## 1AC Drone Court

### Adv 1

#### Advantage 1 Norms

#### Transparent drone use solves deterrence breakdowns that escalate

Boyle, 13 [“The costs and consequences of drone warfare”, MICHAEL J. BOYLE, International Affairs 89: 1 (2013) 1–29, assistant professor of political science at LaSalle University]

The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, such as Russia and China, are beginning rapidly to developand deploy drones for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own. A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them. Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144 Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 Given this precedent, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government. One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147 Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them. Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus tilting the balance of power in authoritarian regimes even more decisively towards those who wield the coercive instruments of power and against those who dare to challenge them. Conclusion Even though it has now been confronted with blowback from drones in the failed Times Square bombing, the United States has yet to engage in a serious analysis of the strategic costs and consequences of its use of drones, both for its own security and for the rest of the world. Much of the debate over drones to date has focused on measuring body counts and carries the unspoken assumption that if drone strikes are efficient—that is, low cost and low risk for US personnel relative to the terrorists killed—then they must also be effective. This article has argued that such analyses are operating with an attenuated notion of effectiveness that discounts some of the other key dynamics—such as the corrosion of the perceived competence and legitimacy of governments where drone strikes take place, growing anti-Americanism and fresh recruitment to militant networks—that reveal the costs of drone warfare. In other words, the analysis of the effectiveness of drones takes into account only the ‘loss’ side of the ledger for the ‘bad guys’, without asking what America’s enemies gain by being subjected to a policy of constant surveillance and attack. In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States. Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156 A final, and crucial, step towards mitigating the strategic consequences of drones would be to develop internationally recognized standards and norms for their use and sale. It is not realistic to suggest that the US stop using its drones altogether, or to assume that other countries will accept a moratorium on buying and using drones. The genie is out of the bottle: drones will be a fact of life for years to come. What remains to be done is to ensure that their use and sale are transparent, regulated and consistent with internationally recognized human rights standards. The Obama administration has already begun to show some awareness that drones are dangerous if placed in the wrong hands. A recent New York Times report revealed that the Obama administration began to develop a secret drones ‘rulebook’ to govern their use if Mitt Romney were to be elected president.157 The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.

#### Specifically, US-led drone norms are key to prevent escalation in Asia

Stein, 13 [12/19/Setting Rules For Unmanned Aerial Vehicles, Aaron, Foreign Affairs, Drone Decreeshttp://www.foreignaffairs.com/articles/140584/aaron-stein/drone-decrees?cid=soc-twitter-in-snapshots-drone\_decrees-122013]

Drone technology and drone use have also proliferated in other countries. And even more are seeking to develop their own systems. These systems are likely to be more local affairs than those of the United States. Most of the emerging drone states -- including China -- lack the United States’ worldwide network of military bases and satellites, which allow it to operate drones far from its own borders. And, like the United States, emerging drones states are eager to develop armed drones for counterterrorism operations and surveillance. With more drones in more places come more security and policy challenges for the United States. To deal with them, it will have to come up with a new drone policy. The tensions between China and Japan over the Senkaku (Diaoyu) Islands are a good example of how drones introduce new diplomatic questions. Chinese manned and unmanned surveillance flights routinely violate Japan’s 12-nautical-mile zone around the islands. Japan has dispatched fighter jets to intercept a Chinese manned surveillance plane and is reported to have even contemplated shooting down Chinese drones. In response, Wang Hongguang, the former deputy commander of China’s Nanjing Military Region, wrote in early November that China should attack Japanese manned planes should Japan shoot down Chinese surveillance drones. Things have become even tenser since China declared a so-called Air Defense Identification Zone over part of the East China Sea. Japan’s Nikkei reports that the United States plans to use Global Hawk drones for surveillance in the area in conjunction with increased Japanese manned E-2C Hawkeye early-warning aircraft. Although there has always been a risk of unintended escalation in the East China Sea, the emergence of [unpiloted] ~~unmanned~~ systems adds a new twist. For example, the 2001 aerial collision near Hainan Island in the South China Sea involved manned aircraft operating in international airspace. The American plane was flying a surveillance mission when two Chinese fighter jets began to tail it. One of the Chinese fighter jets accidently bumped the U.S. plane, prompting an emergency landing at a Chinese military facility on Hainan Island. China then detained the U.S. crew and inspected the plane, despite warnings that the aircraft was U.S. sovereign territory. The incident touched off a diplomatic row between two great world powers and was an early diplomatic test for the recently elected George W. Bush administration. The rules of engagement are relatively clear for the intentional downing of a [piloted] ~~manned~~ aircraft, but the potential response to the shooting down of an unmanned system -- as Japan seems ready to do -- is far murkier. On the one hand, such an act could escalate and lead to a conflict. On the other, since downing a drone would pose no danger to human life, China or Japan could conclude that the provocative use of drones -- or the intentional targeting of U.S. drones -- carries less risk of retaliation and is therefore a low-stakes means of coercion. That idea is not so far off base: In the Persian Gulf, Iran has fired on U.S. drones and was even successful in spoofing the Global Positioning System (GPS) signal of the advanced RQ-170 drone flying over its territory. An Iranian engineer told The Christian Science Monitor, “By putting noise [jamming] on the communications, you force the bird into autopilot. This is where the bird loses its brain.” The U.S. Government Accountability Office has acknowledged the risk of GPS spoofing and recommends the introduction of spoof-resistant navigation systems on drones. In the Gulf, the United States has sporadically opted to escort its surveillance drones with manned fighter jets, which raises the cost of such operations as well as the risk of escalation. Absent a clear norm on the response to shooting down an unmanned system, incidents involving drones could snowball quickly. And that is why the United States should develop a clear policy about the targeting of drones. It should be designed to prevent unintended escalation by defining the cost of provocatively using or targeting unmanned systems. These rules would need to apply to all parties, including the United States. First, the United States should signal that it would hold the operator responsible for the actions of unmanned systems. Any retaliation need not target the actual operator, given the complexity of locating the pilot, but could include the air base from which the drone was launched. The goal would be to reintroduce the prospect of casualties and escalation into the drone equation by clearly laying out the potential American response if an adversary considers using unmanned systems in a coercive way against the United States or its allies and partners. In short, U.S. policy should be to treat drones like their manned cousins. Similarly, in the cases where a potential adversary targets a U.S. drone, Washington should make clear that it regards such an act as akin to the downing of a manned aircraft. The response, therefore, could include the use of force or strong diplomatic action. In setting out this policy, the United States would tacitly accept that its own drone program could invite retaliation and that bases from which it flies drones could be targeted. Yet in most cases, the United States receives overflight rights for its drone operations, which should thereby protect the United States from potential retaliation from the countries in which it currently uses drones. The policy would, therefore, weigh more heavily on new drone-operating nations while keeping in place many of the United States’ own drone programs. Holding drone bases responsible could help minimize the ways in which emerging drone states use drones coercively against U.S. interests, as well as push them to reach similar overflight arrangements to those that the United States keeps with its partners. The new policy would not address the legality of targeted killings, but such legal questions can be dealt with separately. The United States should begin to prepare for a world in which it no longer has a monopoly on drone technology. Still, it should do so knowing that, for now, it will retain the unique capability to use military force on a global scale. For the foreseeable future, potential adversaries will mostly use unmanned systems locally and in ways that affect the security of U.S. allies. As the United States increases its own use of drones, it should be taking steps to map out a strategy to respond to provocations. Doing so would help establish new norms for everyone.

#### China’s recent test proves conflict is possible

Harress, 14 [The Rise of China's Drone Fleet and Why It May Lead to Increased Tension in Asia by Christopher Harress on January 11 2014 12:30 PM, http://www.ibtimes.com/rise-chinas-drone-fleet-why-it-may-lead-increased-tension-asia-1535718]

China has successfully flown its first stealth drone for around 20 minutes in Chengdu, again narrowing the gap between its aerial prowess and that of Western nations. The flight took place in November 2013, and while appearing to be a harmless [test flight](http://www.ibtimes.com/rise-chinas-drone-fleet-why-it-may-lead-increased-tension-asia-1535718), the drone’s capability may carry a more alarming message than some might think. China’s [fleet](http://www.ibtimes.com/rise-chinas-drone-fleet-why-it-may-lead-increased-tension-asia-1535718) of drones has become the most extensive fleet among the few countries that operate them and that has raised questions about stability in the region. Recently, U.S. ally Japan has become irate over Chinese drone flights over the disputed Senaku Island group, called Diaoyu in China, saying they will shoot down any drone that refuses to leave Japanese airspace. Then, to further complicate matters, there is the planned increase of American troops in the demarcation zone in South Korea expected this February. It was reported in Vice magazine recently that China has copied nearly all of America’s drone fleet, although nothing has led officials to believe they stole any specific technology, despite cyberattacks on American [aviation](http://www.ibtimes.com/rise-chinas-drone-fleet-why-it-may-lead-increased-tension-asia-1535718) manufacturers. Those attacks, which have been occurring for about six years according to government sources, were only discovered last year. It is believed that a Chinese espionage group has stolen hundreds of terabytes of information from over 141 companies across 20 major industries, including aerospace and defense, according to a report by Mandiant, an information-security company based in Virginia. Backing up this evidence is China’s Lijian stealth drone, which bares a very striking resemblance to the American-built Northrup Grumman Corporation (NYSE:NOC) X-47B . It has also been reported by various media that America’s F-35 joint strike fighter was delayed because of espionage fears. Obama has called for a stop to cyberattacks on the U.S., but China has said that they were the work of rogue hackers. Drones China currently has over 900 different types of drones, ranging from micro, blimps, unmanned combat air vehicles, and rotary-wing UAV.

#### Goes nuclear

**Goldstein, 13** – Avery, David M. Knott Professor of Global Politics and International Relations, Director of the Center for the Study of Contemporary China, and Associate Director of the Christopher H. Browne Center for International Politics at the University of Pennsylvania (“First Things First: The Pressing Danger of Crisis Instability in U.S.-China Relations,” International Security, vol. 37, no. 4, Spring 2013, Muse //Red)

Two concerns have driven much of the debate about international security in the post-Cold War era. The first is the potentially deadly mix of nuclear proliferation, rogue states, and international terrorists, a worry that became dominant after the terrorist attacks against the United States on September 11, 2001.1 The second concern, one whose prominence has waxed and waned since the mid-1990s, is the potentially disruptive impact that China will have if it emerges as a peer competitor of the United States, challenging an international order established during the era of U.S. preponderance.2 Reflecting this second concern, some analysts have expressed reservations about the dominant post-September 11 security agenda, arguing that China could challenge U.S. global interests in ways that terrorists and rogue states cannot. In this article, I raise a more pressing issue, one to which not enough attention has been paid. For at least the next decade, while China remains relatively weak, the gravest danger in Sino-American relations is the possibility the two countries will find themselves in **a crisis** that **could escalate to open military conflict.** In contrast to the long-term prospect of a new great power rivalry between the United States and China, which ultimately rests on debatable claims about the intentions of the two countries and uncertain forecasts about big shifts in their national capabilities, the danger of instability in a crisis involving these two nuclear-armed states is a tangible, near-term concern.3 Even if the probability of such a war-threatening crisis and its escalation to the use of significant military force is low, the **potentially catastrophic consequences** of this scenario provide good reason for analysts to better understand its dynamics and for policymakers to fully consider its implications. Moreover, events since 2010—especially those relevant to disputes in the East and South China Seas—suggest that **the danger of a military confrontation** in the Western Pacific **that could lead to a U.S.-China standoff may be on the rise.** In what follows, I identify not just pressures to use force preemptively that pose the most serious risk should a Sino-American confrontation unfold, but also related, if slightly less dramatic, incentives to initiate the limited use of force to gain bargaining leverage—a second trigger for potentially devastating instability during a crisis.4 My discussion proceeds in three sections. The first section explains why, during the next decade or two, a serious U.S.-China crisis may be more likely than is currently recognized. The second section examines the features of plausible Sino-American crises that may make them so dangerous. The third section considers general features of crisis stability in asymmetric dyads such as the one in which a U.S. superpower would confront an increasingly capable but still thoroughly overmatched China—the asymmetry that will prevail for at least the next decade. This more stylized discussion clarifies the inadequacy of focusing one-sidedly on conventional forces, as has much of the current commentary about the modernization of China's military and the implications this has for potential conflicts with the United States in the Western Pacific,5 or of focusing one-sidedly on China's nuclear forces, as a smaller slice of the commentary has.6 An assessment considering the interaction of conventional and nuclear forces indicates why **escalation resulting from crisis instability remains a devastating possibility.** Before proceeding, however, I would like to clarify my use of the terms "crisis" and "instability." For the purposes of this article, I define a crisis as a confrontation between states involving a serious threat to vital national interests for both sides, in which there is the expectation of a short time for resolution, and in which there is understood to be a sharply increased risk of war.7 This definition distinguishes crises from many situations to which the label is sometimes applied, such as more protracted confrontations; sharp disagreements over important matters that are not vital interests and in which military force seems irrelevant; and political disputes involving vital interests, even those with military components, that present little immediate risk of war.8 I define instability as the temptation to resort to force in a crisis.9 Crisis stability is greatest when both sides strongly prefer to continue bargaining; instability is greatest when they are strongly tempted to resort to the use of military force. Stability, then, describes a spectrum—from one extreme in which neither side sees much advantage to using force, through a range of situations in which the balance of costs and benefits of using force varies for each side, to the other extreme in which the benefits of using force so greatly exceed the costs that striking first looks nearly irresistible to both sides. Although the incentives to initiate the use of force may not reach this extreme level in a U.S. China crisis, the capabilities that the two countries possess raise concerns that escalation pressures will exist and that they may be highest **early in a crisis**, compressing the time frame for diplomacy to avert military conflict.

#### Judicial enforcement mechanisms key to signal accountability

Wexler, 13 [The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests, Lesley Wexler, Professor of Law and Thomas A. Mengler Faculty Scholar, 3rd Speaker and semifinalist 1998 National Debate Tournament, p. SSRN]

The current practice of using drones to engage in overseas killings raises difficult legal ques-tions with incredibly high stakes. The fate of potential targets and collateral damage hangs in the balance along with grave concerns about national and foreign security. Over the past decade, expansive deference to the executive branch has allowed a substantial increase in the number and rate of drone strikes. The use of drones for targeted killing is becoming a regular tool of the U.S. government and perhaps will become so for other governments as well. What role, if any, do courts have to play in regulating this practice? Critics of the status quo would like greater transparency and accountability in regards to tar-geted killings. In addition to constitutional concerns, some worry the executive branch is violating International Humanitarian Law (IHL). They want the executive branch to reveal its legal under-standings of IHL. They also seek greater information regarding review processes for targeted kill-ings as to both prospective listings and retrospective assessments of compliance. These skeptics contend that the lack of judicial oversight and the opacity of the government’s legal position risks the deaths of innocent foreign civilians, violates democratic accountability norms, erodes our compliance reputation with allies, and helps recruit a new generation of anti-American insurgents. Even if the current approach is lawful, many worry about future administrations or other governments that may adopt drone strikes without sufficient IHL protections. As this chapter describes, some of these critics have proposed the use of courts to foster either transparency or accountability or both. In contrast, many, including the executive and judicial branches themselves, believe that the judicial role regarding drone strikes and targeted killings should be a minimal one. They suggest that an active court reviewing names of those to be targeted, providing damages to victims of un-lawful strikes, or demanding agencies declassify information on drone strikes would compromise an effective strategy in the war on terror. They fear judicial intervention would pose great danger to U.S. soldiers, foreign civilians, and in worst case scenarios, to U.S. citizens at home without en-hancing IHL compliance. In particular, executive branch officials have argued that greater transpar-ency may compromise intelligence efforts, provide targets with additional opportunities to act stra- 3 tegically, and sour relations with states currently willing to provide sub rosa permission for strikes. Meanwhile, these court opponents suggest that sufficient internal and congressional oversight can prevent unlawful activity. They also push back on the opacity charge by noting the information pro-vided through a series of high-level administration speeches and unacknowledged leaks. The U.S. judiciary itself is often reluctant to aggressively intervene in national security mat-ters and other legal issues arising out of armed conflicts. Federal courts frequently employ a variety of procedural postures and substantive doctrines to avoid deciding live IHL controversies. But the judicial branch sometimes surprises, as when the Supreme Court spoke to detention policy and its relationship to IHL in the trio of war on terror cases Hamdi,1 Hamdan,2 and Boumediene.3 U.S. courts might look to other countries, like Israel, whose courts have ruled on targeted killings and issued guidelines informed by IHL to govern future behavior.4 This chapter suggests the judiciary may play an important role in the debate over the execu-tive branch’s decisions regarding IHL even if it declines to speak to the substance of such cases. First, advocates may use courts as a visible platform in which to make their arguments and spur conversations about alternative, non-judicially mandated transparency and accountability measures. As they did with the trio of detention cases, advocates can leverage underlying constitutional con-cerns about the treatment of citizens to stimulate interest in the larger IHL issues. Second, litigants may use courts to publicize and pursue Freedom of Information (FOIA) requests and thus enhance transparency. Even if courts decline to grant FOIA requests, the lawsuits can generate media atten-tion about what remains undisclosed. Third, and most robustly, Congress may pass legislation that would facilitate either prospective review of kill lists through a so-called drone court or remove procedural barriers to retrospective damage suits for those unlawfully killed by a drone strike. Even the threat of such a judicial role may influence executive branch behavior.

#### Transparency and accountability key to drone norms

Kreps and Zenko, 14 [“The Next Drone Wars Preparing for Proliferation”, SARAH KREPS is Stanton Nuclear Security Fellow at the Council on Foreign Relations and Assistant Professor of Government at Cornell University. MICAH ZENKO is Douglas Dillon Fellow in the Center for Preventive Action at the Council on Foreign Relations, Foreign Affairs, http://www.foreignaffairs.com/articles/140746/sarah-kreps-and-micah-zenko/the-next-drone-wars]

As the only country to have used drones extensively, the United States must take the lead in regulating their use and export. So far, the United States has kept its exports of armed drones to a minimum (much to the chagrin of the defense industry), sending them only to the United Kingdom. Washington should maintain such restraint. It should also revisit its own targeted-killing policies, lest other countries follow the United States’ example. The U.S. government has articulated its drone policy to the public only in an ad hoc manner. Behind closed doors, the White House reportedly oversees targeting decisions in a regular review process that includes the Pentagon, the State Department, and other agencies, but it ignores bigger strategic questions about the impact that unilateral measures on the part of the United States to restrain its own drone use could have on other states. A separate, independent review panel should be formed to answer these questions, and an unclassified version of the findings should be made available to the public. It could be modeled on the Guantanamo Review Task Force, which was charged with determining which detainees could be released or prosecuted and brought together the Departments of Justice, Defense, State, and Homeland Security; the director of national intelligence; and the Joint Chiefs of Staff. Or it could be modeled on the panel set up by the White House last summer to review the National Security Agency’s surveillance operations. Those two panels are good precedents for how to deal with the U.S. drone program since they brought together both outside experts and experts from across various government agencies to review sensitive U.S. national security policies -- and they recommended meaningful reforms. Congress, which has deferred to the executive branch on drone policy, should take a more active role by holding extensive hearings on drones’ unique use in counterterrorism and other strikes. These hearings should continue to scrutinize the Authorization for the Use of Military Force, which the Obama administration has cited as its legal justification for drone strikes on suspected terrorists, including the U.S. citizen Anwar al-Awlaki in Yemen. But they should also focus on how drones are used in disputed areas and across borders and against publicly undefined targets, such as militants and criminals -- the most common and the most dangerous scenarios. The United States should also come clean about how it has used armed drones, which could prompt Israel and the United Kingdom to do the same. The United States and the United Kingdom have released some overall strike data, but little regarding civilian casualties, with the British military claiming it cannot collect such data “because of the immense difficulty and risks that would be involved.” Last summer, the Obama administration responded to a Freedom of Information Act request by declaring that there is “no information that can be provided at the unclassified level.” Israel has been even more reticent, refusing to acknowledge that it has conducted any drone strikes. More transparency could correct some misconceptions about drones, such as that the United States violates sovereign airspace and does not take precautions to mitigate civilian harm. Greater openness would generate public confidence in the legitimacy of drone use and could shape how other states conducted and justified their own lethal missions. REINING IN THE ROBOTS The United States, however, cannot go it alone; if the regulation of the proliferation and use of armed drones is going to work, it must be a multilateral effort. Some drone exports are currently covered by the Missile Technology Control Regime (MTCR), created in 1987 to regulate nuclear-capable missiles and related technologies. The voluntary arrangement does cover armed drones but mentions them only as an afterthought. The regime’s guidelines lump them in with cruise missiles. And they deal only with armed and unarmed unmanned systems with ranges of at least 300 kilometers and payloads of over 500 kilograms. Those limits are arbitrary and outdated; the defense contractor General Atomics has developed a version of the Predator for export designed precisely to get around them. The MTCR also has enforcement and membership problems. Its 34 participating states are free to interpret and implement its provisions at their own discretion. But more important, China, India, Iran, Israel, and Pakistan, which either have or aspire to develop drones, are not even members. Some nonmember states, such as Israel, which is nominally a “unilateral adherent” to the regime, act as they please and are dominating the drone export market. According to the consulting firm Frost & Sullivan, between 2005 and 2012, Israel exported $4.6 billion worth of drone systems to countries in Asia, Europe, and Latin America. Washington should take the lead in creating better and more appropriate international regulations, building on proven initiatives. A new and enhanced drone regime would be drone-specific, covering all exports and uses of armed-capable drones, including those that fall outside the purview of the MTCR. Moreover, its membership would go beyond that of the MTCR, which is largely limited to industrialized countries, and include all states that have or could soon acquire armed drones. Although surveillance drones make strikes by other weapons platforms more likely, given their wide availability on the commercial market, it is unrealistic to try to further limit their spread by including them in this new drone regime. To win international support to either update the MTCR or create such a new regime, Washington will have to be more forthcoming about its own use of drones. It could offer more transparency in order to garner the consensus vote that is required to modify the MTCR or to guarantee broad, credible participation in a new control regime. This kind of bargaining strategy might mirror the way nuclear-armed states have compelled nonnuclear weapons states to agree to nonproliferation. Commitments by the United States and Russia to make aggressive progress on their own disarmament after the fall of the Soviet Union convinced nonnuclear weapons states to agree in 1995 to an indefinite extension of the Nuclear Nonproliferation Treaty. Of course, even if the United States revealed some elements of its own closely guarded drone program, including that it uses drones in such places as Yemen, countries such as China might not agree to join a new regime. But given that the Obama administration has shown little inclination to stop using drones in areas in which the United States is not engaged in traditional combat, greater disclosure is the only concession it could realistically offer.

#### The plan results in effective international pressure against the PRC, prevents cascading violence

Whibley, 13 [“The Proliferation of Drone Warfare: The Weakening of Norms and International Precedent”, <http://journal.georgetown.edu/2013/02/06/the-proliferation-of-drone-warfare-the-weakening-of-norms-and-international-precedent-by-james-whibley/>]

In a recent article, David Wood expresses concern over the start of a drone arms race, with China’s People’s Liberation Army beginning to adopt drone technology and Iran possibly supplying drones to Hezbollah in Lebanon. Other reports show that Pakistan has also developed its own set of drones, with offers of assistance from China to help improve their technological sophistication. The proliferation of drone technology is in many ways unsurprising, as technology always spreads across the globe. Yet, the economic and organizational peculiarities of drones may mean their adoption is more likely than other high-tech weapons. Michael C. Horowitz, in his widely praised book The Diffusion of Military Power, notes that states and non-state actors face a number of possible strategic choices when considering military innovations, with the adoption of innovative technology not a foregone conclusion. States will consider both the financial cost of adopting new technology and the organizational capacity required to adopt new technologies — that is, the need to make large-scale changes to recruitment, training, or strategic doctrine. From a financial perspective, drones are an attractive option for state and non-state actors alike, as they are vastly cheaper to build and operate than other forms of aerial technology, with the high level of commercial applications for drone technology helping drive down their cost. Organizationally, drones still require a significant level of training to operate in a combat setting, inhibiting their immediate adoption. Yet, as strategic doctrine in nearly every state prioritizes combating terrorism, drone programs will be easier to integrate into military structures as Horowitz notes that how a military organization defines its critical tasks determines the ease of adopting innovations. Even if the level of organizational capacity needed to operate drones eludes most terrorist organizations, the apparent willingness of states such as Iran to supply militant groups with drones raises the possibility of terrorist groups acquiring tacit knowledge about operating them by networking with sympathising states. If drones are destined to proliferate, the more important issue may become whether American drone doctrine is setting a precedent for other states over how drones are used, and if so, is American drone use weakening the long-standing international norm against assassination? Current US practices include the use of drones in countries without a declaration of war, the routine targeting of rescuers at the scene of drone attacks and the funerals of victims, and the killing of US citizens. The existence of such practices lends legitimacy to illiberal actions and significantly diminishes the moral authority of the US to condemn similar tactics used by other states, whether against rebellious populations in their own territory or enemies abroad. While drone advocates such as Max Boot argue that other countries are unlikely to follow any precedents about drone use established by America, power has an undeniable effect in establishing which norms are respected or enforced. America used its power in the international system after World War 2 to embed norms about human rights and liberal political organization, not only in allies, but in former adversaries and the international system as a whole. Likewise, the literature on rule-oriented constructivism presents a powerful case that norms have set precedents on the appropriate war-fighting and deterrence policies when using weapons of mass destruction and the practices of colonialism and human intervention. Therefore, drones advocates must consider the possible unintended consequences of lending legitimacy to the unrestricted use of drones. However, with the Obama administration only now beginning to formulate rules about using drones and seemingly uninterested in restraining its current practices, the US may miss an opportunity to entrench international norms about drone operations. If countries begin to follow the precedent set by the US, there is also the risk of weakening pre-existing international norms about the use of violence. In the summer 2000 issue of International Security, Ward Thomas warned that, while the long-standing norm against assassination has always been less applicable to terrorist groups, the targeting of terrorists is, “likely to undermine the norm as a whole and erode the barriers to the use of assassination in other circumstances.” Such an occurrence would represent a deleterious unintended consequence to an already inhumane international system, justifying greater scrutiny of the drone program. Realism cautions scholars not to expect ethical behaviour in international politics. Yet, the widespread use of drones by recent administrations with little accountability and the lack of any normative framework about their deployment on the battlefield could come to be seen as a serious strategic error and moral failing. If the Obama administration was nervous about leaving an amorphous drone policy to a possible Romney Presidency, then surely China or Russia possessing such a program would be terrifying.

### Adv 2

#### Advantage 2 Accountability

#### Ex ante review key to accountable and legitimate targeted killing

Adelsberg 12 (Samuel, J.D. – Yale Law School, “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens,” Harvard Law & Policy Review, Summer, 6 Harv. L. & Pol'y Rev. 437, Lexis)

The relevance of these precedents to the targeting of citizens is clear: the constitutional right to due process is alive and well--regardless of geographic location. We now turn to what type of process is due.

III. BRING IN THE COURTS: BRINGING JUDICIAL LEGITIMACY TO TARGETED KILLINGS

The function of this Article is not to argue that targeted killing should be removed from the toolbox of American military options. Targeted killing as a military tactic is here to stay. n34 Targeting strikes have robust bipartisan political support and have become an increasingly relied upon weapon as the United States decreases its presence in Iraq and Afghanistan. n35 The argument being asserted here, therefore, is that in light of the protections the Constitution affords U.S. citizens, there must be a degree of inter-branch process when the government targets such individuals.

The current intra-executive process afforded to U.S. citizens is not only unlawful, but also dangerous. n36 Justice O'Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that an interrogator is not a neutral decision-maker as the "even purportedly fair adjudicators are disqualified by their interest in the controversy." n37 In rejecting the government's argument that a "separation of powers" analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O'Connor contended that, in times of conflict, the Constitution "most assuredly envisions a role for all three branches when individual liberties are at stake." n38 Similarly, Justice Kennedy was unequivocal in Boumediene about the right of courts to enforce the Constitution even in times of war. Quoting Chief Justice Marshall in Marbury v. Madison, n39 Kennedy argued that holding "that the political branches may switch the constitution on or off at will would lead to a regime in which they, not this Court, say 'what the law is.'" n40 This sentiment is very relevant to our targeted killing analysis: in the realm of targeted killing, where the deprivation is of one's life, the absence of any "neutral decision-maker" outside the executive branch is a clear violation of due process guaranteed by the Constitution.

Justices O'Connor and Kennedy are pointing to a dangerous institutional tension inherent in any intra-executive process regime. Targeting decisions are no different; indeed, the goal of those charged with targeting citizens like al-Awlaki is not to strike a delicate balance between security [\*444] and liberty but rather, quite single-mindedly, to prevent attacks on the United States. n41 In describing the precarious nature of covert actions, James Baker, a distinguished military judge, noted, "the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and informed accountable decision-making." n42 While Judge Baker concluded that these risks "magnify the importance of a meaningful process of ongoing executive appraisal," he overlooked the institutional tension, seized upon by Justices O'Connor and Kennedy, which would preclude the type of process that he was advocating. n43

Although there may be a role for Congress in such instances, a legislative warrant for specific cases would likely be cumbersome, carry significant security risks, and may violate the spirit of the Bill of Attainder Clause, which prohibits the legislature from performing judicial or executive functions. The current inter-branch process for covert actions, in which the President must make a finding and notify the leaders of Congress and the intelligence committees, is entirely ex post and also has not been proven to provide a meaningful check on executive power. n44 Moreover, most politicians are unqualified to make the necessary legal judgments that these situations require.

Solutions calling for the expatriation of citizens deemed to be terrorists are fraught with judicial complications and set very dangerous precedents for citizenship revocation. n45 Any post-deprivation process, such as a Bivens-style action, for a targeted attack would also be problematic. n46 Government officials charged with carrying out these attacks might be hesitant to do so if there were a threat of prosecution. Moreover, post-deprivation process for a target would be effectively meaningless in the wake of a successful attack.

[\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens.

Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on steadier constitutional ground. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

#### Drones key to legitimacy

Kennedy, 13 [“Drones: Legitimacy and Anti-Americanism”, Greg Kennedy is a Professor of Strategic Foreign Policy at the Defence Studies Department, King's College London, based at the Joint Services Command and Staff College, Defence Academy of the United Kingdom, in Shrivenham, Parameters 42(4)/43(1) Winter-Spring 2013]

The exponential rise in the use of drone technology in a variety of military and non-military contexts represents a real challenge to the framework of established international law and it is both right as a matter of principle, and inevitable as a matter of political reality, that the international community should now be focusing attention on the standards applicable to this technological development, particularly its deployment in counterterrorism and counter-insurgency initiatives, and attempt to reach a consensus on the legality of its use, and the standards and safeguards which should apply to it.4 deliver deadly force is taking place in both public and official domains in the United States and many other countries.5 The four key features at the heart of the debate revolve around: who is controlling the weapon system; does the system of control and oversight violate international law governing the use of force; are the drone strikes proportionate acts that provide military effectiveness given the circumstances of the conflict they are being used in; and does their use violate the sovereignty of other nations and allow the United States to disregard formal national boundaries? Unless these four questions are dealt with in the near future the impact of the unresolved legitimacy issues will have a number of repercussions for American foreign and military policies: “Without a new doctrine for the use of drones that is understandable to friends and foes, the United States risks achieving near-term tactical benefits in killing terrorists while incurring potentially significant longer-term costs to its alliances, global public opinion, the war on terrorism and international stability.”6 This article will address only the first three critical questions. The question of who controls the drones during their missions is attracting a great deal of attention. The use of drones by the Central Intelligence Agency (CIA) to conduct “signature strikes” is the most problematic factor in this matter. Between 2004 and 2013, CIA drone attacks in Pakistan killed up to 3,461—up to 891 of them civilians.7 Not only is the use of drones by the CIA the issue, but subcontracting operational control of drones to other civilian agencies is also causing great concern.8 Questions remain as to whether subcontractors were controlling drones during actual strike missions, as opposed to surveillance and reconnaissance activities. Nevertheless, the intense questioning of John O. Brennan, President Obama’s nominee for director of the CIA in February 2013, over drone usage, the secrecy of their controllers and orders, and the legality of their missions confirmed the level of concern America’s elected officials have regarding the legitimacy of drone use. Furthermore, perceptions and suspicions of illegal clandestine intelligence agency operations, already a part of the public and official psyche due to experiences from Vietnam, Iran-Contra, and Iraq II and the weapons of mass destruction debacle, have been reinforced by CIA management of drone capability. Recent revelations about the use of secret Saudi Arabian facilities for staging American drone strikes into Yemen did nothing to dissipate such suspicions of the CIA’s lack of legitimacy in its use of drones.9 The fact that the secret facility was the launching site for drones used to kill American citizens Anwar al-Awlaki and his son in September 2011, both classified by the CIA as al-Qaeda-linked threats to US security, only deepened such suspicions. Despite the fact that Gulf State observers and officials knew about American drones operating from the Arabian peninsula for years, the existence of the CIA base was not openly admitted in case such knowledge should “ . . . damage counter-terrorism collaboration with Saudi Arabia.”10 The fallout from CIA involvement and management of drone strikes prompted Senator Dianne Feinstein, Chairwoman of the Senate Intelligence Committee, to suggest the need for a court to oversee targeted killings. Such a body, she said, would replicate the Foreign Intelligence Surveillance Court, which oversees eavesdropping on American soil.11 Most importantly, such oversight would go a long way towards allaying fears of the drone usage lacking true political accountability and legitimacy. In addition, as with any use of force, drone strikes in overseas contingency operations can lead to increased attacks on already weak governments partnered with the United States. They can lead to retaliatory attacks on local governments and may contribute to local instability. Those actions occur as a result of desires for revenge and frustrations caused by the strikes. Feelings of hostility are often visited on the most immediate structures of authority—local government officials, government buildings, police, and the military.12 It can thus be argued that, at the strategic level, drone strikes are fuelling anti-American resentment among enemies and allies alike. Those reactions are often based on questions regarding the legality, ethicality, and operational legitimacy of those acts to deter opponents. Therefore, specifically related to the reaction of allies, the military legitimacy question arises if the use of drones endangers vital strategic relationships.13 One of the strategic relationships being affected by the drone legitimacy issue is that of the United States and the United Kingdom. Targeted killing, by drone strike or otherwise, is not the sole preserve of the United States. Those actions, however, attract more negative attention to the United States due to its prominence on the world’s stage, its declarations of support for human rights and democratic freedoms, and rule-of-law issues, all which appear violated by such strikes. This complexity and visibility make such targeted killings important for Anglo-American strategic relations because of the closeness of that relationship and the perception that Great Britain, therefore, condones such American activities. Because the intelligence used in such operations is seen by other nations as a shared Anglo-American asset, the use of such intelligence to identify and conduct such killings, in the opinion those operations.14 Finally, the apparent gap between stated core policies and values and the ability to practice targeted killings appears to be a starkly hypocritical and deceitful position internationally, a condition that once again makes British policymakers uncomfortable with being tarred by such a brush.15 The divide between US policy and action is exacerbated by drone technology, which makes the once covert practice of targeted killing commonplace and undeniable. It may also cause deep-rooted distrust due to a spectrum of legitimacy issues. Such questions will, therefore, undermine the US desire to export liberal democratic principles. Indeed, it may be beneficial for Western democracies to achieve adequate rather than decisive victories, thereby setting an example of restraint for the international order.16 The United States must be willing to engage and deal with drone-legitimacy issues across the entire spectrum of tactical, operational, strategic, and political levels to ensure its strategic aims are not derailed by operational and tactical expediency.

#### Heg without legitimacy causes violent transitions—voluntary limits on power maintain relative stability

Martin Griffiths January **2004**; Associate Professor and Head of School at School of Government and International Relations, Griffith University (coincidence, as it turns out) “BEYOND THE BUSH DOCTRINE: AMERICAN HEGEMONY AND WORLD ORDER” AUSTRALASIAN JOURNAL OF AMERICAN STUDIES www.anzasa.arts.usyd.edu.au/a.j.a.s/Articles/1\_04/Griffiths.pdf‎

In international relations, an established hegemony helps the cause of international peace in a number of ways. First, a hegemon deters renewed military competition and provides general security through its preponderant power. Second, a hegemon can, if it chooses, strengthen international norms of conduct. Third, a hegemon’s economic power serves as the basis of a global lending system and free trade regime, providing economic incentives for states to cooperate and forego wars for resources and markets. Such was the nature of British hegemony in the nineteenth century, hence the term Pax Britannica. After the Second World War, the United States has performed the roles that Britain once played, though with an even greater preponderance of power. Thus, much of the peace between democracies after World War Two can be explained by the fact that the political-military hegemony of the United States has helped to create a security structure in Europe and the Pacific conducive to peaceful interaction. Today, American hegemony is tolerated by many states in Europe and Asia, not because the United States is particularly liked, but because of the perception that its absence might result in aggression by aspiring regional hegemons. However, Chalmers Johnson has argued that this is a false perception promoted from Washington to silence demands for its military withdrawal from Japan and South Korea.8 It is true that hegemonic stability theory can be classified as belonging in the realist tradition because of its focus on the importance of power structures in international politics. The problem is that power alone cannot explain why some states choose to follow or acquiesce to one hegemon while vigorously opposing and forming counter-alliances against another hegemon. Thus when international relations theorists employ the concept of hegemonic stability, they supplement it with the concept of legitimacy.9 Legitimacy in international society refers simply to the perceived justice of the international system. As in domestic politics, legitimacy is a notoriously difficult factor to pin down and measure. Still, one cannot do away with the concept, since it is clear that all political orders rely to some extent on consent in addition to coercion. Hegemony without legitimacy is insufficient to deter violent challenges to the international order, and may provoke attempts to build counter-alliances against the hegemon. Hegemonic authority which accepts the principle of the independence of states and treats states with a relative degree of benevolence is more easily accepted. The legitimacy of American hegemony during the cold war was facilitated by two important characteristics of the era. First, the communist threat (whether real or imaginary) disguised the tension between the United States’ promotion of its own interests and its claim to make the world safe for capitalism.10 Second, American hegemony managed to combine economic liberalism between industrialised states with an institutional architecture (the Bretton Woods system) that moderated the volatility of transaction flows across borders. It enabled governments to provide social investments, safety nets and adjustment assistance at the domestic level.11 In the industrialised world, this grand bargain formed the basis of the longest and most equitable economic expansion in human history, from the 1950s to the 1980s. And it provided the institutional foundation for the newest wave of globalisation, which began not long thereafter and is far broader in scope and deeper in reach than its nineteenth century antecedent. The system that the United States led the way in creating after 1945 has fared well because the connecting and restraining aspects of democracy and institutions reduce the incentives for Western nations to engage in strategic rivalry or balance against American hegemony. The strength of this order is attested to by the longevity of its institutions, alliances and arrangements, based on their legitimacy in the eyes of the participants. Reacting against the closed autarchic regions that had contributed to the world depression and split the globe into competing blocs before the war, the United States led the way in constructing a post-war order that was based on economic openness, joint management of the Western political-economic order, and rules and institutions that were organised to support domestic economic stability and social security.12 This order in turn was built around a basic bargain: the hegemonic state obtains commitments from secondary states to participate in the international order, and the hegemon in return places limits on the exercise of its power. The advantage for the weak state is that it does not fear domination or abandonment, reducing the incentive to balance against the hegemon, and the leading state does not need to use its power to actively enforce order and compliance. It is these restraints on both sides and the willingness to participate in this mutual accord that explains the longevity of the system, even after the end of the cold war. But as the founder and defender of this international order, the United States, far from being a domineering hegemon, was a reluctant superpower.

#### That prevents great power war, economic collapse, and global governance failures

**Thayer 13**—PhD U Chicago, former research fellow at Harvard Kennedy School’s Belfer Center, political science professor at Baylor (Bradley, professor in the political science department at Baylor University, “Humans, Not Angels: Reasons to Doubt the Decline of War Thesis”, International Studies Review Volume 15, Issue 3, pages 396–419, September 2013, dml)

Accordingly, while Pinker is sensitive to the importance of power in a domestic context—the Leviathan is good for safety and the decline of violence—he neglects the role of power in the international context, specifically he neglects US power as a force for stability. So, if a liberal Leviathan is good for domestic politics, a liberal Leviathan should be as well for international politics. The primacy of the United States provides the world with that liberal Leviathan and has four major positive consequences for international politics (Thayer 2006). In addition to ensuring the security of the United States and its allies, American primacy within the international system causes many positive outcomes for the world. The first has been a more peaceful world. During the Cold War, US leadership reduced friction among many states that were historical antagonists, most notably France and West Germany. Today, American primacy and the security blanket it provides reduce nuclear proliferation incentives and help keep a number of complicated relationships stable such as between Greece and Turkey, Israel and Egypt, South Korea and Japan, India and Pakistan, Indonesia and Australia. Wars still occur where Washington's interests are not seriously threatened, such as in Darfur, but a Pax Americana does reduce war's likelihood—particularly the worst form—great power wars**.** Second, American power gives the United States the ability to spread democracy and many of the other positive forces Pinker identifies. Doing so is a source of much good for the countries concerned as well as the United States because liberal democracies are more likely to align with the United States and be sympathetic to the American worldview. In addition, once states are governed democratically, the likelihood of any type of conflict is significantly reduced. This is not because democracies do not have clashing interests. Rather, it is because they are more transparent, more likely to want to resolve things amicably in concurrence with US leadership. Third, along with the growth of the number of democratic states around the world has been the growth of the global economy. With its allies, the United States has labored to create an economically liberal worldwide network characterized by free trade and commerce, respect for international property rights, mobility of capital, and labor markets. The economic stability and prosperity that stems from this economic order is a global public good. Fourth, and finally, the United States has been willing to use its power not only to advance its interests but to also promote the welfare of people all over the globe. The United States is the earth's leading source of positive externalities for the world. The US military has participated in over 50 operations since the end of the Cold War—and most of those missions have been humanitarian in nature. Indeed, the US military is the earth's “911 force”—it serves, de facto, as the world's police, the global paramedic, and the planet's fire department. There is no other state, group of states, or international organizations that can provide these global benefits. Without US power, the liberal order created by the United States will end just as assuredly. But, the waning of US power, at least in relative terms, introduces additional problems for Pinker concerning the decline of violence in the international realm. Given the importance of the distribution of power in international politics, and specifically US power for stability, there is reason to be concerned about the future as the distribution of relative power changes and not to the benefit of the United States.

#### External court review maintains legitimacy – key to global stability

Knowles, 9 [Robert, Assistant Professor, NYU Law, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, p. lexis]

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy. The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436 Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438 At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440 The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiesnce, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige. Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449 Conclusion When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Intra-executive processes cause operational error

Chehab, 12 [Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review]

The practical, pragmatic justification for the COAACC derives largely from considering social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147 Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153 Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making. D. THE NEED FOR ACCOUNTABILITY CHECKS To check the vices of groupthink and shortcomings of human judgment, the psychology literature emphasizes a focus on accountability mechanisms in which a better reasoned decision-making process can flourish.156 By serving as a constraint on behavior, “accountability functions as a critical norm-enforcement mechanism—the social psychological link between individual decision makers on the one hand and social systems on the other.”157 Such institutional review can channel recognition for the need by government decision-makers to be more self-critical in policy targeted killing designations, more willing to consider alternative points of view, and more willing to anticipate possible objections.158 Findings have also shown that ex ante awareness can lead to more reasoned judgment while also preventing tendentious and ideological inclinations (and political motivations incentivized and exploited by popular hysteria and fear).159 Requiring accounting in a formalized way prior to engaging in a targeted killing—by providing, for example, in camera review, limited declassification of information, explaining threat assessments outside the immediate circle of policy advisors, and securing meaningful judicial review via a COAACC-like tribunal—can promote a more reliable and informed deliberation in the executive branch. With process-based judicial review, the COAACC could effectively reorient the decision to target individuals abroad by examining key procedural aspects—particularly assessing the reliability of the “terrorist” designation—and can further incentivize national security policy-makers to engage in more carefully reasoned choices and evaluate available alternatives than when subject to little to no review.

#### Op error strengthens armed insurgencies

Mayer 9 (Jane, critically acclaimed author and staff writer for the New Yorker, “The Predator War,” The New Yorker, 10-26, http://www.newyorker.com/reporting/2009/10/26/091026fa\_fact\_mayer)

Indeed, the history of targeted killing is marked by errors. In 1973, for example, Israeli intelligence agents murdered a Moroccan waiter by mistake. They thought that he was a terrorist who had been involved in slaughtering Israeli athletes at the Munich Olympics, a year earlier. And in 1986 the Reagan Administration attempted to retaliate against the Libyan leader Muammar Qaddafi for his suspected role in the deadly bombing of a disco frequented by American servicemen in Germany. The U.S. launched an air strike on Qaddafi’s household. The bombs missed him, but they did kill his fifteen-month-old daughter. The C.I.A.’s early attempts at targeting Osama bin Laden were also problematic. After Al Qaeda blew up the U.S. Embassies in Tanzania and Kenya, in August, 1998, President Bill Clinton retaliated, by launching seventy-five Tomahawk cruise missiles at a site in Afghanistan where bin Laden was expected to attend a summit meeting. According to reports, the bombardment killed some twenty Pakistani militants but missed bin Laden, who had left the scene hours earlier. The development of the Predator, in the early nineteen-nineties, was supposed to help eliminate such mistakes. The drones can hover above a target for up to forty hours before refuelling, and the precise video footage makes it much easier to identify targets. But the strikes are only as accurate as the intelligence that goes into them. Tips from informants on the ground are subject to error, as is the interpretation of video images. Not long before September 11, 2001, for instance, several U.S. counterterrorism officials became certain that a drone had captured footage of bin Laden in a locale he was known to frequent in Afghanistan. The video showed a tall man in robes, surrounded by armed bodyguards in a diamond formation. At that point, drones were unarmed, and were used only for surveillance. “The optics were not great, but it was him,” Henry Crumpton, then the C.I.A.’s top covert-operations officer for the region, told Time. But two other former C.I.A. officers, who also saw the footage, have doubts. “It’s like an urban legend,” one of them told me. “They just jumped to conclusions. You couldn’t see his face. It could have been Joe Schmo. Believe me, no tall man with a beard is safe anywhere in Southwest Asia.” In February, 2002, along the mountainous eastern border of Afghanistan, a Predator reportedly followed and killed three suspicious Afghans, including a tall man in robes who was thought to be bin Laden. The victims turned out to be innocent villagers, gathering scrap metal. In Afghanistan and Pakistan, the local informants, who also serve as confirming witnesses for the air strikes, are notoriously unreliable. A former C.I.A. officer who was based in Afghanistan after September 11th told me that an Afghan source had once sworn to him that one of Al Qaeda’s top leaders was being treated in a nearby clinic. The former officer said that he could barely hold off an air strike after he passed on the tip to his superiors. “They scrambled together an élite team,” he recalled. “We caught hell from headquarters. They said ‘Why aren’t you moving on it?’ when we insisted on checking it out first.” It turned out to be an intentionally false lead. “Sometimes you’re dealing with tribal chiefs,” the former officer said. “Often, they say an enemy of theirs is Al Qaeda because they just want to get rid of somebody. Or they made crap up because they wanted to prove they were valuable, so that they could make money. You couldn’t take their word.” The consequences of bad ground intelligence can be tragic. In September, a nato air strike in Afghanistan killed between seventy and a hundred and twenty-five people, many of them civilians, who were taking fuel from two stranded oil trucks; they had been mistaken for Taliban insurgents. (The incident is being investigated by nato.) According to a reporter for the Guardian, the bomb strike, by an F-15E fighter plane, left such a tangle of body parts that village elders resorted to handing out pieces of unidentifiable corpses to the grieving families, so that they could have something to bury. One Afghan villager told the newspaper, “I took a piece of flesh with me home and I called it my son.” Predator drones, with their superior surveillance abilities, have a better track record for accuracy than fighter jets, according to intelligence officials. Also, the drone’s smaller Hellfire missiles are said to cause far less collateral damage. Still, the recent campaign to kill Baitullah Mehsud offers a sobering case study of the hazards of robotic warfare. It appears to have taken sixteen missile strikes, and fourteen months, before the C.I.A. succeeded in killing him. During this hunt, between two hundred and seven and three hundred and twenty-one additional people were killed, depending on which news accounts you rely upon. It’s all but impossible to get a complete picture of whom the C.I.A. killed during this campaign, which took place largely in Waziristan. Not only has the Pakistani government closed off the region to the outside press; it has also shut out international humanitarian organizations like the International Committee for the Red Cross and Doctors Without Borders. “We can’t get within a hundred kilometres of Waziristan,” Brice de la Vingne, the operational coördinator for Doctors Without Borders in Pakistan, told me. “We tried to set up an emergency room, but the authorities wouldn’t give us authorization.” A few Pakistani and international news stories, most of which rely on secondhand sources rather than on eyewitness accounts, offer the basic details. On June 14, 2008, a C.I.A. drone strike on Mehsud’s home town, Makeen, killed an unidentified person. On January 2, 2009, four more unidentified people were killed. On February 14th, more than thirty people were killed, twenty-five of whom were apparently members of Al Qaeda and the Taliban, though none were identified as major leaders. On April 1st, a drone attack on Mehsud’s deputy, Hakimullah Mehsud, killed ten to twelve of his followers instead. On April 29th, missiles fired from drones killed between six and ten more people, one of whom was believed to be an Al Qaeda leader. On May 9th, five to ten more unidentified people were killed; on May 12th, as many as eight people died. On June 14th, three to eight more people were killed by drone attacks. On June 23rd, the C.I.A. reportedly killed between two and six unidentified militants outside Makeen, and then killed dozens more people—possibly as many as eighty-six—during funeral prayers for the earlier casualties. An account in the Pakistani publication The News described ten of the dead as children. Four were identified as elderly tribal leaders. One eyewitness, who lost his right leg during the bombing, told Agence France-Presse that the mourners suspected what was coming: “After the prayers ended, people were asking each other to leave the area, as drones were hovering.” The drones, which make a buzzing noise, are nicknamed machay (“wasps”) by the Pashtun natives, and can sometimes be seen and heard, depending on weather conditions. Before the mourners could clear out, the eyewitness said, two drones started firing into the crowd. “It created havoc,” he said. “There was smoke and dust everywhere. Injured people were crying and asking for help.” Then a third missile hit. “I fell to the ground,” he said. The local population was clearly angered by the Pakistani government for allowing the U.S. to target a funeral. (Intelligence had suggested that Mehsud would be among the mourners.) An editorial in The News denounced the strike as sinking to the level of the terrorists. The Urdu newspaper Jang declared that Obama was “shutting his ears to the screams of thousands of women whom your drones have turned into dust.” U.S. officials were undeterred, continuing drone strikes in the region until Mehsud was killed. After such attacks, the Taliban, attempting to stir up anti-American sentiment in the region, routinely claims, falsely, that the victims are all innocent civilians. In several Pakistani cities, large protests have been held to decry the drone program. And, in the past year, perpetrators of terrorist bombings in Pakistan have begun presenting their acts as “revenge for the drone attacks.” In recent weeks, a rash of bloody assaults on Pakistani government strongholds has raised the spectre that formerly unaligned militant groups have joined together against the Zardari Administration. David Kilcullen, a counter-insurgency warfare expert who has advised General David Petraeus in Iraq, has said that the propaganda costs of drone attacks have been disastrously high. Militants have used the drone strikes to denounce the Zardari government—a shaky and unpopular regime—as little more than an American puppet. A study that Kilcullen co-wrote for the Center for New American Security, a think tank, argues, “Every one of these dead non-combatants represents an alienated family, a new revenge feud, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased.” His co-writer, Andrew Exum, a former Army Ranger who has advised General Stanley McChrystal in Afghanistan, told me, “Neither Kilcullen nor I is a fundamentalist—we’re not saying drones are not part of the strategy. But we are saying that right now they are part of the problem. If we use tactics that are killing people’s brothers and sons, not to mention their sisters and wives, we can work at cross-purposes with insuring that the tribal population doesn’t side with the militants. Using the Predator is a tactic, not a strategy.” Exum says that he’s worried by the remote-control nature of Predator warfare. “As a military person, I put myself in the shoes of someone in fata”—Pakistan’s Federally Administered Tribal Areas—“and there’s something about pilotless drones that doesn’t strike me as an honorable way of warfare,” he said. “As a classics major, I have a classical sense of what it means to be a warrior.” An Iraq combat veteran who helped design much of the military’s doctrine for using unmanned drones also has qualms. He said, “There’s something important about putting your own sons and daughters at risk when you choose to wage war as a nation. We risk losing that flesh-and-blood investment if we go too far down this road.”

#### The impact is Middle East War and Pakistani collapse

Hussain 13 (Nazia, research scholar at the Terrorism, Transnational Crime and Corruption Center and a doctoral student at George Mason University, “Pakistan's Jihadi Problem and the Middle East,” Middle East Institute, 4-11, <http://www.mei.edu/content/pakistans-jihadi-problem-and-middle-east>)

Jihadi groups in Pakistan pose grave threats to the stability of the country and the surrounding region. Their operations and influence have extended from beyond the tribal areas to Pakistan’s cities. Along with countries such as Syria and Iraq, Pakistan has become a theater of doctrinal differences between Shia and Sunni Muslims, signifying that rifts between local groups have become linked to the wider violent sectarianism in the Middle East. This evolving composition of the “Jihadi problem” in Pakistan demonstrates that while jihadi groups may be based locally, their outlook is becoming increasingly transnational, and directly linked with the Middle East and the various conflicts raging within the region. The jihadi groups, mainly Tehreek-e-Taliban Pakistan (TTP) have become powerful enough to extend influence from beyond the tribal areas to major urban centers. Not only have they been operating in Quetta and Peshawar for some time, they are disbursing justice and instilling a reign of fear in Karachi, a city which contributes a quarter of Pakistan’s GDP. At the political level, this ease of functioning in Karachi is important as it means that they are in the process of displacing political parties such as Muttahida Qaumi Movement (MQM), Pakistan Peoples Party (PPP), and Awami National Party (ANP), thereby constricting political space for Pakistanis. In an open letter to Pakistanis, the TTP called upon them to boycott the elections as it would only mean a continuation of Western-style corrupt governance, but if they had to attend any political gatherings, to avoid those held by MQM, ANP, and PPP. The threats have worked to the effect that the secular ANP, which to date has represented Pashtuns in Pakistan, has been forced to go door-to-door for political canvassing, instead of holding political rallies. In Punjab, the sectarian Lashkar-e-Jhangvi (LeJ) has secured a political alliance with the ruling party of Pakistan Muslim League-Nawaz faction (PML-N), highlighting that it not only has a constituency that will vote for it, but also has political sway to forge a partnership with the ruling party. These developments point out that jihadi and sectarian groups have begun to command popular respect, and cannot be considered merely as foot soldiers of jihad that can be controlled by the state machinery. Slowly but surely, they are carving constituencies of support, instilling fear, or both, among the people of Pakistan. Adding to the conundrum, the ongoing Shia-Sunni conflict in the Middle East has spilled over into Pakistan. The trend of wreaking revenge on Pakistan’s Shia minority for ideological reasons as well as for the tactical purpose of avenging the suffering of Sunnis at the hands of the Alawite regime in Syria and the slights suffered under the Shia government in Iraq is disturbing. It manifests the fact that religious motivations of local sectarian groups are aligning with the interests of transnational entities such as Al Qaeda that believe in creating unrest in the already turbulent Syria and Iraq. Since the1980s, doctrinal differences between Sunnis and Shias have become a full-blown conflict in Pakistan. The country also has become a theater of competing ideologies of Sunni and Shia Islam, especially after the revolution in neighboring Iran. As a US diplomatic cable published by Wikileaks noted, an estimated $100 million a year from donors from the Gulf was supporting some of the hardline religious seminaries that have been responsible in creation of an extremist recruitment network in Punjab province. Vali Nasr traces the genesis of this problem in his book, The Shia Revival (p.160–162), pointing out that, ‘In the 1980s and the1990s, South Asia in general and Pakistan in particular served as the main battleground of the Saudi-Iranian and Sunni-Shia conflict. India and Pakistan were far more vulnerable to Shia assertiveness than the Arab countries...Pakistan was where Iran focused its attention first. There, as contrasted with the situation along the Iran-Iraq border, it would not be conventional war but rather ideological campaigns and sectarian inspired civil violence that would decide the outcome…The more aggressively Iran tried to influence the Shias of India and Pakistan, the more the Sunni ulama in those countries became determined to respond. After Iran organized Shia youth into student associations and supported the formation of a Pakistani Shia party modeled after Lebanon’s Amal, the Sunnis began to form sectarian militias recruited from madrassas across the country, including those that had been set up in the Pashtun region along the Afghan border to train fighters for the war against the Soviet Union. These militias enjoyed the backing not only of Islamabad but also of Riyadh and even for a time of Baghdad, as all three regimes saw Iranian influence in Pakistan as a strategic threat.” From the days of foreign governments supporting various factions to the use of the jihadi groups in India and Afghanistan, the situation has become even more complex. Different jihadi groups have not only become interlinked with each other for operational ease, they also share the goal of establishing an Islamic caliphate in Pakistan and beyond. In that respect, the dream of making Pakistan a truly Islamic state has become even more elusive. It can be argued that what these groups aspire for, in its distorted version, is striking at the heart of the ideological confusion that surrounded Pakistan and the possible role of Islam in its polity and society. Over the years, successive governments dabbled with the idea of finding a place for Islam in the new republic, but none did this more systematically than General Zia-ul-Haq. Not only was the use of Islam a useful tool to dilute the impact of populist appeal of Zulfiqar Ali Bhutto, it also provided a newborn constituency of Islamists and ulama to the Zia government. The new constituency of Islamists in Pakistan was further strengthened by support during the Afghan jihad days. The historical genesis of the jihadi groups is useful to understand, as it paints them as more than miscreants contributing to chaos in Pakistan, but more so, as people whose thinking and operations have been in the making for years. These groups, by their very actions, question the role of Islam ― and what version of Islam at that ― in the state of Pakistan. Furthermore, in their conception of Pakistan as an Islamic caliphate, and their worldview of not tolerating Shia interpretations of Islam, their actions are synchronizing with the current plight of Sunni brethren in the Middle East. In conclusion, the jihadi problem poses an existential problem not only in terms of the future of, and the role of Islam (and dominant interpretation of religion) in Pakistan, but is also connected to the Sunni-Shia conflict in the Middle East, as demonstrated in Iraq and Syria, and which threatens to affect other countries in the region as well. For policy makers in Pakistan and elsewhere, it is important to understand the nature of the “jihadi problem” as beyond the debate of terrorism and counterterrorism, and law and the absence of the rule of law. Hypothetically, neither can all Shias leave Pakistan, nor all extremist groups tried in courts of law. Instead, it is necessary to understand the multidimensional “jihadi problem” confronting Pakistan and the region. The links between national and transnational issues need to be recognized, in order to collaborate with Middle Eastern countries in preventing a Shia-Sunni conflagration that spans the length and breadth of the Muslim world. Lastly, policy makers should take into account the Pakistani people, who, if their loyalties are transferred to actors other than the state, can be the country’ undoing, or if their energies are harnessed, can provide the opportunity to turn things around. Pakistan needs to spend more on social sectors,[1] as well as improve governance throughout the country. If the government will not cater to the needs of the people, they will have no option but to seek sustenance from actors who will. That could prove tragic for Pakistan and dangerous for its immediate neighbors and the international community.

#### Goes nuclear

Michael O’Hanlon 5, senior fellow with the Center for 21st Century Security and Intelligence and director of research for the Foreign Policy program at the Brookings Institution, visiting lecturer at Princeton University, an adjunct professor at Johns Hopkins University, and a member of the International Institute for Strategic Studies

PhD in public and international affairs from Princeton, Apr 27 2005, “Dealing with the Collapse of a Nuclear-Armed State: The Cases of North Korea and Pakistan,” http://www.princeton.edu/~ppns/papers/ohanlon.pdf

Were Pakistan to collapse, it is unclear what the United States and like-minded states would or should do. As with North Korea, it is highly unlikely that “surgical strikes” to destroy the nuclear weapons could be conducted before extremists could make a grab at them. The United States probably would not know their location – at a minimum, scores of sites controlled by Special Forces or elite Army units would be presumed candidates – and no Pakistani government would likely help external forces with targeting information. The chances of learning the locations would probably be greater than in the North Korean case, given the greater openness of Pakistani society and its ties with the outside world; but U.S.-Pakistani military cooperation, cut off for a decade in the 1990s, is still quite modest, and the likelihood that Washington would be provided such information or otherwise obtain it should be considered small. If a surgical strike, series of surgical strikes, or commando-style raids were not possible, the only option would be to try to restore order before the weapons could be taken by extremists and transferred to terrorists. The United States and other outside powers might, for example, respond to a request by the Pakistani government to help restore order. Given the embarrassment associated with requesting such outside help, the Pakistani government might delay asking until quite late, thus complicating an already challenging operation. If the international community could act fast enough, it might help defeat an insurrection. Another option would be to protect Pakistan’s borders, therefore making it harder to sneak nuclear weapons out of the country, while only providing technical support to the Pakistani armed forces as they tried to quell the insurrection. Given the enormous stakes, the United States would literally have to do anything it could to prevent nuclear weapons from getting into the wrong hands. India would, of course, have a strong incentive to ensure the security of Pakistan’s nuclear weapons. It also would have the advantage of proximity; it could undoubtedly mount a large response within a week, but its role would be complicated to say the least. In the case of a dissolved Pakistani state, India likely would not hesitate to intervene; however, in the more probable scenario in which Pakistan were fraying but not yet collapsed, India’s intervention could unify Pakistan’s factions against the invader, even leading to the deliberate use of Pakistani weapons against India. In such a scenario, with Pakistan’s territorial integrity and sovereignty on the line and its weapons put into a “use or lose” state by the approach of the Indian Army, nuclear dangers have long been considered to run very high.

### Plan

#### The United States Federal Government should a limited ex ante judicial review process for targeted killing by drones.

### Solvency

#### Expansive jurisdiction solves, while maintaining sufficient operational flexibility

Gonzalez, 14 [Drones: The Power to Kill Alberto R. Gonzales, Former Counsel to the President and United States Attorney General under the George W. Bush Administration. Before joining the Bush Administration in Washington, the author served as then-Governor George W. Bush’s General Counsel, the Texas Secretary of State, and was later appointed to the Texas Supreme Court. The author is currently the Doyle Rogers Distinguished Chair of Law at Belmont University College of Law, and Counsel of the Nashville law firm of Waller Lansden. The author thanks Shellie Handelsman, J.D. Candidate, 2014, Belmont University College of Law, for her valuable assistance and recognizes the contribution of Christine Oberholtzer, J.D. Candidate, 2014, Belmont University College of Law. Copyright © 2013 by Alberto R. Gonzales]

The President may express concerns that involving a neutral decisionmaker unduly frustrates his ability to carry out his national security and foreign affairs responsibilities, and is neither required under the Constitution nor under Youngstown.441 He may object that this procedure would add a hurdle that hinders the Executive’s flexibility. 442 Such concerns are legitimate because enemy combatants hide in the shadows, and the U.S. may only have limited opportunities—a small window—to capture or kill them.443 Involving a third party such as a tribunal to decide the enemy combatant status of an American citizen targeted for a drone killing may limit the President’s ability to act quickly within that tiny window of opportunity against military targets.444 Yet these arguments are undercut by the reality that the Administration already employs a designation process that takes months to complete.445 Congress, by statute, could provide for expedited procedures for the tribunal in order to alleviate the risk that the President may be unable to act within a window of opportunity. However, increasing flexibility also increases the risk of enhanced judicial scrutiny. The more truncated the process, the more likely the procedures will be subject to attack in our courts on due process grounds. Some have suggested the creation of a special national security court to make the determination of whether an American citizen is an enemy combatant and therefore eligible to be killed by drone strike.446 While this would address some of the concerns about the current process, given the relatively few instances (we all hope) in which the Executive would be targeting an American citizen, perhaps a less expensive and more efficient alternative to creating a new layer of bureaucracy would be to use the existing Foreign Intelligence Surveillance Court (“FISC”). The Foreign Intelligence Surveillance Act (“FISA”)447 was enacted in 1978 to provide the executive branch with an appropriate means to investigate and counter foreign intelligence threats.448 FISA created a special process to be followed by the government in order to receive a court order authorizing a search or surveillance for foreign intelligence purposes.449 FISA requires that the Attorney General file an application that details the facts that lead to a finding of probable cause to believe a target meets the statutory requirements for surveillance under FISA.450 These applications are reviewed ex parte in a classified setting by one Article III judge specially appointed to the FISC by the Chief Justice of the United States.451 If the application meets the statutory requirements, then the judge must issue the order and the government may commence its search or surveillance.452 As Attorney General, I reviewed and approved hundreds of FISA applications, and I know completing and approving an application that satisfies the statutory requirements can be burdensome depending on the circumstances. In an age of instant communication, unfortunately a delay of just an hour can hinder the government’s ability to identify and stop terrorist plots. For this reason, FISA allows the Attorney General to authorize an Emergency FISA when Necessary, provided the Attorney General believes all statutory requirements under FISA are present, and provided further that the Attorney General submits an application to the FISC within a specified time.453 Because of their experience with surveillance requests, members of the executive branch already have experience dealing with the FISC in the national security context. Judges on the FISC already are accustomed to dealing with national security matters. Both lawyers and judges know the importance of acting with deliberate speed to protect our country, while protecting the rights of American citizens. Instead of creating a new court to determine if an American is an enemy combatant, Congress should expand the jurisdiction of the FISC for the limited purpose of establishing a new statutory framework outlining criteria for enemy combatants. Under this proposal, the Attorney General would submit an application detailing facts that satisfy the newly established statutory framework. If the FISC agrees, it would issue a finding that an American target is an enemy combatant. That judicial finding would be all the President would need by law from a neutral decisionmaker before executing a drone strike against that target.

#### Our procedural safeguard minimizes error and establishes credible signal

Somin, 13 [Ilya Somin Professor of Law HEARING ON “DRONE WARS: THE CONSTITUTIONAL AND COUNTERTERRORISM IMPLICATIONS OF TARGETED KILLING” TESTIMONY BEFORE THE UNITED STATES SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS April 23, 2013]

In my view, the use of targeted killings by drones is not inherently illegal or immoral. It is a legitimate weapon of war in the struggle against al Qaeda and associated terrorist groups. However, serious constitutional and other problems arise if the US government fails to take proper care to ensure that the use of drones is strictly limited to legitimate terrorist targets. These dangers are likely to be at their most severe in the admittedly rare cases involving American citizens. I would urge the Subcommittee and Congress generally to consider adopting procedural safeguards that would minimize the likelihood of erroneous or illegal drone strikes. One proposal that deserves serious consideration is the establishment of an independent court that would oversee drone strikes in advance. 2 I. WHY TARGETED KILLING IS NOT INHERENTLY ILLEGAL OR IMMORAL. The Authorization for the Use of Military Force enacted by Congress on September 14, 2001 authorizes the president to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”1 This is generally understood as creating a legal state of war between the United States and Al Qaeda and its allies. The Supreme Court has recognized this, describing the conflict we are engaged in as “the war with al Qaeda.”2 Similarly, President Obama, like President George W. Bush before him, has emphasized that “we are indeed at war with Al Qaeda and its affiliates.”3 Thus, all three branches of government have recognized that a state of war exists, and that therefore the United States is entitled to use all measures normally permitted in warfare against its enemies. In wartime, the individualized targeting of an enemy commander is surely both legal and moral. During World War II, for example, the United States targeted Japanese Admiral Isoruku Yamamoto, and the British and Czechs successfully targeted German SS General Reinhard Heydrich.4 Few if any serious commentators claim that these operations and others like them were either illegal or morally dubious. If it is permissible to individually target a uniformed enemy officer, such as Admiral Yamamoto in World War II, it is surely legitimate to do the same to the leader of a terrorist organization. Indeed, it would be perverse if terrorist leaders enjoyed greater protection against targeting than uniformed military officers. Unlike the latter, terrorists do not even pretend to obey the laws of war. And they deliberately endanger civilians by choosing not to wear distinctive uniforms. To give terrorists greater protection against targeted killing than that enjoyed by uniformed military personnel would in effect reward and incentivize illegal behavior that endangers innocent civilians by making it harder to distinguish them from combatants. In some ways, individual targeting of terrorist leaders is actually more defensible than mass targeting of their underlings. Leaders usually bear greater moral and legal responsibility for the activities of their groups than do low-level members. And, at least in some cases, individual targeting of leaders is less likely to inflict collateral damage on civilians than conventional attacks on groups. This analysis does not change if the enemy leader happens to be an American citizen. Surely the targeting of Admiral Yamamoto would not have become illegal or immoral if he had acquired dual US citizenship while living in the United States during the 1920s. As Justice Sandra Day O’Connor noted in her majority opinion for the Supreme Court in Hamdi v. Rumsfeld, “[a] citizen, no less than an alien, can be part of or supporting forces hostile to the United States or coalition partners and engaged in an armed conflict against the United States.”5 Benjamin Wittes of the Brookings Institution correctly points out that “Americans have fought in foreign armies against their country in numerous armed conflicts in the past, and their citizenship has never relieved them of the risks of that belligerency.”6 Most obviously, nearly all the combatants arrayed against US forces in the Civil War were American citizens. Yet that did not prevent the Union Army from targeting them with lethal force or make it illegal to do so. Giving American citizens who join terrorist organizations blanket immunity from individual targeting is also problematic because it would increase terrorists’ incentives to recruit Americans. Obviously, a terrorist leader who is immune from individually targeted attack can be more effective than one who is not. There is also no reason to believe that the use of drones for such targeting raises any greater moral or legal problems than the use of conventional weapons such as air strikes, attacks by ground forces, or artillery. Drones can, of course, be used in ways that are illegal, unethical, or unwise. For example, they could be used to deliberately target civilians. But the same is true of virtually every other weapon of war. Given the existence of a state of war, I believe that the Obama administration was correct to conclude in its recently released White Paper that it is legal for the government to target US citizens who are “senior operational leader[s] of al-Qa’ida or an associated force.”7 Some critics of the Administration White Paper focus on the possible weaknesses of the memo’s three additional requirements for the targeted killing of a US citizen: that “(1) an informed, high-level official of the US government has determined that the targeted individual poses an imminent threat of violent attack against the United States, (2) capture is infeasible and the United States continues to monitor whether capture becomes feasible, and (3) the operation would be conducted in a manner consistent with applicable law of war principles.”8 Law Professor Gerard Magliocca, for example, argues that “[t]he White Paper says that a citizen is eligible for death-by-drone when ‘an informed, high-level, official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States.’ In my opinion, this threshold is too low.”9 But the “imminent threat” test applies only to people located outside the United States who are “senior operational leaders of al-Qa’ida or an associated force,” not to just anyone who “an informed...official” believes to be a threat.10 In other words, the requirements that the target pose an “imminent threat” and cannot be captured are in addition to the requirement that he be a senior leader of Al Qaeda or one of its “associated forces.” Once this key point is recognized, many of the objections to the memo are weakened. Indeed, a senior al Qaeda leader likely qualifies as a legitimate target even if he does not pose an “imminent threat.” It was surely permissible to target Admiral Yamamoto even if the US did not have any proof that he was planning “imminent” military operations against US forces. The fact that he was a top enemy commander in an ongoing war was enough. Here as elsewhere, there is no good reason to give terrorist leaders greater immunity from attack than that enjoyed by uniformed military officers. Even when the use of targeted killing is both legal and moral, it is not always prudent and wise. In, many cases, it might be desirable to refrain from otherwise unproblematic strikes in order to avoid antagonizing civilian populations in the relevant region, or for other strategic reasons. Such considerations are extremely important, but probably best left to those with greater expertise on the relevant issues than I possess. I note them here only to emphasize that I do not claim that the US government should indiscriminately resort to the use of targeted killing in every instance where it might be legally permissible to do so. To the contrary, a prudent government should exercise great caution in ordering such operations. II. THE TARGETING DILEMMA. Although the targeting of genuine al Qaeda leaders is legally and morally unproblematic, the administration’s policy of targeted killing still raises serious questions. The key issue is whether we are following rigorous enough procedures to ensure that the people targeted by drone strikes really are members of terrorist organizations at war with the United States. A. Choosing Targets. Unfortunately, identifying al Qaeda leaders is a far more difficult task than identifying enemy officers in a conventional war. Precisely because terrorists do not wear uniforms and often do not have a clear command structure, it is easy to make mistakes. And where US citizens are involved, there is the danger that the government will target someone merely because that person is a political enemy of the current administration. Even if officials are acting entirely in good faith, there is still a serious risk that innocent people will be targeted in error. The DOJ White Paper does not even consider the question of how we decide whether a potential target really is a terrorist leader or not. But that is the most difficult and dangerous issue that must be considered. The problem is not an easy one. On the one hand, war cannot wait on elaborate judicial processes. And we usually cannot give a potential target an opportunity to contest his designation in court without tipping him off. On the other hand, it is both dangerous and legally problematic to give the president and his subordinates unconstrained power to designate American citizens as “terrorist leaders” and then target them at will. A drone strike aimed at American citizen without adequate evidence showing that he or she is a terrorist combatant raises serious constitutional problems. In particular, it is likely to violate the Due Process Clause of the Fifth Amendment, which forbids government deprivation of “life, liberty, or property without due process of law.”11 Legal scholars and jurists have spilled many barrels of ink debating the exact meaning of these words. But at the very least, they surely prevent the executive from unilaterally ordering the death of American citizen without at least some substantial proof that he is an enemy combatant, and perhaps an independent judicial determination thereof.12 As the Supreme Court has recognized, the Bill of Rights protects American citizens overseas, as well as domestically.13 Whether non-citizens are also entitled to the protection of the Due Process Clause when targeted beyond the boundaries of the United States is more disputable. Even though the text of the Amendment extends to all “persons,” some historical evidence suggests that the Due Process Clause was originally understood as not applying to foreigners outside US jurisdiction.14 The risk of either inadvertent or deliberate targeting of innocent people is heightened by the growing scale of targeted killing over the last several years. According to leading counterterrorism expert Peter Bergen, the Obama Administration conducted 283 drone strikes in Pakistan alone between 2009 and late 2012, more than six times as many as in the years of the George W. Bush administration.15 These strikes go well beyond targeting “senior” terrorists. Indeed, only 13% of them succeeded in killing a terrorist or “militant” leader.16 A recent analysis of government documents obtained by McClatchy Newspapers suggests that the vast majority of drone strikes under the Obama administration have been aimed at low-level al Qaeda and Taliban members.17 During a 12 month period ending in September 2011, McClatchy estimates that drone strikes in Pakistan killed some 482 people, of which only 8 were “senior al Qaida leaders” and 265 were low-level “militants.”18 Low- level terrorists and their allies are still legitimate targets. But the extension of the targeted killing program to cover such minor figures necessarily heightens the risk of error and abuse. A related challenge is the extension of targeted killings to cover radical Islamist groups that have few or no ties to al Qaeda or the Taliban. The AUMF only authorizes military action against “those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”19As Harvard Law School Professor and former head of the Office of Legal Counsel Jack Goldsmith points out, the AUMF “is a tenuous foundation for military action against newly threatening Islamist terrorist groups … that have ever-dimmer links to the rump al-Qaeda organization.”20 The difficulty of determining which groups are closely enough affiliated with al Qaeda to be covered by the AUMF also heightens the danger of error and abuse in target selection. In this testimony, I do not address the special issues raised by the potential use of targeted killings on American soil. But I agree with Attorney General Eric Holder’s recent statement indicating that the president does not “have the authority to use a weaponized drone to kill an American not engaged in combat on American soil.”21 B. Possible Institutional Safeguards. One partial solution to the problem of target selection would be to require officials to get advance authorization for targeting a United States citizen from a specialized court, similar to the FISA Court, which authorizes intelligence surveillance warrants for spying on suspected foreign agents in the United States. The specialized court could act faster than ordinary courts do and without warning the potential target, yet still serve as a check on unilateral executive power. In the present conflict, there are relatively few terrorist leaders who are American citizens. Given that reality, we might even be able to have more extensive judicial process than exists under FISA. Professor Amos Guiora of the University of Utah, a leading expert on legal regulation of counterterrorism operations with extensive experience in the Israeli military, has developed a proposal for a FISA-like oversight court that deserves serious consideration by this subcommittee, and Congress more generally.22 The idea of a drone strike oversight court has also been endorsed by former Secretary of Defense Robert Gates, who served in that position in both the Obama and George W. Bush administrations. Gates emphasizes that “some check 7 on the president’s ability to do this has merit as we look to the long-term future,” so that the president would not have the unilateral power of “being able to execute” an American citizen.23 We might even consider developing a system of judicial approval for targeted strikes aimed at non-citizens. The latter process might have to be more streamlined than that for citizens, given the larger number of targets it would have to consider. But it is possible that it could act quickly enough to avoid compromising operations, while simultaneously acting as a check on abusive or reckless targeting. However, the issue of judicial review for strikes against non-citizens is necessarily more difficult than a court that only covers relatively rare cases directed at Americans. Alternatively, one can envision some kind of more extensive due process within the executive branch itself, as advocated by Neal Katyal of the Georgetown University Law Center.24 But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lower-level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad. Whether targeting decisions are made with or without judicial oversight, there is also an important question of burdens of proof. How much evidence is enough to justify classifying you or me as a senior Al Qaeda leader? The administration memo does not address that crucial question either. Obviously, it is unrealistic to hold military operations to the standards of proof normally required in civilian criminal prosecutions. But at the same time, we should be wary of giving the president unfettered power to order the killing of citizens simply based on his assertion that they pose a threat. Amos Guiora suggests that an oversight court should evaluate proposed strikes under a “strict scrutiny standard” that ensures that strikes are only ordered based on intelligence that is “reliable, material and probative.”25 It is difficult for me to say whether this standard of proof is the best available option. But the issue is a crucial one that deserves further consideration. Ideally, we need a standard of proof rigorous enough to minimize reckless or abusive use of targeted killing, but not so high as to preclude its legitimate use. Neither judicial review nor any other oversight system can completely eliminate all errors from the system. Given the limitations of intelligence and the fallibility of human decision-makers, some mistakes are probably inevitable. The only way avoid all error is to ban targeted killing entirely. But that approach might actually lead to greater loss of innocent life overall, by making it more difficult to combat terrorism and by incentivizing policymakers to use military tactics that often cause greater loss of life than targeted drone strikes. What we can hope to achieve is an oversight system that greatly diminishes the risk of serious abuse: targeted killings that are undertaken recklessly or - worse still – for the deliberate purpose of eliminating people who do not pose any genuine threat, but are merely attacked because they are critics of the government, or otherwise attracted the wrath of policymakers. Overall, we should seek to establish procedural safeguards that provide a check on executive discretion without miring the process in prolonged litigation that makes it impossible to conduct operations in “real time.” We cannot achieve anything approaching perfection. But it is reasonable to hope that we can improve on the status quo. Judicial oversight can help ensure that we are targeting the right individuals. But courts are less likely to be effective in addressing the problem of defining the range of groups that we are at war with. Our enemies probably are not limited to individuals formally affiliated with al Qaeda, since that organization has a variety of allies that support it. But the AUMF is not broad enough to cover all radical Islamist groups everywhere, nor is it desirable that we wage war against all of them. Ultimately, only Congress can properly clarify the scope of the conflict we are engaged in. Like many commentators and legal scholars across the political spectrum, I hope that Congress enacts a framework statute defining the scope of the War on Terror, and regulating the use of targeted killing, including appropriate procedural safeguards. So far, however, it has not chosen to do. It may take a highly visible disaster such as the deliberate or clearly reckless targeting of an obviously innocent person, to stimulate appropriate legislative action. At that point, it may be too late to reverse either the resulting harm to innocent people or the damage to the public image and foreign policy interests of the United States. But I very much hope that such a conjecture is unduly pessimistic.

#### Executive lead role spurs mistrust and global opposition

Goldsmith, 13 [May 1st, Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law. He is the author, most recently, of Power and Constraint, How Obama Undermined the War on Terror http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism]

And so Barack Obama greatly expanded the secret war that George W. Bush began. In the fall of 2009, Obama approved a "long list" of new CIA paramilitary operation proposals, as well as CIA requests for more armed drones, more spies, and larger targeting areas in Pakistan. "The CIA gets what it wants," said the president, approving the CIA requests, and conveying what Mazzetti thinks was his first-term attitude toward the Agency. The Department of Defense also got most of what it wanted. Obama approved an initiative by General David Petraeus to expand "military spying activities throughout the Muslim world," and gave special operations forces "even broader authorities to run spying missions across the globe" than they possessed under the Bush administration. Mazzetti describes Obama's souped-up secret war as "the way of the knife," a reference to Obama counterterrorism czar (and now CIA director) John Brennan's claim that the administration had replaced the "hammer" of large deployments with the "scalpel" of secret pinpoint missions. Its most famous use was the Abbottabad raid to kill bin Laden. But its most enduring legacy is Obama's significant expansion of the CIA and JSOC drone-strike campaign against Al Qaeda and affiliates, especially in Pakistan and Yemen. In 2009, the Obama administration conducted more drone strikes in those countries than the Bush administration had done in the seven years after 9/11; and to date, it has conducted almost nine times more drone strikes there than its predecessor. The administration's most controversial drone strike came against an American citizen, Anwar al-Awlaki, a leader of Al Qaeda in the Arabian Peninsula, the Yemeni organization responsible for the failed Detroit "underwear bomb" attack on Christmas in 2009 and other attempted attacks against the United States. Government lawyers gave the green light to kill al-Awlaki in 2010, but the administration had no idea where in Yemen he was. By 2011, the CIA and JSOC both had spies on the ground in Yemen and were "running two distinct drone wars," with different targeting lists, from bases in Saudi Arabia (for the CIA) and Ethiopia and Djibouti (for JSOC). In the fall of 2011, in part because of prior JSOC targeting mistakes and in part because of the CIA's extraordinary successes in Pakistan, Obama tasked the CIA alone with finding and killing al-Awlaki. On September 30, a CIA Reaper drone fired on a convoy near the Saudi Arabian desert and completed the mission. At the end of president Obama's first term, Mazzetti remarks, Americans seemed "little concerned about their government's escalation of clandestine warfare." By that point Obama's way of the knife had both decimated the senior leadership of Al Qaeda and reversed the Republicans' traditional advantage on national security. "Ask Osama bin Laden and the 22 out of 30 top Al Qaeda leaders who have been taken off the field whether I engage in appeasement," said the boastful president in December 2011, flicking away Republican charges that he was soft on terrorism. "Or whoever is left out there, ask them about that," he added. But in the last few months the Obama administration's secret war—and especially its drone program—have come under attack on multiple fronts. In 2011, The Washington Post reported the CIA's counterterrorism chief bragging of his Al Qaeda strikes that "we are killing these sons of bitches faster than they can grow them now." It is unclear whether this statement is true today. The core Al Qaeda organization appears debilitated. But its affiliate organizations are operating in Somalia, Yemen, and Iraq. And powerful new affiliates appear to be springing up elsewhere, including Al Qaeda in the Islamic Maghreb in post-Qaddafi North Africa, and the Al Nusra Front in revolutionary Syria. Secrecy is the essence of the type of war that Obama has chosen to fight. In this light, questions about the strategic success of Obama's drone campaign, and his secret war more generally, are growing. "We cannot kill our way to victory," former Congresswoman Jane Harman, who was a member of the House Intelligence Committee, testified in a counterterrorism hearing last month. General Stanley McChrystal, who presided over JSOC from 2003 to 2008, made a similar point in a recent interview in Foreign Affairs. The "danger of special operating forces," he noted, is that "you get this sense that it is satisfying, it's clean, it's low risk, it's the cure for most ills." But history provides no example of "a covert fix that solved a complex problem," he continued, adding that a too-heavy reliance on drone strikes is also "problematic" because "it's not a strategy in itself; it's a short-term tactic." One reason McChrystal questions the strategic efficacy of heavy reliance on drones is that "inhabitants of that area and the world have significant problems watching Western forces, particularly Americans, conduct drone strikes inside the terrain of another country." Last summer, Pew Research reported "considerable opposition" in "nearly all countries," and especially in predominantly Muslim countries, to Obama's drone program. It also found that Lebanon, Egypt, Jordan, and Pakistan now had a less favorable attitude toward the United States than at the end of the Bush administration. And a Gallup poll in February found that 92 percent of the people in Pakistan disapprove of the American leadership and 4 percent approve—historically bad numbers for the United States that are largely attributable to the way of the knife. These are discouraging numbers for a president who hoped to diminish the terrorism threat by establishing "a new beginning between the United States and Muslims ... based upon mutual interest and mutual respect," as Obama said in Cairo in 2009. The president added in that speech that the United States during the Bush era had acted "contrary to our ideals," and he pledged to "change course." But as the polls abroad show, Obama's change of course has not made the world think better of American ideals. Ben Emmerson, a United Nations special rapporteur on counter-terrorism and human rights, recently suggested that some American drone attacks might be war crimes. Since he launched an investigation in January, he has noted that most nations "heavily disput[e]" the legal theory underlying Obama's stealth wars, and concluded that American drone strikes violate Pakistan's sovereignty, contrary to international law. Most Americans are little interested in the popularity abroad of the way of the knife. To date, they very strongly support what they know about the president's drone campaign against foreign terrorist suspects. Support for targeting American citizens such as Anwar al-Awlaki, however, has dropped, and the focus on American citizens is affecting other elements of the way of the knife. In large part this has resulted from the administration's stilted explanations about the legal limits on killing Americans and the secret processes for placing American suspects on target lists. When a less-than-convincing Justice Department white paper on the topic leaked to the press in February, it stoked suspicions that the administration had big plans and something to hide. Questions grew when the administration continued to withhold legal memos from Congress, and when John Brennan danced around the issue during his confirmation hearings to be director of the CIA. Senator Rand Paul then cleverly asked Brennan whether the president could order a drone to kill a terrorist suspect inside the United States. When Brennan and Attorney General Eric Holder seemed to prevaricate, Paul conducted his now-famous filibuster. "I cannot sit at my desk quietly and let the president say that he will kill Americans on American soil who are not actively attacking the country," Paul proclaimed. The president never said, or suggested, any such thing. But with trust in Obama falling fast, Paul was remarkably successful in painting the secret wars abroad as a Constitution-defying threat to American citizens at home. Paul's filibuster attracted attention to the issue of drone attacks on Americans in the homeland. A more serious challenge to the president comes from growing concerns, including within his own party, about the legal integrity of his secret wars abroad. Anne-Marie Slaughter, a former senior official in Obama's State Department, recently gainsaid "the idea that this president would leave office having dramatically expanded the use of drones—including [against] American citizens—without any public standards and no checks and balances." Many in Congress want to increase the transparency of the processes and legal standards for placing a suspect (especially an American) on a targeting list, to tighten those legal standards (perhaps by recourse to a "drone court"), and to establish a more open accounting of the consequences (including civilian casualties) from the strikes. "This is now out in the public arena, and now it has to be addressed," Senator Dianne Feinstein, a Democrat, recently said. Others in Congress worry about the obsolescence of the legal foundation for the way of the knife: the congressional authorization, in 2001, of force against Al Qaeda. "I don't believe many, if any, of us believed when we voted for [the authorization] that we were voting for the longest war in the history of the United States and putting a stamp of approval on a war policy against terrorism that, 10 years plus later, we're still using," said Senator Richard Durbin, also a Democrat, in a Wall Street Journal interview. "What are the checks and balances of the system?" he asked. Senator John McCain, who led bipartisan efforts against what he saw as Bush-era legal excesses, is now focusing similar attention on Obama. "I believe that we need to revisit this whole issue of the use of drones, who uses them, whether the CIA should become their own air force, what the oversight is, [and] what the legal and political foundations [are] for this kind of conflict," he said last month. These are unhappy developments for the president who in his first inaugural address pledged with supercilious confidence that, unlike his predecessor, he would not expend the "rule of law" for "expedience's sake." Obama reportedly bristles at the legal and political questions about his secret war, and the lack of presidential trust that they imply. "This is not Dick Cheney we're talking about here," he recently pleaded to Democratic senators who complained about his administration's excessive secrecy on drones, according to Politico. And yet the president has ended up in this position because he committed the same sins that led Cheney and the administration in which he served to a similar place. The first sin is an extraordinary institutional secrecy that Obama has long promised to reduce but has failed to. In part this results from any White House's inevitable tendency to seek maximum protection for its institutional privileges and prerogatives. The administration's disappointing resistance to sharing secret legal opinions about the secret war with even a small subset of Congress falls into this category. Much of what the administrat-ion says about its secret war seems incomplete, self-serving, and ultimately non-credible. But the point goes deeper, for secrecy is the essence of the type of war that Obama has chosen to fight. The intelligence-gathering in foreign countries needed for successful drone strikes there cannot be conducted openly. Nor can lethal operations in foreign countries easily be acknowledged. Foreign leaders usually insist on non-acknowledgment as a condition of allowing American operations in their territories. And in any event, an official American confirmation of the operations might spark controversies in those countries that would render the operations infeasible. The impossible-to-deny bin Laden raid was a necessary exception to these principles, and the United States is still living with the fallout in Pakistan. For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests. A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants. The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust. Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct. Administration officials resist this route because they worry about the outcome of the public debate, and because the president is, as The Washington Post recently reported, "seen as reluctant to have the legislative expansion of another [war] added to his legacy." But the administration can influence the outcome of the debate only by engaging it. And as Mazzetti makes plain, the president's legacy already includes the dramatic and unprecedented unilateral expansion of secret war. What the president should be worried about for legacy purposes is that this form of warfare, for which he alone is today responsible, is increasingly viewed as illegitimate.

#### Ex ante key – FISA critics miss the mark

Guiora, 12 [Targeted Killing: When Proportionality Gets All Out of Proportion, Amos N. Guiora. Professor of Law, S.J. Quinney College of Law, University of Utah, p. SSRN]

The unitary executive theory aggressively articulated, and implemented, by the Bush Administration has been adopted in toto by the Obama Administration. While the executive clearly prefers to operate in a vacuum, the question whether that most effectively ensures effective operational counterterrorism is an open question. The advantage of institutionalized, process-based input into executive action prior to decision implementation is worthy of discussion in operational counterterrorism. The solution to this search for an actionable guideline is the strict scrutiny standard. What is strict scrutiny, and how is it to be implemented in the context of operational counterterrorism? Why is there a need, if at all, for an additional standard articulating self-defense? The strict scrutiny standard would enable operational engagement of a non-state actor predicated on intelligence information that would meet admissibility standards akin to a court of law. The strict scrutiny test seeks to strike a balance enabling the state to act sooner but subject to significant restrictions. The ability to act sooner is limited, however, by the requirement that intelligence information must be reliable, viable, valid, and corroborated. The strict scrutiny standard proposes that for states to act as early as possible in order to prevent a possible terrorist attack the information must meet admissibility standards similar to the rules of evidence. The intelligence must be reliable, material, and probative. The proposal is predicated on the understanding that while states need to engage in operational counterterrorism, mistakes regarding the correct interpretation and analysis of intelligence information can lead to tragic mistakes. Adopting admissibility standards akin to the criminal law minimizes operational error. Rather than relying on the executive branch making decisions in a “closed world” devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information’s admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur. The logistics of this proposal are far less daunting than might seem—the court before which the executive would submit the evidence is the FISA Court. Presently, FISA Court judges weigh the reliability of intelligence information in determining whether to grant government ex parte requests for wire-tapping warrants. Under this proposal, judicial approval is necessary prior to undertaking a counterterrorism operation predicated solely on intelligence information. The standard the court would adopt in determining the information’s reliability is the same applied in the traditional criminal law paradigm. The intelligence must be reliable, material, and probative. While the model is different—a defense attorney cannot question state witnesses—the court will assume a dual role. In this dual role capacity the court will cross-examine the representative of the intelligence community and subsequently rule as to the information’s admissibility. While some may suggest that the FISA court is largely an exercise in “rubber-stamping,” the importance of the proposal is in requiring the government to present the available information to an independent judiciary as a precursor to engaging in operational counterterrorism. The call is complicated: the United States is a nation based on democratic values rooted in ethics and morals; yet, when push comes to shove the United States does not always act in accordance with these articulated principles. The vision of a “city upon a hill,” articulated by Puritan settler John Winthrop and subsequently referenced by President Ronald Reagan, 9 has been called into question by certain U.S. counterterrorism measures. This is not the first time that American responses in the face of crisis (whether real or perceived) have reflected “over-board” and “over-broad” approaches.10

#### Drone court key

Chow, 13 [Droning On: The Need to Establish a New Norm, Eugene K. Chow Former Executive Editor, Homeland Security NewsWire, http://www.huffingtonpost.com/eugene-k-chow/establish-new-constitutional-norm\_b\_2683131.html]

Contrary to what some have argued that the president requires full and unadjudicated control of the CIA's drone program for the swift execution of military operations to safeguard the nation, the proposed drone court or some form of Congressional oversight would not necessarily slow down the government's ability to wage war. Before that fateful button is pressed and Hellfire missiles go streaking toward an enemy combatant, thousands of [hu]man-hours are poured into gathering intelligence, assessing threats, and monitoring their movements. In all that time building up to that final moment, why can we not spare a few extra minutes for a Congressional committee, a judge, or a panel to determine if an American ought to be killed or not? Let us remember that the measure of a democratic society is not how it treats its best, but its worst. In the war against violent extremism, our government has already established a precedent for additional oversight. Following the Hamdi v. Rumsfeld decision, the Pentagon created Combatant Status Review Tribunals to determine if captured enemies on the battlefield had been properly designated as "enemy combatants." So it is not a question of whether the government can establish additional layers of oversight to ensure transparency, accountability, and the protection of Constitutional rights, but rather do we have the will. Now that a perpetual war, waged on an omnipresent battlefield, and drones capable of automatically monitoring every single moving object within 65 square miles and firing death-dealing missiles with a click of the button have become commonplace - it is high time we put into place laws and parameters that clearly define this new norm.

#### Ex ante review key to improve targeting and legitimize the program

McKelvey, 11 [Benjamin, JD Candidate, Senior Editorial Board, Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>]

A. Option One: Congress Could Pass Legislation to Establish Screening and Oversight of Targeted Killing As the Aulaqi case demonstrates, any resolution to the problem of targeted killing would require a delicate balance between due process protections and executive power.204 In order to accomplish this delicate balance, Congress can pass legislation modeled on the Foreign Intelligence Surveillance Act (FISA) that establishes a federal court with jurisdiction over targeted killing orders, similar to the wiretapping court established by FISA.205 There are several advantages to a legislative solution. First, FISA provides a working model for the judicial oversight of real-time intelligence and national security decisions that have the potential to violate civil liberties.206 FISA also effectively balances the legitimate but competing claims at issue in Aulaqi: the sensitive nature of classified intelligence and national security decisions versus the civil liberties protections of the Constitution.207 A legislative solution can provide judicial enforcement of due process while also respecting the seriousness and sensitivity of executive counterterrorism duties.208 In this way, congress can alleviate fears over the abuse of targeted killing without interfering with executive duties and authority. Perhaps most importantly, a legislative solution would provide the branches of government and the American public with a clear articulation of the law of targeted killing.209 The court in Aulaqi began its opinion by explaining that the existence of a targeted killing program is no more than media speculation, as the government has neither confirmed nor denied the existence of the program.210 Congress can acknowledge targeted killing in the light of day while ensuring that it is only used against Americans out of absolutenecessity.211 Independent oversight would promote the use of all peaceful measures before lethal force is pursued.212 i. FISA as an Applicable Model FISA is an existing legislative model that is applicable both in substance and structure.213 FISA was passed to resolve concerns over civil liberties in the context of executive counterintelligence.214 It is therefore a legislative response to a set of issues analogous to the constitutional problems of targeted killing.215 FISA also provides a structural model that could help solve the targeted killing dilemma.216 The FISA court is an example of a congressionally created federal court with special jurisdiction over a sensitive national security issue.217 Most importantly, FISA works. Over the years, the FISA court has proven itself capable of handling a large volume of warrant requests in a way that provides judicial screening without diminishing executive authority.218 Contrary to the DOJ’s claims in Aulaqi, the FISA court proves that independent judicial oversight is institutionally capable of managing real-time executive decisions that affect national security.219 The motivation for passing FISA makes this an obvious choice for a legislative model to address targeted killing. With FISA, Congress established independent safeguards and a form of oversight in response to President Nixon’s abusive wiretapping practices.220 The constitutional concern in FISA involved the violation of Fourth Amendment privacy protections by excessive, unregulated executivepower.221 Similarly, the current state of targeted killing law allows for executive infringement on Fifth Amendment due process rights. Although there is no evidence of abusive or negligent practices of targeted killing, the main purpose of congressional intervention is to ensure that targeted killing is conducted only in lawful circumstances after a demonstration of sufficient evidence. Finally, a FISA-style court is a potentially effective possibility because it would provide ex ante review of targeted killing orders, and the pre-killing stage is the only stage during which judicial review would be meaningful.222 In the context of targeted killing, due process is not effective after the decision to deprive an American of life has already been carried out. Pre-screening targeted killing orders is a critical component of judicial oversight. Currently, this screening is conducted by a team of attorneys at the CIA.223 Despite assurances that review of the evidence against potential targets is rigorous and careful, due process is best accomplished through independent judicial review.224 The FISA court provides a working model for judicial review of real-time requests related to national security.225 FISA also established the requisite level of probable cause for clandestine wiretapping and guidelines for the execution and lifetime of the warrant, whereas the legal standards used by the CIA’s attorneys are unknown.226 The only meaningful way to ensure that Americans are not wrongfully targeted with lethal force is to screen the evidence for the decision and to give ultimate authority to an impartial judge with no institutional connection to the CIA.

#### Formal judicial oversight key – balances resolve with restraint

NYT, 10 [“Lethal Force under Law”, New York Times, <http://www.nytimes.com/2010/10/10/opinion/10sun1.html>]

The drone program has been effective, killing more than 400 Al Qaeda militants this year alone, according to American officials, but fewer than 10 noncombatants. But assassinations are a grave act and subject to abuse — and imitation by other countries. The government needs to do a better job of showing the world that it is acting in strict compliance with international law. The United States has the right under international law to try to prevent attacks being planned by terrorists connected to Al Qaeda, up to and including killing the plotters. But it is not within the power of a commander in chief to simply declare anyone anywhere a combatant and kill them, without the slightest advance independent oversight. The authorization for military force approved by Congress a week after 9/11 empowers the president to go after only those groups or countries that committed or aided the 9/11 attacks. The Bush administration’s distortion of that mandate led to abuses that harmed the United States around the world. The issue of who can be targeted applies directly to the case of Anwar al-Awlaki, an American citizen hiding in Yemen, who officials have admitted is on an assassination list. Did he inspire through words the Army psychiatrist who shot up Fort Hood, Tex., last November, and the Nigerian man who tried to blow up an airliner on Christmas? Or did he actively participate in those plots, and others? The difference is crucial. If the United States starts killing every Islamic radical who has called for jihad, there will be no end to the violence. American officials insist that Mr. Awlaki is involved with actual terror plots. But human rights lawyers working on his behalf say that is not the case, and have filed suit to get him off the target list. The administration wants the case thrown out on state-secrets grounds. The Obama administration needs to go out of its way to demonstrate that it is keeping its promise to do things differently than the Bush administration did. It must explain how targets are chosen, demonstrate that attacks are limited and are a last resort, and allow independent authorities to oversee the process. PUBLIC GUIDELINES The administration keeps secret its standards for putting people on terrorist or assassination lists. In March, Harold Koh, legal adviser to the State Department, said the government adheres to international law, attacking only military targets and keeping civilian casualties to an absolute minimum. “Our procedures and practices for identifying lawful targets are extremely robust,” he said in a speech, without describing them. Privately, government officials say no C.I.A. drone strike takes place without the approval of the United States ambassador to the target country, the chief of the C.I.A. station, a deputy at the agency, and the agency’s director. So far, President Obama’s system of command seems to have prevented any serious abuses, but the approval process is entirely within the administration. After the abuses under President Bush, the world is not going to accept a simple “trust us” from the White House. There have been too many innocent people rounded up for detention and subjected to torture, too many cases of mistaken identity or trumped-up connections to terror. Unmanned drones eliminate the element of risk to American forces and make it seductively easy to attack. The government needs to make public its guidelines for determining who is a terrorist and who can be targeted for death. It should clearly describe how it follows international law in these cases and list the internal procedures and checks it uses before a killing is approved. That can be done without formally acknowledging the strikes are taking place in specific countries. LIMIT TARGETS The administration should state that it is following international law by acting strictly in self-defense, targeting only people who are actively planning or participating in terror, or who are leaders of Al Qaeda or the Taliban — not those who raise funds for terror groups, or who exhort others to acts of terror. Special measures are taken before an American citizen is added to the terrorist list, officials say, requiring the approval of lawyers from the National Security Council and the Justice Department. But again, those measures have not been made public. Doing so would help ensure that people like Mr. Awlaki are being targeted for terrorist actions, not their beliefs or associations. A LAST RESORT Assassination should in every case be a last resort. Before a decision is made to kill, particularly in areas away from recognized battlefields, the government needs to consider every other possibility for capturing the target short of lethal force. Terrorists operating on American soil should be captured using police methods, and not subject to assassination. If practical, the United States should get permission from a foreign government before carrying out an attack on its soil. The government is reluctant to discuss any of these issues publicly, in part to preserve the official fiction that the United States is not waging a formal war in Pakistan and elsewhere, but it would not harm that effort to show the world how seriously it takes international law by making clear its limits. INDEPENDENT OVERSIGHT Dealing out death requires additional oversight outside the administration. Particularly in the case of American citizens, like Mr. Awlaki, the government needs to employ some due process before depriving someone of life. It would be logistically impossible to conduct a full-blown trial in absentia of every assassination target, as the lawyers for Mr. Awlaki prefer. But judicial review could still be employed. The government could establish a court like the Foreign Intelligence Surveillance Court, which authorizes wiretaps on foreign agents inside the United States. Before it adds people to its target list and begins tracking them, the government could take its evidence to this court behind closed doors — along with proof of its compliance with international law — and get the equivalent of a judicial warrant in a timely and efficient way. Congressional leaders are secretly briefed on each C.I.A. attack, and say they are satisfied with the information they get and with the process. Nonetheless, that process is informal and could be changed at any time by this president or his successors. Formal oversight is a better way of demonstrating confidence in American methods. Self-defense under international law not only shows the nation’s resolve and power, but sends a powerful message to other countries that the United States couples drastic action with careful judgment.

## 2AC

### AT: Circumvention (2ac)

#### No motive for circumvention

CS Monitor, 13 [Would a US 'drone court' to authorize drone strikes be a good idea? (+video)<http://www.csmonitor.com/USA/DC-Decoder/2013/0524/Would-a-US-drone-court-to-authorize-drone-strikes-be-a-good-idea-video>]

Among the striking moments in President Obama’s national security speech this week, in which he argued it's time to wean America off its nation-at-war mentality, was his apparent receptiveness to the idea of establishing a “drone court" as a check on the use of those weapons. stories Called “kill courts” by critics, the proceedings in these proposed courtrooms would determine whom US forces can legally kill via drone strikes. They presumably would operate much the way that Foreign Intelligence Surveillance Act (FISA) courts do now. Since 1978, these courts have been convened secretly to approve government wiretapping operations on US soil. Until recently, drone strikes rose steadily under Mr. Obama. In 2010, there were 122 of them in Pakistan, killing some 849 people, according to a report by the New America Foundation, a Washington, D.C., think tank. In 2012, such strikes in Pakistan dropped to 50, killing about 306 people. Civilian casualties as a result of drone attacks have also been reduced, according to the foundation. “That is partly the result of a sharply reduced number of drone strikes in Pakistan – 12 so far in 2013, compared with a record 122 in 2010 – and also more precise targeting,” according to its report. The casualty rate for civilians and “unknowns” – in other words, people who are not identified definitively as either militants or civilians – was roughly 40 percent under President George W. Bush. It is now 16 percent, according to the foundation. The proliferation of drone strikes in recent years prompts a much greater need for oversight, say critics of the drone program, echoing warnings against what Obama characterized on Thursday as a “boundless war on terror.” “Perpetual war – through drones or special forces or troops deployments – will prove self-defeating and alter our country in troubling ways,” Obama said. He nonetheless defended drone strikes as pivotal to eliminating Al Qaeda leaders. Looking into the future, Obama opened the door to the possibility of a “drones court” to increase oversight of the weapons' use. “The establishment of a special court to evaluate and authorize lethal action has the benefit of bringing a third branch of government into the process,” he said in his speech. But he also sounded a cautionary note, saying such a court would raise "constitutional issues about presidential and judicial authority.” The courts could help increase accountability, as will having more drone strikes under the auspices of the US military, rather than under the Central Intelligence Agency – a change the White House has indicated it will make. "It puts drone targeting within a well-established process, with rules of engagement, legal review, oversight, and a post-strike review process," says Mark Jacobson, senior transatlantic fellow at the German Marshall Fund of the United States.

#### And, it still spurs better decision making and solves the advantages

Wexler, 13 [The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests, Lesley Wexler, Professor of Law and Thomas A. Mengler Faculty Scholar, 3rd Speaker and semifinalist 1998 National Debate Tournament, p. SSRN]

Introduction The current practice of using drones to engage in overseas killings raises difficult legal questions with incredibly high stakes. The fate of potential targets and collateral damage hangs in the balance along with grave concerns about national and foreign security. Over the past decade, expansive deference to the executive branch has allowed a substantial increase in the number and rate of drone strikes. The use of drones for targeted killing is becoming a regular tool of the U.S. government and perhaps will become so for other governments as well. What role, if any, do courts have to play in regulating this practice? Critics of the status quo would like greater transparency and accountability in regards to targeted killings. In addition to constitutional concerns, some worry the executive branch is violating International Humanitarian Law (IHL). They want the executive branch to reveal its legal under-standings of IHL. They also seek greater information regarding review processes for targeted kill-ings as to both prospective listings and retrospective assessments of compliance. These skeptics contend that the lack of judicial oversight and the opacity of the government’s legal position risks the deaths of innocent foreign civilians, violates democratic accountability norms, erodes our compliance reputation with allies, and helps recruit a new generation of anti-American insurgents. Even if the current approach is lawful, many worry about future administrations or other governments that may adopt drone strikes without sufficient IHL protections. //As this chapter describes, some of these critics have proposed the use of courts to foster either transparency or accountability or both. In contrast, many, including the executive and judicial branches themselves, believe that the judicial role regarding drone strikes and targeted killings should be a minimal one. They suggest that an active court reviewing names of those to be targeted, providing damages to victims of un-lawful strikes, or demanding agencies declassify information on drone strikes would compromise an effective strategy in the war on terror. They fear judicial intervention would pose great danger to U.S. soldiers, foreign civilians, and in worst case scenarios, to U.S. citizens at home without en-hancing IHL compliance. In particular, executive branch officials have argued that greater transpar-ency may compromise intelligence efforts, provide targets with additional opportunities to act stra- 3 tegically, and sour relations with states currently willing to provide sub rosa permission for strikes. Meanwhile, these court opponents suggest that sufficient internal and congressional oversight can prevent unlawful activity. They also push back on the opacity charge by noting the information pro-vided through a series of high-level administration speeches and unacknowledged leaks. The U.S. judiciary itself is often reluctant to aggressively intervene in national security mat-ters and other legal issues arising out of armed conflicts. Federal courts frequently employ a variety of procedural postures and substantive doctrines to avoid deciding live IHL controversies. But the judicial branch sometimes surprises, as when the Supreme Court spoke to detention policy and its relationship to IHL in the trio of war on terror cases Hamdi,1 Hamdan,2 and Boumediene.3 U.S. courts might look to other countries, like Israel, whose courts have ruled on targeted killings and issued guidelines informed by IHL to govern future behavior.4 This chapter suggests the judiciary may play an important role in the debate over the executive branch’s decisions regarding IHL even if it declines to speak to the substance of such cases. First, advocates may use courts as a visible platform in which to make their arguments and spur conversations about alternative, non-judicially mandated transparency and accountability measures. As they did with the trio of detention cases, advocates can leverage underlying constitutional concerns about the treatment of citizens to stimulate interest in the larger IHL issues. Second, litigants may use courts to publicize and pursue Freedom of Information (FOIA) requests and thus enhance transparency. Even if courts decline to grant FOIA requests, the lawsuits can generate media attention about what remains undisclosed. Third, and most robustly, Congress may pass legislation that would facilitate either prospective review of kill lists through a so-called drone court or remove procedural barriers to retrospective damage suits for those unlawfully killed by a drone strike. Even the threat of such a judicial role may influence executive branch behavior.

### 2ac signing statements

#### Signing statements lead to more enforcement

**Evans, 13** – Kevin, Assistant Professor in the Department of Politics and International Relations at Florida International University (“Why the Obama Administration Has Issued Fewer Signing Statements,” Miller Center, 2/4/13, <http://millercenter.org/blog/obama-administration-signing-statements-evans> //Red)

The Obama administration has only issued 22 statements during his first term. While these statements are chock-full of constitutional challenges (Obama’s most recent NDAA signing statement challenges more than 20 sections of law on constitutional grounds), the lack of frequency with which the administration issues them **leaves Obama nowhere close to Bush** in terms of the number of provisions challenged over a similar timeframe. Why have we seen fewer signing statements during the Obama administration? (Side note: anyone interested in this question should keep their eyes peeled for the work of Joel Sievert and Ian Ostrander who recently presented an interesting paper on this topic at the annual meeting of the Southern Political Science Association.) Roughly speaking, the decline of the signing statement during the Obama administration can be attributed to four interrelated problems that President Obama has faced when aspiring to use this tool: 1. The post-Bush sensitivity problem. President Bush’s use of signing statements to challenge provisions of law was unprecedented in nature. Charlie Savage’s Pulitzer Prize winning **coverage of signing statements in The Boston Globe and challenges from legislators helped to raise the public profile of signing statements** to all new heights. As a result, these statements became an important symbol of abused power for many observers. When President Obama came into office he vowed to continue the practice with “caution and restraint, based only on interpretations of the Constitution that are well founded.” Nonetheless, not everyone saw his actions as being in accordance with those principles. With every new signing statement came another New York Times article; **the signing statement was no longer the quiet and obscure tool of unilateral power** that it once was. 2. The YouTube problem. During the 2008 presidential election, candidate Obama did not do himself any favors when he spoke about signing statements. Some of his campaign’s signals were mixed. One exchange in particular has been particularly useful for critics of the administration: Audience member: “When Congress offers you a bill do you promise not to use presidential signage [sic] to get your way?” Obama: “Yes…” [He follows this with an explanation of checks and balances, the veto, and his view of the Bush administration’s signing statements.] Obama: “…we’re not going to use signing statements as a way of doing an end run around Congress…” As a result of this exchange the use of signing statements has become a bit more of a nuisance for the administration. Every time a statement is used that contains constitutional challenges, YouTube videos of this exchange pop up on blogs and news stories around the Internet. Another example comes from President Obama’s response to Charlie Savage’s executive power survey in December of 2007. Here the message is a bit mixed, but ultimately the reader is left with the impression that Obama will use signing statements, but that he will not use them in the same manner as the Bush administration. Obama asserts, “No one doubts that it is appropriate to use signing statements to protect a president's constitutional prerogatives; unfortunately, the Bush Administration has gone much further than that.” In the end, the campaign left enough ambiguity for the president to be easily framed as hypocritical once he started issuing signing statements. 3. The fire-alarm problem. Research has shown (gated; earlier ungated version) **that the use of signing statements stimulates congressional oversight.** It is entirely possible that the Obama administration decided to use other tools of the presidency to avoid the increased scrutiny and publicity (Garvey suggests [gated] that “other interpretive mechanisms” like Statements of Administration Policy and opinions from the Office of Legal Counsel might serve as a partial substitute).

### 2ac legitimacy key

#### Legitimacy’s key to hegemony – economic and military might is limited

Cohen 14 (Michael A., Fellow – Century Foundation, “Hypocrisy Hype: Can Washington Still Walk and Talk Differently?/Farrell and Finnemore Reply,” Foreign Affairs, 93(2), March/April, ProQuest)

Cohen argues that other countries are hypocritical. We agree. American hypoc- risy has not become more problematic because other governments are sincerely outraged by Washington's behavior (although some foreign officials are genuinely shocked and unhappy). Rather, the real trouble is that the hypocrisies of the United States and those of other countries no longer reinforce each other. As we argued in our essay, countries that used to prefer to turn a blind eye to objectionable American behavior can now no longer ignore it. One case in point is Brazil's reaction to the revelations of nsa spying on its state-owned oil company, Petrobras. Brazilian President Dilma Rousseff would likely have preferred to pretend that the spying had not happened, so that she could continue to build economic ties with Washington. But public anger at the revelations in Brazil led her to aggressively curtail relations and introduce legislation forbidding the export of Brazilians' personal data overseas. This reaction is, of course, hypocritical. But Brazilian hypocrisy now cuts against U.S. hypocrisy rather than reinforcing it, by highlighting the contradiction between U.S. exhortations for a free and open Internet and its exploitation of that openness to compromise foreign computer systems. European outrage at nsa spying is partly for show. European governments have their own spies and sometimes monitor their own citizens in intrusive ways. Yet the current outrage reflects genuine anger among citizens and is likely to have far-reaching consequences. Forth- coming European legislation will likely mandate harsh penalties for American firms that share the personal data of Europeans with the U.S. government, a restriction that will likely lead to a major transatlantic confrontation. U.S. President Barack Obama has described eu-U.S. electronic information-sharing arrangements as crucial to counterter- rorism. Thanks to the scandal prompted by Snowden's leaks, such arrangements are now threatened. U.S. hegemony rests on military force and economic might as well as hypocrisy. Yet armies and money only go so far. Even the most powerful states need to persuade and exhort as well as impose. Over time, revelations of U.S. hypocrisy will tend to corrode this form of soft power. The United States will encounter increased resistance from allies, as advocates for civil liberties in other democracies decry American hypocrisy and stoke public outrage. Washington's adversaries will use evidence of American hypocrisy as ammunition in their attacks on the U.S.-led liberal order. Finally, the decentralized international com- munity that establishes the Internet's technical standards will embrace stronger cryptography, which will make the nsa's surveillance far more difficult and costly.

### 2ac lashout

#### Decline ensures lash out – precludes resolution to collective action problems

Beckley, 12 [The Unipolar Era: Why American Power Persists and China’s Rise Is Limited, Assistant Professor of Political Science at Tufts University and a U.S. Foreign Policy and International Security fellow at Dartmouth's Dickey, p. online]

One danger is that declinism could prompt trade conflicts and immigration restrictions. The results of this study suggest that the United States benefits immensely from the free flow of goods, services, and people around the globe; this is what allows American corporations to specialize in high-­‐value activities, exploit innovations created elsewhere, and lure the brightest minds to the United States, all while reducing the price of goods for U.S. consumers. Characterizing China’s export expansion as a loss for the United States is not just bad economics; it blazes a trail for jingoistic and protectionist policies. It would be tragically ironic if Americans reacted to false prophecies of decline by cutting themselves off from a potentially vital source of American power. Another danger is that declinism may impair foreign policy decision-­‐making. If top government officials come to believe that China is overtaking the United States, they are likely to react in one of two ways, both of which are potentially disastrous. The first is that policymakers may imagine the United States faces a closing “window of opportunity” and should take action “while it still enjoys preponderance and not wait until the diffusion of power has already made international politics more competitive and unpredictable.”315 This belief may spur positive action, but it also invites parochial thinking, reckless behavior, and preventive war.316 As Robert 315 Charles A. Kupchan, “Hollow Hegemony or Stable Multipolarity?” in G. John Ikenberry, ed., America Unrivaled: The Future of the Balance of Power (Ithaca, N.Y.: Cornell University Press, 2002), p. 68. 316 Jack S. Levy, “Declining Power and the Preventive Motive for War,” World Politics, Vol. 40, No. 1 (October 1987), pp. 82-­‐107. Chapter 6 196 Gilpin and others have shown, “hegemonic struggles have most frequently been triggered by fears of ultimate decline and the perceived erosion of power.”317 By fanning such fears, declinists may inadvertently promote the type of violent overreaction that they seek to prevent. The other potential reaction is retrenchment – the divestment of all foreign policy obligations save those linked to vital interests, defined in a narrow and national manner. Advocates of retrenchment assume, or hope, that the world will sort itself out on its own; that whatever replaces American hegemony, whether it be a return to balance-­‐of-­‐power politics or a transition to a post-­‐power paradise, will naturally maintain international order and prosperity. But order and prosperity are unnatural. They can never be presumed. When achieved, they are the result of determined action by powerful actors and, in particular, by the most powerful actor, which is, and will be for some time, the United States. Arms buildups, insecure sea-­‐lanes, and closed markets are only the most obvious risks of U.S. retrenchment. Less obvious are transnational problems, such as global warming, water scarcity, and disease, which may fester without a leader to rally collective action. Hegemony, of course, carries its own risks and costs. In particular, America’s global military presence might tempt policymakers to use force when they should 317 Gilpin, War and Change, p. 239. See, also, Dale Copeland, Origins of Major War (Ithaca, N.Y.: Cornell University Press, 2000); Charles Doran and Wes Parsons, “War and the Cycle of Relative Power,” American Political Science Review, Vol. 74, No. 4, (December 1980), pp. 947-­‐965. Chapter 6 197 choose diplomacy or inaction. If the United States abuses its power, however, it is not because it is too engaged with the world, but because its engagement lacks strategic vision. The solution is better strategy, not retrenchment. The first step toward sound strategy is to recognize that the status quo for the United States is pretty good: it does not face a hegemonic rival and the trends favor continued American dominance. The overarching goal of U.S. policy should be to preserve this state of affairs. Declinists claim the United States should “adopt a neomercantilist international economic policy” and “disengage from current alliance commitments in East Asia and Europe.”318 But the fact that the United States rose relative to China while propping up the world economy and maintaining a hegemonic presence abroad casts doubt on the wisdom of such calls for radical policy change.

### 2ac china war

**2. A US first strike decimates the environment --- cause extinction**

Takai ‘9, Retired Colonel and Former Researcher in the military science faculty of the Staff College for Japan’s Ground Self Defense Force (“U.S.-China nuclear strikes would spell doomsday”, October 7, <http://www.upiasia.com/Security/2009/10/07/us-china_nuclear_strikes_would_spell_doomsday/7213/>)

What would happen if China launched its 20 Dongfeng-5 intercontinental ballistic missiles, each with a 5-megaton warhead, at 20 major U.S. cities? Prevailing opinion in Washington D.C. until not so long ago was that the raids would cause over 40 million casualties, annihilating much of the United States. In order to avoid such a doomsday scenario, consensus was that the United States would have to eliminate this potential threat at its source with preemptive strikes on China. But cool heads at institutions such as the Federation of American Scientists and the National Resource Defense Council examined the facts and produced their own analyses in 2006, which differed from the hard-line views of their contemporaries. The FAS and NRDC developed several scenarios involving nuclear strikes over ICBM sites deep in the Luoning Mountains in China’s western province of Henan, and analyzed their implications. One of the scenarios involved direct strikes on 60 locations – including 20 main missile silos and decoy silos – hitting each with one W76-class, 100-kiloton multiple independently targetable reentry vehicle carried on a submarine-launched ballistic missile. In order to destroy the hardened silos, the strikes would aim for maximum impact by causing ground bursts near the silos' entrances. Using air bursts similar to the bombings of Hiroshima and Nagasaki would not be as effective, as the blasts and the heat would dissipate extensively. In this scenario, the 6 megatons of ground burst caused by the 60 attacks would create enormous mushroom clouds over 12 kilometers high, composed of radioactive dirt and debris. Within 24 hours following the explosions, deadly fallout would spread from the mushroom clouds, driven by westerly winds toward Nanjing and Shanghai. They would contaminate the cities' residents, water, foodstuff and crops, causing irreversible damage. The impact of a 6-megaton nuclear explosion would be 360 times more powerful than the Hiroshima bomb, killing not less than 4 million people. Such massive casualties among non-combatants would far exceed the military purpose of destroying the enemy's military power. This would cause political harm and damage the United States’ ability to achieve its war aims, as it would lose international support. On the other hand, China could retaliate against U.S. troops in East Asia, employing intermediate-range ballistic missiles including its DF-3, DF-4 and DF-21 missiles, based in Liaoning and Shandong provinces, which would still be intact. If the United States wanted to destroy China's entire nuclear retaliatory capability, U.S. forces would have to employ almost all their nuclear weapons, causing catastrophic environmental hazards that **could lead to the annihilation of mankind**. Accordingly, the FAS and NRDC conclusively advised U.S. leaders to get out of the vicious cycle of nuclear competition, which costs staggering sums, and to promote nuclear disarmament talks with China. Such advice is worth heeding by nuclear hard-liners.

**3, And, we don’t know where China’s weapons are --- a first strike is impossible and Lieber and Press’s study is flawed.**

**Bin, Prof**essor of the Institute of International Studies, Tsinghua Universit, **06** [Li, “Paper Tiger with

Whitened Teeth”, http://www.wsichina.org/cs4\_5.pdf]

Rather than exploring why China chooses to do so, Lieber and Press use this fact as evidence to support their point on U.S. nuclear primacy.3 If the authors paid more heed to China’s choice of a small and low-alert nuclear arsenal **they would find their deductions faulty**, including technical problems in their calculations. All the calculations in their paper, including the sensitivity analyses, focus on the hardness of the targets as well as strike capabilities, which are determined by the lethal distance, accuracy, and reliability of U.S. nuclear weapons. However, the calculations in the paper are based on a fundamentally unrealistic assumption: that is, the United States can detect and locate all Russian and Chinese long-range nuclear weapons. The authors never state this assumption in their paper – perhaps unknowingly so, as most former calculations do not discuss the issue of target detection. In other previous studies, where the numbers of surviving nuclear weapons in a calculation are much larger than zero, it may be alright to ignore the factor of intelligence. But, if such a calculation gives a result of almost zero surviving targets in a nuclear exchange, the intelligence factor becomes highly salient and therefore cannot be ignored. The authors understand that “… one surviving mobile ICBM might destroy a U.S. city …” So their sensitivity analysis tries to prove that no single Russian longrange nuclear weapon can survive even if the U.S. nuclear weapons are not as effective as assumed. However, the real problem is that if the United States does not know where some nuclear weapons are in Russia or China, the United *With near zero surviving targets in a nuclear exchange, the intelligence factor becomes highly salient.* States cannot destroy them even with superior numbers and performance of nuclear weapons. It is instructive to know that once the Soviet Union (and later, Russia) felt that it had a sufficient number of nuclear weapons to survive a first U.S. nuclear strike, it chose to sign the Strategic Arms Reduction Treaties (START) I and II that entail on-site inspections to verify the numbers and locations of the Russian long-range nuclear weapons. If Russia feels that not a single one of its nuclear weapons can survive a first strike by the United States, it may consider not revealing all its nuclear weapons to the United States. In fact, unlike the START treaties, the new Moscow Treaty does not require similar on-site inspections. It is evident, even more so in China’s case, that it has never declared the number or location of its nuclear weapons. Naturally, the United States relies on its intelligence to identify and locate China’s nuclear weapons and then uses this information to decipher which objects and how many objects appear to be nuclear weapons and where they are located. The calculations in their paper do prove that the United States can destroy all the objects that have been identified by U.S. intelligence as nuclear weapons. However, the paper misses the central point of whether the entirety of Chinese long-range nuclear weapons have been identified and located by U.S. intelligence or whether all the objects that are identified in China are real nuclear weapons. The paper simply omits possible deficiencies of intelligence. Furthermore, the performance of U.S. intelligence in the first Iraq war and the Kosovo war suggests that the United States may miss more than just a few large military targets. Technically speaking, it is a relatively simple countermeasure for China to conceal a few actual ICBMs and to deploy decoy missiles – given the large size of the Chinese territory. No matter how the United States increases the number, accuracy, and reliability of its nuclear weapons, even if used in a surprise attack, it has no means of destroying those Chinese ICBMs that its intelligence has not found. Thus, there is no method or model by which Lieber and Press can determine with any certainty that the number of surviving Chinese ICBMs after a surprise U.S. strike (equal to the number of undetected Chinese ICBMs) will be zero, and it seems far more likely survivability would be greater than zero. The definitive conclusion that the surviving Chinese ICBMs must be zero is technically wrong as it omits the intelligence deficiency. The uncertainties of the calculations in the paper are much greater and much more serious than indicated by the authors, and certainly goes beyond their single scenario of an enemy target surviving because a U.S. submarine commander does not believe his launch order. However, the greatest concern is that U.S. leaders actually believe that zero retaliation from China is possible, as predicted by Lieber and Press, and behave incautiously. Zero retaliation is an illusion, and if taken seriously it would bring dire risks to the United States.

#### no A2AD threat

Jonathan Greenert 12, Chief of Naval Operations, 5/10/12, “Projecting Power, Assuring Access,” http://cno.navylive.dodlive.mil/2012/05/10/projecting-power-assuring-access/

There’s been attention recently about closing an international strait using, among other means, mines, fast boats, cruise missiles and mini-subs. These weapons are all elements of what we call an “Anti-Access /Area Denial (A2AD)” strategy. Keeping with my tenet of “Warfighting First,” I want to highlight for you how the Navy and Air Force have been planning to deal with A2AD threats like this today and into the future.¶ A goal of an A2AD strategy is to make others believe it can close off international airspace or waterways and that U.S. military forces will not be able (or willing to pay the cost) to reopen those areas or come to the aid of our allies and partners. In peacetime, this gives the country with the A2AD weapons leverage over their neighbors and reduces U.S. influence. In wartime, A2AD capabilities can make U.S. power projection more difficult. The areas where A2AD threats are most consequential are what I call “strategic maritime crossroads.” These include areas around the Straits of Hormuz and Gibraltar, Suez Canal, Panama Canal or Malacca Strait – but strategic crossroads can also exist in the air, on land, and in cyberspace.¶ To counter these strategies and assure U.S. freedom of action, Navy and Air Force spearheaded a comprehensive study, which included Army and Marine Corps participation, to bring forward a concept called Air Sea Battle (ASB). This concept identifies how we will defeat A2AD capabilities such as cyber attack, mines, submarines, cruise and ballistic missiles, and air defense systems and, where applicable, “natural access denial” such as weather, pollution, natural disaster, etc. The concept also describes what we will need to do these operations, especially as the threats improve due to technological advancements.¶ Air-Sea Battle relies on tightly coordinated operations across domains (air, land, maritime, undersea, space and cyberspace) to defeat A2AD capabilities, such as a submarine striking air defenses in support of Air Force bombers, Air Force stealth fighters destroying a radar site to prevent cruise missile attacks on Navy ships, or a Navy cryptologic technician (CT) confusing a radar system to allow an Air Force UAV to attack an enemy command center. This level of real-time coordination requires new approaches to developing systems, planning operations, and conducting command and control.¶ By working across domains, Air-Sea Battle takes advantage of unique U.S. advantages in global reach (long-range tankers, nuclear-powered carriers), and stealth above (F-22 and B-2) and below (SSN, SSGN) the sea. Putting Air Force and Navy capabilities together also creates new combinations of systems, or “kill-chains”, for warfighting operations that can add redundancy or make us more efficient. For example, a threat cruise missile could be detected by an Air Force E-3 AWACS or Navy E-2D Hawkeye, and if we invest in the right data links, either of them could cue an Air Force F-22, Aegis ship or Navy F/A-18 to engage the missile. This provides more “paths” we can follow to destroy the missile.¶ Using these integrated air and naval forces, the Air Sea Battle concept executes three main lines of effort:¶ Disrupt an adversary’s command, control, communications, computers and intelligence, surveillance and reconnaissance (C4ISR) – this reduces the adversary’s ability to find or target us with large raids; they will have to spread out their attacks to all our potential locations.¶ Destroy adversary weapons launch systems – To have sustained access to international seas and skies, we will eventually need to destroy the launchers on land, sea and in the air.¶ Defeat adversary weapons – until we destroy the launchers, our forces will kinetically or non-kinetically prevent the weapons launched at us from getting a hit.¶ We are using the Air Sea Battle concept to guide decisions in procurement, doctrine, organization, training, leadership, personnel and facilities. Our budgets for FY11, FY12 and now FY13 reflect hard choices that support Air-Sea Battle. In some cases we accepted reductions in capacity to ensure the needed capabilities were retained.

### AT: T – Restrictions

#### We meet --- the plan prohibits the President’s ability to act without judicial review and counter-interpretation authority = permission of a judge to act

John C. Eastman 6, Prof of Law at Chapman University, PhD in Government from the Claremont Graduate University, served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration, “Be Very Wary of Restricting President's Power,” Feb 21 2006, http://www.claremont.org/publications/pubid.467/pub\_detail.asp]

Prof. Epstein challenges the president's claim of inherent power by noting that the word "power" does not appear in the Commander in Chief clause, but the word "command," fairly implied in the noun "Commander," is a more-than-adequate substitute for "power." Was it really necessary for the drafters of the Constitution to say that the president shall have the power to command? Moreover, Prof. Epstein ignores completely the first clause of Article II -- the Vesting clause, which provides quite clearly that "The executive Power shall be vested in a President." The relevant inquiry is whether those who ratified the Constitution understood these powers to include interception of enemy communications in time of war without the permission of a judge, and on this there is really no doubt; they clearly did, which means that Congress cannot restrict the president's authority by mere statute////.¶ Prof. Epstein's own description of the Commander in Chief clause recognizes this. One of the "critical functions" performed by the clause, he notes, is that "Congress cannot circumvent the president's position as commander in chief by assigning any of his responsibilities to anyone else." Yet FISA does precisely that, assigning to the FISA court a core command authority, namely, the ability to authorize interception of enemy communications. This authority has been exercised by every wartime president since George Washington.

#### Counter interp – limitations or qualifications, not prohibitions

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### Restrict doesn’t mean prohibit

**Coffey, 82** - US Circuit Judge, dissenting (VICTOR D. QUILICI, ROBERT STENGL, et al., GEORGE L. REICHERT, and ROBERT E. METLER, Plaintiffs-Appellants, v. VILLAGE OF MORTON GROVE, et al., Defendants-Appellees Nos. 82-1045, 82-1076, 82-1132 UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT 695 F.2d 261; 1982 U.S. App. LEXIS 23560, lexis)

Pursuant to section 83, a municipality can enact an ordinance reasonably restricting or confining the use and possession of firearms. A municipality can also require registration of firearm ownership. What the legislature has authorized is limited regulation of firearm possession by local units of government, but not prohibition. Section 83 does not allow a municipality such as Morton Grove to categorically prohibit handgun possession. [\*\*35] To limit or restrict involves a circumscription which falls far short of an absolute prohibition.

"The words 'prohibit' and 'restrict' are not synonymous. They are not alike in their meaning in their ordinary use . . . . 'To restrict is to restrain within bounds; to limit; to confine and does not mean to destroy or prohibit.'"

### Iran

#### Any further sanctions vote would only happen after negotiations failed – overwhelming Congressional support for current negotiations – including Menendez

**Shapiro, 3/28/14** ­(Dmitry, “Senate, House Differ in Letters Supporting Obama Administration on Iran Talks” <http://www.algemeiner.com/2014/03/28/senate-house-differ-in-letters-supporting-obama-administration-on-iran-talks/>)

Both letters, which were signed by an overwhelming majority of senators and House members from both parties, expressed support for the P5+1 negotiations in Geneva, while reasserting the belief that Congress should have a role in any final agreement.

“As negotiations progress, we expect your administration will continue to keep Congress regularly apprised of the details,” the House letter stated. “And, because any long-term sanctions relief will require Congressional action, we urge you to consult closely with us so that we can determine the parameters of such relief in the event an agreement is reached, or, if no agreement is reached or Iran violates the interim agreement, so that we can act swiftly to consider additional sanctions and steps necessary to change Iran’s calculation.”

The House letter, crafted by Majority Leader Eric Cantor (R-VA) and Minority Whip Steny Hoyer (D-MD), received 395 signatures.

On the topic of sanctions, including those that have been rolled back by the administration after reaching an interim agreement with Iran back in January, the Senate letter stated that members of the chamber “believe, as you do, that the pressure from economic sanctions brought Iran to the table, and that it must continue until Iran abandons its efforts to build a nuclear weapon.”

The Senate letter was led by Sens. Robert Menendez (D-NJ), Lindsey Graham (R-SC), Charles Schumer (D-NY), Mark Kirk (R-IL), Chris Coons (D-DE), and Kelly Ayotte (R-NH). It was signed by 83 senators.

The letter was not specific whether the senators want to roll sanctions back to pre-framework levels or prevent further relief without an agreement. It also laments the danger of allowing Iran to circumvent current sanctions and benefit from growing international investment in its economy, mentioning reports of rising purchases of Iranian oil as proof.

“Iran cannot be allowed to be open for business,” the letter stated.

Such language could be seen as going further than those on the House side were willing to go. The only mention of sanctions in the House letter indicates that signatories do not oppose the rollback in sanctions, only that they will oppose future relief if certain conditions aren’t met.

“Iran’s leaders must understand that further sanctions relief will require Tehran to abandon its pursuit of a nuclear weapon and fully disclose its nuclear activities,” stated the House letter.

While both letters mention dismantling Iran’s nuclear weapons program, the House letter specifically mentions the possibility of a civilian program.

“We do not seek to deny Iran a peaceful nuclear energy program, but we are gravely concerned that Iran’s industrial-scale uranium enrichment capability and heavy water reactor being built at Arak could be used for the development of nuclear weapons,” the House members wrote.

The Senate letter seemed to go further.

“We believe that Iran has no inherent right to enrichment under the Nuclear Non-Proliferation Treaty,” the letter stated.

According to a senior Capitol Hill staffer who requested anonymity, these intentional differences had to do with the bipartisan goals set for the letters. The House letter, the staffer explained, is a direct descendent of a previously planned Hoyer-Cantor resolution on Iran sanctions that fell through earlier this year as the administration began pushing back against legislation demanding more sanction if negotiations failed.

The staffer said Hoyer was more sensitive towards giving the administration leeway in negotiations before having House Democrats sign on.

In the Senate, meanwhile, Menendez, who had earlier sponsored the Nuclear Weapons Free Iran Bill, was leading the effort with Graham, while Majority Leader Sen. Harry Reid (D-NV) and other key senators stayed off.

Regardless of the House-Senate differences, the message remains that an overwhelming majority of both chambers want to be involved in what a final deal with Iran will look like.

“Although the P5+1 process is focused on Iran’s nuclear program, we remain deeply concerned by Iran’s state sponsorship of terrorism,” the House letter stated. “We want to work with you to address these concerns as part of a broader strategy of dealing with Iran.”

#### Every effort for tougher moves on Iran has failed – the effort is over

Shapiro 3/26 (Dmitiry, “Senate, House differ in letters supporting Obama administration on Iran talks”, http://www.jns.org/latest-articles/2014/3/26/senate-house-differ-in-letters-supporting-obama-administration-on-iran-talks#.UzMhi\_ldX00)

An analysis of recent letters sent by members of the U.S. Senate and House of Representatives to President Barack Obama pledging support for the administration’s ongoing negotiations on Iran’s nuclear program reveal subtle, but crucial differences in tone. Though the idea of a letter on Iran occupied a key position in the agenda at the American Israel Public Affairs Committee’s annual policy conference in early March, the day the letters were delivered to the White House on March 18, the self-labeled “pro-Israel, pro-peace” lobby J Street—whose positions on the Iran issue have been more in line with Obama administration policy—claimed victory, stating that the conversation had moved away from “saber-rattling” to support of American-led diplomacy. Dylan Williams, J Street’s director of government affairs, drew attention to the fact that the letters do not list any prerequisites for a final deal and also would allow Iran to develop a civilian nuclear energy program. “This started in mid-December as an effort to impose sanctions and conditions as a matter of law through a bill,” said Williams. “That effort failed. Then it transformed into an effort to get a resolution, a bipartisan resolution, laying down parameters and final conditions for a deal. That effort failed.” “Then there was an effort to get a letter which laid down parameters and conditions, including zero [uranium] enrichment,” he continued. “That effort failed. So then you have a letter that will only be called bipartisan if it is genuinely supportive of the administration’s efforts and does not impose any onerous conditions on the negotiators.” Both letters, which were signed by an overwhelming majority of senators and House members from both parties, expressed support for the P5+1 negotiations in Geneva, while reasserting the belief that Congress should have a role in any final agreement. “As negotiations progress, we expect your administration will continue to keep Congress regularly apprised of the details,” the House letter stated. “And, because any long-term sanctions relief will require Congressional action, we urge you to consult closely with us so that we can determine the parameters of such relief in the event an agreement is reached, or, if no agreement is reached or Iran violates the interim agreement, so that we can act swiftly to consider additional sanctions and steps necessary to change Iran’s calculation.” The House letter, crafted by Majority Leader Eric Cantor (R-VA) and Minority Whip Steny Hoyer (D-MD), received 395 signatures. On the topic of sanctions, including those that have been rolled back by the administration after reaching an interim agreement with Iran back in January, the Senate letter stated that members of the chamber “believe, as you do, that the pressure from economic sanctions brought Iran to the table, and that it must continue until Iran abandons its efforts to build a nuclear weapon.” The Senate letter was led by Sens. Robert Menendez (D-NJ), Lindsey Graham (R-SC), Charles Schumer (D-NY), Mark Kirk (R-IL), Chris Coons (D-DE), and Kelly Ayotte (R-NH). It was signed by 83 senators. The letter was not specific whether the senators want to roll sanctions back to pre-framework levels or prevent further relief without an agreement. It also laments the danger of allowing Iran to circumvent current sanctions and benefit from growing international investment in its economy, mentioning reports of rising purchases of Iranian oil as proof. “Iran cannot be allowed to be open for business,” the letter stated. Such language could be seen as going further than those on the House side were willing to go. The only mention of sanctions in the House letter indicates that signatories do not oppose the rollback in sanctions, only that they will oppose future relief if certain conditions aren’t met. “Iran’s leaders must understand that further sanctions relief will require Tehran to abandon its pursuit of a nuclear weapon and fully disclose its nuclear activities,” stated the House letter. While both letters mention dismantling Iran’s nuclear weapons program, the House letter specifically mentions the possibility of a civilian program. “We do not seek to deny Iran a peaceful nuclear energy program, but we are gravely concerned that Iran’s industrial-scale uranium enrichment capability and heavy water reactor being built at Arak could be used for the development of nuclear weapons,” the House members wrote. The Senate letter seemed to go further. “We believe that Iran has no inherent right to enrichment under the Nuclear Non-Proliferation Treaty,” the letter stated. According to a senior Capitol Hill staffer who requested anonymity, these intentional differences had to do with the bipartisan goals set for the letters. The House letter, the staffer explained, is a direct descendent of a previously planned Hoyer-Cantor resolution on Iran sanctions that fell through earlier this year as the administration began pushing back against legislation demanding more sanction if negotiations failed. The staffer said Hoyer was more sensitive towards giving the administration leeway in negotiations before having House Democrats sign on. In the Senate, meanwhile, Menendez, who had earlier sponsored the Nuclear Weapons Free Iran Bill, was leading the effort with Graham, while Majority Leader Sen. Harry Reid (D-NV) and other key senators stayed off. Regardless of the House-Senate differences, the message remains that an overwhelming majority of both chambers want to be involved in what a final deal with Iran will look like. “Although the P5+1 process is focused on Iran’s nuclear program, we remain deeply concerned by Iran’s state sponsorship of terrorism,” the House letter stated. “We want to work with you to address these concerns as part of a broader strategy of dealing with Iran.”

#### Talks fail – Iranian right to enrich uranium and fissures between the P5+1 countries

NST 3/27 (New Strait Times, “Iran nuclear deal proves elusive”, http://www.nst.com.my/world/iran-nuclear-deal-proves-elusive-1.535445)

Foreign ministers from world powers struggled Saturday to nail down a landmark nuclear deal with Iran, with US Secretary of State John Kerry announcing his imminent departure and Iran's chief negotiator downbeat. As talks in Geneva went late into an unscheduled fourth day, Kerry's spokesman said Washington's top diplomat would be flying to London on Sunday morning -- presumably with or without a deal. Iranian chief negotiator Abbas Ar aqchi said he doubted that Tehran and the P5+1 world powers -- the United States, Britain, France, China, Russia and Germany -- could reach an accord by the end of Saturday. "Intense and difficult negotiations are under way and it is not clear whether we can reach an agreement tonight," Fars news agency quoted Araqchi as saying. The talks, mostly between Iranian Foreign Minister Mohammad Javad Zarif and P5+1 chief negotiator Catherine Ashton, are aimed at securing a freeze on parts of Iran's nuclear programme in return for limited sanctions relief. The arrival of Kerry and other P5+1 foreign ministers late Friday and on Saturday had raised hopes, after three long days of intense negotiations among lower-level officials, that a breakthrough was in sight. However the talks continued to drag on inside the smart Geneva hotel late Saturday. "We have now entered a very difficult stage," Zarif told state television. He insisted he would not bow to "excessive demands", without detailing the obstacles. British Foreign Secretary William Hague said on his arrival that the talks "remain very difficult" and that "we are not here because things are necessarily finished". Late on Saturday, Kerry went into a three-way meeting with Ashton and Zarif for the second time, a US official said following a meeting among the powers' foreign ministers. Two weeks ago, the ministers had jetted in seeking to sign on the dotted line, only to fail as cracks appeared among the P5+1 nations -- fissures that officials say are now repaired. But a second fruitless effort in Geneva in as many weeks would not only be an diplomatically embarrassing. If there is no deal, or at least an agreement to meet again soon and keep the diplomatic momentum going, the standoff could enter a new, potentially dangerous phase.

#### Ukraine crisis derails

**Aramesh, 3/14/14** (Arash, The Majallah, “A Russian Monkey Wrench in the Works?,” factiva)

The crisis in Ukraine and the Crimean Peninsula may affect the talks between Iran and the P5+1, the five permanent members of the UN Security Council plus Germany. One possibility is that Russia may act as a "spoiler" in the talks with Iran should the United States and the European Union decide to punish Russia for violating Ukraine’s sovereignty and for destabilizing the region. What the international community is willing to do also largely depends on what aggressive measures President Vladimir Putin’s Russia is willing to undertake in the aftermath of the March 16 referendum in Crimea, which would set the stage for Crimea’s secession.

The best possible outcome is that Putin will seek to keep the two issues separate and instruct his Minister of Foreign Affairs, Sergey Lavrov, to continue to act as a somewhat reliable partner in the P5+1 talks with Iran. In this case, Russia would refrain from encouraging Iran to either walk away from the Geneva framework agreed last November or to stop cooperating with international bodies such as the International Atomic Energy Agency as they seek to verify Iran’s compliance with the preliminary agreement. After all, a peaceful resolution to the Iranian nuclear crisis would be in Russia’s regional interests, as a belligerent and obstinate Iran could lead to serious consequences.

US President Barack Obama has spent plenty of political capital in order to keep negotiations with Iran alive—he has already had to withstand attacks from Israeli Prime Minister Benjamin Netanyahu and defuse a coup in Congress by some of the most senior members of his own party. Should Iran deviate from the framework of internationally agreed terms, the US would be forced to consider other means of stopping the Iranian nuclear program, especially one whose peaceful nature cannot be verified.

Nonetheless, Russia can cause plenty of headaches for the West when it comes to Iran’s nuclear program. It is no secret that hardliners in Iran have been unhappy with concessions made by the government of President Hassan Rouhani in order to ease the pain stemming from economic sanctions and to escape from the depths of international isolation. Preparing for hard times down the road, the hardliners in Tehran and Supreme Leader Ayatollah Ali Khamenei have called for "economic jihad": a set of extreme austerity measures designed to help Iran’s economy weather further storms—storms that will only grow stronger in the face of renewed international sanctions and Iranian belligerence.

What can the Kremlin offer Iran if it does seek to obstruct the nuclear talks? Russia can give some financial relief to Iran, but it will be very limited. Western sanctions on Russia could mean an ailing Russian economy and limited supplies of cash available to be thrown at foreign allies. Also, Russia’s track record of providing cash-strapped allies with financial support is not stellar. It was under the ousted Kremlin-friendly Ukrainian President Viktor Yanukovych that Russia demanded higher prices from the Ukraine for its energy supplies and, in effect, pushed the Ukrainian government further into a financial free-fall.

However, Russia can provide Iran with long-sought-after military hardware to fortify its sensitive nuclear and military facilities: the advanced long-rang S-300 surface-to-air missile system, and even the more sophisticated S-400 short-range air defense system. New batteries of these missiles in Iran would mean heavier losses in any US military campaign against a belligerent Iran, which would be much more difficult to stomach.

#### No strike – institutional and political checks

**Keck, 13** - Zachary Keck is associate editor of The Diplomat (“Five Reasons Israel Won't Attack Iran”, The National Interest, 11/28, http://nationalinterest.org/commentary/five-reasons-israel-wont-attack-iran-9469

4. Israel’s Veto Players Although Netanyahu may be ready to attack Iran’s nuclear facilities, he operates within a democracy with a strong elite structure, particularly in the field of national security. It seems unlikely that he would have enough elite support for him to seriously consider such a daring and risky operation. For one thing, Israel has strong institutional checks on using military force. As then vice prime minister and current defense minister Moshe Yaalon explained last year: “In the State of Israel, any process of a military operation, and any military move, undergoes the approval of the security cabinet and in certain cases, the full cabinet… the decision is not made by two people, nor three, nor eight.” It’s far from clear Netanyahu, a fairly divisive figure in Israeli politics, could gain this support. In fact, Menachem Begin struggled to gain sufficient support for the 1981 attack on Iraq even though Baghdad presented a more clear and present danger to Israel than Iran does today. What is clearer is that Netanyahu lacks the support of much of Israel’s highly respected national security establishment. Many former top intelligence and military officials have spoken out publicly against Netanyahu’s hardline Iran policy, with at least one of them questioning whether Iran is actually seeking a nuclear weapon. Another former chief of staff of the Israeli Defense Forces told The Independent that, “It is quite clear that much if not all of the IDF [Israeli Defence Forces] leadership do not support military action at this point…. In the past the advice of the head of the IDF and the head of Mossad had led to military action being stopped.”

#### No one would intervene

**Poor 12** (Jeff, 2/16/12, http://dailycaller.com/2012/02/16/krauthammer-israeli-strike-on-iran-will-not-cause-a-world-war-video/,)

On Wednesday’s “Special Report Online” segment on FoxNews.com, syndicated columnist Charles Krauthammer said that if Israel decides to attack Iran in order to thwart its development of nuclear weapons, the collateral damage wouldn’t start a third world war.

Krauthammer based that hypothesis on Iran not having allies that would be willing to intervene significantly on a military level. (RELATED: More analysis from Charles Krauthammer)

“It could cause a regional war,” Krauthammer said. “It will not cause a world war by any means. It’s not August 1914, because Iran has no great power allies who will intervene militarily. Iran is going to be alone with its clients, Syria, Hezbollah and Hamas — all of whom are on their heels right now.”

He said it would require Iran acting out in an irrational way and luring the United States into engagement for any conflict to become more widespread.

“If Iran is smart, it will not attack the United States in retaliation because that would involve us,” he said. “It would retaliate against Israel and it could remain a limited engagement. Now of course, irrationality is possible and you cannot predict. If the Iranians either close the Strait of Hormuz or attack Americans at the naval facility in Bahrain, that would be suicide because that would occasion American intervention, almost like Wilson in the First World War in the sinking of the Lusitania. You don’t do that if you’re rational, but who knows. The Iranians haven’t always been rational.”

#### No PC

**Cook, 3/17/14** – editor of the Cook Political Report for National Journal (Charlie, “6 Ways Washington Will Stay the Same” <http://www.nationaljournal.com/off-to-the-races/6-ways-washington-will-stay-the-same-20140317>)

3. President Obama's job-approval ratings are very likely to remain pretty much where they are today, which means he will be running pretty low on political capital. His approval generally oscillates between 38 and 46 percent in most polls, with disapproval usually between 50 and 54 percent (looking only at polls using live interviewers). Obama's approval ratings have ranged from as low as 38 percent in Fox and occasional Gallup nightly tracking to as high as 46 percent in polling by ABC News/Washington Post, CBS News/New York Times, and at times, Gallup. Most often, the president's approval rating runs around 41 percent, as NBC News/Wall Street Journal and the most recent CBS/NYT poll found. Obama's disapproval numbers have run from as low as 47 percent in older CBS News polls to as high as 54 percent in NBC/WSJ's and Fox's polling (there is a Bloomberg News poll that was something of an outlier that showed 48 percent for both approval and disapproval of the president). The most recent (March 14-16) Gallup tracking shows 40 percent approval, 55 percent disapproval. If Obama were a stock, you would say he has a narrow trading range, with a high floor and a low ceiling. Barring some cataclysmic event, his approval is unlikely to stay below 38 percent or above 46 percent for long, meaning that his political capital will remain pretty low for the duration of his presidency. 4. Obama's relations with Congress will remain poor for the duration of his time in office, pretty much as they have been since his earliest days in the White House. More specifically, Obama and his White House have no relationship at all with the tea party and most conservative Republicans on Capitol Hill, an awful relationship with the more establishment Republicans, and a distant and uncomfortable relationship with congressional Democrats. Perhaps the title of the movie He's Just Not That Into You pretty much describes how the president's attitude toward his own party members seems to be, and their view of him has become pretty much reciprocal. It's hard to see how any of that changes either before or after the 2014 midterms.

#### CIA fight thumps

**Klapper, 3/24/14** (Bradley, “Terror Report Release May Fuel The Spat Between Congress And The CIA” Associated Press, <http://www.huffingtonpost.com/2014/03/24/terror-report-congress_n_5020547.html>)

If senators vote this week to release key sections of a voluminous report on terrorist interrogations, an already strained relationship between lawmakers and the CIA could become even more rancorous, and President Barack Obama might have to step into the fray. The Senate Intelligence Committee hopes that by publishing a 400-page summary of its contentious review and the 20 main recommendations, it will shed light on some of the most unsavory elements of the Bush administration's "war on terror" after the Sept. 11, 2001, attacks. Despite now serving Obama, the CIA maintains that the report underestimates the intelligence value of waterboarding and other methods employed by intelligence officials at undeclared, "black site" facilities overseas. The entire investigation runs some 6,200 pages. The dispute boiled into the open earlier this month with competing claims of wrongdoing by Senate staffers and CIA officials. The intelligence committee's chairwoman, Sen. Dianne Feinstein, accused the CIA of improperly monitoring the computer use of Senate staffers and deleting files, undermining the separation of powers between the executive and legislative branches. The agency said the intelligence panel illegally accessed certain documents. Each side has registered criminal complaints with the Justice Department. This week's vote could fuel the fight, if it goes in favor of disclosure. It would start a process that forces CIA officials and Senate staffers to go line-by-line through the report and debate which elements can be made public and which must stay secret because of ongoing national security concerns. The CIA and the executive branch hold all the keys as the final determiners of what ought to remain classified. Senators primarily have the bully pulpit of embarrassing the CIA publicly and the last-resort measure of going after the agency's budget.

#### Drone restrictions thump

Bennett, 14 [John T, Defense News, “McCain Vows New Fight Over Control of US Armed Drone Program”, http://www.defensenews.com/article/20140219/DEFREG02/302190025/McCain-Vows-New-Fight-Over-Control-US-Armed-Drone-Program

WASHINGTON — A senior US lawmaker intends to renew his fight to require the Obama administration to fully shift its armed drone program from the CIA to the Defense Department. Sen. John McCain, R-Ariz., a senior Armed Services Committee member, told Defense News on Wednesday, just before Congress left for a weeklong recess, that he will push the issue when the panel crafts its 2015 Pentagon policy bill in coming months. “We’re going to have that debate,” McCain said in a brief interview. “There is no doubt about it.” McCain’s comments come weeks after he expressed disgust with language reportedly inserted into the classified portion of a Pentagon-funding section of an omnibus spending bill blocking the shift of the drone program from the CIA to the military. The administration of President Barack Obama last year signaled it wanted to move most — or all — of the program from the spy agency to the military. But that plan hit a number of legal and operational snags, and was not fully completed before Congress passed the omnibus. But McCain says the fight isn’t over. “I would like to make sure they are cooperating with other countries,” McCain said, referring to concerns among some lawmakers and analysts that the Obama administration avoids getting clearance from leaders of countries before flying drones into their airspace. “Mostly, I want to see it moved over to DoD. That’s my primary goal,” McCain said. Many analysts say that other than possibly taking up a new immigration reform measure, Congress likely is finished with major legislation this year. The mid-term election cycle is in full swing, and both parties seem content to battle it out back home after five years of bitter partisan fights here. But Congress is expected, as it has for 52 consecutive years, to pass a defense authorization bill. And McCain’s intentions will revivea battle between two powerful camps on Capitol Hill. Lawmakers on both sides of the debate have strong opinions about whether it is the job of the military or intelligence community to kill al-Qaida leaders and operatives. And behind the issue of whether the CIA should be firing missiles from remotely piloted aircraft is a simmering congressional turf war between the chambers’ Armed Services and Intelligence committees. If the Defense Department is handed control of the CIA’s armed drone fleet and strike missions against al-Qaida targets, it would also gain what intelligence analysts say is the program’s sizable budget and control over one of the White House’s primary tactics for combating the terrorist group. On one side are pro-military lawmakers like McCain. They believe the military should be the US entity charged with killing America’s foes, and that the CIA should get back to collecting and analyzing intelligence. On the other side are members like Senate Intelligence Committee Chairwoman Sen. Dianne Feinstein, D-Calif. These members, largely Democrats**,** are skeptical of the military’s ability to use what they see as the CIA’s rigorous decision process before carrying out armed strikes.

#### Obama won’t fight the plan

Kwame Holman 13, congressional correspondent for PBS NewsHour; citing Rosa Brooks, Prof of Law at Georgetown University Law Center, former Counselor to the Under Secretary of Defense for Policy, former senior advisor at the US Dept of State, “Congress Begins to Weigh In On Drone Strikes Policy,” http://www.pbs.org/newshour/rundown/2013/04/congress-begins-to-weigh-in-on-drone-strikes-policy.html

In an October 2012 interview, Mr. Obama said of the drone program, "we've got to ... put a legal architecture in place, and we need Congressional help in order to do that, to make sure that not only am I reined in but any president's reined in, in terms of some of the decisions that we're making."¶ The president has not taken up the drone issue in public again but White House press secretary Jay Carney, asked Wednesday about the drone hearing, said, "We have been in regular contact with the committee. We will continue to engage Congress...to ensure our counterterrorism efforts are not only consistent with our laws and system of checks and balances, but even more transparent to the American people and the world."¶ And after the hearing, Brooks, too, sounded optimistic.¶ "My own sense is that the executive branch is open to discussion of some kind of judicial process," she said.¶ While some experts have argued for court oversight of drone strikes before they're carried out, Brooks sides with those who say that would be unwieldy and unworkable.¶ Brooks says however an administration that knows its strikes could face court review after the fact -- with possible damages assessed -- would be more responsible and careful about who it strikes and why.

#### That boosts Obama’s capital without triggering a fight over authority

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 59-60

Presidents and politicos alike have long recognized Congress's ability to reduce the political costs that the White House risks incurring by pursuing a major military initiative. While declarations of war are all but extinct in the contemporary period, Congress has repeatedly moved to authorize presidential military deployments and consequently to tie its own institutional prestige to the conduct and ultimate success of a military campaign. Such authorizing legislation, even if it fails to pass both chambers, creates a sense of shared legislative-executive responsibility for a military action's success and provides the president with considerable political support for his chosen policy course.34 Indeed, the desire for this political cover—and not for the constitutional sanction a congressional authorization affords—has historically motivated presidents to seek Congress's blessing for military endeavors. For example, both the elder and younger Bush requested legislative approval for their wars against Iraq, while assiduously maintaining that they possessed sufficient independent authority as commander in chief to order the invasions unilaterally.35 This fundamental tension is readily apparent in the elder Bush's signing statement to HJ Res 77, which authorized military action against Saddam Hussein in January of 1991. While the president expressed his gratitude for the statement of congressional support, he insisted that the resolution was not needed to authorize military action in Iraq. "As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution."36

### AT: Executive CP – Top Level

#### Congress key to legal clarity

Mark David Maxwell, Colonel, Judge Advocate with the U.S. Army, Winter 2012, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

The weakness of this theory is that it is not codified in U.S. law; it is merely the extrapolation of international theorists and organizations. The only entity under the Constitution that can frame and settle Presidential power regarding the enforcement of international norms is Congress. As the check on executive power, Congress must amend the AUMF to give the executive a statutory roadmap that articulates when force is appropriate and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, statutory clarification will give other states a roadmap for the contours of what constitutes anticipatory self-defense and the proper conduct of the military under the law of war. Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74 The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order targeted killing without congressional limits means the President can manipulate force in the name of national security without tethering it to the law advanced by international norms. The potential consequence of such unilateral executive action is that it gives other states, such as North Korea and Iran, the customary precedent to do the same. Targeted killing might be required in certain circumstances, but if the guidelines are debated and understood, the decision can be executed with the full faith of the people’s representative, Congress. When the decision is made without Congress, the result might make the United States feel safer, but the process eschews what gives a state its greatest safety: the rule of law

.

#### Executive lead role spurs mistrust and global opposition – media spin means nobody trusts the CP – 1AC Goldstein

#### Links to politics

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

#### Executive action isn’t credible

McKelvey, 11 [Benjamin, JD Candidate, Senior Editorial Board, Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>]

The Obama Administration’s Reassurances Are Circular and Unsatisfactory The Obama Administration has addressed the controversy over targeted killing in an effort to assuage concerns over the program’s constitutionality, including concerns over due process protections.162 However, the Administration’s explanations do little but reiterate the gaping hole in guaranteed due process protections if Americans are targeted with lethal force.163 In fact, the Administration’s attempts to justify the current response emphasize the desperate need for a clear articulation of the law and a mechanism for constitutional safeguards.164 Harold Koh, the Legal Adviser to the Department of State, addressed the criticisms of targeted killing in a speech at the Annual Meeting of the American Society of International Law in March 2010.165 Koh addressed the concern that “the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing.”166 First, he asserted that a state engaged in armed conflict is not required to provide legal process to military targets.167 Koh then attempted to reassure the critics of targeted killing that the program was conducted responsibly and with precision.168 He said that the procedures for identifying targets for the use of lethal force are “extremely robust,” without providing any explanation or details to substantiate this claim.169 He then argued that “[i]n my experience, the principles of proportionality and distinction . . . are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with international law.”170 Koh dismissed constitutional claims over targeted killing by simply suggesting that the program is legal and responsible.171 But this response only begs the question over targeted killing: what mechanisms are in place to prevent the unsafe and irresponsible use of this extraordinary power? Asserting that the program is legal and responsible without substantiating this assertion rests on notions of blind faith in executive prudence and responsibility, and provides no grounds for reassurance.172 The Obama Administration’s assurances regarding the targeted killing program are unsatisfactory because they fail to address the primary concern at issue: the possibility that an unchecked targeted killing power within the Executive Branch is an invitation for abuse.1 73 Without some form of independent oversight, there is no mechanism for ensuring the accurate and legitimate use of targeted killings in narrowly tailored circumstances.174

### legalism

#### No lash out – institutional safeguards check

Buchanan 7 [Allen, Professor of Philosophy and Public Policy at Duke, 2007, Preemption: military action and moral justification, pg. 128]

The intuitively plausible idea behind the 'irresponsible act' argument is that, other things being equal, the higher the stakes in acting and in particular the greater the moral risk, the higher are the epistemic requirements for justified action. The decision to go to war is generally a high stakes decision par excellence and the moral risks are especially great, for two reasons. First, unless one is justified in going to war, one's deliberate killing of enemy combatants will he murder, indeed mass murder. Secondly, at least in large-scale modem war, it is a virtual certainty that one will kill innocent people even if one is justified in going to war and conducts the war in such a way as to try to minimize harm to innocents. Given these grave moral risks of going to war, quite apart from often substantial prudential concerns, some types of justifications for going to war may simply be too subject to abuse and error to make it justifiable to invoke them. The 'irresponsible act' objection is not a consequentialist objection in any interesting sense. It does not depend upon the assumption that every particular act of going to war preventively has unacceptably bad consequences (whether in itself or by virtue of contributing lo the general acceptance of a principle allowing preventive war); nor does it assume that it is always wrong lo rely on a justification which, if generally accepted, would produce unacceptable consequences. Instead, the "irresponsible act' objection is more accurately described as an agent-centered argument and more particularly an argument from moral epistemic responsibility. The 'irresponsible act' objection to preventive war is highly plausible if— but only if—one assumes that the agents who would invoke the preventive-war justification are, as it were, on their own in making the decision to go to war preventively. In other words, the objection is incomplete unless the context of decision-making is further specified. Whether the special risks of relying on the preventive-war justification are unacceptably high will depend, inter alia, upon whether the decision-making process includes effective provisions for redu­cing those special risks. Because the special risks are at least in significant part epistemic—due to the inherently speculative character of the preventive war-justification—the epistemic context of the decision is crucial. Because institutions can improve the epistemic performance of agents, it is critical to know what the institutional context of the preventive-war decision is, before we can regard the 'irresponsible agent' objection as conclusive. Like the 'bad practice' argument, this second objection to preventive war is inconclusive because it does not consider— and rule out—the possibility that well-designed institutions for decision-making could address the problems that would otherwise make it irresponsible for a leader to invoke the preventive-war justification.

#### No alternative to the law/legal system---other ideas bring more inequality and abuse

Jerold S. Auerbach 83, Professor of History at Wellesley, “Justice Without Law?”, 1983, p. 144-146

As cynicism about the legal system increases, so does enthusiasm for alternative dispute-settlement institutions. The search for alternatives accelerates, as Richard Abel has suggested, "when some fairly powerful interest is threatened by an increase in the number or magnitude of legal rights.\*'6 Alternatives are designed to provide a safety valve, to siphon discontent from courts. With the danger of political confrontation reduced, the ruling power of legal institutions is preserved, and the stability of the social system reinforced. Not incidentally, alternatives prevent the use of courts for redistributive purposes in the interest of equality, by consigning the rights of disadvantaged citizens to institutions with minimal power to enforce or protect them. It is, therefore, necessary to beware of the seductive appeal of alternative institutions. They may deflect energy from political organization by groups of people with common grievances; or discourage effective litigation strategies that could provide substantial benefits. They may, in the end, create a two-track justice system that dispenses informal "justice" to poor people with "small" claims and "minor" disputes, who cannot afford legal services, and who are denied access to courts. (Bar associations do not recommend that corporate law firms divert their clients to mediation, or that business deductions for legal expenses—a gigantic government subsidy for litigation—be eliminated.) Justice according to law will be reserved for the affluent, hardly a novel development in American history but one that needs little encouragement from the spread of alternative dispute-settlement institutions.¶ It is social context and political choice that determine whether courts, or alternative institutions, can render justice more or less accessible—and to whom. Both can be discretionary, arbitrary, domineering—and unjust. Law can symbolize justice, or conceal repression. It can reduce exploitation, or facilitate it. It can prohibit the abuse of power, or disguise abuse in procedural forms. It can promote equality, or sustain inequality. Despite the resiliency and power of law, it seems unable to eradicate the tension between legality and justice: even in a society of (legal) equals, some still remain more equal than others. But diversion from the legal system is likely to accentuate that inequality. Without legal power the imbalance between aggrieved individuals and corporations, or government agencies, cannot be redressed. In American society, as Laura Nader has observed, "disputing without the force of law ... [is| doomed to fail."7 Instructive examples document the deleterious effect of coerced informality (even if others demonstrate the creative possibilities of indigenous experimentation). Freed slaves after the Civil War and factory workers at the turn of the century, like inner-city poor people now, have all been assigned places in informal proceedings that offer substantially weaker safeguards than law can provide. Legal institutions may not provide equal justice under law, but in a society ruled by law it is their responsibility.¶ It is chimerical to believe that mediation or arbitration can now accomplish what law seems powerless to achieve. The American deification of individual rights requires an accessible legal system for their protection. Understandably, diminished faith in its capacities will encourage the yearning for alternatives. But the rhetoric of "community" and "justice" should not be permitted to conceal the deterioration of community life and the unraveling of substantive notions of justice that has accompanied its demise. There is every reason why the values that historically are associated with informal justice should remain compelling: especially the preference for trust, harmony, and reciprocity within a communal setting. These are not, however, the values that American society encourages or sustains; in their absence there is no effective alternative to legal institutions.¶ The quest for community may indeed be "timeless and universal."8 In this century, however, the communitarian search for justice without law has deteriorated beyond recognition into a stunted off-shoot of the legal system. The historical progression is clear: from community justice without formal legal institutions to the rule of law, all too often without justice. But injustice without law is an even worse possibility, which misguided enthusiasm for alternative dispute settlement now seems likely to encourage. Our legal culture too accurately expresses the individualistic and materialistic values that most Americans deeply cherish to inspire optimism about the imminent restoration of communitarian purpose. For law to be less conspicuous Americans would have to moderate their expansive freedom to compete, to acquire, and to possess, while simultaneously elevating shared responsibilities above individual rights. That is an unlikely prospect unless Americans become, in effect, un-American. Until then, the pursuit of justice without law does incalculable harm to the prospect of equal justice.

#### Single acts of resistance don’t spillover

Antonio **Negri 5**, Italian Marxist philosopher, “postmodern global governance and the critical legal project”, Law and Critique (2005) 16: 27–46

(In parenthesis, at this point, we could ask ourselves: if there is no possibility of reconstructing a strong realist alternative starting from the margins of the legal system, is it still possible to consider these very margins, that is to say, the interstices of a world compacted by command (by society’s material subsumption by capital), as points of resistance, or simply as irresoluble ontological ‘folds’, or even as cues for escape strategies? Such an illusion has for long been maintained by intellectuals and law practitioners during the years in which reformism was in deep crisis, i.e. from Thatcher to Blair, Reagan to Clinton. In the years of the ‘pensiero debole’, **some**, having almost gone ‘underground’, **hoped** (like hackers inﬁltrating the net) that **individual** instances of **resistance could** still **produce general eﬀects** **of sabotage in the system** and that the gestures and the tactics of refusal could open up into alternative strategies. **None of this was realised**, at least not **in any visible way**. Even where the normative logics of the destruction of Welfarism and privatisation do not extend their reach, even where the restorative decisions of the courts do not openly triumph, a mechanism was set in motion whereby democratic legal proceedings were neutralised and the constituent powers of freedom suﬀocated – a mechanism which seemed and proved unstoppable. And yet… And yet something did happen. It happened not because of the ‘resistants’ but because the phoenix-like return of the ﬂame from the furnace of the new totalitarian fusion has been unstoppable. The fact of the matter is that the more the postmodern process of law’s absorption into the privatistic command of capital got underway, and the new technologies of governance became effective in managing the particular and in leading it back into the system of command, the more one witnessed the onset, or at least the appearance, of a multiplicity of violent shifts, a plurality of interruptions, more or less capable of being clearly articulated and of producing subjectivity, yet always proliferating… For the proliferation of the interstice was ontological, not a matter of will. What we witnessed was a somewhat spontaneous overturning of the systemic interdependence of legal production points, so that, with respect to the central problematics of legal thought for instance, the theory of **interpretation became increasingly** undecided (and therefore potentially **open** to unforeseen and radically other possibilities), and, on the constitutional plane, the deﬁnition of subjects became increasingly fragmented, diﬀuse, and wide, bending the system’s unity into some sort of spontaneous federalism. We cannot overestimate these phenomena. Taken in themselves, they are of utmost importance. They often make possible both the opening up of the discussion and, exceptionally, the bringing together of the critical process. Substantive interests and subjective rights – such as those of women, gays and lesbians, and other groups – would not have had the space to develop and mature outside these interstitial dispositives. Still though, **none of this is enough**. **The insistence of legal strategy on the** **interstice**, no matter how open this be to proliferating tensions, **cannot establish a new juridical horizon**. **Small**, albeit important, innovatory **moments are drawn into the abyss of the structures of command**. At which point, there is once more the void).

#### Legal norms don’t cause wars and the alt can’t solve

David Luban **10**, law prof at Georgetown, Beyond Traditional Concepts of Lawfare: Carl Schmitt and the Critique of Lawfare, 43 Case W. Res. J. Int'l L. 457

Among these associations is the positive, constructive side of politics, the very foundation of Aristotle's conception of politics, which Schmitt completely ignores. Politics, we often say, is the art of the possible. It is the medium for organizing all human cooperation. Peaceable civilization, civil institutions, and elemental tasks such as collecting the garbage and delivering food to hungry mouths all depend on politics. Of course, peering into the sausage factory of even such mundane municipal institutions as the town mayor's office will reveal plenty of nasty politicking, jockeying for position and patronage, and downright corruption. Schmitt sneers at these as "banal forms of politics, . . . all sorts of tactics and practices, competitions and intrigues" and dismisses them contemptuously as "parasite- and caricature-like formations." n55 The fact is that Schmitt has nothing whatever to say about the constructive side of politics, and his entire theory focuses on enemies, not friends. In my small community, political meetings debate issues as trivial as whether to close a street and divert the traffic to another street. It is hard to see mortal combat as even a remote possibility in such disputes, and so, in Schmitt's view, they would not count as politics, but merely administration. Yet issues like these are the stuff of peaceable human politics. Schmitt, I have said, uses the word "political" polemically--in his sense, politically. I have suggested that his very choice of the word "political" to describe mortal enmity is tendentious, attaching to mortal enmity Aristotelian and republican associations quite foreign to it. But the more basic point is that Schmitt's critique of humanitarianism as political and polemical is itself political and polemical. In a word, the critique of lawfare is itself lawfare. It is self-undermining because to the extent that it succeeds in showing that lawfare is illegitimate, it de-legitimizes itself. What about the merits of Schmitt's critique of humanitarianism? His argument is straightforward: either humanitarianism is toothless and [\*471] apolitical, in which case ruthless political actors will destroy the humanitarians; or else humanitarianism is a fighting faith, in which case it has succumbed to the political but made matters worse, because wars on behalf of humanity are the most inhuman wars of all. Liberal humanitarianism is either too weak or too savage. The argument has obvious merit. When Schmitt wrote in 1932 that wars against "outlaws of humanity" would be the most horrible of all, it is hard not to salute him as a prophet of Hiroshima. The same is true when Schmitt writes about the League of Nations' resolution to use "economic sanctions and severance of the food supply," n56 which he calls "imperialism based on pure economic power." n57 Schmitt is no warmonger--he calls the killing of human beings for any reason other than warding off an existential threat "sinister and crazy" n58 --nor is he indifferent to human suffering. But international humanitarian law and criminal law are not the same thing as wars to end all war or humanitarian military interventions, so Schmitt's important moral warning against ultimate military self-righteousness does not really apply. n59 Nor does "bracketing" war by humanitarian constraints on war-fighting presuppose a vanished order of European public law. The fact is that in nine years of conventional war, the United States has significantly bracketed war-fighting, even against enemies who do not recognize duties of reciprocity. n60 This may frustrate current lawfare critics who complain that American soldiers in Afghanistan are being forced to put down their guns. Bracketing warfare is a decision--Schmitt might call it an existential decision--that rests in part on values that transcend the friend-enemy distinction. Liberal values are not alien extrusions into politics or evasions of politics; they are part of politics, and, as Stephen Holmes argued against Schmitt, liberalism has proven remarkably strong, not weak. n61 We could choose to abandon liberal humanitarianism, and that would be a political decision. It would simply be a bad one.

#### Lawfare is inevitable, but using it is key to access the case

Goldsmith, 11 [9/8, Jack, Henry L. Shattuck Professor at Harvard Law School, former Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, member of the Hoover Institution Task Force on National Security and Law, “Mea Culpa: Lawfare,” www.lawfareblog.com/2011/09/mea-culpa-lawfare/]

In the Fall of 2002, a month or so after I started work in the Defense Department General Counsel’s office, I had a chat with Rear Admiral Michael Lohr, who at the time was the Judge Advocate General of the Navy. I had come to the Pentagon from the University of Chicago Law knowing very little about how the U.S. military worked. At some point in the conversation with Admiral Lohr I said that I was surprised about how law- and lawyer-heavy the Pentagon was. I probably conveyed doubt, perhaps a lot, that this was a healthy development. Admiral Lohr patiently explained that the Pentagon was a huge organization, that any such organization needed many rules to function well, that deviations from rule-governed behavior, especially during armed conflict, could have disastrous consequences for the military and the nation, and that lawyers were integral in ensuring that this did not happen. That conversation was the beginning of my decade-long education about the complex but important role of law in the military and in the national security establishment more generally. Over the course of the decade, I came to appreciate the wisdom in Lohr’s words. I am still sensitive to the potential costs of so many lawyers in the military, including risk aversion, loss of initiative, and intrusion on the commander’s prerogative. But I now better appreciate the benefits, and I think they outweigh the costs on balance. One of many benefits is the enormous power that the military gains from the constraint of law and lawyers. Soldiers kill and maim and destroy property and unsettle lives, and American soldiers do so with high-tech weapons that often give them enormous advantages over their adversaries. Adherence to law, and especially to the laws of war that define when and how military force can legitimately employed, is what justifies and excuses these otherwise-terrible acts, renders them moral, and enables a person of conscience and honor to undertake them. Law compliance is more important than ever in an era where every military conflict plays out on the internet for all to see and criticize, and in which law is (as my colleague David Kennedy puts it) “a vocabulary for judgment” and “a mark of legitimacy.” Lawful action—and, just as important, **the perception of lawful action**—is more than a demand of honor or morality or something to abide to withstand legal scrutiny; **it is a military imperative**. Some of the USG’s greatest defeats in its post-9/11 wars have related to non-compliance with law. As legality has moved to center stage as a military consideration, lawyers have necessarily moved with it in order to guide commanders and defend the legality of controversial war decisions to the public. Relatedly, my views on lawfare have changed. I started the decade in the camp of those who saw the novel cascade of legal criticisms and lawsuits against the U.S. government’s counterterrorism policies simply as efforts to use law strategically “as a weapon of war” to “handcuff the United States,” as Charlie Dunlap put it in his seminal paper. This may well be the motivation of some of USG critics, both inside and outside the government, but the issue, I now realize, is much more complex. As war has become hyper-legalized, and as legality has become the currency of legitimacy for military action, it is inevitable that government critics will use law as a measure of critique and a tool of sanction. But the Executive branch uses law strategically as well. The President’s **legitimate military power flows from domestic and international law**. His lawyers are in constant battle—with the media, NGOs, and terrorists in federal court—for their favored understandings of the law, and in these battles they interpret and employ law strategically to further their aims. The United States also employs law strategically when it seizes terrorist assets, buys commercial satellite imagery, hires private security forces, threatens sanctions, and engages in thousands of other war-related acts every day. To take one of many other examples, counterinsurgency strategy, including the Rule of Law Field Force – Afghanistan, is also a form of using law strategically as a weapon in war. “Lawfare in this sense,” Mark Martins noted on this blog, “is in many respects the opposite of the manipulative original connotation of the term.” There is no escaping the **strategic use of law in war because law defines and touches on every aspect of war.** There are certainly abuses of law in war. But in a world in which legal norms touching on war are contested and the interpreters of these norms are many and varied, it is often hard to say, except in clear cases of dishonesty, that law is used abusively. There are of course many potential costs of lawfare, including many of the same costs associated with the rise of lawyers in the military. But complaining about the strategic use of law against the USG, I now realize, is futile; the USG, and every other actor in war, uses law strategically, and **lawfare** is not going away. A much better approach, I now think, is (a) to recognize that **legality and the perception of legality and the contested development of legal norms are an inevitable part of the battlefield**, and (b) do one’s best to win the war over law while controlling its many costs.

## 1AR

### 1ar circumvention

#### Political pressures ensure compliance

Stephen I. Vladeck 9, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, 3-1-2009, “The Long War, the Federal Courts, and the Necessity / Legality Paradox,” http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=facsch\_bkrev

Moreover, even if one believes that suspensions are unreviewable, there is a critical difference between the Suspension Clause and the issue here: at least with regard to the former, there is a colorable claim that the Constitution itself ousts the courts from reviewing whether there is a “Case[ ] of Rebellion or Invasion [where] the public Safety may require” suspension––and even then, only for the duration of the suspension.179 In contrast, Jackson’s argument sounds purely in pragmatism—courts should not review whether military necessity exists because such review will lead either to the courts affirming an unlawful policy, or to the potential that the political branches will simply ignore a judicial decision invalidating such a policy.180 Like Jackson before him, Wittes seems to believe that the threat to liberty posed by judicial deference in that situation pales in comparison to the threat posed by judicial review. ¶ The problem is that such a belief is based on a series of assumptions that Wittes does not attempt to prove. First, he assumes that the executive branch would ignore a judicial decision invalidating action that might be justified by military necessity.181 While Jackson may arguably have had credible reason to fear such conduct (given his experience with both the Gold Clause Cases182 and the “switch in time”),183 a lot has changed in the past six-and-a-half decades, to the point where I, at least, cannot imagine a contemporary President possessing the political capital to squarely refuse to comply with a Supreme Court decision. But perhaps I am naïve.184

#### Obama supports the plan

Hosenball, 13 [Mark, Reuters, February, Support grows for U.S. "drone court" to review lethal strikeshttp://www.reuters.com/article/2013/02/09/us-usa-drones-idUSBRE91800B20130209]

(Reuters) - During a fresh round of debate this week over President Barack Obama's claim that he can unilaterally order lethal strikes by unmanned aircraft against U.S. citizens, some lawmakers proposed a middle ground: a special federal "drone court" that would approve suspected militants for targeting. While the idea of a judicial review of such operations may be gaining political currency, multiple U.S. officials said on Friday that imminent action by the U.S. Congress or the White House to create one is unlikely. The idea is being actively considered, however, according to a White House official. At Thursday's confirmation hearing for CIA director nominee John Brennan, senators discussed establishing a secret court or tribunal to rule on the validity of cases that U.S. intelligence agencies draw up for killing suspected militants using drones. The court could be modeled on an existing court which examines applications for electronic eavesdropping on suspected spies or terrorists. Senator Dianne Feinstein, Democratic chairwoman of the Senate Intelligence Committee, said Thursday that she planned to "review proposals for ... legislation to ensure that drone strikes are carried out in a manner consistent with our values, and the proposal to create an analogue of the Foreign Intelligence Surveillance Court to review the conduct of such strikes." Senator Angus King, a Maine independent, said during the hearing that he envisioned a scenario in which executive branch officials would go before a drone court "in a confidential and top-secret way, make the case that this American citizen is an enemy combatant, and at least that would be ... some check on the activities of the executive." King suggested that only drone attacks on U.S. citizens would need court approval; other proposals leave open the possibility that such a court could also rule regarding drone strikes on non-Americans. On Friday, a White House official indicated the administration was open to the idea. Without specifically mentioning drones, the official said "the White House has been discussing various ways there could be independent review of counterterrorism actions for more than a year."

#### Solvency doesn’t depend on the court working – it just needs to exist in order to work

Pillar, 13 [Paul, A Killing court, Nonresident Senior Fellow, Foreign Policy, Center for 21st Century Security and Intelligence Brookings, <http://www.brookings.edu/research/opinions/2013/02/08-drone-court-pillar>]

In John Brennan's confirmation hearing before the Senate Select Committee on Intelligence, committee chair Diane Feinstein (D-CA) said she would explore with Congressional colleagues the possible creation of a special court to review candidates for assassination by armed drones. The idea is worth exploring. Such a judicial mechanism could be a way of meeting the well-justified concerns of many that the drone program is too much a matter of executive discretion. The Foreign Intelligence Surveillance Court can serve as a successful model of how such a court might work. If we are to involve the judiciary before tapping a person's telephone (even when the target of the tap is a foreigner), why shouldn't we involve courts before killing the person? Even if a drone court does not materialize, Congressional consideration of one would give a healthy boost to the hitherto insufficient discussion and debate about applying the rule of law to aerial assassination. Before establishing any such court, however, Congress should carefully weigh one other thing such a court would do and some things it would not do.

### 1ar china

**Extinction**

**Hunkovic 9** – American Military University (Lee J., “The Chinese-Taiwanese Conflict: Possible Futures of a Confrontation between China, Taiwan and the United States of America,” http://www.lamp-method.org/eCommons/Hunkovic.pdf)

A war between China, Taiwan and the **U**nited **S**tates has the potential to escalate into a nuclear conflict and a **third world war**, therefore, many countries other than the primary actors could be affected by such a conflict, including Japan, both Koreas, Russia, Australia, India and Great Britain, if they were drawn into the war, as well as all other countries in the world that participate in the global economy, in which the United States and China are the two most dominant members.

**Heg solves china war**

Thayer, 6 [Bradley A., Assistant Professor of Political Science at the University of Minnesota, Duluth, The National Interest, November -December, “In Defense of Primacy”, lexis]

They are the "Gang of Five": China, Cuba, Iran, North Korea and Venezuela. Of course, countries like India, for example, do not agree with all policy choices made by the United States, such as toward Iran, but New Delhi is friendly to Washington. Only the "Gang of Five" may be expected to consistently resist the agenda and actions of the United States. China is clearly the most important of these states because it is a rising great power. But even Beijing is intimidated by the United States and refrains from openly challenging U.S. power. China proclaims that it will, if necessary, resort to other mechanisms of challenging the United States, including asymmetric strategies such as targeting communication and intelligence satellites upon which the United States depends. **But China may not be confident those strategies would work**, and so it is likely to refrain from testing the United States directly for the foreseeable future because China's power benefits, as we shall see, from the international order U.S. primacy creates.

#### U.S. can adapt to A2/AD

James Dobbins 12, directs the International Security and Defense Policy Center at the RAND Corporation, previously served as American Ambassador to the European Community and Assistant Secretary of State, August/September 2012, “War with China,” Survival, Vol. 54, No. 4, p. 7-24

The increasing difficulty in ensuring direct defence could be consequential even if Sino-American hostilities are unlikely, for they could stimulate Chinese risk-taking, increase US inhibitions, and weaken the resolve of US allies and China’s neighbours to withstand greater Chinese insistence on sett ling disputes on Beijing’s terms. These trends are the result of underlying general technological progress; sustainable growth in military spending, reform and doctrinal adaptation within the People’s Liberation Army; and geographic distances for China and the United States. On the other hand, most of China’s neighbours are growing both economically and in technological sophistication, and some may choose to keep pace in quality (if not quantity) with Chinese advances in the military field.

Barring unforeseen technological developments that assure survivability for US forces and C4ISR capabilities, it will not be possible or affordable for the United States to buck these trends. As the defence of Taiwan is already becoming problematic for US forces (including for its carriers and nearby air bases), so will US operational options in the event of a confrontation with China over a North Korean collapse or a crisis in Southeast Asia. Over time, the United States is likely to become increasingly reliant on its more distant and less vulnerable capabilities. As US forward-operating survivability declines, strike range must increase. US military-operational emphasis in the Western Pacific will thus shift from geographically limited direct defence to more escalatory responses, and eventually, when even these will not suffice, from deterrence based on denial to deterrence based on the threat of punishment, with the speed of the shift likely to be more swift in Taiwan, followed by Northeast Asia and then Southeast Asia at a somewhat later date.

### 1ar heg

#### Monteiro’s wrong

**Busby 12**, Josh, assistant professor of public affairs at the Lyndon B. Johnson School of Public Affairs [“Josh Busby on Unipolarity and International Relations,” January 6th, http://www.strausscenter.org/strauss-news/josh-busby-on-unipolarity-and-international-relations.html] HURWITZ

Strauss Scholar, Joshua Busby, wrote a three-part piece on the blog The Duck of Minerva, responding to two articles published by University of Chicago scholars Nuno Monteiro, and Sebastian Rosato and John Schuessler. The articles, and Busby’s response, focus on international relations, unipolarity and the realist approach to foreign policy. Busby’s first post critiques Nuno Monteiro’s article, “Unrest Assured: Why Unipolarity Is Not Peaceful” published in International Security. Monteiro argued that unipolarity has been less peaceful than other time periods. Busby disagrees with this argument, citing the contemporary era may create a “presentist bias” due to the overemphasis of our own lived experience and the omnipresence of the news media. Finally Busby addressed Moneiro’s argument that unipolarity drives conflict. Busby argues that **domestic-level factors in** both the United States and **potential adversaries, rather than U.S. power** alone, help explain recent conflicts.

#### Superpower transitions necessitate global wars.

**Khanna 09** – Director of the Global Governance Initiative at the New America Foundation (Parag, The second world: how emerging powers are redefining global competition in the twenty-first century, p. 337-338)

Even this scenario is optimistic, for superpowers are by definition willing to encroach on the turf of others—changing the world map in the process. Much as in geology, such tectonic shifts always result in earthquakes, particularly as rising powers tread on the entrenched position of the reigning hegemon.56 The sole exception was the twentieth century Anglo-American transition in which Great Britain and the United States were allies and shared a common culture—and even that took two world wars to complete.57 As the relative levels of power of the three superpowers draw closer, the temptation of the number-two to preemptively knock out the king on the hill grows, as does the lead power’s incentive to preventatively attack and weaken its ascending rival before being eclipsed.58 David Hume wrote, “It is not a great disproportion between ourselves and others which produces envy, but on the contrary, a proximity.”59 While the density of contacts among the three superpowers makes the creation of a society of states more possible than ever—all the foreign ministers have one anothers’ mobile phone numbers—the deep differences in interests among the three make forging a “culture of peace” more challenging than ever.60 China seas, hyperterrorism with nuclear weapons, an attack in the Gulf of Aden or the Straits of Malacca. The uncertain alignments of lesser but still substantial powers such as Russia, Japan, and India could also cause escalation. Furthermore, America’s foreign lenders could pull the plug to undermine its grand strategy, sparking economic turmoil, political acrimony, and military tension. War brings profit to the military-industrial complex and is always supported by the large patriotic camps on all sides. Yet the notion of a Sino-U.S. rivalry to lead the world is also premature and simplistic, for in the event of their conflict, Europe would be the winner, as capital would flee to its sanctuaries. These great tensions are being played out in the world today, as each superpower strives to attain the most advantageous position for itself, while none are powerful enough to dictate the system by itself. Global stability thus hangs between the bookends Raymond Aron identified as “peace by law” and “peace by empire,” the former toothless and the latter prone to excess.61 Historically, successive iterations of balance of power and collective security doctrines have evolved from justifying war for strategic advantage into building systems to avoid it, with the post-Napoleonic “Concert of Europe” as the first of the modern era.62 Because it followed rules, it was itself something of a societal system.\* Even where these attempts at creating a stable world order have failed—including the League of Nations after World War I—systemic learning takes place in which states (particularly democracies) internalize the lessons of the past into their institutions to prevent history from repeating itself.63 Toynbee too viewed history as progressive rather than purely cyclical, a wheel that not only turns around and around but also moves forward such that Civilization (with a big C) could become civilized.64 But did he “give too much credit to time’s arrows and not enough to time’s cycle”?65 Empires and superpowers usually promise peace but bring wars.66 The time to recognize the current revolutionary situation is now—before the next world war.67

### 1ar politics

#### Congress is now unified behind threatening sanctions only if negotiations fail first

**Shabad, 3/18/14** (Rebecca, “Congress fires warning shot at Iran” The Hill, Read more: <http://thehill.com/blogs/global-affairs/middle-east-north-africa/201074-83-senators-outline-preferred-requirements-for#ixzz2wSCbg4ET>)

In a letter sent to President Obama, 83 senators — well above the two-thirds required to override a presidential veto — warned there would be serious consequences for Iran if it fails to reach a nuclear agreement with the United States.

“We must signal unequivocally to Iran that rejecting negotiations and continuing its nuclear weapon program will lead to much more dramatic sanctions, including further limitations on Iran’s exports of crude oil and petroleum products,” the letter says.

Several hours later, a letter to Obama signed by 394 House members was released that said Congress was ready to "act swiftly to consider additional sanctions and steps necessary to change Iran's calculation" if negotiations falter or Iran violates the interim nuclear deal reached last year.

The unified push from both chambers of Congress came as world powers, including the United States, gathered in Vienna, Austria, to try and hammer out the details of a final agreement with Iran.

#### This completely changes the political dynamic – no one is pushing the Menendez bill anymore, and all of the Democratic holdouts lined up to unify on post-negotiation sanctions threats

**Stoil, 3/18/14** (Rebecca, “Large senate majority warns of Iran sanctions slippage”The Times of Israel <http://www.timesofisrael.com/huge-senate-majority-warns-of-iran-sanctions-slippage/#ixzz2wZN8yMGe>)

WASHINGTON — Over four-fifths of the US Senate sent a letter Tuesday to President Barack Obama in which they insisted that Iran give up its capacity to break out to a nuclear weapon and warned of the circumvention of existing sanctions under the interim deal with Tehran.

A bipartisan majority of 83 senators signed on to the letter, which was circulated in recent weeks by Senate Foreign Relations Committee Chairman Robert Menendez (D-NJ) and Sens. Lindsey Graham (R-SC), Charles Schumer (D-NY), Mark Kirk (R-IL), Christopher Coons (D-DE) and Kelly Ayotte (R-NH).

In the letter, the senators emphasized their support for the ongoing negotiations between the six world powers and Iran, but insisted that 20 years’ worth of Congressional commitment to sanctions against Iran were what brought the Iranians to the negotiating table in the first place.

Those negotiations resumed Tuesday morning with a meeting in Geneva between EU policy chief Catherine Ashton and Iranian Foreign Minister Mohammad Javad Zarif. The new round of talks is the second in a planned series of meetings this year that aims to transform November’s interim deal between Iran and the world powers — the five permanent members of the UN Security Council plus Germany – into a lasting accord by July.

The letter was a victory for AIPAC, whose activists had pushed for it during a legislative action day two weeks ago. The organization said in a statement Tuesday that it “applauds this overwhelming demonstration by the US Senate of its determination to prevent Iran from achieving nuclear weapons capability.”

In the letter, senators warned that in order to achieve a successful diplomatic outcome, Washington must “couple our willingness to negotiate with a united and unmistakable message to the Iranian regime.”

The letter addressed recent reports that even under the limited sanctions relief offered by the interim agreement, Iran’s economy was improving beyond predictions made by US administration figures.

“Iran must not be allowed during these negotiations to circumvent sanctions,” the senators wrote. “We view this period as one fraught with the danger of companies and countries looking to improve their commercial position in Tehran, especially given recent reports of rising purchases of Iranian oil. Iran cannot be allowed to be open for business.”

The senators emphasized that “Congress has a continuing role to play to improve the prospects for success in the talks with Iran” and promised that as negotiations proceed, they would “outline our views about the essential goals of a final agreement with Iran, continue oversight of the interim agreement and the existing sanctions regime, and signal the consequences that will follow if Iran rejects an agreement that brings to an end its nuclear weapons ambitions.”

The letter laid out core principles that the senators believe should delineate American positions in final status talks, including denying Iran any “right to enrichment under the Nuclear Proliferation Treaty” and calling on Iran to dismantle its entire alleged nuclear weapons program. The letter specified that the latter included denying Iran the ability to create a bomb using either enriched uranium or plutonium, which could be produced by the heavy water plant in Arak. The senators specifically called for the regime to give up the Arak reactor and to “fully explain the questionable activities in which it engaged at Parchin and other facilities.” The military base at Parchin is suspected of being a site for testing delivery systems for nuclear weapons.

The office of Menendez, the Senate Foreign Relations Committee chairman, emphasized the line in the letter that said that “most importantly, Iran must clearly understand the consequences of failing to reach an acceptable final agreement. We must signal unequivocally to Iran that rejecting negotiations and continuing its nuclear weapon program will lead to much more dramatic sanctions, including further limitations on Iran’s exports of crude oil and petroleum products.”

Although the administration has pushed Senate Democrats not to sign on to the Nuclear Weapons Free Iran Act, which would delineate the sanctions to be imposed should Iran back away from talks, a number of senators who have not co-sponsored the bill signed on to Tuesday’s letter. Menendez, together with Senator Mark Kirk (R-IL) are the original sponsors of the bill, which has 67 other Senate co-sponsors.

#### Deal collapse inevitable over centrifuges and Zarif isn’t seeking a deal

**Goldberg, 1/24/14 -** national correspondent for The Atlantic(Jeffrey, Bloomberg, “More Bad Omens for the Iran Nuclear Talks” <http://www.bloomberg.com/news/2014-01-24/more-bad-omens-for-the-iran-nuclear-talks.html>)

The velocity of bad sign-spotting is increasing as we get closer to the main negotiations over Iran's nuclear program. Bad Sign No. 1: I think it’s important to note that Iranian President Hassan Rouhani has just stated that under no circumstances would Iran agree to destroy any of its centrifuges. I would also like to note that this unequivocal statement, if sincere, means that there is no possibility of a nuclear deal between Iran and the six powers set to resume negotiating with it next month. In order to keep Iran perpetually 6 to 12 months away from developing a nuclear weapon -- an unacceptable period in the mind of Israeli Prime Minister Benjamin Netanyahu, but a time-frame that U.S. President Barack Obama could conceivably accept -- Iran would have to agree to dismantle 15,000 centrifuges; close an important uranium enrichment site; and accept 20 years of nuclear inspections, according to the Institute for Science and International Security, a well-respected (and centrist) think tank headed by the former United Nations weapons inspector David Albright. Here is what Rouhani -- who is described as a far more moderate a figure than the man who actually leads Iran, Supreme Leader Ayatollah Ali Khamenei -- said on CNN: “In the context of nuclear technology, particularly of research and development and peaceful nuclear technology, we will not accept any limitations. And in accordance with the parliament law, in the future, we’re going to need 20,000 megawatts of nuclear-produced electricity, and we’re determined to obtain the nuclear fuel for the nuclear installation at the hands of our Iranian scientists. And we are going to follow on this path." At which point, his interviewer, Fareed Zakaria, asks: “So there would be no destruction of centrifuges, of existing centrifuges?” To which Rouhani responds: “Not under any circumstances. Not under any circumstances.” I’m not sure how Rouhani and his chief negotiator, the suave, superficially Westernized foreign minister Mohammad Javad Zarif, back down from this maximalist position. And I’m not sure how Obama could possibly accept a deal that mothballs centrifuges while leaving them in place, rather than devising an agreement that guarantees their destruction. If the centrifuges are allowed to remain in Iran, but are disabled (or covered with bedsheets or wrapped in couch-plastic or locked in a very big room), it would possible for Iran to very quickly start spinning them again. First step: Kick out the inspectors. Second step: Break the locks. Third step: Enrich uranium to weapons-grade level in a short enough period that the West -- the lumbering, ambivalent, disputatious West -- has insufficient time to respond. This would be the moment, of course, at which Obama would have to carry out his promise to use whatever means necessary to stop Iran from going nuclear, and this is not a position Obama wants to create for himself -- which is why leaving the centrifuges in place would not be a wise move for him. Bad Sign No. 2: Zarif, the moderate’s moderate, might not be so moderate at all. Writing in the New Republic, Ali Alfoneh and Reuel Marc Gerecht plumb Zarif’s new memoir, “Mr. Ambassador: A Conversation with Mohammad-Javad Zarif, Iran’s Former Ambassador to the United Nations,” and find distressing signs of ideological fervor: "His discussion of the basic nature of the Islamic Republic and the West exposes Zarif’s ideological commitment and the regime’s revolutionary constancy.” They quote him: “ 'We have a fundamental problem with the West and especially with America,’ Zarif declares. ‘This is because we are claimants of a mission, which has a global dimension. It has nothing to do with the level of our strength, and is related to the source of our raison d’etre. How come Malaysia [an overwhelmingly Muslim country] doesn’t have similar problems? Because Malaysia is not trying to change the international order. It may seek independence and strength, but its definition of strength is the advancement of its national welfare.’ ” Alfoneh and Gerecht continue, “While Zarif considers national welfare one of the goals of the Islamic Republic, he stresses that ‘we have also defined a global vocation, both in the Constitution and in the ultimate objectives of the Islamic revolution.' He adds: ‘I believe that we do not exist without our revolutionary goals.’ ” In other words, U.S. negotiators facing Zarif might be facing someone who is more rigidly ideological than they are prepared to acknowledge.