudi Arabia at present does not have much in the way of nuclear capabilities though it is aggressively pursuing an atomic energy program with support from a number of foreign nations. The oil-rich state is in early talks with the Obama administration on a civilian atomic collaboration agreement that would allow Riyadh to gain access to U.S. nuclear materials and technology “for use in medicine, industry and power generation.” Kahl, and report co-authors Melissa Dalton and Matthew Irvine, indicated they do not think much of Saudi Arabia’s chances of acquiring an indigenous nuclear weapons capability in anything less than a decade, if at all. “Even if the kingdom’s technical prowess grows over time, any Saudi attempt to develop nuclear weapons would be complicated by significant bureaucratic and managerial challenges. Put bluntly, the Saudi bureaucracy lacks the human capital, managerial expertise, safety culture and regulatory, technical and legal structures

necessary to nurture and sustain a robust domestic nuclear program,” the report reads. Purchasing an outside capability from Pakistan is also unlikely, according to the report. After coming under widespread international condemnation for the nuclear proliferation ring managed for years by lead Pakistani nuclear weapons scientist A.Q. Khan, Islamabad has had to fight hard to regain lost global trust it is obeying nonproliferation rules. Rather than risk coming under renewed international scorn and isolation for selling nuclear weapons technology to Saudi Arabia, Islamabad is more likely to agree to publicly extend a strategic security guarantee over the nation, the experts said.

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### Blowback UQ---Pakistan---1AR

#### Casualties have increased---the problem is the internal ecology of the executive---this is a solvency def to the cp

**Watson, Nottingham IR masters, 11-26-13**

(Steve, “Report: More Drone Strike Deaths Since Obama Announced New “Constraint”, <http://www.infowars.com/report-more-drone-strike-deaths-since-obama-announced-new-constraint/>, ldg)

A new report from a leading watchdog on drone missile use concludes that there have been more deaths from strikes in the six months AFTER president Obama announced a new “constraint” on use of the technology than there were in the six months before. The Bureau of Investigative Journalism in London says that their new analysis calls into question the promise by Obama to limit the use of drones in targeted killings of suspected terrorists overseas. Obama made the remarks in an address at the National Defense University back in May, stating that “The same human progress that gives us the technology to strike half a world away also demands the discipline to constrain that power – or risk abusing it.” The president even called into question the morality of drone missile use, and briefed the media on a potential overhaul of targeted killing policy and so called ‘signature strikes’. The headlines that followed suggested that there was to be “important shifts in the policy of using unmanned drones to kill citizens of other countries.” The Mainstream media reported that the US military would be exclusively handed responsibility for all drone strikes outside of Afghanistan, and that deaths from the attacks would likely be significantly reduced. None of that has happened. Indeed, as the Bureau reports, While the number of covert strikes fell in Yemen and Pakistan in the six months after the speech, “the overall death toll has increased.” “In Yemen, civilians have reportedly been killed in drone strikes after the speech.” the report notes. “Between six and seven civilians were reported killed, two of whom were said to be children.” “It also emerged this month that the US knew it had killed civilians in strikes after the speech.” the report continues. “The LA Times reported that the CIA briefed Congress about civilian casualties, including a child aged 6-13 who had been riding in a car with his older brother, an alleged militant, when the drones attacked. The CIA reportedly did not know he was in the car at the time.” The Bureau notes that every single drone strike in Yemen in the six months since Obama’s speech came during one intense two week period in late July and August. Eight strikes were carried out in response, we were told, to intelligence that a Yemeni terrorist plot was about to go live. In the same period, the US temporarily closed over 20 embassies and consulates in Africa and the Middle East, fearing a repeat of the Benghazi attack of 2012. It is thought that at least 29 people were killed by the drone strikes, “but only three of them were described in reports as significant leaders in the group.” the Bureau notes. In Pakistan, the prevailing trend of fewer deaths from drone strikes since 2009 has been reversed since Obama promised more restraint. “In the six months before the speech, an average of 3.5 people were killed in each strike. Since the speech this has risen to almost five.” the report notes. Many of the strikes in Pakistan were thought to have targeted Hakimullah Mehsud, leader of the Pakistan Taliban, who is now reported to have been killed three times already. Amnesty International has declared that the drone strikes in Pakistan and Yemen are responsible for unlawful killings, some of which could amount to war crimes. In October, a 97-page report by Human Rights Watch came to the conclusion that drone strikes against suspected members of Al-Qaeda in the Arabian Peninsula (AQAP) in Yemen are killing more civilians than suspected terrorists. The report noted that out of 82 people killed in 6 HRW case study attacks, 57 were civilians.

**Specifically true for drones**

**Cole 13** David, The Nation's legal affairs correspondent, is the author of *The Torture Memos: Rationalizing the Unthinkable*, "What's Wrong With Obama's Drone Policy", February 13, www.thenation.com/article/172898/whats-wrong-obamas-drone-policy#

The power to kill by remote control anywhere in the world should not unilaterally reside in the executive branch. The white paper dismissively claims that courts cannot second-guess the executive’s “predictive” judgments about national security. But courts already do this. The Foreign Intelligence Surveillance Court, composed of federal judges, reviews requests for search and wiretap warrants based on national security concerns. Those warrants by definition rest on predictive judgments about whether evidence relating to national security will be found. If we demand that a court authorize even a temporary wiretap, **shouldn’t we also demand that a court review a decision to end a human life?** Some have questioned the utility of a necessarily one-sided and secret warrant process, but warrants have served us well for centuries by interposing an independent decision-maker between the executive and the citizenry. Due process may require advance notice to the target in some instances and/or judicial review after the fact, as the Israeli Supreme Court requires. **But we can’t leave this awesome power exclusively in executive hands**.¶ Some object that since ordinary uses of armed force in wartime do not require this sort of public accountability, judicial review and due process, those requirements ought not to apply to drone strikes. During World War II, FDR did not have to issue criteria for a kill list, involve courts or publish his officers’ specific rules of engagement. **But the technology of drones, coupled with the murky scope of this “war,” make those features essential now**. Because they permit the killing of people without putting boots on the ground or risking American lives, and because they are, at least in theory, surgically precise, drones reduce the considerable practical disincentives to lethal force.¶ The ambiguous definitions of the scope of this war and even of the enemy risk establishing a **precedent that drones can be used against anyone** a government considers even a long-term threat. The administration claims still to be operating under the 2001 Authorization for Use of Military Force (AUMF), but that sanctioned military force only against those who attacked us on 9/11 and those who harbored them. In Yemen and Somalia, we have killed members of Al Qaeda in the Arabian Peninsula and Al Shabaab. Neither organization even existed in 2001, and Al Shabaab seems principally focused on domestic Somali grievances. Does the AUMF authorize the government to kill by remote control any group that says it is inspired by Al Qaeda? If so, has President Obama resurrected the “global war on terror” that he previously rejected?¶ Much like transnational wars against nonstate actors, drones challenge traditional legal and ethical categories. The root of the problem is that they make it too easy to kill**. We need not and cannot forswear their use**. We should not confuse them with assassinations and torture. **But we must insist on clear restrictions, transparent practices, independent oversight and accountability—in short, the rule of law**. In his only major presidential speech on national security, in May 2009, President Obama promised that he would fight terror within the confines of our values and the rule of law. What happened to that promise?

### NATO

#### No war with Russia or Baltic conflicts – NATO enlargement won’t happen and Russia will cooperate instead of miscalculate with NATO

Padrtova 13 (Barbora, holds Master degree in Security and Strategic Studies from the Faculty of Social Studies of the Masaryk University in Brno “NATO-Russia Relations” <http://cenaa.org/analysis/nato-russia-relations/>)

Key areas of disagreement Despite positive efforts to cooperate on a practical level in Afghanistan, there are number of areas where the attitudes of Russia and NATO diverge. Among the most contentious one’s is the issue of Georgian war and Russian recognition of South Ossetia and Abkhazia. The second is NATO’s open door policy, especially towards Georgia and Ukraine. The third challenge is cooperation on missile defence in Europe. These three issues concern strategic interests of both entities. Further, these problematic issues are long-term and probably will last into the future as well. However, there are disagreements in other areas, as was shown during the recent Syria crisis, where their strategic interests diverged due to the broader geopolitical interests of both entities in the Middle East. NATO’s position towards the Georgian war is well described on the official NATO website stating, that “Alliance expressed particular concern over Russia’s disproportionate military action which was incompatible with Russia’s peacekeeping role in the breakaway regions of South Ossetia and Abkhazia” (NATO 2012a). Following the 2008 war, NATO-Russia relations reached the lowest point in a decade and they were gradually and slowly improving in the following years. The war definitely caused a rift in their mutual relations, which were formally re-built in 2010, when NATO invited Russia to the Lisbon summit. Another issue critical to NATO-Russia relations is Alliance’s continuing commitment to future enlargement. The less Moscow obstructs potential memberships of the Balkan states, the more it is against accession of countries from “near abroad.” NATO confirmed many times (Bucharest Summit in 2008, Lisbon Summit in 2010, and the latest summit in Chicago), that Georgia is a real candidate for NATO membership. Georgia is also actively contributing to the ISAF as the second largest non-NATO troop contributor nation (NATO 2012a). However, within the Alliance there is a strong group of member states led by France and Germany who see Georgia’s accession as unacceptable. Despite the fact that the NATO summit in Chicago is considered to be the “last NATO summit without enlargement,” it is more focused on the Balkans. An Intensified Dialogue on Ukraine’s membership aspirations and related reforms was launched in 2005. Nevertheless, Ukraine’s membership in the Alliance is not realistic in the foreseeable future. The reason is primarily that under the current President Viktor Yanukovych, Ukraine is not pursuing NATO membership as a foreign policy goal. Secondly, according to numerous independent polls, NATO membership has low public support (40% of Ukrainians see NATO as a threat) (Gallup 2010). For more than three years Ukraine has been out of NATO’s accession discussions. The change may eventually occur, depending on the results of the Ukrainian parliamentary elections, which will take place in October 2012. However, based on the present situation, such a shift is not realistic. It is important to mention that both Georgian and Ukrainian membership are just theoretical possibilities at the moment. Missile defence in Europe can be a catalyst for mutual NATO-Russia relations. It could either lead to pragmatic cooperation or to deterioration of relations. As Russian foreign policy expert Dmitri Trenin expressed in an interview for NATO Review – “Missile defence can be a game changer [a bridge towards the future that leads to real cooperation] or a game breaker [bridge towards the past where the danger of sliding back is very real]” (Trenin 2010). When NATO leaders met almost two years ago in Lisbon, the possibilities for cooperation looked promising. They attempted to neutralize the most disputed issue in NATO-Russia relations. The NATO-Russian Council, with the participation of Russian President Dmitri Medvedev, specifically “agreed on joint ballistic missile threat assessment and to continue dialogue in this area” (Chicago Summit Declaration 2012). However the promising political declaration was not further translated into real steps. Until there is some concrete binding document, any real progress on this issue cannot be expected. Russia would like to participate on the missile defence plan as a partner on the basis of complete reciprocity and transparency. Thus, Moscow wants an equal participation in NATO’s decision-making process. To this effect Russia proposed that NATO creates a “sectoral” missile defence, with each entity responsible for providing missile defence protection for their own sector in Europe. Such conditions are naturally unacceptable for the Alliance. Moreover, Russian officials have expressed concerns about any deployments close to their borders because the fast interceptor missiles can possibly threaten Moscow’s nuclear deterrence. Therefore Kremlin requires from NATO “more transparency” about missile defence capabilities and plans, which would assure them that it poses no threat. Whereas the Alliance seeks to develop two separate systems working independently of each other, Russia wants to lock the two systems, thereby effectively securing itself a veto. This in turn clashes with the provisions of The NATO-Russia Founding Act that rules out any “right of veto over the actions of the other” or any restriction on “the rights of NATO or Russia to independent decision-making and action” (Sherr 2011). Currently, pragmatic cooperation is feasible. On the one hand, this sort of cooperation requires trust that just isn’t there. On the other hand, further developing of practical cooperation will help increase mutual trust and improve relations. If Russia misses the chance to collaborate with NATO on common missile defence, for sure the US and NATO will create their own system without Russia and that’s what Kremlin has to take into account. The challenges are tremendous, but returning to the status quo is not a sustainable, longer-term option (Trenin 2012). Future platforms of cooperation In the post-ISAF period, the importance of Afghanistan will decrease and cooperation in other areas will gain in prominence. Nevertheless, Afghanistan will be important for Moscow in the future as well. According to the results of the Chicago NATO Summit, there will be a new operation where NATO forces will gradually move into a more supportive role (Chicago Summit Declaration 2012). So far, there is no NATO official information about the numbers of troops, which will stay there after the deadline, but it is estimated that it will be around 50,000 troops. The force generation procedure will start next year and Russia will have an opportunity once again to be involved in the process of Afghanistan’s transition. Leaving aside Afghanistan, the cooperation will most probably continue in key areas of shared interests including the fight against terrorism, counter-narcotics, counter-piracy, nuclear weapons issues (New START – a nuclear arms reduction treaty between the US and Russia, signed on 8 April 2010, ratified on 5 February 2011), crisis management [between 1996 and 2003, Russia was the largest non-NATO troop contributor to NATO-led peacekeeping operations (NATO 2012b)], Cooperative Airspace Initiative, non-proliferation and arms control, military-to-military cooperation, submarine-crew search and rescue, defence transparency, strategy and reform, defence industrial cooperation, logistics, civil emergencies, and raising public awareness of the NRC. NATO-Russia cooperation in combating terrorism has taken the form of regular exchanges of information, in-depth consultations, joint threat assessments, civil emergency planning for terrorist attacks, high-level dialogue on the role of the military in combating terrorism, lessons learned from recent terrorist attacks, and scientific and technical cooperation. NRC members also cooperate in areas related to terrorism such as border control, non-proliferation, airspace management, and nuclear safety. A concrete example of cooperation in this field is the “Stand-off Detection of Explosive Devices” project aimed at confronting and countering the threat of attacks on mass transit and possibly other public gathering places through jointly developing technology to detect explosives. Part of the struggle against terrorism is also Cooperative Airspace Initiative (CAI) for air traffic coordination. This project significantly contributes to building mutual trust between NATO and Russia (NATO 2012b). In the area of counter-narcotics cooperation, NATO and Russia cooperate within the framework of NATO-Russia Council through joint projects such as the NRC Counter Narcotics Training Project. Since 2006, the NRC has been assisting in building regional capacity against narcotics trafficking by training counter narcotics personnel from Afghanistan, Central Asian nations and Pakistan. The initiative seeks to build local capacity and to promote regional networking and cooperation by sharing the expertise (NATO 2012b). Since December 2004 Russia supports NATO’s maritime counter-piracy operation in the Mediterranean Sea – Operation Active Endeavour. Piracy and armed robbery at sea continue to pose a significant and growing threat to maritime security. Taking into account, that the share of maritime transport accounts for 38% of all freight (Cargo.ru 2012), it is in Russian direct interest to keep sea waters secure from pirates which could threaten the country’s export. The NRC member states expand existing tactical level co-operation, including through joint training and exercises. The more Russia and NATO will cooperate in different areas, the better the relationship will be. Diversification of areas where they cooperate means that they are feeling and perceiving the same threat in the same view, which results in more trust on both sides (NATO 2012b). Role of the United States and Putin’s return to Kremlin The United States as the leader of the Alliance is an important element in NATO-Russia relations, as the US-Russia relationship has always determined the NATO-Russia relations. Generally, if Moscow’s relations with Washington are going the right way, they are also on the right path with the Alliance. In Russia the perception of the Alliance is even more simplified, where the US equates to NATO. After all, much will depend on the outcome of the November 2012 US Presidential elections. If Barack Obama becomes re-elected US, it is probable that cooperation will go on in the same direction. For President Putin it would be much to his advantage, because he can expect some concession from the US side, as it was already visible during Obama’s 1st administration (efforts for realignment via “reset policy,” the decision to cancel Bush administration’s plans for European missile defence system). Should Obama be voted out of office, however, there will be a greater probability that US-Russian relations may sour, given that all leading Republican contenders advocate a tougher stance on issues of importance to Russia, including missile defence. Toughening of US policy towards Russia will force Putin to reciprocate also in order to secure support in the State Duma, where all opposition parties are more anti-Western than the party of power (Saradzhyan – Abdullaev 2012). Furthermore, some statements made by US representatives do not help Russians to understand the “West” thinking and position. A case in point is the interview for CNN with Mitt Romney, nominee of the Republican Party for President, who recently charged Russia with being America’s “number one geopolitical foe” (Romney 2012). Such contradictions produce only confusion on the Russian side and poison even more NATO’s relations with Russia. Moreover, treating Moscow like a foe will make Russia more suspicious of NATO’s relationship. Washington should not give Moscow additional reasons to indulge its paranoia. Regarding future prospects of cooperation, we also have to take into account the results of Russian presidential elections and Putin’s return to Kremlin. Foreign policy under the new-old President should not radically change the strategic course, though the tone and style will likely differ from that of Dmitry Medvedev. Even as Prime Minister, Vladimir Putin was the principal architect of the Russian foreign policy, therefore we can expect a significant degree of continuity. Nevertheless, President Putin will have to confront domestic political and economic challenges that may affect his foreign policy choices: he could resort to the traditional Russian tactic of depicting a foreign adversary to rally domestic support as during his election campaign, or he could pursue a more accommodating foreign policy so that he can focus on issues at home (Katz 2012). The domestic political challenges have begun late last year when the results of Duma elections were accompanied by massive demonstrations. These events led Putin to project himself as a more fervent guardian of Russia’s interests on the international scene as a way to increase his support at home. His foreign policy pragmatism has a long-term goal of making Russia strong and restoring its role as a great world power. Unlike his predecessor, Putin has deliberately cultivated his image as a strong leader ready to defend Russia’s national interests. Conclusion Although it has been more than two decades since the Cold War ended, the attitudes from that period have continued to influence the political thinking in Russia and NATO. There is still a lingering feeling of distrust and the level of cooperation is not up to its full potential. The animosities of the Cold War years proved difficult to overcome, and each side’s suspicions of the other’s motives persist. While there have been improvements in the relationship, it is still stuck halfway between former enmity and the aspired strategic partnership. The ISAF mission enabled Russia to play an important role due to the transit through Russian territory and enhanced both entities’ ability to work together in areas of common interest. Common security challenges demand unified responses, which is why cooperation between NATO and Russia is inevitable for ensuring the Euro-Atlantic zone’s security. Both Russia and NATO should deepen mutual cooperation where common interests exist and put on ice differences in conflict areas. The most developed areas of cooperation remain Afghanistan, counter-terrorism, nuclear arms, crisis management, counter-narcotics, and counter-piracy. From a strategic point of view, cooperation on missile defence has the potential to either move NATO-Russia relations down a common path or it could end up in a deadlock. While, the technical hurdles are not inconsiderable, it is mostly the political considerations and Russia’s delusion about the danger of missile defence that block cooperation. Failure to see eye to eye on this issue will not mean another Cold War ‒ it will definitely lead to deeper and more pronounced hostility and further isolation of Russia.

#### NATO deters Russia and prevents escalation – turns their impact because the U.S. gets drawn in inevitably

John Duffield, Assistant Professor of Government and Foreign Affairs at the University of Virginia, 1994

[Political Science Quarterly 109:5, p. 766-7]

Initial analyses of NATO's future prospects overlooked at least three important factors that have helped to ensure the alliance's enduring relevance. First, they underestimated the extent to which external threats sufficient to help justify the preservation of the alliance would continue to exist. In fact, NATO still serves to secure its members against a number of actual or potential dangers emanating from outside their territory. These include not only the residual threat posed by Russian military power, but also the relatively new concerns raised by conflicts in neighboring regions. Second, the pessimists failed to consider NATO's capacity for institu­tional adaptation. Since the end of the cold war, the alliance has begun to develop two important new functions. NATO is increasingly seen as having a significant role to play in containing and controlling milita­rized conflicts in Central and Eastern Europe. And, at a deeper level, it works to prevent such conflicts from arising at all by actively pro­moting stability within the former Soviet bloc. Above all, NATO pessimists overlooked the valuable intra-alliance functions that the alliance has always performed and that remain rele­vant after the cold war. Most importantly, NATO has helped stabilize Western Europe, whose states had often been bitter rivals in the past. By damping the security dilemma and providing an institutional mech­anism for the development of common security policies, NATO has contributed to making the use of force in relations among the countries of the region virtually inconceivable. In all these ways, NATO clearly serves the interests of its European members. But even the United States has a significant stake in preserving a peaceful and prosperous Europe. In addition to strong transatlantic historical and cultural ties, American economic interests in Europe— as a leading market for U.S. products, as a source of valuable imports, and as the host for considerable direct foreign investment by American companies — remain substantial. If history is any guide, moreover, the United States could easily be drawn into a future major war in Europe, the consequences of which would likely be even more devastating than those of the past, given the existence of nuclear weapons.11

#### CSDP shift fails – EU defense alone can’t solve the impacts and won’t fill in for NATO

Coffey 6/6/13 (Luke, Margaret Thatcher Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation, “EU Defense Integration: Undermining NATO, Transatlantic Relations, and Europe’s Security” <http://www.heritage.org/research/reports/2013/06/eu-defense-integration-undermining-nato-transatlantic-relations-and-europes-security>)

Developments within the European Union’s Common Security and Defence Policy (CSDP) threaten to undermine transatlantic security cooperation between the U.S. and its European partners. Far from improving the military capabilities of European countries, the CSDP decouples the U.S. from European security and will ultimately weaken the NATO alliance. U.S. policymakers should watch CSDP developments closely and discourage the EU from deepening defense integration. It is clear that an EU Army is the ultimate goal of the CSDP. The consequences would be great: The U.S. would lose influence in European security matters, and NATO would become a second-tier priority for most European countries. Finally, it would mean an end to Europe being a serious security actor on the global stage. The veto power of the EU’s five neutral members, coupled with the bureaucratic inertia of Brussels, would lead to paralysis in decision making and likely mean that EU forces would rarely, if ever, be sent on overseas combat operations. The CSDP does more harm than good, and the U.S. should oppose it. When it comes to defense and military capability in the 21st century, it is clear that Europe is not pulling its weight. Spending and investment in defense across Europe has steadily declined since the end of the Cold War. The political will to deploy troops into harm’s way when it is in the national interest has all but evaporated for most EU countries. During the recent Libya operation, European countries were literally running out of munitions.[1] Many European nations are racing for the exit in Afghanistan.[2] In Mali, European countries have been able to scrape together only 150 instructors to train the Malian military. The EU is not the answer to Europe’s military woes. Instead, the U.S. should be pushing for more NATO-centric solutions ensuring that all advancements in European defense capabilities are done through NATO or at least on a multilateral basis. This will ensure NATO’s primacy over, and the right of first refusal for, all Europe-related defense matters, and will guarantee that the U.S. has the amount of influence relative to the level of resources the U.S. has committed to Europe.

### 1AR COC Link

Hillman, law prof-UC Hastings, 13 (Elizabeth L. Hillman, a professor of law at the University of California, Hastings, is the president of the National Institute of Military Justice, “Get Civilian Authorities Involved,” July 13, http://www.nytimes.com/roomfordebate/2013/05/28/ensuring-justice-in-the-military/get-civilian-authorities-involved-in-military-justice)

Since the end of the draft in 1973, we’ve become accustomed to a very active military, composed only of volunteers, to which our civilian leaders have reflexively deferred, whether on matters of personnel policy or strategy. Consider the remarkable solicitude that was required before “don’t ask/don’t tell” came to an end. Before this civil rights reform could be implemented, surveys and studies and working groups that dwarfed the resources that have been invested in understanding sexual assault were dedicated to making sure that lesbians and gay men serving openly would not undermine morale. A sense of superiority, and a resentful posture toward civilian authority, have pervaded military culture as our use of the military to pursue national goals has expanded since the end of World War II, and presidential power has grown. The Supreme Court has increasingly deferred to military decision-making. While valuing the sacrifices of service members and honoring our responsibility to veterans, we need to end this isolation of the military from civil society. Doing so would help restore confidence in military justice. The notion that soldiers are superior to civilians was not, of course, invented in the late 20th-century, but historians and legal scholars alike have remarked on this recent trend. Robert L. Goldich casts the post-modern army as staffed with legionnaires rather than citizen-soldiers. Andrew J. Bacevich sees the relatively new “warrior-professional” as standing above, not with, his or her civilian counterpart. Diane H. Mazur considers judicial deference to the military a misguided constitutional doctrine that undermines military professionalism itself. To end the sexual assaults that have eroded confidence in military justice, we need to consider whether our service members, and our nation, are well served by leaving all decisions about crime and punishment entirely in the hands of those in uniform. Civilian authorities should help shoulder the burdens of having a professional armed force by participating in the process of investigating and prosecuting service members' misconduct. Shrinking military jurisdiction so that some crimes committed by service members are prosecuted by civilian courts could help disrupt the isolated culture of the military and educate civilians about military life. If an alleged rape, robbery, or drunk driving offense were prosecuted by civil authorities, military resources could be conserved for military operations, training, and discipline rather than spent on criminal investigation, prosecution and punishment. Even a modest shift in the direction of civil authority would signal the military's openness to change and progress, as well as its essential connection to civil law and government.

### 1AR Link D

The link is so hopelessly non-unique its been empirically denied, Boumediene injected con law into national security, and soldiers have so much other shit to worry about this will not over deter them

Kent 10/14/13 (Andrew, is a Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2330476)

Though Goldsmith lists “civil trials” as part of his detailed description of the post-9/11 accountability, the book barely addresses them, and for good reason. As we have seen, Bivens suits have played a relatively small role in the national security area because the courts of appeals have not allowed them to go forward. Goldsmith’s account of the effectiveness of this new ecology of transparency provides interesting context for thinking about the way the courts have equilibrated doctrine in the national security area. On the one hand, it might be said that his account undermines one of the Supreme Court’s most potent arguments against monetary liability for federal officials—the fear that it will “over-deter,” cause excessive caution that damages the public interest, especially in the national security area where boldness is arguably more necessary.208 It might seem farfetched to think that a civil tort suit will by itself cause significant over-deterrence for, say, a senior CIA official who is also worried about investigations by the inspector general, DOJ prosecutors and an internal accountability board; congressional scrutiny; foreign civil and criminal trials ginned up by NGOs; and public scrutiny and calumny in the press or NGO reports. This is especially the case if, as seems likely,209 the official has personal liability insurance or can request reimbursement of costs and indemnification from his agency, or both. It is likely true, as Goldsmith suggests, that all of these accountability mechanisms put together have caused some over-deterrence. But it does not seem credible that civil torts suits would alone tip the balance from appropriate deterrence to overdeterrence.

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#### Default NEG-the AFF impacts are self-referential and based on conjecture.

**Spencer et al., Ludwig-Maximilians-University IR lecturer, 2008**

(Alexander, “The Metaphor of Terror: Terrorism Studies and the Constructivist Turn,” Security Dialogue vol. 39, no. 6, December, ebsco, ldg)

In any case, most of what has been written on Al-Qaeda is based neither on interviews nor on field research conducted inside the organization. Rather, it builds on less-direct information – it is ‘veranda terrorism research’. Among the sources used are already existing studies of Al-Qaeda, media information and intelligence reports. Obviously, this leads to a rather incestuous field of knowledge, where one scholar reproduces the unverified views of another and thus contributes to the circulation of the ever-same ‘facts’ (Reid, 1993). This is hardly a new insight about terrorism research, however. Back in 1988, one review found that ‘there are probably few areas in the social science literature in which so much is written on the basis of so little research’ (Schmid & Jongman, 1988: 177). Another remarked that ‘with a few clusters of exception there is, in fact, a disturbing lack of good empirically-grounded research on terrorism’ (Gurr, 1988: 2). These findings have been subsequently confirmed – and deplored – on numerous occasions (e.g. Merari, 1991; Silke, 2001, 2004; Horgan, 2004; Schulze, 2004; Ranstorp, 2007). Obviously, this lack of primary research further aggravates the problem identified above, as it adds another layer of interpretation. Studies of this kind which predominantly use secondary information are interpretations of how others (e.g. intelligence staff or field-researching terrorism scholars) have interpreted Al- Qaeda members’ self-interpretation. And yet, despite these various filters, information in such studies is presented as though it provided objective accounts of the reality about Al-Qaeda. This is particularly true for work that draws on intelligence reports and treats them as though they were primary sources (e.g. Burke, 2003; Gunaratna, 2002; Jacquard, 2001; Koch, 2005; Reeve, 1999). Yet, even if an intelligence report is based on successful infiltration, it provides not a description but an interpretation of Al-Qaeda.

#### Terrorists can’t sustain the operational focus necessary for WMD use

**Mueller et al., OSU political science professor, 2012**

(John, “The Terrorism Delusion”, International Security, 37.1, politicalscience.osu.edu/faculty/jmueller//absisfin.pdf, ldg)

In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots during the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8 This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme. In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as incompetent, ineffective, unintelligent, idiotic, ignorant, inadequate, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.” In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics. In the eleven years since the September 11 attacks, no terrorist has been able to detonate even a primitive bomb in the United States, and except for the four explosions in the London transportation system in 2005, neither has any in the United Kingdom. Indeed, the only method by which Islamist terrorists have managed to kill anyone in the United States since September 11 has been with gunfire—inflicting a total of perhaps sixteen deaths over the period (cases 4, 26, 32).11 This limited capacity is impressive because, at one time, small-scale terrorists in the United States were quite successful in setting off bombs. Noting that the scale of the September 11 attacks has “tended to obliterate America’s memory of pre-9/11 terrorism,” Brian Jenkins reminds us (and we clearly do need reminding) that the 1970s witnessed sixty to seventy terrorist incidents, mostly bombings, on U.S. soil every year.12 The situation seems scarcely different in Europe and other Western locales. Michael Kenney, who has interviewed dozens of government officials and intelligence agents and analyzed court documents, has found that, in sharp contrast with the boilerplate characterizations favored by the DHS and with the imperatives listed by Dalmia, Islamist militants in those locations are operationally unsophisticated, short on know-how, prone to making mistakes, poor at planning, and limited in their capacity to learn.13 Another study documents the difficulties of network coordination that continually threaten the terrorists’ operational unity, trust, cohesion, and ability to act collectively.14 In addition, although some of the plotters in the cases targeting the United States harbored visions of toppling large buildings, destroying airports, setting off dirty bombs, or bringing down the Brooklyn Bridge (cases 2, 8, 12, 19, 23, 30, 42), all were nothing more than wild fantasies, far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shared apartment, some of which did not even exist (case 15). In Norway, a neo-Nazi terrorist on his way to bomb a synagogue took a tram going the wrong way and dynamited a mosque instead.15

#### No WMD terrorism-no expertise, storage or delivery capacity.

**Mauroni, Air Force senior policy analyst, 2012**

(Al, “Nuclear Terrorism: Are We Prepared?”, Homeland Security Affairs, <http://www.hsaj.org/?fullarticle=8.1.9>, ldg)

Military chemical/biological (CB) warfare agents, radiological material, and nuclear weapons are not easily obtained, outside of government laboratories. Nation states invest large amounts of people and funds to develop and test specific unconventional weapons, and if they were to give or sell these weapons to terrorists, one of two things could happen — either the weapons would be traced back to them, or the weapons might be used someplace where the nation-state really didn’t want those weapons used. In theory, scientists recruited by sub-state groups could develop small quantities of military CB warfare agents, but the lack of access to fissile material would frustrate any ambitious engineer trying to build an improvised nuclear device. There are other hypotheses as to why sub-state groups have been unable to obtain nuclear weapons and/or fissile material on the “global market.” It could be that, despite the available information about nuclear weapons, these groups haven’t developed the expertise, skills, or experience to design a nuclear weapon. It takes time, resources, and a secure facility to successfully develop such a weapon, and international efforts to combat terrorism may have been successful in stopping such efforts. It could be that the scientists and engineers who are attracted to sub-state groups are not capable of designing weapons. It is a particularly challenging task to take a particularly hazardous material, developed in a laboratory, and turn it into a reliable military weapon of mass destruction. Last, it could be that sub-state groups have been frustrated by the numerous black-market scams and intelligence sting operations, in which fraudulent persons claimed to have nuclear material.9 Sub-state groups are interested in chemical, biological, radiological, and nuclear (CBRN) hazards, however, because senior political leaders and military leaders publicly state, over and over again, how dangerous a release of these materials would be to the American public. So of course terrorists are interested in CBRN hazards, but they don’t have the expertise to produce the specialized military warfare agents, they don’t have any training in handling or storing them, and they don’t understand how to deliver the agents to their targets with any degree of effectiveness. So one might see some attempts to steal chlorine gas cylinders from water treatment sites, some occasional attempts to produce ricin toxin from castor beans, stories about a few grams of radioactive material stolen from a facility — these are not materials that cause mass casualty events. But the fear persists, and so government leaders spend billions every year to reduce the already minute possibility that some sub-state group does develop or steal a nuclear weapon for the purposes of employing it against the United States. This leads to our public policy discussion: to understand how effectively the USG is performing in this case.