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#### Obama uses PC to delay an Iran deal now

**Gerstein, 11/12/13** (Josh, Politico, “Iran talks delay puts White House on defense”

http://www.politico.com//story/2013/11/iran-talks-delay-white-house-99707.html)

A ten-day delay in talks aimed at negotiating an interim halt to Iran’s nuclear program could allow opponents of such a deal to build momentum on Capitol Hill, analysts said Monday.

For a time last week, it seemed like the Obama administration was eager to complete such a pact in little more than 48 hours from the time officials disclosed that a serious short-term agreement was on the table. That would have allowed the administration to bring such a package to Congress as a done deal, with lawmakers in the position of having to upend an agreement that had the blessing of at least six major world powers.

However, a late snag in the talks — there was still some dispute Monday about who was responsible for the hitch — led the parties to recess, with plans to reconvene Nov. 20. And that delay is essentially forcing the administration into a more public and high-profile defense of more diplomacy with Iran, and the Senate to hold off on a vote on new sanctions against Tehran.

Vice President Joe Biden spoke to Sen. Chuck Schumer (D-N.Y.) Monday to encourage the Senate to avoid any moves that might scuttle the next round of talks, said a source familiar with the conversation, first reported by BuzzFeed.

And Secretary of State John Kerry is expected to brief members of the Senate Banking Committee at a closed-door session later this week, a congressional source said. Kerry spokeswoman Jen Psaki told reporters returning from the Mideast with the secretary that the briefing will take place Wednesday, Reuters reported.

As top Obama administration officials urged the Senate to hold off any new sanctions action, some supporters of a deal with Iran fretted that the administration had waited until now to make a strong push in Congress and with the public for a pact aimed at halting Tehran’s nuclear program.

“I understand the attractiveness of that strategy, but am still doubtful about the wisdom and effectiveness of it, because it essentially means the president wanted to present Congress with a fait accompli, and this Congress doesn’t react very well to that,” said Trita Parsi of the National Iranian American Council.

Parsi said it was clear that the U.S. administration and others wanted to get an interim deal signed before the debate heated up in Congress again on sanctions.

#### PC key – new sanctions wreck the deal

**Cockburn, 11/11**/13 **-** PATRICK COCKBURN is the author of Muqtada: Muqtada Al-Sadr, the Shia Revival, and the Struggle for Iraq (“The Deal-Wreckers Why Iran’s Concessions Won’t Lead to a Nuclear Agreement”, Counterpunch, <http://www.counterpunch.org/2013/11/11/why-irans-concessions-wont-lead-to-a-nuclear-agreement/>

In Tehran President Hassan Rouhani has so far had a fairly easy ride because of his recent election and the support of the Supreme leader, Ali Khamenei. But if he is seen as offering too many concessions on the nuclear programme and not getting enough back in terms of a relaxation of economic sanctions then he and his supporters become politically vulnerable. There are some signs that this is already happening.

The Reformists in Iran will also be vulnerable to allegations that they have given the impression that they are negotiating from weakness because economic sanctions are putting unsustainable pressure on Iran. If this argument was true then Israel, France and Saudi Arabia can argue that more time and more sanctions will make the Iranians willing to concede even more.

There is no doubt that sanctions do have a serious impact on the Iranian economy, but it does not necessarily follow that it will sacrifice its nuclear programme. The confrontational policy advocated much of the US Congress may, on the contrary decide Iran to build a nuclear weapon on the grounds that the international campaign against Iranian nuclear development is only one front in an overall plan to overthrow the system of government installed in Iran since the fall of the Shah in 1979. In other words, Iranian concessions on nuclear issues are not going to lead to an agreement, because the real objective is regime change.

On the other hand, the decision by President Obama not to launch airstrikes against Syria, Iran’s crucial Arab ally, after the use of chemical weapons on 21 August, has to a degree demilitarised the political atmosphere. This could go into reverse if Congress adds even tougher sanctions and threats of military action by Israel resume. Much will depend on how much political capital President Obama is willing spend to prevent prospects for a deal being extinguished by those who believe that confrontation with Iran works better than diplomacy.

#### War powers stripping tanks pol cap

O’Neil 7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### Deal stops prolif and iran strike

**Stephens, 11/14/13** – columnist for the Financial Times (Phillip, Financial Times, “The four big truths that are shaping the Iran talks” <http://www.ft.com/intl/cms/s/0/af170df6-4d1c-11e3-bf32-00144feabdc0.html#axzz2kkvx15JT>

The first of these is that Tehran’s acquisition of a bomb would be more than dangerous for the Middle East and for wider international security. It would most likely set off a nuclear arms race that would see Saudi Arabia, Turkey and Egypt signing up to the nuclear club. The nuclear non-proliferation treaty would be shattered. A future regional conflict could draw Israel into launching a pre-emptive nuclear strike. This is not a region obviously susceptible to cold war disciplines of deterrence.

The second ineluctable reality is that Iran has mastered the nuclear cycle. How far it is from building a bomb remains a subject of debate. Different intelligence agencies give different answers. These depend in part on what the spooks actually know and in part on what their political masters want others to hear. The progress of an Iranian warhead programme is one of the known unknowns that have often wreaked havoc in this part of the world.

Israel points to an imminent threat. European agencies are more relaxed, suggesting Tehran is still two years or so away from a weapon. Western diplomats broadly agree that Ayatollah Ali Khamenei has not taken a definitive decision to step over the line. What Iran has been seeking is what diplomats call a breakout capability – the capacity to dash to a bomb before the international community could effectively mobilise against it.

The third fact – and this one is hard for many to swallow – is that neither a negotiated settlement nor the air strikes long favoured by Benjamin Netanyahu, Israel’s prime minister, can offer the rest of the world a watertight insurance policy.

It should be possible to construct a deal that acts as a plausible restraint – and extends the timeframe for any breakout – but no amount of restrictions or intrusive monitoring can offer a certain guarantee against Tehran’s future intentions.

By the same token, bombing Iran’s nuclear sites could certainly delay the programme, perhaps for a couple of years. But, assuming that even the hawkish Mr Netanyahu is not proposing permanent war against Iran, air strikes would not end it.

You cannot bomb knowledge and technical expertise. To try would be to empower those in Tehran who say the regime will be safe only when, like North Korea, it has a weapon. So when Barack Obama says the US will never allow Iran to get the bomb he is indulging in, albeit understandable, wishful thinking.

The best the international community can hope for is that, in return for a relaxation of sanctions, Iran will make a judgment that it is better off sticking with a threshold capability. To put this another way, if Tehran does step back from the nuclear brink it will be because of its own calculation of the balance of advantage.

The fourth element in this dynamic is that Iran now has a leadership that, faced with the severe and growing pain inflicted by sanctions, is prepared to talk. There is nothing to say that Hassan Rouhani, the president, is any less hard-headed than previous Iranian leaders, but he does seem ready to weigh the options.

Seen from this vantage point – and in spite of the inconclusive outcome – Geneva can be counted a modest success. Iran and the US broke the habit of more than 30 years and sat down to talk to each other. Know your enemy is a first rule of diplomacy – and of intelligence. John Kerry has his detractors but, unlike his predecessor Hillary Clinton, the US secretary of state understands that serious diplomacy demands a willingness to take risks.

The Geneva talks illuminated the shape of an interim agreement. Iran will not surrender the right it asserts to uranium enrichment, but will lower the level of enrichment from 20 per cent to 3 or 4 per cent. It will suspend work on its heavy water reactor in Arak – a potential source of plutonium – negotiate about the disposal of some of its existing stocks of enriched uranium, and accept intrusive international inspections. A debate between the six powers about the strength and credibility of such pledges is inevitable, as is an argument with Tehran about the speed and scope of a run down of sanctions.

#### An Israeli strike fails, but triggers World War 3, collapses heg and the global economy

**Reuveny, 10** – professor in the School of Public and Environmental Affairs at Indiana University (Rafael, “Unilateral strike could trigger World War III, global depression” Gazette Xtra, 8/7, - See more at: <http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/#sthash.ec4zqu8o.dpuf>)

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.

For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.

Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.

All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians but also the Chinese and, likely, the Russians as well.

By now, Iran has also built redundant command and control systems and nuclear facilities, developed early warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.

Because Iran is well-prepared, a single, conventional Israeli strike—or even numerous strikes—could not destroy all of its capabilities, giving Iran time to respond.

Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt and the Palestinian Authority to join the assault, turning a bad situation into a regional war.

During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.

Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.

In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.

An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.

Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.

From there, things could deteriorate as they did in the 1930s. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops.

Russia, China, Venezuela, and maybe Brazil and Turkey—all of which essentially support Iran—could be tempted to form an alliance and openly challenge the U.S. hegemony.

Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.

Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.

If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons but would probably not risk using force.

While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

#### Iran prolif causes nuclear war

**Edelman, 11 -** Distinguished Fellow at the Center for Strategic and Budgetary Assessments; he was U.S. Undersecretary of Defense for Policy in 2005-9 (Eric, “The Dangers of a Nuclear Iran,” Foreign Affairs, Jan/Feb, proquest)

The reports of the Congressional Commission on the Strategic Posture of the United States and the Commission on the Prevention ofWeapons of Mass Destruction Proliferation and Terrorism, as well as other analyses, have highlighted the risk that a nuclear-armed Iran could trigger additional nuclear proliferation in the Middle East, even if Israel does not declare its own nuclear arsenal. Notably, Algeria, Bahrain, Egypt, Jordan, Saudi Arabia, Turkey, and the United Arab Emirates- all signatories to the Nuclear Nonproliferation Treaty (npt)-have recently announced or initiated nuclear energy programs. Although some of these states have legitimate economic rationales for pursuing nuclear power and although the low-enriched fuel used for power reactors cannot be used in nuclear weapons, these moves have been widely interpreted as hedges against a nuclear-armed Iran. The npt does not bar states from developing the sensitive technology required to produce nuclear fuel on their own, that is, the capability to enrich natural uranium and separate plutonium from spent nuclear fuel.Yet enrichment and reprocessing can also be used to accumulate weapons-grade enriched uranium and plutonium-the very loophole that Iran has apparently exploited in pursuing a nuclear weapons capability.

Developing nuclear weapons remains a slow, expensive, and difficult process, even for states with considerable economic resources, and especially if other nations try to constrain aspiring nuclear states' access to critical materials and technology. Without external support, it is unlikely that any of these aspirants could develop a nuclear weapons capability within a decade.

There is, however, at least one state that could receive significant outside support: Saudi Arabia. And if it did, proliferation could accelerate throughout the region. Iran and Saudi Arabia have long been geopolitical and ideological rivals. Riyadh would face tremendous pressure to respond in some form to a nuclear-armed Iran, not only to deter Iranian coercion and subversion but also to preserve its sense that Saudi Arabia is the leading nation in the Muslim world. The Saudi government is already pursuing a nuclear power capability, which could be the first step along a slow road to nuclear weapons development. And concerns persist that it might be able to accelerate its progress by exploiting its close ties to Pakistan. During the 1980s, in response to the use of missiles during the Iran-Iraq War and their growing proliferation throughout the region, Saudi Arabia acquired several dozen css-2 intermediate-range ballistic missiles from China. The Pakistani government reportedly brokered the deal, and it may have also offered to sell Saudi Arabia nuclear warheads for the css-2s, which are not accurate enough to deliver conventional warheads effectively.

There are still rumors that Riyadh and Islamabad have had discussions involving nuclear weapons, nuclear technology, or security guarantees. This "Islamabad option" could develop in one of several different ways. Pakistan could sell operational nuclear weapons and delivery systems to Saudi Arabia, or it could provide the Saudis with the infrastructure, material, and technical support they need to produce nuclear weapons themselves within a matter of years, as opposed to a decade or longer.Not only has Pakistan provided such support in the past, but it is currently building two more heavy-water reactors for plutonium production and a second chemical reprocessing facility to extract plutonium from spent nuclear fuel. In other words, it might accumulate more fissile material than it needs to maintain even a substantially expanded arsenal of its own.

Alternatively, Pakistan might offer an extended deterrent guarantee to Saudi Arabia and deploy nuclear weapons, delivery systems, and troops on Saudi territory, a practice that the United States has employed for decades with its allies. This arrangement could be particularly appealing to both Saudi Arabia and Pakistan. It would allow the Saudis to argue that they are not violating the npt since they would not be acquiring their own nuclear weapons. And an extended deterrent from Pakistan might be preferable to one from the United States because stationing foreign Muslim forces on Saudi territory would not trigger the kind of popular opposition that would accompany the deployment of U.S. troops. Pakistan, for its part, would gain financial benefits and international clout by deploying nuclear weapons in Saudi Arabia, as well as strategic depth against its chief rival, India.

The Islamabad option raises a host of difficult issues, perhaps the most worrisome being how India would respond. Would it target Pakistan's weapons in Saudi Arabia with its own conventional or nuclear weapons? How would this expanded nuclear competition influence stability during a crisis in either the Middle East or South Asia? Regardless of India's reaction, any decision by the Saudi government to seek out nuclear weapons, by whatever means, would be highly destabilizing. It would increase the incentives of other nations in the Middle East to pursue nuclear weapons of their own. And it could increase their ability to do so by eroding the remaining barriers to nuclear proliferation: each additional state that acquires nuclear weapons weakens the nonproliferation regime, even if its particular method of acquisition only circumvents, rather than violates, the npt.

N-PLAYER COMPETITION

Were Saudi Arabia to acquire nuclear weapons, the Middle East would count three nuclear-armed states, and perhaps more before long. It is unclear how such an n-player competition would unfold because most analyses of nuclear deterrence are based on the U.S.- Soviet rivalry during the Cold War. It seems likely, however, that the interaction among three or more nuclear-armed powers would be more prone to miscalculation and escalation than a bipolar competition. During the Cold War, the United States and the Soviet Union only needed to concern themselves with an attack from the other. Multipolar systems are generally considered to be less stable than bipolar systems because coalitions can shift quickly, upsetting the balance of power and creating incentives for an attack.

More important, emerging nuclear powers in the Middle East might not take the costly steps necessary to preserve regional stability and avoid a nuclear exchange. For nuclear-armed states, the bedrock of deterrence is the knowledge that each side has a secure second-strike capability, so that no state can launch an attack with the expectation that it can wipe out its opponents' forces and avoid a devastating retaliation. However, emerging nuclear powers might not invest in expensive but survivable capabilities such as hardened missile silos or submarinebased nuclear forces. Given this likely vulnerability, the close proximity of states in the Middle East, and the very short flight times of ballistic missiles in the region, any new nuclear powers might be compelled to "launch on warning" of an attack or even, during a crisis, to use their nuclear forces preemptively. Their governments might also delegate launch authority to lower-level commanders, heightening the possibility of miscalculation and escalation. Moreover, if early warning systems were not integrated into robust command-and-control systems, the risk of an unauthorized or accidental launch would increase further still. And without sophisticated early warning systems, a nuclear attack might be unattributable or attributed incorrectly. That is, assuming that the leadership of a targeted state survived a first strike, it might not be able to accurately determine which nation was responsible. And this uncertainty, when combined with the pressure to respond quickly, would create a significant risk that it would retaliate against the wrong party, potentially triggering a regional nuclear war.

### 2

#### The President of the United States should announce that he will restrict his war powers authority for targeted killing as a first resort outside zones of active hostilities, publicly disclose all relevant legal rationales, evidence, and norms in this process, assert that Congress was an active participant in setting these terms of battle, and make any needed clarifications to inquiring parties.

#### Disclosure makes the counterplan credible and checks impulsive decisions

**Marguiles 2012** – Professor of Law, Roger Williams University (5/15, Peter, Pepperdine Law Review, Volume 39, Issue 4, Article 1, “Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel”, http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1370&context=plr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

1. Disclosure

Disclosure is an important deliberative safeguard. From an ex ante perspective, disclosure protects against fringe views, since the author of an opinion knows that outside audiences will “kick the tires” and quickly discover and critique views that distort the relevant law.242 Disclosure also helps ex post, by allowing Congress, professional peers, and the public to see distortions as they emerge and campaign to correct them.243 Disclosure also works hand in hand with efforts by the President to secure ratification of an unorthodox view that responds to exigent circumstances; disclosure, at least to Congress, is a necessary incident of ratification.244 Certain opinions may contain sensitive information that makes immediate disclosure inappropriate.245 However, Congress could well require as part of its oversight that OLC engage in a deliberative process, including making express findings that become part of an opinion, when such circumstances prevail.

#### Seen as the decisive voice of America, even if Congress hasn’t signed on

Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America. To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America. This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

### 3

#### The United States federal government should statutorily establish a quantum of information framework requiring a clear and convincing standard for targeted killing outside zones of active hostilities and require offering notice to the targeted state and allowance of time for a good-faith effort to neutralize the threat to the United States.

#### Establishing a clear and convincing requirement for out of combat zone targeting resolves the legal controversy

Geoffrey S. Corn, Associate Professor of Law at South Texas College of Law in Houston, Texas. Previously Lieutenant Colonel, U.S. Army and Special Assistant to the U.S. Army Judge Advocate General for Law of War Matters, 2012, Targeting, Command Judgment, and a Proposed Quantum of Information Component, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1762894

Many legal experts have criticized the invocation of LOAC authority as a justification for using predator drones to attack individuals significantly removed from the area of active combat operations in Afghanistan or Iraq.224 This criticism has focused on both the inherent invalidity of characterizing the struggle against terrorism as an armed conflict225 and the invalidity of treating civilian terrorists as lawful military objectives.226 Addressing these criticisms is well beyond the scope of this article, which assumes arguendo that these characterizations are justified and that the United States will continue to invoke the LOAC to justify attack on such individuals. 227 Instead, what is critical for this analysis is the requisite quantum of information necessary to justify the military objective determination and render the attack on such individuals reasonable. While this may have been close to conclusive in the case of Osama bin Laden, it is far more complex for a deliberate attack of “day-to-day” terrorist operatives.228

One of the most complex legal issues resulting from the U.S. decision to characterize the struggle against transnational terrorism as an armed conflict is the legality of targeting nonstate belligerent actors outside of the area of active combat operations. This challenge is exemplified by the debate over the use of predator drones to attack suspected Al Qaeda operatives in places like Pakistan, Somalia, and Yemen.230 One aspect of these attacks that is straightforward is identifying the legal basis relied on by the United States: a determination that the individual subjects of attack qualify as lawful military objectives.231

The quantum related to the determination of target legality becomes critical in this decision-making process. In essence, targeting of such terrorist operatives adds new levels of complexity to this complicated issue of targeting civilians who take a direct part in hostilities. Initially, it is not even clear that if al Qaeda operatives fall within the LOAC targeting authority they should be considered presumptive civilians.232 Although the emerging concept of continuing combat function seems to accommodate the perceived need to attack such operatives, the position of the United States appears to indicate that they are instead considered enemy belligerents for targeting purposes, not civilians taking direct part in hostilities (a position which ironically finds some support in the Direct Participation Interpretive Guidance).233 Irrespective of whether the legality of targeting these individuals is analyzed by application of the direct part in hostilities rule or by application of the principle of military objective (by treating these individuals as enemy belligerents), the threat identification issue remains extremely complex. Under either category, the basis upon which the target legality judgment will be made will invariably focus on the continuing and habitual conduct of the individual.

Relying on conduct as a basis to determine target legality is unfailingly more difficult than relying on a traditional objective indication of military status such as a uniform. However, this has always been the criterion used to determine whether a civilian directly participates in hostilities.234 This conduct-based targeting determination is already complex in the context of ongoing ground combat operations. It becomes increasingly more difficult as the individual object of attack becomes further removed from the area of direct hostilities. Under the traditional restrictive definition of direct participation in hostilities, the weight of the presumption of civilian status arguably increases with attenuation from an area of active ground combat operations. This is the simple consequence of the reality that individuals can only take a direct part in hostilities in the vicinity of combat operations. But the nature of transnational terrorist operations has called into question the correlation between proximity to an area of active combat operations and the weight of the presumption of civilian status.235

This complexity is at the heart of the debate surrounding the ICRC Interpretive Guidance.236 The continuous combat function concept endorsed by that study is an implicit recognition of the effect of the asymmetrical tactics relied upon by contemporary nonstate actors engaged in armed hostilities.237 These tactics may result in the legitimate determination that individuals who are not proximate to an area of active combat operations may nonetheless directly participate in hostilities. The controversy associated with this proposition is ostensibly based in part on the risk of error associated with the determination of target legality rather than the conclusion that direct participation in hostilities does not always require proximity to actual combat operations.238 Recognizing this concern justifies a demanding quantum of information to warrant the determination that an individual is taking a direct part in hostilities (and therefore may be attacked) when attenuated from active military operations. In short, the controversy associated with engaging in these attacks when coupled with the inherent risk of error in the determination of target legality warrants a quantum requirement that will contribute to accuracy and legitimacy.

Commanders cannot be expected to achieve absolute accuracy in their judgments. Still, it does seem legitimate to require that the information available be sufficient to clearly support the target legality conclusion that such individuals are in fact lawful objects of attack.239 At least one scholar has proposed imposing a proof beyond a reasonable doubt standard,240 which would certainly be the most demanding quantum standard. However, the inherent judicial nature of this standard and the vagaries of its meaning call into question the utility of this proposal. **A clear and convincing requirement seems** more **logically suited to this decision- making context**. Commanders would be required to assess available information and conclude not merely that it is more likely than not that the individual nominated for attack is an enemy belligerent, but that the information establishes this status so convincingly that the conclusion is clear. This quantum standard would require the commander to be convinced that the available information excludes any alternate hypothesis inconsistent with the conclusion that the individual nominated for attack is in fact an enemy belligerent.242 Unless available information provides that level of certitude, the commander would be required to forego attack. This demanding standard of proof would facilitate attack on enemies operating outside a conflict area while limiting such attacks to only those cases involving a high degree of certitude. **In so doing, it would mitigate the risk associated with what many believe is an overbroad assertion of the LOAC-based targeting authority, protect the government from allegations that targeting decisions are arbitrary in nature, and preserve the ability to attack** when the government is able to amass this type of compelling intelligence.

#### That resolves TK legitimacy and geography drone norms

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

This does not mean that the uncertainties created by the intersection of threat-based scope and TAC are insignificant. To the contrary, extending the concept of armed conflict to a transnational non-State opponent has resulted in significant discomfort related to the assertion of State military power. But attempting to decouple the permissible geography of armed conflict from threat driven strategy by imposing some arbitrary legal limit on the geographic scope of TAC is an unrealistic and ultimately futile endeavor. **Other solution**s to these uncertainties **must be pursued**—solutions **that mitigate** the **perceived over-breadth of authority associated with TAC.** As explained below, these solutions should focus on four considerations:

(1) managing application of the inherent right of self-defense when it results in action within the sovereign territory of a non-consenting State;

(2) adjusting the traditional targeting methodology to account for the increased uncertainties associated with TAC threat identification;

(3) considering the feasibility of a “functional hors de combat” test to account for incapacitating enemy belligerents incapable of offering hostile resistance; and

(4) continuing to enhance the process for ensuring that preventive detention of captured belligerent operatives does not become unjustifiably protracted in duration.

This essay does not seek to develop each of these mitigation measures in depth. Instead, it proposes that focusing on these (and perhaps other innovations in existing legal norms) is a more rational approach to mitigating the impact of TAC than imposing an arbitrary geographic scope limitation. Other scholars have already begun to examine some of these concepts, a process that will undoubtedly continue in the future. Whether these innovations take the form of law or policy is another complex question, which should be the focus of exploration and debate. In short, rejecting the search for geographic limits on the scope of TAC should not be equated with ignorance of the risks attendant with this broad conception of armed conflict. Instead, it must be based on the premise that even if such a limit were proposed, it would ultimately prove ineffective in preventing the conduct of operations against transnational non-State threats where the State concludes such operations will produce a decisive effect. Instead, focusing on the underlying issues themselves and considering how the law might be adjusted to account for actual or perceived authority over-breadth is a more pragmatic response to these concerns.

A. Jus ad Bellum and the Authority to Take the Fight to the Enemy

One example of proposals to mitigate the risk of over-breadth associated with TAC is the “unable or unwilling” test highlighted by the scholarship of Professor Ashley Deeks.53 Deeks proposes a methodology for balancing a State’s inherent right to defend itself against transnational non-State threats and the sovereignty of other States where threat operatives are located. Because the law of neutrality cannot provide the framework for balancing these interests (as it does in the context of international armed conflicts), Deeks acknowledges that some other framework is necessary to limit resort to military force outside “hot zones,” even when justified as a measure of national self-defense. The test she proposes seeks to limit selfhelp uses of military force to situations of absolute necessity by imposing a set of conditions that must be satisfied to provide some objective assurance that the intrusion into another State’s territory is a genuine measure of last resort.54 This is pure lex lata,55 so is Deeks, to an extent. However, Deeks, having served in the Department of State Legal Advisor’s Office, recognizes that if TAC is a reality (which it is for the United States), these innovations are necessary to ensure it does not result in unjustifiably overbroad U.S. military action.

B. Target Identification and Engagement

This is precisely the approach that should be considered in the jus in bello branch of conflict regulation to achieve an analogous balance between necessity and risk during the execution of combat operations. Even assuming the “unable or unwilling” test effectively limits the exercise of national selfdefense in response to transnational terrorism, it in no way mitigates the risks associated with the application of combat power once an operation is authorized.

The in bello targeting framework is an obvious starting point for this type of exploration of the concept and its potential adjustment.56 Indeed, it seems increasingly apparent that while TAC suggests a broad scope of authority to employ combat power in a LOAC framework with no geographic constraint, the consternation generated by this effect is a result of the uncertainty produced by the complexity of threat recognition. This consternation is most acute in relation to three aspects of action to incapacitate terrorist belligerent operatives: the relationship between threat recognition and the authority to kill as a measure of first resort (the difficulty of applying the principle of distinction when confronting irregular enemy belligerent forces); the pragmatic illogic of asserting the right to kill as a measure of first resort to an individual subject to capture with virtually no risk to U.S. forces; and the ability to apply this targeting authority against unconventional enemy operatives located outside of “hot zones”.57

These concerns flow from the intersection of a battlespace that is functionally unrestricted by geography and the unconventional nature of the terrorist belligerent operative. The combined effect of these factors is a target identification paradigm that defies traditional threat recognition methodologies: no uniform, no established doctrine, no consistent locus of operations, and dispersed capabilities.58 It is certainly true that threat identification challenges are in no way unique to TAC; threat identification has always been difficult, especially in the context of “traditional” noninternational armed conflicts involving unconventional belligerent opponents. Yet, when this threat recognition uncertainty was confined to the geography of one State, it was never perceived to be as problematic as it is in the context of TAC. This is perplexing. In both contexts, the unconventional nature of the enemy increases the risk of mistake in the target selection and engagement process.59 Thus, employing the same approach is completely logical.

Two factors appear to provide an explanation for the increased concern over the threat identification uncertainty in the context of TAC. One of these is beyond the scope of “mitigation solutions,” while the other is not. The first is the increased public awareness and interest in both the legal authority to use military force and the legality of the conduct of hostilities, a factor that inevitably increases the scrutiny on military power under the rubric of TAC. **This pervasive and intense interest in and legal critique of military operations** associated with what is euphemistically called the war on terror **is truly unprecedented**. In this “lawfare” environment, it is unsurprising that government action that deprives individuals of life as a measure of first resort or subjects them to preventive detention that may last a lifetime—often impacting individuals located far beyond a “hot zone” of armed hostilities—generates intense legal scrutiny.60 **This factor**, whether a net positive or negative, is a reality that **is unlikely to abate** in the foreseeable future.

In an article published in the Brooklyn Law Review, I proposed a sliding quantum of information related to the assessment of targeting legality based on relative proximity to a “hot zone.”62 In essence, I proposed that when conducting operations against unconventional non-State operatives, the reasonableness of a target legality judgment requires increased informational certainty the more attenuated the nominated target becomes to a zone of traditional combat operations. The concept was proposed as a measure to mitigate the increased risk of targeting error when engaging an unconventional belligerent operative in an area that itself does not indicate belligerent activity. Jennifer Daskal offers a similar proposal in her article, The Geography of the Battlefield.63 Daskal presents a more comprehensive approach to adjusting the traditional targeting framework when applied to the TAC context. Both of these articles seek to **mitigate the consequence** of applying broad LOAC authority against a dispersed and unconventional enemy; both methods that should continue to be explored.

[Note: This clarifies Corn is talking about proposals that seek to legally limit TAC authority (transnational armed conflict) – that is referring to the “armed conflict” legal apparatus that regulates the US armed conflict against AQ, which allows for the use of force and what not. If the US did legally confine the armed conflict, then law enforcement and human rights law would apply outside of the battlefield. Clearly, that is not the plan, as we only add a mitigation measure to a single armed conflict operation.]

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

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

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

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

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

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

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

#### Terror causes extinction

**Hellman 8** (Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, <http://www.nuclearrisk.org/paper.pdf>)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

### 4

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

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

B. Consequences for the Continued Development of LOAC

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

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

CONCLUSION

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

#### Turns and solves the case

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

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

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

#### Key to regulate emerging military tech

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

Over the centuries LOAC, in its various guises, has always had as its focus the regulation of armed conflict so as to protect the victims of war.2 During the nineteenth century, in response to both the development of military technology

and the prevailing social mores of the time, LOAC rules started to become formalized and began to reflect the format that we are familiar with today.

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

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

#### Extinction

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

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

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

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

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

### europe adv

#### No impact to irregular warfare

Col. Dr. Frans Osinga, 2007; Royal Netherlands Air Force; “On Boyd, Bin Laden, and Fourth Generation Warfare as String Theory”, From John Olson, ed., On New Wars (Oslo, 2007, forthcoming). Reprinted with permission, 26 June 2007

Conceptually flawed Fourth, and related to the previous observation, conceptually the threat is addressed in a flawed manner. 4GW is guilty of trying to create too much coherence among disparate events, incidents, localized developments and factions. Most criminal, terrorist and insurgent groups actually are very local in their greed, grievances and activities and only use the ‘global insurgency’ as a veneer to gain local traction, wider attraction and legitimacy. Their strategic mobility and aspirations, and the expectation that such groups may all cohere against western states, may well be exaggerated. In addition, 4GW seems to lean heavily on case studies such as Vietnam, Iraq and the IDF-Palestian conflict and extrapolate from that to western states that are in fact not nearly so proximate to areas of instability and are also in contrast quite resilient. There is an obvious danger in that. What applies in Iraq – hardly a modern established stable state – may not apply in the US or Europe, nor is it immediately apparent what the equivalent actors – the terroristcriminal symbiosis of John Robb - are to the various Sunni and Shiite rogues perpetrating the daily atrocities in the streets of Baghdad or the to gangs in Columbia and Nigeria.

#### Other disputes outweigh—relations are resilient

**Hamilton and Burwell 10** (Daniel S, Executive Director of the Center for Transatlantic Relations; Executive Director of the American Consortium on EU Studies; Austrian Marshall Plan Foundation Research Professor at the Paul H. Nitze School of Advanced International Studies at Johns Hopkins, and Frances, Vice President, Director of the Program on Transatlantic Relations at the Atlantic Council, former executive director of the Center for International and Security Studies at the University of Maryland, "The Setting: The United States and Europe in a G20 World," Chapter 1, http://transatlantic.sais-jhu.edu/bin/k/u/shoulder-to-shoulder-book-finaltext.pdf)

Some argue that with the Cold War over and new powers rising, the transatlantic partnership has had its day. The values and interests of Europeans and Americans have diverged, it is said, and many of our institutions are of little relevance to today’s challenges. We disagree. Our partnership remains as vital as in the past, but now we must focus on a new agenda. The new world rising compels us, urgently, to reposition our partnership to meet 21st century challenges, and to improve the tools at our disposal. In recent years, Europeans and Americans have differed on the nature of some of these challenges and how best to confront them. Such differences can be powerful. But the history of European- American relations has often been the history of difference. Merely asserting difference or reciting lists of tough issues does not make the case for estrangement. It makes the case for more effective partnership. Moreover, that which has driven us apart is much less fundamental than that which keeps us together: support for democracy, liberty, human rights, nondiscrimination and the rule of law; mutual peace and security; open, rules- based markets; and an open door to those who choose to abide by these principles and add their strength to ours. These beliefs are underpinned by **deep** security and **economic linkages** and an intensity and range of cooperation without parallel. At times, each side of the Atlantic has honored these principles in the breach. Our achievements do not always match our aspirations. But the common body of accumulated principles, norms, rules and procedures we have built and accumulated together— in essence, an acquis Atlantique— affirms the basic expectations we have for ourselves and for each other. 3 It offers a unique foundation upon which to build.

#### Allied backlash empirically denied—their author

Dworkin, senior policy fellow at the European Council on Foreign Relations, 13

(Anthony, “Drones And Targeted Killing: Defining A European Position,” http://ecfr.eu/page/-/ECFR84\_DRONES\_BRIEF.pdf, accessed 10-23-13, CMM)

The US use of drones for targeted killing away from any¶ battlefield has become the focus of increasing attention¶ and concern in Europe. In a recent opinion poll, people¶ in all European countries sampled were opposed to the¶ use of drones to kill extremists outside the battlefield and¶ a large majority of European legal scholars reject the legal¶ justification offered for these attacks.2 But European leaders¶ and officials have responded to the US campaign of drone¶ strikes in a muted and largely passive way. Although some¶ European officials have made their disagreement with¶ the legal claims underlying US policies clear in closeddoor¶ dialogues and bilateral meetings, EU member state¶ representatives have said almost nothing in public about¶ US drone strikes.3 The EU has so far failed to set out¶ any vision of its own about when the use of lethal force¶ against designated individuals is legitimate. Nor is there¶ any indication that European states have made a serious¶ effort to influence the development of US policy or to begin¶ discussions on formulating common standards for the kinds¶ of military operations that UAVs facilitate.

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

### drones adv

#### Their ev cites other triggers like boats—miscalc is still likely without drones.

#### No escalation

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

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

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

#### No Chinese drone aggression

**Erickson and Strange 13** [Andrew Erickson, associate professor at the Naval War College and Associate in Research at Harvard University's Fairbank Centre, and Austin Strange, researcher at the Naval War College's China Maritime Studies Institute and graduate student at Zhejiang University, 5-29-13 China has drones. Now how will it use them? Foreign Affairs, McClatchy-Tribune, 29 May 2013, http://www.nationmultimedia.com/opinion/China-has-drones-Now-how-will-it-use-them-30207095.html, da 8-3-13]

Drones, able to dispatch death remotely, without human eyes on their targets or a pilot's life at stake, make people uncomfortable - even when they belong to democratic governments that presumably have some limits on using them for ill. (On May 23, in a major speech, US President Barack Obama laid out what some of those limits are.) An even more alarming prospect is that unmanned aircraft will be acquired and deployed by authoritarian regimes, with fewer checks on their use of lethal force.¶ Those worried about exactly that tend to point their fingers at China. In March, after details emerged that China had considered taking out a drug trafficker in Myanmar with a drone strike, a CNN blog post warned, "Today, it's Myanmar. Tomorrow, it could very well be some other place in Asia or beyond." Around the same time, a National Journal article entitled "When the Whole World Has Drones" teased out some of the consequences of Beijing's drone programme, asking, "What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea?"¶ Indeed, the time to fret about when China and other authoritarian countries will acquire drones is over: they have them. The question now is when and how they will use them. But as with its other, less exotic military capabilities, Beijing has cleared only a technological hurdle - and its behaviour will continue to be constrained by politics.¶ China has been developing a drone capacity for over half a century, starting with its reverse engineering of Soviet Lavochkin La-17C target drones that it had received from Moscow in the late 1950s. Today, Beijing's opacity makes it difficult to gauge the exact scale of the programme, but according to Ian Easton, an analyst at the Project 2049 Institute, an American think-tank devoted to Asia-Pacific security matters, by 2011 China's air force alone had over 280 combat drones. In other words, its fleet of unmanned aerial vehicles is already bigger and more sophisticated than all but the United States'; in this relatively new field Beijing is less of a newcomer and more of a fast follower. And the force will only become more effective: the Lijian ("sharp sword" in Chinese), a combat drone in the final stages of development, will make China one of the very few states that have or are building a stealth drone capacity.¶ This impressive arsenal may tempt China to pull the trigger. The fact that a Chinese official acknowledged that Beijing had considered using drones to eliminate the Myanmar drug trafficker, Naw Kham, makes clear that it would not be out of the question for China to launch a drone strike in a security operation against a non-state actor. Meanwhile, as China's territorial disputes with its neighbours have escalated, there is a chance that Beijing would introduce unmanned aircraft, especially since India, the Philippines and Vietnam distantly trail China in drone funding and capacity, and would find it difficult to compete. Beijing is already using drones to photograph the Senkaku/Diaoyu islands it disputes with Japan, as the retired Chinese major-general Peng Guangqian revealed earlier this year, and to keep an eye on movements near the North Korean border.Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry.

#### No solvency—they’ll use other weapons or cheat

**Etzioni 13** [Amitai, professor of international relations at George Washington University, “The Great Drone Debate,” March-April, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>]

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage. Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of self constraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology. I am not arguing that there are no natural norms that restrain behavior. There are certainly some that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). However drones are but one step—following bombers and missiles—in the development of distant battleﬁeld technologies. (Robotic soldiers—or future ﬁghting machines— are next in line). In such circumstances, the role of norms is much more limited.

#### No impact to drone spread or US norms

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

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones. As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, the narrow applications of current drone technology coupled with what we know about state behavior in the international system lend no credence to these ominous warnings. Indeed, critics seem overly-focused on the domestic implications of drone use. In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.” Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, there remain equally serious diplomatic and political costs that emanate from beyond a fickle electorate, which will prevent the likes of the increased drone aggression predicted by both Ignatieff and Sharkey. Most recently, the serious diplomatic scuffle instigated by Syria’s downing a Turkish reconnaissance plane in June illustrated the very serious risks of operating any aircraft in foreign territory. States launching drones must still weigh the diplomatic and political costs of their actions, which make the calculation surrounding their use no fundamentally different to any other aerial engagement. This recent bout also illustrated a salient point regarding drone technology: most states maintain at least minimal air defenses that can quickly detect and take down drones, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active. What the U.S. also learned, however, was that drones constitute an effective military tool in an extremely narrow strategic context. They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations against a technologically unsophisticated enemy. In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region. Non-state actors, on the other hand, have even more reasons to steer clear of drones: – First, they are wildly expensive. At $15 million, the average weaponized drone is less costly than an F-16 fighter jet, yet much pricier than the significantly cheaper, yet equally damaging options terrorist groups could pursue. – Those alternatives would also be relatively more difficult to trace back to an organization than an unmanned aerial vehicle, with all the technical and logistical planning its operation would pose. – Weaponized drones are not easily deployable. Most require runways in order to be launched, which means that any non-state actor would likely require state sponsorship to operate a drone. Such sponsorship is unlikely given the political and diplomatic consequences the sponsoring state would certainly face. – Finally, drones require an extensive team of on-the-ground experts to ensure their successful operation. According to the U.S. Air Force, 168 individuals are needed to operate a Predator drone, including a pilot, maintenance personnel and surveillance analysts. In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology. Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team. Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones. What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use. Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best. Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations. Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### Norms fail and US can't create them

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

The New York Times engages in some scare-mongering today about a drone ams race. Scott Shane notes correctly other nations such as China are building their own drones and in the future U.S. forces could be attacked by them–our forces will not have a monopoly on their use forever. Fair enough, but he goes further, suggesting our current use of drones to target terrorists will backfire: If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them. “The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the University of Pittsburgh and author of Missile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.” This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran. The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example. In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests. Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected assassination of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone? While a decision on our part to stop drone strikes would be unlikely to alter Russian or Chinese thinking, it would have one immediate consequence: al-Qaeda would be strengthened and could regenerate the ability to attack our homeland. Drone strikes are the only effective weapon we have to combat terrorist groups in places like Pakistan or Yemen where we don’t have a lot of boots on the ground or a lot of cooperation from local authorities. We cannot afford to give them up in the vain hope it will encourage disarmament on the part of dictatorial states.

## 1nr

### 2nc overview

#### Timeframe - negotiations are now or never – means the link comes before the turn, because waiting too long allows Iranian hardliners to scuttle negotiations

**Haass, 9/29/13** – president of the Council on Foreign Relations (Richard, “A Diplomatic Dance Will Be No Waltz for Either Iran or America” Financial Times,

<http://www.cfr.org/iran/diplomatic-dance-no-waltz-either-iran-america/p31517>)

We will know soon enough. Both sides are in a hurry. The new Iranian leaders worry that time is against them. They fear that conservatives defeated in the June elections will rally, while the public will grow impatient if the sanctions-battered economy does not improve.

Americans worry Iran is using time to get closer to creating an infrastructure able to produce fissile material, weaponise it and put warheads on missiles. Israeli officials do not hide their belief that under Mr Rouhani Iran will "smile its way to the bomb".

All of which means this diplomatic dance will be no waltz. Sooner rather than later – certainly before next year is out – we should know if we will be toasting success or managing a crisis.

#### link turns credibility which jacks norms and decimates allied coop

**Leverett, 11/10/13 -** senior fellow at the New America Foundation in Washington, D.C. and a professor at the Pennsylvania State University School of International Affairs(Flynt, “Nuclear Negotiations and America’s Moment of Truth About Iran” <http://www.campaigniran.org/casmii/?q=node/13358>)

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Nuclear war

**Friedberg and Schoenfeld 8**

[Aaron, Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute, and Gabriel, Senior Editor of Commentary and Wall Street Journal, “The Dangers of a Diminished America”, 10-28, <http://online.wsj.com/article/SB122455074012352571.html>]

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

Israeli strike draws in great powers – causes miscalc and escalation

Trabanco, 09 **– Independent researcher of geopoltical and military affairs (1/13/09, José Miguel Alonso Trabanco, “The Middle Eastern Powder Keg Can Explode at anytime,”** **\*\*http://www.globalresearch.ca/index.php?context=va&aid=11762\*\*)**

In case of an Israeli and/or American attack against Iran, Ahmadinejad's government will certainly respond. A possible countermeasure would be to fire Persian ballistic missiles against Israel and maybe even against American military bases in the regions. Teheran will unquestionably resort to its proxies like Hamas or Hezbollah (or even some of its Shiite allies it has in Lebanon or Saudi Arabia) to carry out attacks against Israel, America and their allies, effectively setting in flames a large portion of the Middle East. The ultimate weapon at Iranian disposal is to block the Strait of Hormuz. If such chokepoint is indeed asphyxiated, that would dramatically increase the price of oil, this a very threatening retaliation because it will bring intense financial and economic havoc upon the West, which is already facing significant trouble in those respects. In short, the necessary conditions for **a major war** in the Middle East are given. Such conflict could rapidly spiral out of control and thus a relatively minor clash could quickly and dangerously escalate by engulfing the whole region and perhaps even beyond. There are many key players: the Israelis, the Palestinians, the Arabs, the Persians and their respective allies and some great powers could become involved in one way or another (America, Russia, Europe, China). Therefore, any miscalculation by any of the main protagonists can trigger something no one can stop. Taking into consideration that the stakes are too high, perhaps it is not wise to be playing with fire right in the middle of a powder keg.

**no capabilities is a new arg means you reject it, here’s a card**

**Raas & Long 07**- Research Analyst at the Center for Naval Analyses & Adjunct Researcher at the RAND Corporation. [Whitney Raas and Austin Long (Doctoral candidate in political science at the Massachusetts Institute of Technology and a member of the MIT Security Studies Program) “Osirak Redux?: Assessing Israeli Capabilities to Destroy Iranian Nuclear Facilities,” International Security, Vol. 31, No. 4 (Spring 2007), pp. 7–33]

The foregoing assessment is far from definitive in its evaluation of Israel’s military capability to destroy Iranian nuclear facilities. It does seem to indicate, however, that the IAF, after years of modernization, now possesses the capability to destroy even well-hardened targets in Iran with some degree of confidence. Leaving open the question of whether an attack is worth the resulting diplomatic consequences and Iranian response, it appears that the Israelis have three possible routes for an air strike against three of the critical nodes of the Iranian nuclear program. Although each of these routes presents political and operational difficulties, this article argues that the IAF could nevertheless attempt to use them.

The operation would appear to be no more risky than Israel’s 1981 attack on Iraq’s Osirak reactor, and it would provide at least as much benefit in terms of delaying Iranian development of nuclear weapons. This benefit might not be worth the operational risk and political cost. Nonetheless, this analysis demonstrates that Israeli leaders have access to the technical capability to carry out the attack with a reasonable chance of success. The question then becomes one of will and individual calculation.

### ux

#### that’s effective

**Dreyfus, 11/13/13** (Bob, The Nation, “Did the Israel Lobby Agree to Hold Off on New Iran Sanctions?”

<http://www.thenation.com/blog/177144/did-israel-lobby-agree-hold-new-iran-sanctions>

Today the leaders of the US negotiating team are on Capitol Hill, trying to dissuade senators from that sort of outright sabotage. Secretary of State John Kerry, along with Wendy Sherman, are meeting with members of the Senate Banking Committee and others to beg, plead and cajole the Capitol Hill busybodies, many of whom are strongly influenced by the Israel lobby and its chief arm, the American Israel Public Affairs Committee. So far, it appears that the Democratic-controlled Senate, despite its AIPAC ties, is willing to go along with White House requests to avoid interfering in the talks. Reports The Wall Street Journal:

Proponents of tougher sanctions could seek avenues beside the Banking Committee to move a measure.… Senate Majority Leader Harry Reid (D., Nev.) is likely to oppose such a move, however. Mr. Reid on Tuesday warned against attempts to force “extraneous issues” into the debate over the defense bill.

Obama administration officials have been reaching out to a number of lawmakers in recent days to tamp down any momentum for new sanctions. Mr. Kerry has personally spoken with key senators while traveling in recent days, and was to speak to top Senate Democrats on Wednesday.

As for AIPAC itself, it issued a statement saying that it won’t accept any delays in sending a wrecking ball aimed at the talks. “AIPAC continues to support congressional action to adopt legislation to further strengthen sanctions, and there will absolutely be no pause, delay or moratorium in our efforts.”

The comment on “pause, delay or moratorium” follows an effort by the White House, which recently met with American Jewish organizations, to seek exactly that: a moratorium on new anti-Iran sanctions while the talks are underway. As the AP reported on October 29:

The White House has updated Jewish and pro-Israel groups about its talks with Iran amid concerns by some of the groups about the U.S. easing sanctions pressure on Iran over its nuclear program.

The American Israel Public Affairs Committee, the powerful pro-Israel lobbying group, attended the meeting along with the Anti-Defamation League, the American Jewish Committee, and the Conference of Presidents of Major American Jewish Organizations.

The White House’s National Security Council says senior officials told Jewish leaders that the U.S. will not let Iran obtain a nuclear weapon but wants to resolve the nuclear issue through diplomacy.

The Obama administration is asking Congress to hold off on new sanctions while it pursues diplomacy. But Israel and AIPAC are pressing the administration to retain harsh economic sanctions.

That’s tricky for AIPAC, and for Israel. Because if they defy the White House and push aggressively for new sanctions and fail, it will be a major, even unprecedented defeat for AIPAC—plus, it makes outright enemies of the Obama administration and the president himself. Scuttlebutt after the White House meeting suggested that the Jewish groups (AIPAC, the ADL and the AJC) had quietly agreed to allow the negotiations to unfold without the added interference of new sanctions.

Laura Rozen, reporting for Al-Monitor, penned a detailed report on the talks between the White House and the Jewish groups, at which Sherman was joined by Susan Rice, Obama’s national security adviser, and two top White House aides, Antony Blinken and Ben Rhodes.

Following the talks, there was conflicting information about whether or not the Jewish groups (which, collectively, make up the bosses of the Israel lobby) had agreed to a “pause” in their lobbying efforts. According to Haaretz, the liberal Israeli daily, the four groups did indeed agree to a moratorium:

Though they refrained from describing it as “a deal” or a quid pro quo, sources familiar with the meeting said they had agreed to a limited “grace period” only after hearing assurances from the Administration that it had no intention of easing sanctions or of releasing Iranian funds that have been “frozen” in banks around the world.

That was later denied by the same groups, according to The Jerusalem Post:

A report published in Haaretz on Friday claiming that US Jewish leaders have agreed to halt their lobbying efforts in support of a new sanctions bill against Iran has been roundly denied by their organizations.

“No one has given any commitment to make some public moratorium,” said sources with an organization represented at the meeting, “categorically denying” that any such commitment was given.

However, in an on-the-record interview with Haaretz, the ADL’s Abraham Foxman (who attended the White House gathering on October 29) confirmed the cease-fire:

ADL National Director Abe Foxman has confirmed that leaders of major Jewish organizations have agreed on a limited “time out” during which they will not push for stronger sanctions on Iran.

“That means that we are not lobbying for additional sanctions and we are not lobbying for less sanctions,” Foxman told Haaretz, as well as US media outlets.

Foxman was responding to a report in Haaretz on Friday that cited understandings reached among the leaders of four major Jewish organizations who participated in a Monday meeting at the White House with a group of senior White House officials led by National Security Adviser Susan Rice.

Foxman was specific, too:

Foxman made clear, however, that the hiatus is only tactical in nature. “We still believe that sanctions have worked and that additional sanctions would also work,” Foxman said, “but the Administration feels otherwise. They believe that further sanctions at this time would harm prospects for a diplomatic solution.”

“We didn’t change our positions and they didn’t change their positions. But we’re not going to be out there before the end of the next two meetings of the P5+1 with Iran.”

The risk for the Israel lobby is enormous. If it tries to wreck the talks and fails, because members of Congress—especially Democrats in the Senate—sanely agree to postpone a new round of sanctions, it will look powerless and ineffective. So it has to tread carefully, all while being pushed, hard, by Netanyahu and Co. in Israel.

According to Politico, Senate Democrats are willing to give the White House room to negotiate:

Banking Committee Chairman Tim Johnson (D-S.D.) said his panel will not draft new economic penalties toward Iran until the Senate has fully digested that briefing. Even then, Johnson said he will defer to his leadership and the White House to give him the green light. …

Two members of Democratic leadership, Sens. Patty Murray of Washington and Chuck Schumer of New York, both said they remain undecided on pursuing new sanctions and will continue to talk to top administration brass.

### 2nc PC key link block

#### **Fighting to defend the war power derails Obama’s international agenda**

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

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

### AT: No PC / Health care/ NDAA thumper

#### The number of Democratic defections was extremely limited and won’t pressure Senate Democrats

**Sargent, 11/15/13** – writes the Plum Line blog for the Washington Post (Greg, “Dems leaders struggle to contain the damage”

<http://www.washingtonpost.com/blogs/plum-line/wp/2013/11/15/dems-leaders-struggle-to-contain-the-damage/>

So the House of Representatives just passed GOP Rep. Fred Upton’s bill to fix Obamacare by gutting it, with 39 Democrats voting for the measure. That will lead to many stories claiming “dozens” of Dems defected, which is true. More Democrats voted for the Upton bill today than I would have liked.

However, the outcome actually appears to be somewhat better than Dem leaders expected. A senior House Democratic leadership aide tells me that leaders had calculated earlier today that as many as 70 House Dems could defect. That is supported by reports from last night claiming leaders feared “over 100″ Dems could support the measure.

The 39 votes is being widely portrayed as a big defection. But aides note that a similar number of House Dems — 35 — voted back in July with Republicans to delay the employer mandate. So today’s high stakes vote — right in the midst of a crush of bad Obamacare press that could not possibly have been worse — only got a few more Dems than a less consequential vote taken well before the serious problems started. Still, as noted above, the total of 39 Dems is significant, more than I would have liked to see.

Today, Dem leaders faced a problem: Because House Dems might think anything that passes the House would be DOA in the Senate, there would be no harm in a vote for the Upton bill. But leaders hoped to keep the vote down well below 50, and hopefully below 40, which would still be too high but might ensure less pressure on Senate Democratic leaders to hold a vote on something else, like the Mary Landrieu fix, the senior aide tells me.

“They know Reid is going to block it, so it’s a free vote for them,” the aide says of House Dems. “But if there were too many it would have put more pressure on Reid to act.”

#### Democrats are still mostly unified around Obama – tensions over health care are shallow

**Beutler, 11/15**/13 - Brian Beutler is Salon's political writer (“The right’s clueless gloating: Democratic civil war is only in their dreams” Salon, <http://www.salon.com/2013/11/15/the_rights_clueless_gloating_democratic_civil_war_is_only_in_their_dreams/>

That’s not to say everything’s fine now. But they’re off the ledge. The clarion calls from politically vulnerable Dems to do something, and do it fast, have subsided for the moment. And the hope is that in this window of relative repose the administration can get the website working, increase enrollment, and calm the public outcry.

At the same time it exposed the unctuousness of the right’s concern for people whose plans have been canceled. Republicans who have been demanding a comparable legislative fix are suddenly skeptical that this plan will work, and conservatives are torn between hoping Obama’s plan fails — that nobody gets their plans reinstated and continue to blame him for it — or that it works too well and damages the law in the longer run.

But the fix hasn’t taken the shine off the right’s schadenfreude party. If you were expecting conservatives to react to the Democrats’ mad scramble with anything less than unrestrained glee you … well, I guess you don’t understand the politics of Obamacare.

Everyone’s entitled to a little gloating, I guess. But I do think conservatives — who just last month spilled gallons of ink explaining why conservatism wasn’t in collapse — are engaging in a bit of premature celebration.

Obamacare has a real problem — an enrollment bottleneck created by Healthcare.gov’s failure — and the truth is the wave of cancellations wouldn’t have been easily brushed off even if the website had been working perfectly. Together they’ve driven some Democrats into conflict with one another.

But the conflict isn’t especially deep. Ask congressional Democrats whether they support Sen. Mary Landrieu’s bill to require insurance carriers to reinstate canceled policies, some will say no, some will say yes, some will have a different plan that they like better. Deep down they know that a ham-fisted solution shouldn’t become law, but they don’t feel like they can be caught supporting nothing either.

Ask them, by contrast, if they support the Affordable Care Act, or think it should be repealed, or regret their votes for it, or believe it can be fixed, or anything like that, and they’re unanimous.

You don’t have to squint very hard to notice that these divisions are about equal to but opposite the divisions within the Republican Party that resulted in a government shutdown last month. Every one of them agrees Obamacare is an excrescence that should be wiped off the books. But they had different ideas about how to respond to its imminent launch.

The difference is they chose the maximally self-destructive option. Maybe they wouldn’t have if they knew how badly the rollout would go. But that’s what they did. Conservative and moderate members openly attacked each other; grass-roots and establishment groups continue to do battle. Democrats, by contrast, haven’t followed their desperation into a burning furnace.

Not yet, anyhow.

We’ll know Democrats are warring with each other, or in full retreat from the law, when Harry Reid and Nancy Pelosi can’t restrain rank-and-file members from forcing legislative sabotage on Obama. That hasn’t happened yet. Obama’s administrative fix staved it off for the time being. But the scenario’s not outside the realm of possibility if the relaunch isn’t smooth, and enrollments fail to reach escape velocity.

### 2nc war powers spillover link

#### Fiating a hostile Congress by unilaterally restricting war powers spills over to Iran negotiation – Obama needs to be perceived as having independent authority – all of their answers to XO CP prove the link

**Mataconis, 9/6/13** – DC attorney (Doug, “What Would Obama Do If Congress Says No On Syria?” <http://www.outsidethebeltway.com/what-would-obama-do-if-congress-says-no-on-syria/>)

To answer this question, we must examine what the President could do, what we think he would do, and, of course, what he should do, in the event he loses the vote.

The President is walking a tightrope here, obviously. If he were to come right out and say that he was inclined to strike regardless of what Congress said, then he would likely guarantee that he would end up losing the vote in the end simply because he annoyed Congress. At the same time, he can’t necessarily say that he would absolutely comply with Congress’s will, then he risks weakening his position on the foreign policy front and creating a precedent that could unduly bind future Presidents. Even Blinken’s statement is far more nuanced than most of the reports about it would have you believe. What Blinkin said was that it was not the President’s intention to act in defiance of Congressional will. That’s a far cry from saying that he would comply with that will. So, we’re left, somewhat intentionally, in an ambiguous world where we’re forced to speculate about how the President would react to the loss, and what that would mean for domestic politics and his relationship with Congress.

Legally, the situation here is also ambiguous. While many will be quick to draw an analogy between this Congressional vote and the vote in Parliament last week, after which British Prime Minister David Cameron announced that he would abide by the vote and that Britain would not be participating in an attack on Syria, that analogy fails. Unlike the American President, the powers when it comes to warmaking and the use of military force are far more constrained. By the terms of the Constitution, the President is Commander in Chief of America’s armed forces. The British Prime Minister does not hold a similar position. Instead, the C-in-C of British armed forces is, technically at least, Queen Elizabeth II. That authority, of course, has been vested in Parliament along with most other Royal powers, and Parliament further vests it in the Prime Minister and various other defense officials. If Parliament says that certain action cannot be taken, then the Prime Minister has to be consider him or herself bound by that decision or otherwise risk a vote of no confidence that results in their removal from office. The President’s authority, however, is far broader and over 200+ years of American history has been interpreted to permit him to commit American forces in a wide variety of circumstances. Whether those interpretations are correct is, of course, debatable, but the precedents do exist and Congress has done little to restrain such actions by previous Presidents (or, in the case of Libya, by this President.) Given all of this, a statement by President Obama that he would absolutely follow Congressional will in this matter would arguably constitute an historical rewriting of the relationship between the branches of government.

The fact that President Obama may be able to make a credible legal/historical case for acting without Congressional authority, though, is only half the equation. The other thing to consider if Congress votes down a Syria AUMF is what the political consequences would be if the President acted notwithstanding that result. Without question, it would further damage the relationship between the White House and the House and Senate GOP at a time when the Federal Government still has to deal with several immediate issues beyond Syria, such as the Fiscal Year 2014 Budget, and the impending Debt Ceiling vote. It would likely reinvigorate the Tea Party and other groups opposed to the President’s agenda. And, it would bring closer the point in his Second Term when President Obama would become a “lame duck.” It’s also likely that many House and Senate Democrats who opposed the AUMF would be upset at such a direct Presidential snub of Congressional prerogative. We might even see impeachment or censure proceedings in Congress. Candidates for 2014 and 2016 would be required to take a position on what the President did, and Washington would generally become even more of a mess than it already is. Given all of this, the political factors would seem to argue strongly that, if he loses the vote, the President should state that he will respect the vote while doing so in a manner that preserves traditional Presidential powers and reserving the right to return to the Syria issue if circumstances warrant. Any other option would seem to be political suicide.

#### Uncertainty over war powers keeps Iran at the table. Obama needs to be perceived as having independent authority to both strike and back down

**Zeisberg, 9/25/13** - associate professor of political science at the University of Michigan (Mariah, “Debate over War Powers may yield positive outcome”

<http://blog.constitutioncenter.org/2013/09/debate-over-war-powers-resolution-may-yield-positive-outcome/>)

Uncertainty about what the Constitution requires is thick: even as President Obama called for legislative authorization to bolster the legitimacy of strikes, and even as he now appeals to the UN for a resolution authorizing military sanctions if Syria does not comply with the U.S.-Russia agreement for destroying its chemical weapons, the president nevertheless maintains that he has the authority to commit the U.S. to hostilities in Syria without Congressional (or UN) authorization.

Robert Gates criticized the president for running a risk of looking “weak” if Congress did not authorize military action, and agreed with Leon Panetta that the president obviously has all power needed for strikes in Syria.

On the other hand, constitutional scholars Louis Fisher, Stephen Griffin, and Sandy Levinson have argued that Obama’s constitutional grounding for independent strikes is either non-existent or extremely weak. Congress itself has been divided over whether authorization is necessary for a presidential strike in Syria.

While the Constitution tells us that Congress has the power to “declare war,” the text nowhere defines what kinds of hostilities count as war – which has enabled some opportunism in the Obama administration, and in many other presidential administrations too.

Even the War Powers Resolution restricts “hostilities” without defining the term, and there, too, Obama has been willing to press language to (or beyond) its absolute limit.

Constitutional and statutory text that does not define the meaning of the key words that separate one institution’s authority from another necessarily insert some measure of uncertainty into the branches’ war powers regime.

What to make of these tensions and ambiguities? Has the Constitution failed in its task to provide a definitive legal framework that can guide decision-makers about important questions such as which institution has the power to take the country to war? Isn’t the point of a Constitution to resolve this kind of conflict? If it is so pervasively difficult to read our political culture and know which branch has war authority, then does that mean that the Constitution has failed to do its job – or worse, that we are witnessing an epidemic of reckless infidelity to the Constitution’s mandates?

In fact, I think that uncertainty as to the meaning of the Constitution’s war powers regime in Syria is not catastrophic but may actually carry benefits.

As diplomacy around Syria unfolds, I want to draw attention to a few of the intersections between domestic constitutional debates and the conditions for effective international action.

First, it is arguably the threat of intervention which moved Russia into high gear in negotiations with Syria. But President Obama needed a plausible claim of independent presidential empowerment for such a claim to be credible.

At the same time, such a claim, unresisted, raises the specter of undefined aims, mission creep, costly wars without broad public support, unconsidered policy complexities, and troubling bellicose precedent that are a hallmark of presidentialism in war. This is, in part, why congressional mobilization to defend its institutional prerogatives has been so welcomed by some prominent war powers scholars.

Obama’s subsequent willingness to back down, to accommodate claims to legislative empowerment – derided by many as a weak or vacillating choice — seems in turn to have created time and space for a diplomatic process to unfold in the place of a military one.

Recent developments in that process include not only a Russian-brokered plan to confiscate all chemical weapons from the Assad regime but also statements by the Ayatollah Khamenei signaling openness to diplomacy and by President Rouhani that Iran would not develop a nuclear weapon.

And now Obama is moving this technique of vacillating red lines up to the level of global institutions.

On the one hand he is pressing the UN to back up the U.S.-Russia agreement with sanctions, but at the same time says that he reserves the power to act outside the UN, and has argued that “without a credible military threat, the Security Council had demonstrated no inclination to act at all.”

We have yet to see what kind of domestic or international push-back would await him if he tried to translate this rhetorical willingness to act outside the UN into concrete action.

Obama’s constitutional “vacillations” may end up being productive in sundering the Assad regime from its chemical weapons. Only time will tell.

For constitutional scholars, it is worth noting the positive role that uncertainty and textual ambiguity can create in generating good international outcomes.

### at winners win

#### Empirically false and the plan is more likely to disrupt Obama’s careful issue selection

**Eberly, 13** - coordinator of Public Policy Studies and assistant professor in the Department of Political Science at St. Mary's College of Maryland (Todd, Baltimore Sun, “The presidential power trap” <http://articles.baltimoresun.com/2013-01-21/news/bs-ed-political-capital-20130121_1_political-system-george-hw-bush-party-support/2>)

Only by solving the problem of political capital is a president likely to avoid a power trap. Presidents in recent years have been unable to prevent their political capital from eroding. When it did, their power assertions often got them into further political trouble. Through leveraging public support, presidents have at times been able to overcome contemporary leadership challenges by adopting as their own issues that the public already supports. Bill Clinton's centrist "triangulation" and George W. Bush's careful issue selection early in his presidency allowed them to secure important policy changes — in Mr. Clinton's case, welfare reform and budget balance, in Mr. Bush's tax cuts and education reform — that at the time received popular approval.

However, short-term legislative strategies may win policy success for a president but do not serve as an antidote to declining political capital over time, as the difficult final years of both the Bill Clinton and George W. Bush presidencies demonstrate. None of Barack Obama's recent predecessors solved the political capital problem or avoided the power trap. It is the central political challenge confronted by modern presidents and one that will likely weigh heavily on the current president's mind today as he takes his second oath of office.

## 2nc

### LOAC

#### The US is broadening the interpretation of the LOAC to be not state centric – it doesn’t impede US operations and is gaining greater support

**Radin, 13** –Visiting Research Scholar at the Naval War College, Newport Rhode Island; PhD candidate, Asia Pacific Centre for Military Law, University of Melbourne Law School. (Sasha, “Global Armed Conflict? The Threshold of Extraterritorial Non-International Armed Conflicts” 89 INT’L L. STUD. 696 (2013))

This interpretation of Common Article 3 has been challenged in recent years for several reasons. Armed groups have grown in strength and ac-quired an ability to act against States across multiple borders. At the same time, an increased recognition that internal conflicts often spill over into neighboring countries exists. These developments highlight the incon-sistency between traditional State-centric, territorially bound views en-trenched in the law of armed conflict and realities on the ground. Moreo-ver, the long-standing resistance of States, which has permeated the devel-opment, codification and enforcement of NIAC law, to concede to the ap-plication of Common Article 3 may be shifting for some States. The Unit-ed States in its current global armed conflict against Al Qaeda is leading this move towards a wider application, rather than avoidance, of the law of armed conflict.

Some scholars have identified the development of international human rights law and its accompanying restrictions to be an impetus for this shift.69 They suggest that as a result of the increasing constraints of human rights law, characterizing a situation as one of armed conflict actually allows States more flexibility in how they may lawfully deal with armed groups (in terms of targeting and detention).70 An additional contributing factor may be that in these situations the majority of the violence does not take place in the territory of the State fighting the armed group, but occurs on a sec-ond State’s territory. As such, the fear of the fighting State that it might appear to lack an ability to maintain law and order is no longer present. This set of circumstances has evoked reaction and led to renewed debate within the international law community as to the conditions for the ap-plicability of Common Article 3.71 One of the challenges today is if and how Common Article 3 applies extraterritorially.

### --xt no china drone threat

#### No Asian drone wars

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

There are several facts that provide some solace to the U.S. as China's drones are far from being a real challenge to the American drone program. First, the Chinese drones are nowhere as sophisticated as U.S. drones in their range and proper hardware for optic systems and motors to power the "dragons." The DSB report notes that the U.S. technical systems are almost unrivaled at present. Second, China lacks the manpower to properly support their new fleet of drones. Whereas the U.S. has been training and honing a large force of UAV pilots, technicians and operation managers for 15 years. Finally, the U.S. drone program is about 20 years ahead of the Chinese program. The current models on show are considered to be prototypes and not finished products. The Chinese also have not had a chance to gain real experience with their drones during real operation.

#### Chinese drones are inelegant prototypes—no risk of application

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

Against this fast-expanding fleet of killer drones, China has just a handful of inelegant UAV prototypes. There were two dozen different aerial bots on display at the Zhuhai Airshow in southern China last year, but almost all of them were small, flimsy models that John Pike, from Globalsecurity.org, called “easy to do.” China does possess prototypes for at least four medium-size drones similar in dimension to the Predator and Reaper. These include the propeller-driven Yilong and BZK-005 and the jet-poweredTianchi and WJ-600. The BZK-005 is the only one of these four drones to show up in a photo depicting a seemingly operational environment. That photo, seen above, was leaked onto the Internet in October 2009 and showed just two BZK-005s at what appeared to be an active PLAAF airstrip. Otherwise, China’s four medium drones appear to be mere prototypes. And only the WJ-600 is said to be capable of carrying weapons. What’s holding China back? Engines, for one. Chinese industry has not proved capable of developing reliable military-grade motors. That’s been the biggest thing holding back China’s new fighters and choppers — and now apparently drones, too. “Another obstacle probably is real-time, on-time delivery of precision photo imagery,” observed Arthur Ding, an analyst based in Taiwan. The Pentagon possesses scores of communications satellites for linking drones, ground troops and imagery analysts; China has just a handful of similar spacecraft. The same communication problem could also inhibit the PLA’s ability to control its UAVs.

#### Economics and diplomacy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### --2nc no impact to drones

#### This impact is journalistic handwringing—1nc Singh says the diplomatic, economic, and deterrent costs are identical for drones and other weapons—the only difference is the lack of pilot, which is never big enough to motivate undue aggression or probing—all their scenarios are conjecture based on isolated instances that won’t manifest in conflict scenarios. Default to zero probability because the empirical record is decisive.

#### Also, the better their impact gets, the weaker solvency becomes, because it requires belligerent autocracies that ignore existing norms on conflict escalation.

#### Basic countermeasures solve—drones are only usable in permissive environments, creating a built in check to aggressive use

Michael W. Lewis 12, Associate Professor of Law at Ohio Northern University Pettit College of Law, Spring 2012, “ARTICLE: SYMPOSIUM: THE 2009 AIR AND MISSILE WARFARE MANUAL: A CRITICAL ANALYSIS: Drones and the Boundaries of the Battlefield,” Texas International Law Journal, p. lexis

Like any weapons system drones have significant limitations in what they can achieve. Drones are extremely vulnerable to any type of sophisticated air defense system. They are slow. Even the jet-powered Avenger recently purchased by the Air Force only has a top speed of around 460 miles per hour, n20 meaning that it cannot escape from any manned fighter aircraft, not even the outmoded 1970s-era fighters that are still used by a number of nations. n21 Not only are drones unable to escape manned fighter aircraft, they also cannot hope to successfully fight them. Their air-to-air weapons systems are not as sophisticated as those of manned fighter aircraft, n22 and in the dynamic environment of an air-to-air engagement, the drone operator could not hope to match the situational awareness n23 of the pilot of manned fighter aircraft. As a result, the outcome of any air-to-air engagement between drones and manned fighters is a foregone conclusion. Further, drones are not only vulnerable to manned fighter aircraft, they are also vulnerable to jamming. Remotely piloted aircraft are dependent upon a continuous signal from their operators to keep them flying, and this signal is vulnerable to disruption and jamming. n24 If drones were [\*299] perceived to be a serious threat to an advanced military, a serious investment in signal jamming or disruption technology could severely degrade drone operations if it did not defeat them entirely. n25

These twin vulnerabilities to manned aircraft and signal disruption could be mitigated with massive expenditures on drone development and signal delivery and encryption technology, n26 but these vulnerabilities could never be completely eliminated. Meanwhile, one of the principal advantages that drones provide - their low cost compared with manned aircraft n27 - would be swallowed up by any attempt to make these aircraft survivable against a sophisticated air defense system. As a result, drones will be limited, for the foreseeable future, n28 to use in "permissive" environments in which air defense systems are primitive n29 or non-existent. While it is possible to find (or create) such a permissive environment in an inter-state conflict, n30 permissive environments that will allow for drone use will most often be found in counterinsurgency or counterterrorism operations.

#### Reject their “conflict threshold” theory—ignores history of intervention

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

Another, more general, criticism of drones is that, by offering the absence of personal and political risk, they ‘lower the bar to war’.8 By inducing a ‘false faith in the efficacy and morality of armed attack’, unmanned systems could ‘weaken the moral presumption against the use of force’.9

These, too, are critiques that must be taken seriously. The decision to take military action must always be made heavily. If the object of war is to make a better peace, then it must be waged with due regard not just for one’s own cost in blood and treasure, but also for that of the adversary.

Yet it is a mistake to ascribe too much to technology as a dynamo of intervention itself. It is true that major Western militaries now prepare for an era of ‘light-footprint’ intervention born of budget austerity and war exhaustion from the protracted counter-insurgencies of the post-9/11 era. But the Western record of intervention has not been linear. For the Libya intervention, there is the Syria non-intervention; the West intervened firmly in Bosnia in 1995, but only after the earlier failures resulted in the worst massacre in Europe since the Second World War at Srebrenica; the withdrawal from Somalia and the shameful inaction over Rwanda sits in the historical record alongside the determined, forceful, sustained military action in Kosovo of 1999 and the preventative diplomacy in Macedonia of 2001. Technological capabilities can shape the form of intervention, but ultimately its drivers and determinants are political and moral. President Sarkozy and Prime Minister Cameron, for instance, pushed for intervention in Libya on moral grounds despite serious equipment deficiencies that meant reliance on American assets – and, in the case of Cameron, much against the counsel of his own military.10

### --2nc norms fail

#### No solvency—there's a mismatch between their impact about unrestrained use in a crisis, and their solvency claim about following US pressure—Boot says legal norms fail because perpetrators are already willing to break the rules.

#### This answers Farley—zero empirical proof of those norms—the reason India hasn’t nuked Pakistan has nothing to do with those agreements.

#### Even moderate norms fail—circumvention and prestige—subsumes “pressure”

McGinnis, senior professor – Northwestern Law, ‘10

(John O. 104 Nw. U. L. Rev. Colloquy 366)

It is hard to overstate the extent to which advances in robotics, which are driven by AI, are transforming the United States military. During the Afghanistan and Iraq wars, more and more Unmanned Aerial Vehicles (UAVs) of different kinds were used. For example, in 2001, there were ten unmanned "Predators" in use, and at the end of 2007, there were 180. n42 Unmanned aircraft, which depend on substantial computational capacity, are an increasingly important part of our military and may prove to be the [\*374] majority of aircraft by 2020. n43 Even below the skies, robots perform im-portant tasks such as mine removal. n44 Already in development are robots that would wield lasers as a kind of special infantryman focused on killing snipers. n45 Others will act as paramedics. n46 It is not an exaggeration to predict that war twenty or twenty-five years from now may be fought predominantly by robots. The AI-driven battlefield gives rise to a different set of fears than those raised by the potential autonomy of AI. Here, the concern is that human malevolence will lead to these ever more capable machines wreaking ever more havoc and destruction. III. THE FUTILITY OF THE RELINQUISHMENT OF AI AND THE PROHIBITION OF BATTLEFIELD RO-BOTS Joy argues for "relinquishment"--i.e., the abandonment of technologies that can lead to strong AI. Those who are concerned about the use of AI technology on the battlefield would focus more specifically on weapons powered by AI. But whether the objective is relinquishment or the constraint of new weaponry, any such program must be translated into a specific set of legal prohibitions. These prohibitions, at least under current technology and current geopolitics, are certain to be ineffective. Thus, nations are unlikely to unilaterally relinquish the technology behind accelerating compu-tational power or the research to further accelerate that technology. Indeed, were the United States to relinquish such technology, the whole world would be the loser. The United States is both a flourishing commercial republic that benefits from global peace and prosperity, and the world's hegemon, capable of supplying the public goods of global peace and security. Because it gains a greater share of the prosperity that is afforded by peace than do other nations, it has incentives to shoulder the burdens to maintain a global peace that benefits not only the United States but the rest of the world. n47 By relinquishing the power of AI, the United States would in fact be giving **greater incentives** to rogue nations to develop it. Thus, the only realistic alternative to unilateral relinquishment would be a global agreement for relinquishment or regulation of AI-driven weaponry. But such an agreement would face the same insuperable obstacles nuclear disarma-ment has faced. As recent events with Iran and North Korea demonstrate, n48 it seems difficult if not impossible to per-suade rogue nations [\*375] to relinquish nuclear arms. Not only are these weapons a source of geopolitical strength and prestige for such nations, but verifying any prohibition on the preparation and production of these weapons is a task beyond the capability of international institutions. The verification problems are far greater with respect to the technologies relating to artificial intelligence. Relative-ly few technologies are involved in building a nuclear bomb, but arriving at strong artificial intelligence has many routes and still more that are likely to be discovered. Moreover, building a nuclear bomb requires substantial infrastruc-ture. n49 Artificial intelligence research can be **done in a garage**. Constructing a nuclear bomb requires very substantial resources beyond that of most groups other than nation-states. n50 Researching artificial intelligence is done by institu-tions no richer than colleges and perhaps would require even less substantial resources.

### at: zenko

#### Two problems with Zenko:

#### 1. Prolif is slow and the impact is small

**Zenko ’13** [Micah, Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department’s Office of Policy Planning, “Reforming U.S. Drone Strike Policies,” January, Council Special Report No. 65, online]

Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out¶ distant drone strikes that would be harmful to U.S. national interests.¶ However, those candidates able to obtain this technology will most¶ likely be states with the financial resources to purchase or the industrial¶ base to manufacture tactical short-range armed drones with limited¶ firepower that lack the precision of U.S. laser-guided munitions; the¶ intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and crossborder¶ adversaries who currently face attacks or the threat of attacks¶ by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia¶ into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into¶ Yemen. When compared to distant U.S. drone strikes, these contingencies¶ do not require system-wide infrastructure and host-state support.¶ Given the costs to conduct manned-aircraft strikes with minimal threat¶ to pilots, it is questionable whether states will undertake the significant¶ investment required for armed drones in the near term.

#### 2. Completely wrong on solvency

**Anderson 11** (Kenneth Anderson, Professor at Washington College of Law, American University; and Hoover Institution visiting fellow, member of Hoosver Task Force on National Security and Law; nonresident senior fellow, Brookings Institution, October 9, 2011, What kind of drones arms race is coming, http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516)

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?)

It sounds like it must be true. But is it? **There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has** against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.

Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.

But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.

Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. **The US didn’t spark an arms race; this would occur to any state with a drone**. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do – but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

The real place where states divide in their technological abilities with respect to drones is not about avionics or weapons – but the third, crucial conceptual element of a drone: sensor capabilities. Those are capabilities in both hardware, the kinds of signals that can be taken in from the real world (video, radar, infrared, etc.), and software, the kinds of analytic integration that can be achieved, coupled with other streams from outside the drone, such as general telecomm monitoring. That is an area in which the US has a significant edge – the Chinese, Russians, India, or for that matter, Germany or France, could do it if desired, though everyone will find it easier to steal it and reverse engineer.

Worth noting, as well, something that is rarely noted: today’s sensor technologies work well over deserts and largely bare mountains. They have not been developed for seeing through forest or jungle cover. Moreover, none of this takes account of a central reason why the US is successful with drones in Pakistan – the investment over years in an on-the-ground intelligence network that permits targeting in the first place: the focus on drones as technology in the Shane piece doesn’t not pay enough attention to this crucial, non-technological element. The recent Reuters piece on the ground-level intelligence piece makes it clear that purely focusing on the technology gives a profoundly misleading picture of drones and their capabilities.

But again, let’s ask, why does a state want more advanced sensor technology? Yes, better sensor technology does provide greater intelligence in targeting. And China will certainly want that, because it will find that it has reasons for wanting to engage in targeted assassination against non-state actors or, for that matter, state targets. But an awful lot of countries that want drones are not really that picky, because they don’t fundamentally care much about greater discrimination in targeting; they are not that worried about indiscriminate attack, either because, as in the case of Hamas targeting Israel, indiscriminate attack is the point or because they don’t care about collateral damage so long as the target is destroyed. So why invest in greater discrimination achieved through expensive and perhaps inaccessible sensor technologies? If there were going to be an arms race in drones, it would take place here, where the technology is not already widely available – but the parties who want it are limited.

The real arms race in drones will take place, not around drones themselves, but in counters to drones. Drones are effective, in their current form, against non-state actors, terrorists, low tech insurgents, because they have no air-defense systems. The game changer in Afghanistan against Soviet helicopters was American-supplied Stinger missiles. When some state designs and starts handing out some form of air-defense system to non-state actors, then the arms race in drones actually begins. It begins with re-designs of slow, noisy surveillance craft designed to operate at high altitude over long periods of time. It takes into account one of the most likely forms of counter to drones – viruses or other malware that interferes with the communications links that control the drones – shades of the malware discovered in drone systems recently.

It is indeed likely that the future will see more instances of uses of force at a much smaller, often less attributable, more discrete level than conventional war. Those uses will be most easily undertaken against non-state actors, rather than states, though the difference is likely to erode. **The idea that it would not have occurred to China or Russia that drones could be used to target non-state actors across borders in safe havens, or that they would not do so because the United States had not done so is far-fetched**. That is so not least because the United States has long held that it, or other states threatened by terrorist non-state actors in safe havens across sovereign borders, can be targeted if the sovereign is unable or unwilling to deal with them. There’s nothing new in this as a US view of international law; it goes back decades, and the US has not thought it some special rule benefiting the US alone. So **the idea that the US has somehow developed this technology and then changed the rules regarding cross-border attack on terrorists is just wrong**; the US has believed this for a long time and thinks it is legally and morally right.

Then there a further idea that drones make it “too easy” to reach across borders and that is the difference today; a long-standing legal doctrine suddenly made far too powerful by reason of new technology. I am not convinced. That drones – precisely because they are accepted as both more sparing of civilians and more sparing of one’s own forces – makes it “too easy” to use force, reduces the disincentive against using force, has proven irresistible to many as a criticism of drones and targeted killing. I address some of the questions in this draft article. Still, one consideration is simply that the number of “resorts to force” is not enough to damn drones and targeted killing. One must also consider the intensity of the fighting that ensues by comparison to conventional war, as well as the question of whether they increase or diminish the damage that might otherwise arise from conventional wars that take place in lieu of these more discrete uses of force.

The moral or legal case against drones and targeted killing, because their jus in bello virtues supposedly increase the propensity to use force, is not obvious, at least not to me. But in any case, this is almost certainly the future direction of uses of force. Shane is falling into a trap here not dissimilar to the advocates who believed that they could forestall the militarization of airplanes and aerial bombardment in the early 20th century. Today’s targeted killing technologies aboard drones is finally providing a technological advance – not a solution, certainly, but an advance – on the problem of indiscriminate aerial bombardment that begin with airplanes in the 20th century. It’s not just that this technology is coming, in other words – it is that, seen over the whole course of the history of military aviation, this is a good thing, not a bad thing. It’s a pity that the Times article doesn’t see this – and given what Scott Shane and Mark Mazzetti wrote in their last, outstanding piece on drones (correctly observing that drones are about non-state actors, not interstate conflict, because drones are simply too vulnerable today), surprising to me.

### at: brooks 13

#### Brooks also says transparency is key and hostilities is too broad – they can’t solve modeling

Brooks, Professor of Law, Georgetown University Law Center, 13

(Rosa, “The Constitutional and Counterterrorism Implications of Targeted Killing,” Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, April 23, 2013, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf, accessed 9-28-13, CMM)

The trouble is, no one outside a very small group within the US executive branch has any ability to evaluate who is and who isn’t a combatant. The war against al Qaeda and its associates is not like World War II, or Libya, or even Afghanistan: it is an open-ended conflict with an inchoate, undefined adversary (who exactly are al Qaeda’s “associates”?). What is more, targeting decisions in this nebulous “war” are based largely on classified intelligence reporting. As a result, Administration assertions about who is a combatant and what constitutes a threat are entirely non-falsifiable, because they're based wholly on undisclosed evidence. Add to this still another problem: most of these strikes are considered covert action, so although the US sometimes takes public credit for the deaths of alleged terrorist leaders, most of the time, the US will not even officially acknowledge targeted killings.

This leaves all the key rule-of-law questions related to the ongoing war against al Qaeda and its "associates" unanswered.36 Based on what criteria might someone be considered a combatant or directly participating in hostilities? What constitutes “hostilities” in the context of an armed conflict against a non-state actor, and what does it mean to participate in them? And just where is the war? Does the war (and thus the law of war) somehow "travel" with combatants? Does the US have a “right” to target enemy combatants anywhere on earth, or does it depend on the consent of the state at issue? Who in the United States government is authorized to make such determinations, and what is the precise chain of command for such decisions?

#### Transparency key –this is within their card

Brooks, Professor of Law, Georgetown University Law Center, 13

(Rosa, “The Constitutional and Counterterrorism Implications of Targeted Killing,” Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, April 23, 2013, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf, accessed 9-28-13, CMM)

Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder.

### at: daskal

#### Use of “zone of activity hostilities” guarantees circumvention --- Impossible to define the precise geographic scope and what constitutes active hostilities

Daskal, 13 --- Adjunct Professor at Georgetown Law (April 2013, Jennifer C., University of Pennsylvania Law Review, “ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE,” 161 U. Pa. L. Rev. 1165)

2. Identifying the Zone

Consistent with treaty and case law, overt and sustained fighting are key factors in identifying a zone of active hostilities. Specifically, the fighting must be of sufficient duration and intensity to create the exigent circumstances that justify application of extraordinary war authorities, to put civilians on notice, and to justify permissive evidentiary presumptions regarding the identification of the enemy. n133 The presence of troops on the [\*1207] ground is a significant factor, although neither necessary nor sufficient to constitute a zone of active hostilities. Action by the Security Council or regional security bodies such as NATO, as well as the belligerent parties' express recognition of the existence of a hot conflict zone, are also relevant.

Linking the zone of active hostilities primarily to the duration and intensity of the fighting and to states' own proclamations suffers, however, from an inherent circularity. A state can itself create a zone of active hostilities by ratcheting up violence or issuing a declaration of intent, thereby making previously unlawful actions lawful. n134

It is impossible to fully address this concern. The problem can, however, be significantly reduced by insisting on strict compliance with the law-of-war principles of distinction and proportionality and by vigorously punishing states for acts of aggression. n135 There will, of course, be disagreement as to whether a state's escalation of a certain conflict constitutes aggression, particularly given underlying disagreements about who qualifies as a lawful target. The zone approach is helpful in this regard as well: it narrows the range of disagreement by demanding heightened substantive standards as to who qualifies as a legitimate target outside the zones of active hostilities. Under the zone approach, the escalation of force must be aimed at a narrower set of possible military targets until the increased use of force is sufficiently intense and pervasive enough to create a new zone of active hostilities.

3. Geographic Scope of the Zone

A secondary question relates to the geographic scope of the zone of active hostilities. In answering the related question of the scope of the overarching armed conflict, the Tadic court defined the conflict as extending throughout the state in which hostilities were conducted (in the case of international armed conflict) n136 and the area over which a party had territorial control (in the case of a noninternational armed conflict that did not extend [\*1208] throughout an entire state). n137 Neither approach, however, maps well onto the practical realities of a transnational conflict between a state and a non-state actor. In many cases, the non-state actor and related hostilities will be concentrated in a small pocket of the state. It would be contrary to the justifications of exigency and proper notice to define the zone of active hostilities as extending to the entire state. A territorial control test also does not make sense when dealing with a non-state actor, such as al Qaeda, which does not exercise formal control over any territory and is driven more by ideology than territorial

### at: dworkin 13

#### Obama circumvents by broadly defining imminence AND he doesn’t think legal constraints are binding – the plan solves neither

Dworkin, senior policy fellow at the European Council on Foreign Relations, 13

(Anthony, “Drones And Targeted Killing: Defining A European Position,” http://ecfr.eu/page/-/ECFR84\_DRONES\_BRIEF.pdf, accessed 10-23-13, CMM)

Second, the day before his speech, Obama set out regulations for drone strikes that appeared to restrict them beyond previous commitments (the guidance remains classified but a summary has been released). The guidance set out standards and procedures for drone strikes “that are either already in place or will be transitioned into place over time”.31 Outside areas of active hostilities, lethal force will only be used “when capture is not feasible and no other reasonable alternatives exist to address the threat effectively”. It will only be used against a target “that poses a continuing, imminent threat to US persons”. And there must be “near certainty that non-combatants will not be injured or killed”. In some respects, these standards remain unclear: the president did not specify how quickly they would be implemented, or how “areas of active hostilities” should be understood. Nevertheless, taken at face value, they seem to represent a meaningful change, at least on a conceptual level. Effectively, they bring the criteria for all targeted strikes into line with the standards that the administration had previously determined to apply to US citizens. Where the administration had previously said on occasions that it focused in practice on those people who pose the greatest threat, this is now formalised as official policy. In this way, the standards are significantly more restrictive than the limits that the laws of armed conflict set for killing in wartime, and represent a shift towards a threat-based rather than status-based approach. In effect, the new policy endorses a self-defence standard as the de facto basis for US drone strikes, even if the continuing level of attacks would strike most Europeans as far above what a genuine self-defence analysis would permit.32 The new standards would seem to prohibit signature strikes in countries such as Yemen and Somalia and confine them to Pakistan, where militant activity could be seen as posing a cross-border threat to US troops in Afghanistan. According to news reports, signature strikes will continue in the Pakistani tribal areas for the time being.33 However, the impact of the new policy will depend very much on how the concept of a continuing, imminent threat is interpreted. The administration has not given any definition of this phrase, and the leaked Department of Justice white paper contained a strikingly broad interpretation of imminence; among other points, the white paper said that it “does not require the United States to have clear evidence that a specific attack on US persons or interests will take place in the immediate future” and that it “must incorporate considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”.34 The presidential policy guidance captures the apparent concerns behind the administration’s policy more honestly by including the criterion of continuing threat, but this begs the question of how the notions of a “continuing” and “imminent” threat relate to each other. Even since Obama’s speech, the US is reported to have carried out four drone strikes (two in Pakistan and two in Yemen) killing between 18 and 21 people – suggesting that the level of attacks is hardly diminishing under the new guidelines.35 It is also notable that the new standards announced by Obama represent a policy decision by the US rather than a revised interpretation of its legal obligations. In his speech, Obama drew a distinction between legality and morality, pointing out that “to say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance”. The suggestion was that the US was scaling back its use of drones out of practical or normative considerations, not because of any new conviction that the its previous legal claims went too far. The background assertion that the US is engaged in an armed conflict with al-Qaeda and associated forces, and might therefore lawfully kill any member of the opposing **forces** wherever they were found, remains in place to serve as a precedent for other states that wish to claim it.

[their card ends]

Looking forward, Obama’s speech strongly suggests that the¶ time leading up to the withdrawal of most US forces from¶ Afghanistan by the end of 2014 could be a crucial period for¶ the evolution of US policy, and a significant window for the¶ EU to pursue discussions with the US. When US troops are¶ no longer fighting on the ground in Afghanistan, there will¶ be no conventional military operations against al-Qaeda¶ or the Taliban around which a notional armed conflict can¶ be focused and no zone of hostilities in which status-based¶ targeting is clearly justified. Nor will it be possible to justify¶ drone strikes in Pakistan as necessary to prevent attacks on¶ US forces in Afghanistan. Much of the language of Obama’s¶ speech suggests that he regards the withdrawal of troops¶ from Afghanistan both as a likely justification for further¶ reducing drone strikes and perhaps also as a logical moment¶ to reconsider the nature of the campaign against al-Qaeda¶ more broadly. There is no guarantee that Obama will be¶ ready to declare the armed conflict over at that point, or even¶ to rethink the legal prerogatives he claims in the conflict,¶ but he has clearly flagged these questions for consideration.

#### 2. Dworkin says transparency is key

Dworkin, senior policy fellow at the European Council on Foreign Relations, 13

(Anthony, “Drones And Targeted Killing: Defining A European Position,” http://ecfr.eu/page/-/ECFR84\_DRONES\_BRIEF.pdf, accessed 10-23-13, CMM)

As a practical matter, the EU should press the US to¶ continue scaling back its use of drone strikes, and to go¶ further in meeting the requirements of transparency and¶ accountability in the attacks it carries out. Beyond this,¶ though, there is a broader struggle underway to define the¶ rules governing the use of lethal force outside theatres of¶ conventional military operations. Here the EU needs to¶ make its voice heard, both to define its own views of the¶ appropriate standards and to try to work towards greater¶ international consensus on the issue. The shift in US policy¶ towards a greater reliance on self-defence as an operational¶ principle seems to offer an opening for further discussion.¶ But US practice remains very far from what Europeans¶ would like to see and its legal justification continues to rely¶ on premises that most Europeans reject.

### at: roberts 13

#### Geographic limits aren’t sufficient – transparency and killing US citizens are key

Roberts, National Journal, 13

(Kristin, 3-21-13, “When the Whole World Has Drones,” http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321, accessed 10-23-13, CMM)

America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts.¶ To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order.

#### Later in the card its clear secrecy is key AND the Executive isn’t living up to its own standards – proving circumvention

Roberts, National Journal, 13

(Kristin, 3-21-13, “When the Whole World Has Drones,” http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321, accessed 10-23-13, CMM)

BEHIND CLOSED DOORS¶ The argument against public debate is easy enough to understand: Operational secrecy is necessary, and total opacity is easier. “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things,” said Dennis Blair, Obama’s former director of national intelligence. “The reason it’s not been undertaken by the administration is that they just make a cold-blooded calculation that it’s better to hunker down and take the criticism than it is to get into the public debate, which is going to be a hard one to win.”¶ But by keeping legal and policy positions secret, only partially sharing information even with congressional oversight committees, and declining to open a public discussion about drone use, the president and his team are asking the world to just trust that America is getting this right. While some will, many people, especially outside the United States, will see that approach as hypocritical, coming from a government that calls for transparency and the rule of law elsewhere.¶ “I know these people, and I know how much they really, really attend to the most important details of the job,” said Barry Pavel, a former defense and security official in the Bush and Obama administrations who is director of the Brent Scowcroft Center on International Security at the Atlantic Council. “If I didn’t have that personal knowledge and because there isn’t that much really in the press, then I would be giving you a different rendering, and much more uncertain rendering.”¶ That’s only part of the problem with the White House’s trust-us approach. The other resides in the vast distance between the criteria and authorization the administration says it uses in the combat drone program and the reality on the ground. For example, according to administration officials, before a person is added to the targeted strike list, specific criteria should be met. The target should be a 1) senior, 2) operational 3) leader of al-Qaida or an affiliated group who presents 4) an imminent threat of violent attack 5) against the United States.¶ But that’s not who is being targeted.¶ Setting aside the administration’s redefining of “imminence” beyond all recognition, the majority of the 3,500-plus people killed by U.S. drones worldwide were not leaders of al-Qaida or the Taliban; they were low- or mid-level foot soldiers. Most were not plotting attacks against the United States. In Yemen and North Africa, the Obama administration is deploying weaponized drones to take out targets who are more of a threat to local governments than to Washington, according to defense and regional security experts who closely track unrest in those areas. In some cases, Washington appears to be in the business of using its drone capabilities mostly to assist other countries, not to deter strikes against the United States (another precedent that might be eagerly seized upon in the future).¶ U.S. defense and intelligence officials reject any suggestion that the targets are not legitimate. One thing they do not contest, however, is that the administration’s reliance on the post-9/11 Authorization for Use of Military Force as legal cover for a drone-strike program that has extended well beyond al-Qaida in Afghanistan or Pakistan is dodgy. The threat that the United States is trying to deal with today has an ever more tenuous connection to Sept. 11. (None of the intelligence officials reached for this article would speak on the record.) But instead of asking Congress to consider extending its authorization, as some officials have mulled, the administration’s legal counsel has chosen instead to rely on Nixon administration adviser John Stevenson’s 1970 justification of the bombing of Cambodia during the Vietnam War, an action new Secretary of State John Kerry criticized during his confirmation hearing this year.¶ Human-rights groups might be loudest in their criticism of both the program and the opaque policy surrounding it, but even the few lawmakers who have access to the intelligence the administration shares have a hard time coping with the dearth of information.

### allied backlash

#### No allied backlash—they’re conflating normative and descriptive claims—Dworkin says consensus would be good, but it doesn’t matter because the states that matter are sympathizers, and the critics are undecided or just don’t care enough to push back.

#### Empirics are decisive

Aldrich 09

Richard J. Aldrich is a Professor of International Security at the University of Warwick, British Journal of Politics and International Relations, February 2009, "US–European Intelligence Co-operation on Counter-Terrorism: Low Politics and Compulsion", Vol. 11, Issue 1, pgs. 122-139

Since 9/11, intelligence has been viewed as an integral part of a controversial ‘war on terror’. The acrimonious public arguments over subjects such as Iraqi WMD assessments, secret prisons and the interrogation of detainees suggest intense transatlantic discord. Yet improbably, some of those countries that have expressed strident disagreement in public are privately the closest intelligence partners. It is argued here that we can explain this seeming paradox by viewing intelligence co-operation as a rather specialist kind of ‘low politics’ that is focused on practical arrangements. Intelligence is also a fissiparous activity, allowing countries to work together in one area even while they disagree about something else. Meanwhile, the pressing need to deal with a range of increasingly elusive transnational opponents—including organised crime—compels intelligence agencies to work more closely together, despite their instinctive dislike of multilateral sharing. Therefore, transatlantic intelligence co-operation will continue to deepen, despite the complex problems that it entails.

### resiliency

#### Alt cause—NSA

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

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

#### Cooperation high and inevitable

**Techau, 12** [Jan, Director, Carnegie, Europe, European Foreign Policy and the Euro Crisis, European Foreign Policy and the Euro Crisis, http://carnegieendowment.org/2012/02/29/european-foreign-policy-and-euro-crisis/9z4g]

In general EU-U.S. relations are fairly boring. It’s mostly a trading relationship, despite the headlines that are all about security and burden-sharing. The bulk of transatlantic relations are in trade, economic development, and financial matters. The modus operandi of these things are **fairly institutionalized**.¶ With regard to the financial crisis, despite the frequent warnings that America is drifting away from Europe, the euro crisis has actually brought America and Europe closer together. The Obama administration, banks, and the business community in the United States clearly understand that Europe must remain stable or the ramifications for America will be horrific. They need stability in Europe, and they need Europe to tackle this crisis and to manage it well in order to survive themselves.¶ It’s very clear that President Obama is on the phone with Germany’s Angela Merkel and President Sarkozy of France all the time, and that the U.S.-based financial institutions have a very strong stake in the euro crisis—there is a lot of coordination going on across the Atlantic. It may not be for positive reasons that they are cooperating, but they do and that’s basically a good thing.

### suits

#### No internal link – Goldsmith is about CIA suits, SOF is under the DoD, your author

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

From the crucible of more than a decade of continuous combat operations, Special Operations Forces (SOF) have emerged as one of the most cost-effective “weapons systems” in the U.S. military arsenal and a major source of strategic advantage for the nation. This report explores how the United States might capitalize on and ex- tend this strategic advantage well into the future. As America winds down combat operations in Iraq and Afghanistan, a confluence of challenges—both domestic and foreign—drives the need to reexamine U.S. strategy and, along with it, the fundamental purposes of the Armed Forces, including SOF. The United States' precarious fiscal situation will undoubtedly lead to tighter defense spending in the coming years. As resources contract, however, the number of national securi- ty problems facing the nation is increasing. These include rising volatility in the Middle East, the spread of violent extremism to Africa, nuclear proliferation and the threat of mass-casualty terrorism, the diffusion of advanced military technol- ogies, the return of great-power competitions, and the resurgence of proxy wars.

#### All under the DOD

**Feickert, ’13** Specialist in Military Ground Forces (Andrew, “U.S. Special Operations Forces (SOF): Background and Issues for Congress,” 18 September 2013, http://www.fas.org/sgp/crs/natsec/RS21048.pdf)//CC

Special Operations Forces (SOF) play a significant role in U.S. military operations, and the Administration has given U.S. SOF greater responsibility for planning and conducting worldwide counterterrorism operations. U.S. Special Operations Command (USSOCOM) has about 67,000 active duty, National Guard, and reserve personnel from all four services and Department of Defense (DOD) civilians assigned to its headquarters, its four components, and one sub-unified command.

#### 4th gen warfare won’t escalate – only nation state wars matter

**Friedman**, '**8** (Stratfor, June 11, <http://www.stratfor.com/weekly/geopolitical_weekly_u_s_air_force_and_next_war>)

This should be the key point of contention for the Air Force, which should argue that there is no such thing as fourth-generation warfare. There have always been guerrillas, assassins and other forms of politico-military operatives. With the invention of explosives, they have been able to kill more people than before, but there is nothing new in this. What is called fourth-generation warfare is simply a type of war faced by everyone from Alexander to Hitler. It is just resistance. This has not superseded third-generation warfare; it merely happens to be the type of warfare the United States has faced recently. Wars between nation-states, such as World War I and World War II, are rare in the sense that the United States fought many more wars like the Huk rising in the Philippines or the Vietnam War in its guerrilla phase than it did world wars. Nevertheless, it was the two world wars that **determined the future of the world and threatened fundamental U.S. interests. The United States can lose a dozen Vietnams or Iraqs and not have its interests harmed. But losing a war with a nation-state could be catastrophic**.