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### 1AC – Executive Overreach

#### CONTENTION 1: OVERREACH

#### *Scenario A: Targeted Strikes*

#### US policy creates a borderless global war---the lack of statutory limits triggers unnecessary attacks

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University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

Recent statements by administration officials suggest that while, as a matter of law, the United States continues to press a broad definition of the enemy force, its actions, as a matter of policy, are more restrained. Specifically, it focuses its targeted-killing operations on those who pose a "significant threat" n57 and only as a matter of last resort. In the words of John Brennan, the United States does not seek to kill every al Qaeda member, but instead focuses its efforts on "disrupting ... plans and ... plots before they come to fruition," n58 and limits lethal strikes to situations in which it is the "only recourse" against the threat. n59 Brennan cites operational leaders, [\*1186] operatives in the midst of training for an attack, and persons who possess unique operational skills that are being leveraged for an attack. n60 But no binding limits have yet been articulated, and it is not clear that they exist. n61 Are the examples of possible targets exclusive or merely illustrative? How far along does the attack planning need to be? Is mere agreement to plot or plan enough? In what situations is lethal targeting considered the "only recourse"?¶ Of note, recent reporting suggests that the United States has launched at least one drone strike near Sana'a, the capital of Yemen, in a region readily accessible to law enforcement officials, thereby casting doubt on official assertions that lethal targeting is used as a measure of last resort, when capture is not feasible. n62 Moreover, "signature strikes" reportedly were approved for use in Yemen in 2012, allowing the targeting of individuals or groups based on their pattern of activities without knowing the specific targets' identities or roles in the organization - a practice that seems to belie a policy of individualized assessments of "significant threat." n63

#### Congressional inaction has made this a defining policy doctrine---expansive executive authority triggers overreach

Maxwell 12 - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

In the wake of the attacks by al Qaeda on September 11, 2001, an analogous phenomenon of feeling safe has occurred in a recent U.S. national security policy: America’s explicit use of targeted killings to eliminate terrorists, under the legal doctrines of self-defense and the law of war. Legal scholars define targeted killing as the use of lethal force by a state4 or its agents with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.5 In layman’s terms, targeted killing is used by the United States to eliminate individuals it views as a threat.6 Targeted killings, for better or for worse, have become “a defining doctrine of American strategic policy.”7 Although many U.S. Presidents have reserved the right to use targeted killings in unique circumstances, making this option a formal part of American foreign policy incurs risks that, unless adroitly controlled and defined in concert with Congress, could drive our practices in the use of force in a direction that is not wise for the long-term health of the rule of law. This article traces the history of targeted killing from a U.S. perspective. It next explains how terrorism has traditionally been handled as a domestic law enforcement action within the United States and why this departure in policy to handle terrorists like al Qaeda under the law of war—that is, declaring war against a terrorist organization—is novel. While this policy is not an ill-conceived course of action given the global nature of al Qaeda, there are practical limitations on how this war against terrorism can be conducted under the orders of the President. Within the authority to target individuals who are terrorists, there are two facets of Presidential power that the United States must grapple with: first, how narrow and tailored the President’s authority should be when ordering a targeted killing under the rubric of self-defense; and second, whether the President must adhere to concepts within the law of war, specifically the targeting of individuals who do not don a uniform. The gatekeeper of these Presidential powers and the prevention of their overreach is Congress. The Constitution demands nothing less, but thus far, Congress’s silence is deafening.

#### That lowers the threshold for use for US policymakers

Rosa Brooks 13, Prof of Law @ Georgetown University Law Center, Bernard L. Schwartz Senior Fellow, New America Foundation, 4/23/13, The Constitutional and Counterterrorism Implications of Targeted Killing, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

But the advantages of drones are as overstated and misunderstood as the problems they pose — and in some ways, their very perceived advantages cause new problems. Drone technologies temptingly lower or disguise the costs of lethal force, but their availability can blind us to the potentially dangerous longer - term costs and consequences of our strategic choices. Armed drones lower the perceived costs of using lethal force in at least three ways. First, drones reduce the dollar cost of using lethal force inside foreign countries. 13 Most drones are economical compared with the available alternatives. 14 Manned aircraft, for instance, are quite expensive: 15 Lockheed Martin's F - 22 fighter jets cost about $150 million each; F - 35s are $90 million; and F - 16s are $55 million. But the 2011 price of a Reaper drone was approximately $28.4 million, while Predator drones cost only about $5 million to make. 16 As with so many things, putting a dollar figure on drones is difficult; it depends what costs are counted, and what time frame is used. Nevertheless, drones continue to be perceived as cheaper by government decision - makers. Second, relying on drone strikes rather than alternative means reduces the domestic political costs of using lethal force. Sending manned aircraft or special operations forces after a suspected terrorist places the lives of U.S. personnel at risk, and full - scale invasions and occupations endanger even more American lives. In contrast, using armed drones eliminates all short - term risks to the lives of U.S. personnel involved in the operations. Third, by reducing accidental civilian casualties, 17 precision drone technologies reduce the perceived moral and reputational costs of using lethal force. The US government is extraordinarily concerned about avoiding unnecessary civilian casualties, and rightly so. There are moral and legal reasons for this concern, and there are also pragmatic reasons: civilian casualties cause pain and resentment within local populations and host - country governments and alienate the international community It is of course not a bad thing to possess military technologies that are cost little, protect American lives and enable us to minimize civilian casualties. When new technologies appear to reduce the costs of using lethal force, however, the threshold for deciding to use lethal force correspondingly drops, and officials will be tempted to use lethal force with greater frequency and less wisdom.¶ Over the last decade, we have seen US drone strikes evolve from a tool used in extremely limited circumstances to go after specifically identified high - ranking al Qaeda officials to a tool relied on in an increasing number of countries to go after an eternally lengthening list of putative bad actors, with increasingly tenuous links to grave or imminent threats to the United States. Some of these suspected terrorists have been identified by name and specifically targeted, while others are increasingly targeted on the basis of suspicious behavior patterns. Increasingly, drones strikes have targeted militants who are lower and lower down the terrorist food chain, 18 rather than terrorist masterminds. 19 Although drone strikes are believed to have killed more than 3,000 people since 2004, 20 analysis by the New America Foundation and more recently by a the McClatchy newspaper s suggests that only a small fraction of the dead appear to have been so - called "high - value targets." 21 What’s more, drone strikes have spread ever further from "hot" battlefields, migrating from Pakistan to Yemen to Somalia (and perhaps to Mali 22 and the Philippines as well). 23

#### That makes great power war inevitable---causes escalation as traditional checks don’t apply

Eric Posner 13, a professor at the University of Chicago Law School, May 15th, 2013, "The Killer Robot War is Coming," Slate, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/drone\_warfare\_and\_spying\_we\_need\_new\_laws.html

Drones have existed for decades, but in recent years they have become ubiquitous. Some people celebrate drones as an effective and humane weapon because they can be used with precision to slay enemies and spare civilians, and argue that they pose no special risks that cannot be handled by existing law. Indeed, drones, far more than any other weapon, enable governments to comply with international humanitarian law by avoiding civilian casualties when attacking enemies. Drone defenders also mocked Rand Paul for demanding that the Obama administration declare whether it believed that it could kill people with drones on American territory. Existing law permits the police to shoot criminals who pose an imminent threat to others; if police can gun down hostage takers and rampaging shooters, why can’t they drone them down too?¶ While there is much to be said in favor of these arguments, drone technology poses a paradox that its defenders have not confronted. Because drones are cheap, effective, riskless for their operators, and adept at minimizing civilian casualties, governments may be tempted to use them too frequently.¶ Indeed, a panic has already arisen that the government will use drones to place the public under surveillance. Many municipalities have passed laws prohibiting such spying even though it has not yet taken place. Why can’t we just assume that existing privacy laws and constitutional rights are sufficient to prevent abuses?¶ To see why, consider U.S. v. Jones, a 2012 case in which the Supreme Court held that the police must get a search warrant before attaching a GPS tracking device to a car, because the physical attachment of the device trespassed on property rights. Justice Samuel Alito argued that this protection was insufficient, because the government could still spy on people from the air. While piloted aircraft are too expensive to use routinely, drones are not, or will not be. One might argue that if the police can observe and follow you in public without obtaining a search warrant, they should be able to do the same thing with drones. But when the cost of surveillance declines, more surveillance takes place. If police face manpower limits, then they will spy only when strong suspicions justify the intrusion on targets’ privacy. If police can launch limitless drones, then we may fear that police will be tempted to shadow ordinary people without good reason.¶ Similarly, we may be comfortable with giving the president authority to use military force on his own when he must put soldiers into harm’s way, knowing that he will not risk lives lightly. Presidents have learned through hard experience that the public will not tolerate even a handful of casualties if it does not believe that the mission is justified. But when drones eliminate the risk of casualties, the president is more likely to launch wars too often.¶ The same problem arises internationally. The international laws that predate drones assume that military intervention across borders risks significant casualties. Since that check normally kept the peace, international law could give a lot of leeway for using military force to chase down terrorists. But if the risk of casualties disappears, then nations might too eagerly attack, resulting in blowback and retaliation. Ironically, the reduced threat to civilians in tactical operations could wind up destabilizing relationships between countries, including even major powers like the United States and China, making the long-term threat to human life much greater.¶ These three scenarios illustrate the same lesson: that law and technology work in tandem. When technological barriers limit the risk of government abuse, legal restrictions on governmental action can be looser. When those technological barriers fall, legal restrictions may need to be tightened.

#### These conflicts go nuclear --- wrecks global stability

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

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.

#### *Scenario B – Detention*

**Lack of limits on the executive detention make overreach inevitable--- radicalizes foreign populations---codification is critical to set the precedent**

Matthew C **Waxman 9**, Professor of Law; Faculty Chair, Roger Hertog Program on Law and National Security, Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 59-61

Besides posing risks to liberty, administrative detention can also be counterproductive from the security standpoint. Again, the substantive criteria of detention law may help mitigate the risk. Historically, detention policies— especially those viewed as overbroad by the communities in which they were implemented— have sometimes proven ill-suited to combating terrorism and radicalization of individuals or communities. The British government learned painfully that internment of suspected Northern Ireland terrorists was viewed among some communities as a form of collective punishment that fueled violent nationalism and helped dry up the supply of community informants. 54 And in Iraq and Afghanistan, though the circumstances are exceptional because combat still rages there, detention has played an important role in neutralizing threats to coalition forces, but it has also contributed to anticoalition radicalization, especially when it is perceived as being used indiscriminately.¶ One role that well-crafted definitional criteria can play is in **mitigat**ing an **executive’s propensity to overuse the power to detain.** Observers from both the right and the left worry correctly that in the face of terrorist threats the executive is likely to push detention powers to or even past their outer bounds in order to prevent catastrophe as well as to head off any political backlash for having failed to take sufficient action. 56 Such **overbroad use of detention risks** further **radicalizing** and **alienating communities** from which terrorists are **likely to emerge** or whose **assistance is vital** in identifying or penetrating extremist groups. Moreover, several important studies of counterterrorism strategy have emphasized the need to target coercive policies, including **military** **and** **law enforcement efforts**, **narrowly** precisely to avoid playing into al Qaeda propaganda efforts to **aggregate local grievances into a common global movement**. 57 These are fundamentally policy, not legal, problems, and they will require sound executive judgment no matter what the legal regime looks like. But once the role of detention is firmly situated in a broader counterterrorism strategy that seeks to balance the many competing policy priorities, a carefully drawn administrative **detention statute** can help **mitigate long-term strategic damage** from the propensity to **overreach in the short term**. ¶ The danger that administrative detention poses to liberty and security points against emphasizing deterrence or information gathering as its primary strategic purpose. Virtually any very dangerous terrorist or supporter of terrorism that the government could hope to deter through detention would be deterred already by the threat of criminal prosecution or military attack or would be sufficiently committed to violent extremism to render the marginal deterrent threat of administrative detention negligible. 58 As for information gathering, an administrative detention law premised on detaining individuals with valuable knowledge regardless of whether they have engaged in nefarious activities sets a precedent that is too easily abused or overused **at home or abroad.** Information gathering, including through lawful interrogation, will undoubtedly be a strong motive for almost any administrative detention scheme, and an individual’s knowledge of terrorist planning or operations could be a reason not to release the person if he or she has been validly detained on other grounds. 59 But using a person’s suspected knowledge alone as the basis for detention, completely delinking detention from the individual’s voluntary and purposeful actions, cuts even deeper into traditional civil liberties principles and safeguards than most other reasons for administrative detention. 60 A detention law that allows incarceration based on knowledge could also perversely deter individuals with important information from coming forward voluntarily to the government.

**Current detention wrecks** **US rule of law legitimization**

David **Welsh 11**, J.D. from the University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf

The Global War on Terror 1 has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. 2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it **has** also **damaged America’s image** both at home and **abroad**. 3 **Throughout the world**, there is a **growing consensus** that **America has “a lack of credibility as a** fair and just **world leader**.” 4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle **can only be won through legitimizing** the **rule of law** and **undermining** the use of **terror as a means** of political influence. 5 ¶ Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of **the most damaging has been the detention**, treatment, and trial (or in many cases the lack thereof) **of suspected terrorists**. While many scholars have raised constitutional questions about the legality of U.S. detention procedures, 6 this article offers a psychological perspective of legitimacy in the context of detention.

**Plan’s key to legitimize the rule of law---uncertainty risks global instability**

Robert **Knowles 9**, Acting Assistant Professor, New York University School of Law, Spring, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, 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**.

#### Democratic liberalism is backsliding now---the US model of an unrestrained executive causes collapse

Larry **Diamond 9**, Professor of Political Science and Sociology @ Stanford, “The Impact of the Global Financial Crisis on Democracy”, Presented to the SAIS-CGD Conference on New Ideas in Development after the Financial Crisis, Conference Paper that can be found on his Vita

Concern about the future of democracy is further warranted by the gathering signs of a **democratic recession**, even before the onset of the global economic recession. During the past decade, the global expansion of democracy has essentially leveled off and hit an equilibrium While freedom (political rights and civil liberties) continued to expand throughout the post-Cold War era, that progress also halted in 2006, and 2007 and 2008 were the worst consecutive years for freedom since the end of the Cold War, with the number of countries declining in freedom greatly outstripping the number that improved. Two-thirds of all the breakdowns of democracy since the third wave began in 1974 have occurred in the last nine years, and in a number of strategically important states like Russia, Nigeria, Venezuela, Pakistan and Thailand. Many of these countries have not really returned to democracy. And **a number of countries linger in a twilight zone between democracy and authoritarianism**. While normative support for democracy has grown around the world, it remains in many countries, tentative and uneven, or is even eroding under the weight of growing public cynicism about corruption and the self-interested behavior of parties and politicians. Only about half of the public, on average, in Africa and Asia meets a rigorous, multidimensional test of support for democracy. Levels of distrust for political institutions—particularly political parties and legislatures, and politicians in general—are very high in Eastern Europe and Latin America, and in parts of Asia. In many countries, 30-50 percent of the public or more is willing to consider some authoritarian alternative to democracy, such as military or one-man rule. And where governance is bad or elections are rigged and the public cannot rotate leaders out of power, skepticism and defection from democracy grow. Of the roughly 80 new democracies that have emerged during the third wave and are still standing, probably **close to three-quarters are insecure and could run some risk of reversal during adverse** global and domestic **circumstances**. Less at risk—and probably mostly consolidated—are the more established developing country democracies (India, Costa Rica, Botswana, Mauritius), and the more liberal democracies of this group: the ten postcommunist states that have been admitted to the EU; Korea and Taiwan; Chile, Uruguay, Panama, Brazil, probably Argentina; a number of liberal island states in the Caribbean and Pacific. This leaves about 50 democracies and near democracies—including such big and strategically important states as Turkey, Ukraine, Indonesia, the Philippines, South Africa, certainly Pakistan and Bangladesh, and possibly even Mexico—where **the survival of constitutional rule cannot be taken for granted.** In some of these countries, like South Africa, the demise of democracy would probably come, if it happened, not as a result of a blatant overthrow of the current system, **but rather via a gradual executive strangling of** political **pluralism and freedom**, or a steady decline in state capacity and political order due to rising criminal and ethnic violence. Such circumstances would also swallow whatever hopes exist for the emergence of genuine democracy in countries like Iraq and Afghanistan and for the effective restoration of democracy in countries like Thailand and Nepal.

#### US detention policy is key---it has justified democratic backsliding globally

CJA 4 The Center for Justice and Accountability, Amici Curiae in support of petitioners in Al Odah et al. v USA, "Brief of the Center for Justice and Accountability, the International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," 3-10, Lexis

While much of the world is moving to adopt the institutions necessary to secure individual rights, many still regularly abuse these rights. One of the hallmarks of tyranny is the lack of a strong and independent judiciary. Not surprisingly, where countries make the sad transition to tyranny, one of the first victims is the judiciary. Many of the rulers that go down that road justify their actions on the basis of national security and the fight against terrorism, and, disturbingly, many claim to be modeling their actions on the United States. Again, a few examples illustrate this trend. In Peru, one of former President Alberto Fujimori’s first acts in seizing control was to assume direct executive control of the judiciary, claiming that it was justified by the threat of domestic terrorism. He then imprisoned thousands, refusing the right of the judiciary to intervene. International Commission of Jurists, Attacks on Justice 2000-Peru, August 13, 2001, available at ttp://www.icj.org/news.php3?id\_article=2587&lang=en (last visited Jan. 8, 2004). In Zimbabwe, President Mugabe’s rise to dictatorship has been punctuated by threats of violence to and the co-opting of the judiciary. He now enjoys virtually total control over Zimbabweans' individual rights and the entire political system. R.W. Johnson, Mugabe’s Agents in Plot to Kill Opposition Chief, Sunday Times (London), June 10, 2001; International Commission of Jurists, Attacks on Justice 2002— Zimbabwe, August 27, 2002, available at http://www.icj.org/news.php3?id\_article=2695〈=en (last visited Jan. 8, 2004). While Peru and Zimbabwe represent an extreme, the independence of the judiciary is under assault in less brazen ways in a variety of countries today. A highly troubling aspect of this trend is the fact that in many of these instances those perpetuating the assaults on the judiciary have pointed to the United States’ model to justify their actions. Indeed, many have specifically referenced the United States’ actions in detaining persons in Guantánamo Bay. For example, Rais Yatim, Malaysia's "de facto law minister" explicitly relied on the detentions at Guantánamo to justify Malaysia's detention of more than 70 suspected Islamic militants for over two years. Rais stated that Malyasia's detentions were "just like the process in Guantánamo," adding, "I put the equation with Guantánamo just to make it graphic to you that this is not simply a Malaysian style of doing things." Sean Yoong, "Malaysia Slams Criticism of Security Law Allowing Detention Without Trial," Associated Press, September 9, 2003 (available from Westlaw at 9/9/03 APWIRES 09 :34:00). Similarly, when responding to a United States Government human rights report that listed rights violations in Namibia, Namibia's Information Permanent Secretary Mocks Shivute cited the Guantánamo Bay detentions, claiming that "the US government was the worst human rights violator in the world." BBC Monitoring, March 8, 2002, available at 2002 WL 15938703. Nor is this disturbing trend limited to these specific examples. At a recent conference held at the Carter Center in Atlanta, President Carter, specifically citing the Guantánamo Bay detentions, noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already." Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "Every dictator in the world is using what the United States has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in indefinite detention in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — helps create a free license for tyranny in Africa. It helps justify Egypt's move to detain human rights campaigners as threats to national security and does the same for similar measures by the governments of Ivory Coast, Cameroon and Burkina Faso." Available at http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat e=20030121123259. In our uni-polar world, the United States obviously sets an important example on these issues. As reflected in the foundational documents of the United Nations and many other such agreements, the international community has consistently affirmed the value of an independent judiciary to the defense of universally recognized human rights. In the crucible of actual practice within nations, many have looked to the United States model when developing independent judiciaries with the ability to check executive power in the defense of individual rights. Yet others have justified abuses by reference to the conduct of the United States. Far more influential than the words of Montesquieu and Madison are the actions of the United States. This case starkly presents the question of which model this Court will set for the world.

#### Democracy solves global nuclear war

Morton H. Halperin 11**,** Senior Advisor – Open Society Institute and Senior Vice President of the Center for American Progress, “Unconventional Wisdom – Democracy is Still Worth Fighting For”, Foreign Policy, January / February, <http://www.foreignpolicy.com/articles/2011/01/02/unconventional_wisdom?page=0,11>

As the United States struggles to wind down two wars and recover from a humbling financial crisis, realism is enjoying a renaissance. Afghanistan and Iraq bear scant resemblance to the democracies we were promised. The Treasury is broke. And America has a president, Barack Obama, who once compared his foreign-policy philosophy to the realism of theologian Reinhold Niebuhr: "There's serious evil in the world, and hardship and pain," Obama said during his 2008 campaign. "And we should be humble and modest in our belief we can eliminate those things." But one can take such words of wisdom to the extreme-as realists like former Secretary of State Henry Kissinger and writer Robert Kaplan sometimes do, arguing that the United States can't afford the risks inherent in supporting democracy and human rights around the world. Others, such as cultural historian Jacques Barzun, go even further, saying that America can't export democracy at all, "because it is not an ideology but a wayward historical development." Taken too far, such realist absolutism can be just as dangerous, and wrong, as neoconservative hubris. For there is one thing the neocons get right: As I argue in *The Democracy Advantage*, democratic governments are more likely than autocratic regimes to engage in conduct that advances U.S. interests and avoids situations that pose a threat to peace and security. Democratic states are more likely to develop and to avoid famines and economic collapse. They are also less likely to become failed states or suffer a civil war. Democratic states are also more likely to cooperate in dealing with security issues, such as terrorism and proliferation of weapons of mass destruction. As the bloody aftermath of the Iraq invasion painfully shows, democracy cannot be imposed from the outside by force or coercion. It must come from the people of a nation working to get on the path of democracy and then adopting the policies necessary to remain on that path. But we should be careful about overlearning the lessons of Iraq. In fact, the outside world can make an enormous difference in whether such efforts succeed. There are numerous examples-starting with Spain and Portugal and spreading to Eastern Europe, Latin America, and Asia-in which the struggle to establish democracy and advance human rights received critical support from multilateral bodies, including the United Nations, as well as from regional organizations, democratic governments, and private groups. It is very much in America's interest to provide such assistance now to new democracies, such as Indonesia, Liberia, and Nepal, and to stand with those advocating democracy in countries such as Belarus, Burma, and China. It will still be true that the United States will sometimes need to work with a nondemocratic regime to secure an immediate objective, such as use of a military base to support the U.S. mission in Afghanistan, or in the case of Russia, to sign an arms-control treaty. None of that, however, should come at the expense of speaking out in support of those struggling for their rights. Nor should we doubt that America would be more secure if they succeed.

### 1AC – Allied Coop

#### CONTENTION 2: ALLIES

**Allies will insist on a policy that limits operations to zones of active hostilities with criminal prosecutions elsewhere---codification key**

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University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

The debate has largely devolved into an either-or dichotomy, even while security and practical considerations demand more nuanced practices. Thus, the **U**nited **S**tates, supported by a vocal group of scholars, including Professors Jack Goldsmith, Curtis Bradley, and Robert Chesney, has long asserted that it is at war with al Qaeda and associated groups. Therefore, it can legitimately detain without charge - and kill - al Qaeda members and their associates **wherever they are** found, subject of course to additional law-of-war, constitutional, and sovereignty constraints. n9 Conversely, European [\*1170] allies, supported by an equally vocal group of scholars and human rights advocates, assert that the **U**nited **S**tates is engaged in a conflict with al Qaeda only in specified regions, and that the United States' authority to employ law-of-war detention and lethal force extends only to **those particular zones**. n10 In all other places, al Qaeda and its associates should be subject to [\*1171] law enforcement measures, as governed by international human rights law and the domestic laws of the relevant states. n11 Recent statements by **U**nited **S**tates officials suggest an attempt to mediate between these two extremes, at least for purposes of targeted killing, and **as a matter of policy, not law**. While continuing to assert a global conflict with al Qaeda, official statements have limited the defense of out-of-conflict zone targeting operations to high-level leaders and others who pose a "significant" threat. n12 In the words of President Obama's then-Assistant for Homeland Security and Counterterrorism, John O. Brennan, the United States does not seek to "eliminate every single member of al-Qaida in the world," but instead conducts targeted strikes to mitigate "actual[,] ongoing threats." n13 That said, the **U**nited **S**tates continues to suggest that it can, as a matter of law, "take action" against anyone who is "part of" al Qaeda or associated forces - a very broad category of persons - **without any explicit geographic limits.** n14 The stakes are high. If the United States were permitted to launch a drone strike against an alleged al Qaeda operative in Yemen, why not in London - so long as the United States had the United Kingdom's consent and was confident that collateral damage to nearby civilians would be minimal (thereby addressing sovereignty and proportionality concerns)? There are many reasons why such a scenario is unlikely, but the **U**nited [\*1172] **S**tates has yet to assert **any limiting principle** that would, as a matter of law, prohibit such actions. And in fact, the United States did rely on the laws of war to detain a U.S. citizen picked up in a Chicago airport for almost four years. n15 Even if one accepts the idea that the United States now exercises its asserted authority with appropriate restraint, what is to prevent **Russia**, for example, from asserting that it is engaged in an armed conflict with Chechens and that it can target or detain, without charge, an alleged member of a Chechen rebel group wherever he or she is found, including possibly in the United States? Conversely, it cannot be the case - as the extreme version of the territorially restricted view of the conflict suggests - that an enemy with whom a state is at war can merely cross a territorial boundary in order to plan or plot, free from the threat of being captured or killed. In the London example, law enforcement can and should respond effectively to the threat. n16 But there also will be instances in which the enemy escapes to an effective safe haven because the host state is unable or unwilling to respond to the threat (think Yemen and Somalia in the current conflict), capture operations are infeasible because of conditions on the ground (think parts of Yemen and Somalia again), or criminal prosecution is not possible, at least in the short run. This Article proposes a way forward - offering a new legal framework for thinking about the geography of the conflict in a way that better mediates the multifaceted liberty, security, and foreign policy interests at stake. It argues that the jus ad bellum questions about the geographic borders of the conflict that have dominated much of the literature are the wrong questions to focus on. Rather, it focuses on jus in bello questions about the conduct of hostilities. This Article assumes that the conflict extends to **wherever the enemy threat is found**, but argues for **more stringent rules of conduct outside zones of active hostilities**. Specifically, it proposes a series of substantive and procedural rules designed to limit the use of lethal targeting [\*1173] and detention outside zones of active hostilities - subjecting their use to an **individualized threat finding**, a **least-harmful-means test**, and **meaningful procedural safeguards**. n17 The Article does not claim that existing law, which is uncertain and contested, dictates this approach. (Nor does it preclude this approach.) Rather, the Article explicitly recognizes that the set of current rules, developed mostly in response to state-on-state conflicts in a world without drones, fails to address adequately the complicated security and liberty issues presented by conflicts between a state and mobile non-state actors in a world where technological advances allow the state to track and attack the enemy wherever he is found. New rules are needed. Drawing on evolving state practice, underlying principles of the law of war, and prudential policy considerations, the Article proposes a set of such rules for conflicts between states and transnational non-state actors - rules designed both to promote the state's security and legitimacy and to protect against the erosion of individual liberty and the rule of law. The Article proceeds in four parts. Part I describes how the legal framework under which the United States is currently operating has generated legitimate concerns about the creep of war. This Part outlines how the U.S. approach over the past several years has led to a polarized debate between opposing visions of a territorially broad and territorially restricted conflict, and how both sides of the debate have failed to [\*1174] acknowledge the legitimate substantive concerns of the other. Part II explains why a territorially broad conflict can and should distinguish between zones of active hostilities and elsewhere, thus laying out the broad framework under which the Article's proposal rests. Part III details the proposed zone approach. It distinguishes zones of active hostilities from both peacetime and lawless zones, and outlines the enhanced substantive and procedural standards that ought to apply in the latter two zones. Specifically, Part III argues that outside zones of active hostilities, law-of-war detention and use of force should be employed **only in exceptional situations,** subject to an individualized threat finding, least-harmful-means test, and meaningful procedural safeguards. n18 This Part also describes how such an approach maps onto the conflict with al Qaeda, and is, at least in several key ways, **consistent with the approach** **already taken** by the **U**nited **S**tates as a matter of policy. Finally, Part IV explains how such an approach ought to apply not just to the current conflict with al Qaeda but to other conflicts with transnational non-state actors in the future, as well as self-defense actions that take place outside the scope of armed conflict. It concludes by making several recommendations as to how this approach should be incorporated into U.S. and, ultimately, international law. The Article is United States-focused, and is so for a reason. To be sure, other states, most notably Israel, have engaged in armed conflicts with non-state actors that are dispersed across several states or territories. n19 But the **U**nited **S**tates is the first state to self-consciously declare itself at war with a non-state terrorist organization that **potentially spans the globe**. Its **actions and asserted authorities** in response to this threat **establish a reference point** for state practice that will **likely be mimicked by others** and inform the development of **c**ustomary **i**nternational **l**aw.

**Alignment with allies brings detention policy into compliance---makes criminal justice effective outside zones**

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Yale Law School); Samuel Adelsberg (J.D. candidate at Yale Law School); Spencer Amdur (J.D. candidate at Yale Law School); Freya Pitts (J.D. candidate at Yale Law School); Philip Levitz (J.D. from Yale Law School); and Sirine Shebaya (J.D. from Yale Law School), “The Power To Detain: Detention of Terrorism Suspects After 9/11”, The Yale Journal of International Law, Vol. 38, 2013.

There is clear evidence that other countries **recognize** and respond to **the difference in legitimacy** **between civilian and military courts** and that they are, indeed, more **willing to cooperate with U.S.** **counterterrorism efforts** when terrorism suspects are tried in the **c**riminal **j**ustice **s**ystem. Increased international cooperation is therefore another advantage of criminal prosecution.¶ Many key U.S. allies have been unwilling to cooperate in cases involving **l**aw-**o**f-**w**ar detention or prosecution but have cooperated in criminal [\*166] prosecutions. In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court. n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the **U**nited **K**ingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the **E**uropean **C**ourt of **H**uman **R**ights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. **federal criminal justice system** and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus **hinder extradition** and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence.¶ Finally, the **c**riminal **j**ustice **s**ystem is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the United States, and subsequently to detain those who are convicted. n258 This greater variety of offenses - military commissions can only [\*167] punish an increasingly narrow set of traditional offenses against the laws of war n259 - offers prosecutors important flexibility. For instance, it might be very difficult to prove al-Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp or participated in a specific terrorist act, federal prosecutors may convict under various statutes tailored to more specific criminal behavior. n260 In addition, military commissions can no longer hear prosecutions for material support committed before 2006. n261 Due in part to the established track record of the federal courts, the federal criminal justice system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are **powerful incentives for defendants to cooperate**, and often lead to **valuable intelligence-gathering**, producing more intelligence over the course of prosecution. n262

**That solves safe havens and extradition to the US court system**

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Finally, the **c**riminal **j**ustice **s**ystem may help us **obtain important cooperation from other countries**. That **cooperation may be necessary** if we want to detain suspected terrorists¶ or otherwise accomplish our national¶security objectives. Our federal courts are well-respected internationally.¶ They are well-established, formal legal mechanisms that allow the transfer of terrorism suspects to the United States¶ for trial in federal court, and for¶ the provision of information to assist¶ in law enforcement investigations –¶ i.e., extradition and mutual legal assistance treaties (MLATs). **Our allies around the world are comfortable with these mechanisms**, as well as with more informal procedures that are often used to provide assistance to the United States in law enforcement matters, whether relating to terrorism or¶ other types of cases. Such cooperation can be critical to the success of a prosecution, and in some cases can be **the only way in which we will gain** **custody of a suspected terrorist** who has broken our laws.¶ 184¶ In contrast, many of our **key** **allies around the world** are **not willing to cooperate** with or support our efforts to hold suspected terrorists in **law of war detention** or to **prosecute them in military commissions**. While we hope that over time they will grow more supportive of these legal¶ mechanisms, at present many countries would not extradite individuals to the United States for military commission proceedings or law of war¶ detention. Indeed, some of our extradition treaties explicitly forbid extradition to the United States where the person will be tried in a forum other than a criminal court. For example, our treaties with Germany¶ (Article 13)¶ 185¶ and with Sweden (Article V(3))¶ 186¶ expressly forbid extradition¶ when the defendant will be tried in¶ an “extraordinary” court, and the¶ understanding of the Indian government pursuant to its treaty with the¶ United States is that extradition is available only for proceedings under the¶ ordinary criminal laws of the requesting state.¶ 187¶ More generally, the¶ doctrine of dual criminality – under which extradition is available only for¶ offenses made criminal in both countries – and the relatively common¶ exclusion of extradition for military offenses not also punishable in civilian¶ court may also limit extradition outside the criminal justice system.¶ 188¶ Apart¶ from extradition, even where we already have the terrorist in custody, many countries will not provide testimony, other information, or assistance in support of law of war detention or a military prosecution, either as a matter¶ of national public policy or under other provisions of some of our MLATs.¶ 189¶ These concerns are not hypothetical. During the last Administration,¶ the United States was obliged to give¶ assurances against the use of military¶ commissions in order to obtain extradition of several terrorism suspects to¶ the United States.¶ 190¶ There are a number of terror suspects currently in foreign custody who **likely would not be extradited** to the United States by¶ foreign nations if they faced military tribunals.¶ 191¶ In some of these cases, it might be necessary for the foreign nation **to release these suspects** if they cannot be extradited because they do¶ not face charges pending in the¶ foreign nation.

**Plan prevents end of allied intel cooperation and reinvigorates NATO**

Tom **Parker 12**, Former Policy Dir. for Terrorism, Counterterrorism and H. Rts. at Amnesty International, U.S. Tactics Threaten NATO, September 17, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>

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

#### NATO prevents global nuclear war

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

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

#### Interoperability within NATO ensures global trade, natural disaster response and prevents cyber attacks

Jamie Shea 12, Deputy Assistant Secretary General for Emerging Security Challenges, "Keeping NATO Relevant", April 19, carnegieendowment.org/2012/04/19/keeping-nato-relevant/acl9#

At the same time, the national security strategies of the NATO allies underline the extent to which they are currently preoccupied with regional crises, preventing global proliferation, dismantling terrorist networks, preserving their trade routes and access to raw materials, and integrating the rising global powers into a rules-based international system. If NATO is decreasingly responsive to this global agenda, or is focused only on contingencies requiring major military mobilization, such as those that Article 5 was traditionally intended to address, there is a risk of a disconnect between NATO-Brussels and the policy and resource decisions taken in NATO capitals or in other institutions like the EU.¶ SLIMMING DOWN AND STAYING RELEVANT¶ NATO’s core challenge for the next decade will be to slim down while retaining the capability to handle the global security agenda of its members. This is still possible, and NATO’s new Strategic Concept certainly provides the doctrinal basis. But words do not automatically lead to actions.¶ To succeed, the Alliance will need to be serious about three things: demonstrating real capability to counter the new security challenges; harmonizing allied positions on potential or actual regional crises; and binding the maximum number of its partners in North Africa, the Middle East, and the Asia-Pacific region into a structured security community through consultations, training, and interoperability. As NATO builds down, it will need to make sure that it does not sacrifice the structures and people that allow it to deliver on these three tasks and that make the Alliance more than just a multinational military headquarters for “when all else has failed” responses.¶ Because the new security challenges are often civilian in nature (90 percent of cyberspace is owned by the private sector) and because they are often managed by ministries of the interior, the police, or specialized government agencies, some have questioned NATO’s role and relevance. It is also not easy for an organization that has traditionally taken on the major role and responsibility in a crisis (Bosnia, Kosovo, Afghanistan, Libya) or has not been involved at all (Iraq, North Korea, Syria) to adapt to being a partial or supporting actor. There are a large number of agencies involved in a cyber, terrorism, or energy incident and the military role is only one of many that need to be brought into play, and with varying degrees of importance as the crisis develops. But because NATO cannot always be the complete solution does not mean that its role is symbolic, provided that the Alliance identifies the aspect of the issue that corresponds to its essentially military capabilities and crisis-management mechanisms.¶ Countering New Security Challenges¶ All future conflicts will have a cyber dimension, whether in stealing secrets and probing vulnerabilities to prepare for a military operation or in disabling crucial information and command and control networks of the adversary during the operation itself. Consequently, NATO’s future military effectiveness will be closely linked to its cyber-defense capabilities; in this respect, there is also much that NATO can do to help allies improve their cyber forensics, intrusion detection, firewalls, and procedures for handling an advanced persistent attack, such as that which affected Estonia in 2007.¶ The Alliance can also help to shape the future cyber environment by promoting information sharing and confidence-building measures among its partners and, in a longer-term perspective, other key actors, such as Brazil, China, and India. This is a field where the military is clearly ahead in many key technical areas. NATO already has one of the most capable computer incident response centers around and one of the best systems for exchanging and assessing intelligence on cyber threats. NATO must first establish its credibility in this area by bringing all of its civilian and military networks under centralized protection by the end of 2012, but it would not make sense to leave NATO’s role in cyber defense there. It can be a center of excellence for exercises, best practice, stress testing, and common standards for both allies and partners.¶ Of course, NATO will have work to do in order to be an effective player in the cyber field, along with other emerging threats. It will need to go beyond its traditional stakeholders in the allied foreign and defense ministries and build relationships with ministries of the interior, intelligence services, customs, and government crisis-management cells (such as COBRA in the United Kingdom). It will also need to step up its cooperation with industry (which is still in the lead for most of the analysis of cyber malware) and also with private security companies that will be playing an increasing role in cyber defense, protection of critical infrastructure, and protection of shipping from pirates.¶ This field is the very expression of security policy in the twenty-first century, in which industry will not just provide equipment but entire security management services to the armed forces. Private contractors will be firmly embedded in every level of defense ministries as well as the armed forces and security agencies. Many of the security functions traditionally performed by governments will be subcontracted to private companies—from physical protection to malware analysis, intelligence and early warning, and logistics. Accordingly, NATO must learn how to work more productively with them.¶ Given the exponential growth in malware and hacking skills, the cyber threat is the most pressing challenge; but there are others too that NATO can readily handle. For instance, using its Special Forces Headquarters at Allied Command Operations to train and set common standards for special forces with centralized air lift, or monitoring emerging technologies so that NATO can better exploit both existing and future disruptive technologies and counter the use of asymmetric methods by its adversaries. Yet another is the protection of critical infrastructure and supply lines for energy and raw materials, especially in the maritime domain where 90 percent of global trade takes place. Key choke points are especially vulnerable to piracy or threats of closure during crises and war. Related areas are the protection against chemical, biological, or radiological agents and training armed forces to cope with extreme weather conditions and natural disasters resulting from climate change.¶ The difference between these emerging challenges and what NATO encountered in the past is that they cannot be deterred. Cyber attacks, terrorism, supply shortages, and natural disasters will all occur. So a key new role of NATO is to help develop the societal resilience to cope with these new types of attacks, to plug vulnerabilities, and to build in the redundant back-up capabilities to allow societies to recover quickly.¶ But again, while NATO’s military organization and capabilities can be a useful first or second responder, they will need to be coordinated with domestic police, health, and emergency management agencies and organizations like the EU. So NATO’s progress in practically embracing the new challenges will depend upon its capacity for effective networking. This is where civilian-military exercises involving NATO and the EU, and NATO and the civilian crisis-management agencies, can help the Alliance to better prepare and understand the different structures and procedures used by its member nations.

#### Trade solves nuclear war

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Continuing calls for curbs on the flow of finance and trade will inspire the United States and other nations to spew forth **protectionist legislation** like the notorious Smoot-Hawley bill. Introduced at the start of the Great Depression, it triggered a series of tit-for-tat economic responses, which many commentators believe helped turn a serious economic downturn into a **prolonged** and **devastating global disaster**, But if history is any guide, those lessons will have been long forgotten during the next collapse. Eventually, fed by a mood of desperation and growing public anger, restrictions on trade, finance, investment, and immigration will almost certainly intensify. ¶ Authorities and ordinary citizens will likely scrutinize the cross-border movement of Americans and outsiders alike, and lawmakers may even call for a general crackdown on nonessential travel. Meanwhile, many nations will make transporting or sending funds to other countries exceedingly difficult. As desperate officials try to limit the fallout from decades of ill-conceived, corrupt, and reckless policies, they will introduce controls on foreign exchange, foreign individuals and companies seeking to acquire certain American infrastructure assets, or trying to buy property and other assets on the (heap thanks to a rapidly depreciating dollar, will be stymied by limits on investment by noncitizens. Those efforts will cause spasms to ripple across economies and markets, disrupting global payment, settlement, and clearing mechanisms. All of this will, of course, continue to undermine business confidence and consumer spending.¶ In a world of lockouts and lockdowns, any link that transmits systemic financial pressures across markets through arbitrage or portfolio-based risk management, or that allows diseases to be easily spread from one country to the next by tourists and wildlife, or that otherwise facilitates unwelcome exchanges of any kind will be viewed with suspicion and dealt with accordingly.¶ The rise in isolationism and protectionism will bring about ever more heated arguments and **dangerous confrontations** over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to **full-scale military encounters,** often with minimal provocation.¶ In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, **terrorist groups** will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level.¶ Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more healed sense of urgency. China will likely assume an increasingly **belligerent posture** toward **Taiwan**, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientist at the University of Chicago, have even speculated that an "intense confrontation" between the United States and China is "inevitable" at some point.¶ More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles soaked in blood. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. **Terrorists** employing **biological or nuclear weapons** will vie with conventional forces using jets, cruise missiles, and bunker-busting bombs to cause widespread destruction. Many will interpret stepped-up conflicts between Muslims and Western societies as the beginnings of a **new world war**.

#### Cyber causes nuclear war

Jason Fritz 9, Former Captain of the U.S. Army, July, Hacking Nuclear Command and Control, www.icnnd.org/Documents/Jason\_Fritz\_Hacking\_NC2.doc

The US uses the two-man rule to achieve a higher level of security in nuclear affairs. Under this rule two authorized personnel must be present and in agreement during critical stages of nuclear command and control. The President must jointly issue a launch order with the Secretary of Defense; Minuteman missile operators must agree that the launch order is valid; and on a submarine, both the commanding officer and executive officer must agree that the order to launch is valid. In the US, in order to execute a nuclear launch, an Emergency Action Message (EAM) is needed. This is a preformatted message that directs nuclear forces to execute a specific attack. The contents of an EAM change daily and consist of a complex code read by a human voice. Regular monitoring by shortwave listeners and videos posted to YouTube provide insight into how these work. These are issued from the NMCC, or in the event of destruction, from the designated hierarchy of command and control centres. Once a command centre has confirmed the EAM, using the two-man rule, the Permissive Action Link (PAL) codes are entered to arm the weapons and the message is sent out. These messages are sent in digital format via the secure Automatic Digital Network and then relayed to aircraft via single-sideband radio transmitters of the High Frequency Global Communications System, and, at least in the past, sent to nuclear capable submarines via Very Low Frequency (Greenemeier 2008, Hardisty 1985). The technical details of VLF submarine communication methods can be found online, including PC-based VLF reception. Some reports have noted a Pentagon review, which showed a potential “electronic back door into the US Navy’s system for broadcasting nuclear launch orders to Trident submarines” (Peterson 2004). The investigation showed that cyber terrorists could potentially infiltrate this network and **insert false orders for launch.** The investigation led to “elaborate new instructions for validating launch orders” (Blair 2003). Adding further to the concern of cyber terrorists seizing control over submarine launched nuclear missiles; The Royal Navy announced in 2008 that it would be installing a Microsoft Windows operating system on its nuclear submarines (Page 2008). The choice of operating system, apparently based on Windows XP, is not as alarming as the advertising of such a system is. This may attract hackers and narrow the necessary reconnaissance to learning its details and potential exploits. It is unlikely that the operating system would play a direct role in the signal to launch, although this is far from certain. Knowledge of the operating system may lead to the insertion of malicious code, which could be used to gain accelerating privileges, tracking, valuable information, and deception that could subsequently be used to initiate a launch. Remember from Chapter 2 that the UK’s nuclear submarines have the authority to launch if they believe the central command has been destroyed.¶ Attempts by cyber terrorists to create the illusion of a decapitating strike could also be used to engage fail-deadly systems. Open source knowledge is scarce as to whether Russia continues to operate such a system. However evidence suggests that they have in the past. Perimetr, also known as Dead Hand, was an automated system set to launch a mass scale nuclear attack in the event of a decapitation strike against Soviet leadership and military.¶ In a crisis, military officials would send a coded message to the bunkers, switching on the dead hand. If nearby ground-level sensors detected a nuclear attack on Moscow, and if a break was detected in communications links with top military commanders, the system would send low-frequency signals over underground antennas to special rockets. Flying high over missile fields and other military sites, these rockets in turn would broadcast attack orders to missiles, bombers and, via radio relays, submarines at sea. Contrary to some Western beliefs, Dr. Blair says, many of Russia's nuclear-armed missiles in underground silos and on mobile launchers can be fired automatically. (Broad 1993)¶ Assuming such a system is still active, cyber terrorists would need to create a crisis situation in order to activate Perimetr, and then fool it into believing a decapitating strike had taken place. While this is not an easy task, the information age makes it easier. Cyber reconnaissance could help locate the machine and learn its inner workings. This could be done by targeting the computers high of level official’s—anyone who has reportedly worked on such a project, or individuals involved in military operations at underground facilities, such as those reported to be located at Yamantau and Kosvinksy mountains in the central southern Urals (Rosenbaum 2007, Blair 2008)¶ Indirect Control of Launch¶ Cyber terrorists could cause incorrect information to be transmitted, received, or displayed at nuclear command and control centres, or shut down these centres’ computer networks completely. In 1995, a Norwegian scientific sounding rocket was mistaken by Russian early warning systems as a nuclear missile launched from a US submarine. A radar operator used Krokus to notify a general on duty who decided to alert the highest levels. Kavkaz was implemented, all three chegets activated, and the countdown for a nuclear decision began. It took eight minutes before the missile was properly identified—a considerable amount of time considering the speed with which a nuclear response must be decided upon (Aftergood 2000).¶ Creating a false signal in these early warning systems would be relatively easy using computer network operations. The real difficulty would be gaining access to these systems as they are most likely on a closed network. However, if they are transmitting wirelessly, that may provide an entry point, and information gained through the internet may reveal the details, such as passwords and software, for gaining entrance to the closed network. If access was obtained, a false alarm could be followed by something like a DDoS attack, so the operators believe an attack may be imminent, yet they can no longer verify it. This could add pressure to the decision making process, and if coordinated precisely, could appear as a first round EMP burst. Terrorist groups could also attempt to launch a non-nuclear missile, such as the one used by Norway, in an attempt to fool the system. The number of states who possess such technology is far greater than the number of states who possess nuclear weapons. Obtaining them would be considerably easier, especially when enhancing operations through computer network operations. Combining traditional terrorist methods with cyber techniques opens opportunities neither could accomplish on their own. For example, radar stations might be more vulnerable to a computer attack, while satellites are more vulnerable to jamming from a laser beam, thus together they deny dual phenomenology. Mapping communications networks through cyber reconnaissance may expose weaknesses, and automated scanning devices created by more experienced hackers can be readily found on the internet.¶ Intercepting or spoofing communications is a highly complex science. These systems are designed to protect against the world’s most powerful and well funded militaries. Yet, there are recurring gaffes, and the very nature of asymmetric warfare is to bypass complexities by finding simple loopholes. For example, commercially available software for voice-morphing could be used to capture voice commands within the command and control structure, cut these sound bytes into phonemes, and splice it back together in order to issue false voice commands (Andersen 2001, Chapter 16). Spoofing could also be used to escalate a volatile situation in the hopes of starting a nuclear war. “ **[they cut off the paragraph]** “In June 1998, a group of international hackers calling themselves Milw0rm hacked the web site of India’s Bhabha Atomic Research Center (BARC) and put up a spoofed web page showing a mushroom cloud and the text “If a nuclear war does start, you will be the first to scream” (Denning 1999). Hacker web-page defacements like these are often derided by critics of cyber terrorism as simply being a nuisance which causes no significant harm. However, web-page defacements are becoming more common, and they point towards alarming possibilities in subversion. During the 2007 cyber attacks against Estonia, a counterfeit letter of apology from Prime Minister Andrus Ansip was planted on his political party website (Grant 2007). This took place amid the confusion of mass DDoS attacks, real world protests, and accusations between governments.

### 1AC – Plan

#### The United States Federal Government should restrict the President's war making authority by limiting targeted killing and detention without charge to zones of active hostilities by statutory codification of executive branch review policy for those practices; and in addition, by limiting targeted killing and detention without charge outside zones of active hostilities to reviewable operations guided by an individualized threat requirement, a least-harmful-means test, a feasibility test for criminal prosecution, procedural safeguards, and by statutory codification of executive branch review policy for those practices.

### 1AC – Solvency

#### CONTENTION 3: SOLVENCY

**Failure to codify existing policy into law risks spreading executive targeted killings and indefinite detention---plan’s key**

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 161 U. Pa. L. Rev. 1165, Lexis

Fifth, and critically, while the **U**nited **S**tates might be confident that it will exercise its authorities responsibly, it **cannot assure that other states will** follow suit. What is to prevent Russia, for example, from asserting that [\*1233] it is engaged in an armed conflict with Chechen rebels, and can, consistent with the law of war, **kill** **or** **detain** any person **anywhere** in the world which it deems to be a "functional member" of that rebel group? Or **Turkey** from doing so with respect to alleged "functional members" of **Kurdish rebel groups?** If such a theory ultimately resulted in the targeted killing or detaining without charge of an American citizen, the United States would have few principled grounds for objecting.¶ Capitalizing on **the** strategic **benefits of restraint**, the **U**nited **S**tates should **codify into law** what is **already**, in many key respects, **national policy**. As a first step, the President should sign an Executive order requiring that out-of-battlefield target and capture operations be based on individualized threat assessments and subject to a least-harmful-means test, clearly articulating the standards and procedures that would apply. As a next step, Congress should mandate the creation of a review system, as described in detail in this Article. In doing so, **the U**nited **S**tates will **set an important example**, one that **can become a building block upon which to develop an international consensus** as to **the rules that apply to detention** and **targeted killings** **outside the conflict zone**.

**Drone prolif is inevitable but US action creates credibility necessary to build strong norms against reckless use---preserves basing access and precedent**

Micah **Zenko 13**, Douglas Dillon fellow in the Center for Preventive Action @ C.F.R., Council Special Report No. 65, January, 2013, Reforming U.S. Drone Strike Policies, Douglas Dillon fellow in the Center for Preventive Action at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf

The second major risk is that of proliferation. Over the next decade, the U.S. near-monopoly on drone strikes will erode as more countries develop and hone this capability. The advantages and effectiveness of drones in attacking hard-to-reach and time-sensitive targets are compelling many countries to indigenously develop or explore purchasing unmanned aerial systems. In this uncharted territory, U.S. policy provides a **powerful precedent** for other states and nonstate actors that will increasingly deploy drones with potentially dangerous ramifications. Reforming its practices could allow the **U**nited **S**tates to regain moral authority in dealings with other states and **credibly engage** with the international community to shape norms for responsible drone use.¶ The current trajectory of U.S. drone strike policies is unsustainable. **Without reform from within**, drones risk **becom**ing an unregulated, unaccountable vehicle for states to deploy lethal force with impunity. Consequently, the **U**nited **S**tates should more fully explain and reform aspects of its policies on drone strikes in nonbattlefield settings by ending the controversial practice of “signature strikes”; limiting targeted killings to leaders of transnational terrorist organizations and individuals with direct involvement in past or ongoing plots against the United States and its allies; and clarifying rules of the road for drone strikes in nonbattlefield settings. Given that **the U**nited **S**tates is currently the only country—other than the United Kingdom in the traditional battlefield of Afghanistan and perhaps Israel—to use drones to attack the sovereign territory of another country, it has a **unique opportunity** and responsibility to engage relevant international actors and **shape development of a normative framework for acceptable use of drones.** ¶ Although reforming U.S. drone strike policies will be difficult and will require sustained high-level attention to balance transparency with the need to protect sensitive intelligence sources and methods, it would serve U.S. national interests by ¶ - allowing policymakers and diplomats to paint a more accurate portrayal of drones to counter the myths and misperceptions that currently remain unaddressed due to secrecy concerns;¶ - placing the use of drones as a counterterrorism tactic on a more **legitimate and defensible footing with domestic and international audiences**;¶ - increasing the likelihood that the United States will sustain the international tolerance and cooperation **required to carry out future drone strikes**, such as **intelligence support** and **host-state basing rights**;¶ - **exerting a normative influence on the policies** and actions **of other states**; and¶ - providing current and future U.S. administrations with the **requisite political leverage** to **shape and promote responsible use of drones** by other states and nonstate actors.¶ As Obama administration officials have warned about the proliferation of drones, “If we want other nations to use these technologies responsibly, we must use them responsibly.”4

**A flexible zone of conflict regime enhances legitimacy, solves criminal justice prosecution outside zones and preserves the use of emergency measures as a last resort against imminent threats**

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University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

As these cases recognize, the existence of war like conditions in one part of the world **should not** lead to a relaxation of the substantive and procedural standards embodied in peacetime rules elsewhere. In some areas, intense fighting can create conditions that often make it impracticable, if not impossible, to apply ordinary peacetime rules. Such situations justify resort to more expedient wartime rules. By contrast, in areas where ordinary institutions are functioning, domestic police are effectively maintaining law and order, and communication and transportation networks are undisturbed, the exigent circumstances **justifying the reliance on law-of-war tools are typically** **absent**. n88 In those areas, the peacetime standards - which themselves reflect a careful balancing of liberty and security interests - serve the important functions of **minimizing error and abuse** and **enhancing the legitimacy** of the state's actions. These standards should be respected **absent exigent circumstances that justify an exception** Second, the notion of a global conflict clashes with the legitimate and reasonable expectations of persons residing in a peacetime zone. These expectations matter. The corollary - **the requirement of fair notice - is perhaps the primary factor that distinguishes a law-abiding government from a lawless dictatorship**. Its importance is emphasized time and time again in both U.S. constitutional law and international law doctrines. It sets boundaries on substantive rights, n89 is key to choice of law questions, n90 and is the core of procedural-rights protections in both domestic and international law. n91¶ Legal scholars, policymakers, and state actors are embroiled in a heated debate about whether the conflict with al Qaeda is concentrated within specific geographic boundaries or extends to wherever al Qaeda members and associated forces may go. The United States' **expansive view of** the **conflict**, coupled with its broad definition of the enemy, has led to a legitimate concern about the **creep of war**. Conversely, the European and human rights view, which confines the conflict to a limited geographic region, ignores the potentially global nature of the threat and unduly constrains the state's ability to respond. Neither the law of international armed conflict (governing conflicts between states) nor the law of noninternational armed conflict (traditionally understood to govern intrastate conflicts) provides the answers that are so desperately needed.¶ The zone approach proposed by this Article **fills the** international **law gap**, effectively mediating the multifaceted liberty and security interests at stake. It recognizes the broad sweep of the conflict, but distinguishes between zones of active hostilities and other areas in determining which rules apply. Specifically, it offers a set of standards that would both **limit and legitimize** the use of out-of-battlefield targeted killings and law of war-based detentions, subjecting their use to an individualized threat assessment, a least-harmful-means test, and significant procedural safeguards. This [\*1234] approach **confines** the use of out-of-battlefield targeted killings and detention without charge **to extraordinary situations** in which the security of the state so demands. It thus limits the use of force as a first resort, protects against the unnecessary erosion of peacetime norms and institutions, and safeguards individual liberty. At the same time, the zone approach ensures that the state can effectively respond to grave threats to its security, wherever those threats are based.¶ The **U**nited **S**tates has already adopted a number of policies that distinguish between zones of active hostilities and elsewhere, implicitly recognizing the importance of this distinction. By adopting the proposed framework **as a matter of law**, the United States can begin to **set the standards** and build an **international consensus** as to the rules that ought to apply, not only to this conflict, but **to future conflicts**. The likely reputational, security, and foreign policy gains make acceptance of this framework a worthy endeavor.

**Failure to codify limits sets precedent for strikes and the erosion of rule of law---Congress key**

**Maxwell 12** - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

Once a state demonstrates membership in an organized armed group, the members can be presumed to be a continuous danger. **Because this danger is worldwide**, the state can now act in areas **outside** the traditional **zones of conflict**. It is the individual’s conduct over time—**regardless of location**— that gives him the status. Once the status attaches, the member of the organized armed group can be targeted. ¶ Enter Congress ¶ 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**.

#### \*\*Back to Advantage 2\*\*

#### Inadequate response to disasters results in disease outbreak

Aljunid et al 12 Syed, Professor of Health Economics and Senior Research Fellow at UNU International Institute for Global Health, Kouadio Koffi Isidore, Postdoctoral Fellow at United Nations University International Institute for Global Health, Taro Kamigaki, Assistant Professor, at the Department of Virology of Tohoku University Graduate School of Medicine, Karen Hammad, Australian emergency nurse and Lecturer at the School of Nursing and Midwifery, Flinders University and Hitoshi Oshitani, Professor of Virology at Tohoku University Graduate School of Medicine, "Preventing and controlling infectious diseases after natural disasters", March 13, United Nations University, unu.edu/publications/articles/preventing-and-controlling-infectious-diseases-after-natural-disasters.html#info

Beyond damaging and destroying physical infrastructure, natural disasters can lead to outbreaks of infectious disease. In this article, two UNU-IIGH researchers and colleagues review risk factors and potential infectious diseases resulting from the secondary effects of major natural disasters that occurred from 2000 to 2011, classify possible diseases, and give recommendations on prevention, control measures and primary healthcare delivery improvements.¶ Over the past few decades, the incidence and magnitude of natural disasters has grown, resulting in substantial economic damages and affecting or killing millions of people. Recent disasters have shown that even the most developed countries are vulnerable to natural disasters, such as Hurricane Katrina in the United States in 2005 and the Great Eastern Japan Earthquake and tsunami in 2011. Global population growth, poverty, land shortages and urbanization in many countries have increased the number of people living in areas prone to natural disasters and multiplied the public health impacts.¶ Natural disasters can be split in three categories: hydro-meteorological disasters, geophysical disasters and geomorphologic disasters.¶ Hydro-meteorological disasters, like floods, are the most common (40 percent) natural disasters worldwide and are widely documented. The public health consequences of flooding are disease outbreaks mostly resulting from the displacement of people into overcrowded camps and cross-contamination of water sources with faecal material and toxic chemicals. Flooding also is usually followed by the proliferation of mosquitoes, resulting in an upsurgence of mosquito-borne diseases such as malaria. Documentation of disease outbreaks and the public health after-effects of tropical cyclones (hurricanes and typhoons) and tornadoes, however, is lacking.¶ Geophysical disasters are the second-most reported type of natural disaster, and earthquakes are the majority of disasters in this category. Outbreaks of infectious diseases may be reported when earthquake disasters result in substantial population displacement into unplanned and overcrowded shelters, with limited access to food and safe water. Disease outbreaks may also result from the destruction of water/sanitation systems and the degradation of sanitary conditions directly caused by the earthquake. Tsunamis are commonly associated with earthquakes, but can also be caused by powerful volcanic eruptions or underwater landslides. Although classified as geophysical disasters, they have a similar clinical and threat profile (water-related consequences) to that of tropical cyclones (e.g., typhoon or hurricane).¶ Geomorphologic disasters, such as avalanches and landslides, also are associated with infectious disease transmissions and outbreaks, but documentation is generally lacking.¶ After a natural disaster¶ The overwhelming majority of deaths immediately after a natural disaster are directly associated with blunt trauma, crush-related injuries and burn injuries. The risk of infectious disease outbreaks in the aftermath of natural disasters has usually been overemphasized by health officials and the media, leading to panic, confusion and sometimes to unnecessary public health activities.¶ The prolonged health impact of natural disasters on a community may be the consequence of the collapse of health facilities and healthcare systems, the disruption of surveillance and health programmes (immunization and vector control programmes), the limitation or destruction of farming activities (scarcity of food/food insecurity), or the interruption of ongoing treatments and use of unprescribed medications.¶ The risk factors for increased infectious diseases transmission and outbreaks are mainly associated with the after-effects of the disasters rather than to the primary disaster itself or to the corpses of those killed. These after-effects include displacement of populations (internally displaced persons and refugees), environmental changes and increased vector breeding sites. Unplanned and overcrowded shelters, poor water and sanitation conditions, poor nutritional status or insufficient personal hygiene are often the case. Consequently, there are low levels of immunity to vaccine-preventable diseases, or insufficient vaccination coverage and limited access to health care services.¶ Phases of outbreak and classification of infectious disease¶ Infectious disease transmission or outbreaks may be seen days, weeks or even months after the onset of the disaster. Three clinical phases of natural disasters summarize the chronological public health effects on injured people and survivors:¶ Phase (1), the impact phase (lasting up to to 4 days), is usually the period when victims are extricated and initial treatment of disaster-related injuries is provided.¶ Phase (2), the post-impact phase (4 days to 4 weeks), is the period when the first waves of infectious diseases (air-borne, food-borne, and/or water-borne infections) might emerge.¶ Phase (3), the recovery phase (after 4 weeks), is the period when symptoms of victims who have contracted infections with long incubation periods or those with latent-type infections may become clinically apparent. During this period, infectious diseases that are already endemic in the area, as well as newly imported ones among the affected community, may grow into an epidemic.¶ It is common to see the international community, NGOs, volunteers, experts and the media leaving a disaster-affected zone usually within three months, when in reality basic sanitation facilities and access to basic hygiene may still be unavailable or worsen due to the economic burden of the disasters.¶ Although it is not possible to predict with accuracy which diseases will occur following certain types of disasters, diseases can be distinguished as either water-borne, air-borne/droplet or vector-borne diseases, and contamination from wounded injuries.¶ Diarrhoeal diseases¶ The most documented and commonly occurring diseases are water-borne diseases (diarrhoeal diseases and Leptospirosis). Diarrhoeal diseases cause over 40 percent of the deaths in disaster and refugee camp settings. Epidemics among victims are commonly related to polluted water sources (faecal contamination), or contamination of water during transportation and storage. Outbreaks have also been related to shared water containers and cooking pots, scarcity of soap and contaminated food, as well as pre-existing poor sanitary infrastructures, water supply and sewerage systems.

#### Disease causes extinction---no burnout

**Torrey and Yolken 5** E. Fuller and Robert H, Directors Stanley Medical Research Institute, 2005, Beasts of the Earth: Animals, Humans and Disease, pp. 5-6

The outcome of this marriage, however, is not as clearly defined as it was once thought to be. For many years, it was believed that microbes and human slowly learn to live with each other as microbes evolve toward a benign coexistence wit their hosts. Thus, the bacterium that causes syphilis was thought to be extremely virulent when it initially spread among humans in the sixteenth century, then to have slowly become less virulent over the following three centuries. This reassuring view of microbial history has recently been challenged by Paul Ewald and others, who have questioned whether microbes do necessarily evolve toward long-term accommodation with their hosts. Under certain circumstances, Ewald argues, “Natural selection may…favor the evolution of extreme harmfulness if the exploitation that damages the host [i.e. disease] enhances the ability of the harmful variant to compete with a more benign pathogen.” The outcome of such a “marriage” may thus be the murder of one spouse by the other. In eschatological terms, this view argues that a microbe such as HIV or SARS virus may be truly capable of **eradicating the human race**.

# 2AC

## Overreach

#### Aff solves – drones are not the best option and where they are, we maintain them

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

Finally, a number of experts have argued that drone strikes are not only effec - tive but even morally required, because they cause fewer civilian casualties than air strikes or ground operations in combat zones. 67 Contrasting the relative precision of drone warfare to indiscriminate attacks such as the firebombing of Dresden during the Second World War, Henry A. Crumpton, former deputy chief of the CIA’s counterterrorism centre, concluded that drones are a morally superior, even humane, form of warfare. 68 Others have made the counterfactual argument: that far more US and allied troops and Afghan civilians would have been killed over time through enemy attacks and normal NATO ground and air operations if the high-level militants killed by the drone strikes had not been removed from the battlefield. 69 Referring either to real casualties or to casualties prevented by keeping hardened terrorists off the battlefield, many experts have argued that drones are more attractive, and morally defensible, than aerial bombardments or ground military operations.¶ On this point, the distinction between drone strikes inside and outside a theatre of active combat becomes relevant. One could plausibly argue that drone strikes are a more humane option for active theatres of war, where the alternatives— such as air strikes or ground operations—may kill more civilians. 70 In this respect, the Pentagon-run drone programme in Afghanistan might be morally justifiable if the alternatives—such as US air strikes or Afghan ground operations—were worse from the vantage point of non-combatant casualties. At least in the first instance, this is an empirical question. If it is true that drones kill fewer Afghan civilians than NATO air strikes, it would be hard to argue that air strikes should be employed in preference to drones in active theatres of war, although hard questions would remain about the procedures and standards for selecting targets for those strikes. 71 Yet this comparison breaks down when applied to the CIA-run drone programme operating in countries where the United States is not at war. In these cases, the comparison to normal war-fighting is fallacious: the alternative to drones in Pakistan, Yemen, Somalia and elsewhere is not American-led ground operations or air strikes. The US is not formally at war with any of these states and is not legally entitled to use ground forces or air strikes on their territory (though this has not stopped the US from launching periodic air strikes in the past). The realistic alternatives to drones in these cases range from diplomatic pressure to capacity-building to even covert operations, all of which were employed to some benefit prior to the Obama administration’s escalation of drone strikes in 2009. In countries such as Pakistan, Yemen and Somalia, a cost–benefit analysis of drones has to be measured against these plausible alternatives, not against options that are neither realistic nor legally permitted outside a war zone. In these cases, drones are likely to be found wanting. It is hard to argue, for example, that drone strikes will consistently be more effective and kill fewer civilians than carefully constructed covert operations against HVTs. It is also hard to argue that drone strikes consti - tute a durable or long-term strategy in countries where there is a pressing need for capacity-building, especially in policing and intelligence work. The cost–benefit analysis for drones in these cases needs to be measured against these less violent alternatives, not against extreme examples from wartime like the firebombing of Dresden.

## Allies

#### NSA scandal is no big deal---won’t harm relations

Bernd Riegert 10/25, DW's Europe correspondent in Brussels, "Opinion: Much ado about nothing?", 2013, www.dw.de/opinion-much-ado-about-nothing/a-17184229

Spying among friends is not unusual - but spying on the head of a government is taking things a step too far. However, DW's Bernd Riegert believes lack of EU unity means the US will not face serious consequences.¶ It's the stuff spy thrillers are made of: Merkel and Hollande on a secret mission in the capital of the most powerful man in the world! What did Obama know? When did he know it? And why did he do it? The monitored chancellor and her aide force the American bad guys - who are in fact their friends - to impose a code of conduct on the intelligence services.¶ But it's a scenario that's likely to remain in the realms of fiction. So what will happen in reality? The chancellor and the French president will meet their American counterpart for the talks planned at this week's EU summit, and they will try to establish some degree of transparency.¶ There will not, however, be any publicly negotiated agreements on what intelligence agencies on both sides of the Atlantic are allowed to do. That goes against the nature of the beast. The purpose of an intelligence service is to do things that are illegal in the country it's targeting.¶ Furthermore, the French and German leaders do not speak for the European Union. There is no joint European stance, only a vague declaration the delegates at the summit spent hours wrestling with. It merely states that the Americans are good friends, and notes that there is concern - without criticizing, let alone making accusations.¶ Europe not responsible for Merkel's mobile¶ The main reason for this is that European secret services, and thus many governments, benefit from the spying activities of the NSA and CIA. No one wants to endanger a cooperation aimed at preventing potential danger just because the chancellor's insecure private mobile phone may have been tapped. British Prime Minister David Cameron, whose intelligence services cooperate particularly closely with the US, prevented tougher wording on the EU statement. EU member states regard spying as a sovereign national matter. The EU has no authority - it's every country for itself.¶ The fuss in Brussels is also somewhat hypocritical. Now that a top politician is personally affected, delegations are being dispatched to a friendly nation. Yet it was already established months ago that US intelligence services snooped on millions of European citizens in Germany, France and elsewhere. The chancellor ignored the problem for far too long - until she herself was directly affected.¶ Not a big surprise¶ Intelligence service experts know perfectly well that the European services also spy, snoop and wiretap abroad, among both friends and foes. To prevent terrorist attacks, American and European services then share their findings: after 9/11, a liaison office was established outside Paris for precisely that purpose. The exchange allows the agencies to circumvent legal barriers they may be subject to in their own countries.¶ Trust has been lost, and must be won back, said Merkel and many top EU politicians in Brussels. Friends shouldn't be spied on. This is a rather naive notion: it is hardly news that agencies are also active in friendly states. Instead, European leaders should be worrying about what potential opponents, like China, Iran and Russia, are spying on in Europe. This could really cause damage.¶ What insight can the US glean by listening in on Merkel's partisan small talk on her CDU party phone? The comments made by US President Barack Obama on his last visit to Germany are probably closer to the truth: that if he wanted to know what Merkel was thinking, he'd simply give her a call, not ask the NSA.¶ Merkel's mission won't harm ties¶ The European Union will not cancel the agreement to share a large amount of banking data collected via SWIFT, nor will it suspend talks on a free trade agreement. This is the right decision, as such a drastic reaction really would do lasting damage to relations with the US. On their "mission impossible" in Washington, Merkel and Hollande should urge Obama to reduce the NSA's activities to a reasonable scale.

Eavesdropping on Merkel, if it in fact happened, was superfluous.

#### NATO still relevant----military and commerce

Charles A. Kupchan 13, D.Phil from Oxford in International Affairs, Professor of International Affairs at Georgetown, Whitney H. Shepardson Senior Fellow at the Council on Foreign Relations, 3/6/13, "Why is NATO still needed, even after the downfall of the Soviet Union?," http://www.cfr.org/nato/why-nato-still-needed-even-after-downfall-soviet-union/p30152

The North Atlantic Treaty Organization (NATO) is an international military alliance that was created to enable its members (the United States, Canada, and their European partners) to counter the threat posed by the Soviet Union. Alliances usually come to an end when the threat that led to their formation disappears. However, NATO defies the historical norm, not only surviving well beyond the Cold War's end, but also expanding its membership and broadening its mission.¶ NATO remains valuable to its members for a number of reasons. The expansion of the alliance has played an important role in consolidating stability and democracy in Central Europe, where members continue to look to NATO as a hedge against the return of a threat from Russia. In this respect, NATO and the European Union have been working in tandem to lock in a prosperous and secure Atlantic community.¶ Meanwhile, NATO has repeatedly demonstrated the utility of its integrated military capability. The alliance used force to end ethnic conflict in the Balkans and played a role in preserving the peace that followed. NATO has sustained a long-term presence in Afghanistan, helping to counter terrorism and prepare Afghans to take over responsibility for their own security. NATO also oversaw the mission in Libya that succeeded in stopping its civil war and removing the Qaddafi regime. All of these missions demonstrate NATO's utility and its contributions to the individual and collective welfare of its members, precisely why they continue to believe in the merits of membership.

#### Gulf of Guinea is distinct from their piracy D about Somalia---more violent and new attacks destroy the global economy

Nelson 12 Rick "Ozzie", Director of the Homeland Security and CT Program at the CSIS, "An Emerging Threat? Piracy in the Gulf of Guinea", August 8, csis.org/publication/emerging-threat-piracy-gulf-guinea

A1: The Gulf of Guinea is, in many ways, a perfect incubator for piracy, providing both resources and safe haven. Surrounded by some of Africa’s most proficient oil producers, including Nigeria, Angola, Gabon, Ghana, and Equatorial Guinea, the Gulf is a major transit route for oil tankers on their way to international markets. These tankers have proven valuable prey for pirates. Unlike Somali pirates, who focus on the ransom of captured crew members, pirates in the Gulf of Guinea derive much of their income from the theft of oil. These pirates will frequently hijack a tanker, siphon the oil to another vessel, and later resell it on the local black market. In addition to the hijacking of cargo ships containing goods such as cocoa and minerals, this steady supply of tankers provides pirates in the Gulf a lucrative source of income.¶ In addition to serving as a source of revenue, the under-governed states surrounding the Gulf provide pirates ready safe haven from which to operate, both on land and at sea. Faced with widespread poverty, rampant corruption, and an inability to fully control their territory, many of these nations rank among the most dysfunctional in the world. As a result, criminal elements—including but not limited to pirates—have little difficulty establishing and maintaining on-shore bases where they can plan and launch operations. Further, given that many of the states surrounding the Gulf lack significant maritime capabilities, there are few local forces available to combat piracy at sea. Even when states such as Nigeria are able to implement maritime counter-piracy initiatives, many pirates simply move their operations to the waters of weaker states such as Benin. This easy access to sanctuary, as well as the steady flow of oil through the region, has allowed piracy to flourish in the Gulf.¶ Q2: What is the impact of this piracy?¶ A2: The international community has increasingly taken note of piracy in the Gulf of Guinea due to the growing threat this activity represents, not only to the lives of sailors, but to both the regional and global economy. Due to the fact that they derive their profits from the sale of oil and other goods rather than the ransoming of hostages, pirates in the Gulf of Guinea have proven to be significantly more violent than their Somali counterparts. Vessels are frequently sprayed with automatic weapons fire, and the murder of crew members is not uncommon. Recent events indicate that these pirates are even willing to attack vessels with security personnel aboard, evidenced by the recent killing of two Nigerian sailors guarding an oil barge. Given that pirates are now adopting heavier weapons and more sophisticated tactics, this violence is only likely to increase.¶ Beyond the bloodshed, the expansion of piracy in the Gulf of Guinea poses a dire threat to local economies, potentially undermining what little stability currently exists in the region. Oil revenue, which many countries in the region rely upon, is seriously threatened by pirate activity; 7 percent of Nigeria’s oil wealth is believed lost due to such criminality. Additionally, instability in the Gulf has sharply decreased revenue collected from trade; Benin, whose economy depends on taxing ships entering the port of Cotonou, has experienced a 70 percent decline in shipping activity due to piracy. Furthermore, as piracy drives up insurance premiums for international shipping companies, the price of imported goods in the region could spike, further imperiling local economies. If these local economies falter, development and stability in the region could quickly deteriorate.¶ However, the effects of piracy in the Gulf could well extend far beyond Africa, with potential ramifications for the larger global economy and the United States in particular. The estimated 3 million barrels of oil produced daily by the nations around the Gulf ultimately feed the North American and European markets. Nigeria alone is the fifth-largest supplier of oil to the United States and by 2015 could account for a quarter of U.S. oil consumption. However, given the rate at which attacks on oil tankers are increasing, the ability of these nations to reliably provide oil to the international market could be in question. Early 2012 saw a doubling in the number of attacks on oil tankers, with as many as eight hijackings in a month. If this dramatic trend continues, the flow of oil from the Gulf of Guinea to the United States and the West could slow considerably.¶ Q3: What steps are being taken to address this threat?¶ A3: Recognizing the burgeoning threat, a variety of international and local actors have begun efforts to address piracy in the Gulf of Guinea. The United States has supplied over $35 million to train and equip local forces to combat piracy, while the United Nations has called for a regional summit to coordinate a comprehensive counter-piracy strategy for the Gulf. Such a strategy will prove essential to addressing the challenges of piracy, given the ability of pirates to relocate quickly when counter-piracy pressure in one area becomes too great. Regional and international actors can look to the Strait of Malacca, where a number of nations coordinated joint counter-piracy operations and shared intelligence, for an example of successful cooperative efforts to curtail piracy. However, given the limited capacity of many regional actors, increased logistical, material, and intelligence support from international partners will be vital to these efforts. International and regional actors have an opportunity to address the growing threat of piracy in the Gulf of Guinea, but only if they act together.

## Solvency

### 2AC Circumvention

#### Obama won’t circumvent---Congress could remove funding and pressures prevents it, especially since the aff is already Obama policy – that’s Daskal

#### Congress solves circumvention---raises political costs

Ilya **Somin 11**, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/

But I am more skeptical than Balkin that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president can almost always find respectable lawyers within his administration who will tell him that any policy he really wants to undertake is constitutional. Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and from State Department Legal Adviser Harold Koh. Bush, of course, got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration lawyers want to tell their political masters what they want to hear. It also arises from the understandable fact that administrations tend to appoint people who share the president’s ideological agenda and approach to constitutional interpretation. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough consultation with executive branch lawyers can prevent the president from undertaking actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, for the foreseeable future, the main constraints on unconstitutional presidential activity must come from outside the executive branch – that is, from Congress, the courts, and public opinion. These constraints are highly imperfect. But they do impose genuine costs on presidents who cross the line. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

#### Formalization prevents rollback

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

The objections to such a proposal are many. In the context of proposed courts to review the targeting of U.S. citizens, for example, some have argued that such review would serve merely to institutionalize, legitimize, and expand the use of targeted drone strikes. n177 But this ignores the reality of their continued use and expansion and imagines a world in which targeted [\*1222] killings of operational leaders of an enemy organization outside a zone of active conflict is categorically prohibited (an approach I reject n178). If states are going to use this extraordinary power (and they will), there ought to be a clear and transparent set of applicable standards and mechanisms in place to ensure thorough and careful review of targeted-killing decisions. The formalization of review procedures - along with clear, binding standards - will help to avoid ad hoc decisionmaking and will ensure consistency across administrations and time.

### More AT: Circumvention

#### Fiat solves– Only link warrant assumes President will veto & that Congress solves

Baron et al 8 – Prof of Law @ Harvard & Lederman, Vsting Prof @ Georgetown Law Center

Harvard Law Review, vol 121, no 4, Feb 2008, THE COMMANDER IN CHIEF AT THE LOWEST EBB — A CONSTITUTIONAL HISTORY, http://www.scribd.com/doc/142282896/Barron-Lederman2

Congress's capacity to effectively check such defiance will be comparatively weak. After all, the President can veto any effort to legislatively respond to defiant actions, and impeachment is neither an easy nor an attractive remedy. The prior practice we describe, therefore, could over time become a faint memory, recalled only for the proposition that it is anachronistic, unsuited for what are thought to be the unique perils of the contemporary world. Were this to happen it would represent an unfortunate development in the constitutional law of war powers. Thus, it is incumbent upon legislators to challenge efforts to bring about such a change. Moreover, executive branch actors, particularly those attorneys helping to assure that the President takes care the law is faithfully executed, should not abandon two hundred years of historical practice too hastily. At the very least, they should resist the urge to continue to press the new and troubling claim that the President is entitled to unfettered discretion in the conduct of war.

#### No circumvention for military adjudication

#### A) Their link author votes aff

Baron et.al. 8 – Prof of Law @ Harvard & Lederman, Vsting Prof @ Georgetown Law Center

Harvard Law Review, vol 121, no 4, Feb 2008, THE COMMANDER IN CHIEF AT THE LOWEST EBB — A CONSTITUTIONAL HISTORY, http://www.scribd.com/doc/142282896/Barron-Lederman2

However, even if Congress cannot transfer military discretion from the President to one of his subordinates, the contours of a principle of presidential superintendence over discretionary military decisions have historically been limited in important respects. Each of the branches has long accepted, for example, that Congress can provide for courts-martial to have a decisive role, even countermanding the President’s judgments, in some personnel questions, including dismissal from the service. 660 This example is representative of what appears to be a more general consensus understanding among the branches — unchallenged until the George W. Bush Administration — that if Congress establishes a substantive standard for wartime executive detention, Congress can also decide that the President’s adherence to such standards may be assessed by an adjudicatory tribunal. As cases from Brown , Milligan , and Youngstown to Rasul and Hamdan appear to demonstrate, Congress can empower the federal courts to adjudicate cases challenging the Executive’s exercise of war powers (for example, on petitions for habeas corpus, including those filed by alleged enemy detainees), and to issue orders compelling the President to comply with statutory and treaty-based (and constitutional) mandates. Such an understanding has obvious echoes in the longstanding doctrine, exemplified in Humphrey’s Executor v. United States , 661 that executive constitutional prerogatives are less seriously implicated where adjudicatory (rather than purely “executive”) functions are exercised free from presidential control, even within the executive branch. In other, non-military contexts the Court has more recently pulled back from the task of strictly distinguishing between “quasi-judicial” and “purely executive” functions and officers. 662 Nevertheless, there are strong indications that in the context of the Commander in Chief’s preclusive prerogative of military superintendence, an “adjudicatory” exception persists, although its contours are far from clear. 663

#### B) The plan is fundamentally adjudicatory

Issacharoff et.al. ’13 - Sudler Family Professor of Constitutional Law, N.Y.U. School of Law

6-1-2013, Drones and the Dilemma of Modern Warfare, New York University Public Law and Legal Theory Working Papers. Paper 404, Samuel Issacharoff & Richard H. Pildes

http://lsr.nellco.org/cgi/viewcontent.cgi?article=1408&context=nyu\_plltwp

We are at the early stages of a profound but partial transformation regarding the legitimate use of military force: An emerging imperative increasingly requires adjudicative-like individualized judgments about the particular responsibility of specific individual "enemies" before military force can legitimately be used against them. This is a transformation from the traditional status-based or group-based justifications for use of force against "the enemy" to a more act-based or individuated justification for when force is legitimate. This change is being propelled by a combination of the inherent structural differences between the nature of insurgent, guerilla, and terrorist groups today (the principal targets of military force by democratic forces in today's world) and the conventional armies of the past; by technological changes that enable far more discriminating deployments of force; and by the post-World War II emergence of a more general humanitarian sensibility among Western democracies, at least. This change is already beginning to be reflected in the evolving military practices of dominant states. Military practice and moral arguments about this change will move far more quickly than legal change, but to extent, this transformation is also beginning to be reflected in the domestic law of some states and in arguments about obligations under international law. Military practice, perceptions of morality, and legal obligation will mutually influence each other as this transformation unfolds. The ramifications of this emerging imperative to individuate enemy responsibility are wide-ranging.

#### No circumvention---DC court decision

Ed Morrissey 13, Hot Air, "DC circuit slaps Obama administration for refusing to follow statutory law", August 14, hotair.com/archives/2013/08/14/dc-circuit-slaps-obama-administration-for-refusing-to-follow-statutory-law/

Could the Yucca Mountain case put the White House in a vise on the ObamaCare mandates? The DC Circuit Court of Appeals ruled yesterday that the Obama administration cannot ignore statutory law that requires the completion of the licensing process for the controversial nuclear storage site in Nevada, including a final decision on approval. The Obama administration had avoided complying with the federal law that designated Yucca Mountain as a repository for nuclear waste:¶ In a rebuke to the Obama administration, a federal appeals court ruled Tuesday that the Nuclear Regulatory Commission has been violating federal law by delaying a decision on a proposed nuclear waste dump in Nevada.¶ By a 2-1 vote, the U.S. Court of Appeals for the District of Columbia ordered the commission to complete the licensing process and approve or reject the Energy Department’s application for a never-completed waste storage site at Nevada’s Yucca Mountain.¶ In a sharply worded opinion, the court said the nuclear agency was “simply flouting the law” when it allowed the Obama administration to continue plans to close the proposed waste site 90 miles northwest of Las Vegas. The action goes against a federal law designating Yucca Mountain as the nation’s nuclear waste repository.¶ “The president may not decline to follow a statutory mandate or prohibition simply because of policy objections,” Judge Brett M. Kavanaugh wrote in a majority opinion, which was joined Judge A. Raymond Randolph. Chief Judge Merrick B. Garland dissented.¶ As Glenn Reynolds wrote, “Seems like this might apply in quite a few situations.” The Obama administration has decided to ignore statutory language in the Affordable Care Act in order to delay enforcement of the employer mandate, out-of-pocket caps on insurance, and a few other aspects of the law it champions to this day. The Yucca Mountain case provides a similar scenario, and at least at the moment, legal precedent that would likely apply to an appeal of the waivers unilaterally imposed by President Obama.¶ The appeals court explicitly stated that a failure to bind a President to the statute has important implications for the principle of limited government — and so does the ObamaCare case. Once Congress passes a bill and a President signs it, it becomes binding law — binding on the President as well as everyone else. In order to “waive” a mandate at this point, Obama has to go back to Congress and ask them to modify the statute accordingly. Obama won’t do that because the House will insist on rolling back all of the mandates at the same time, and the Senate might actually go along with that approach after the serial disaster that this rollout has produced.¶ Instead, the formal constitutional-law scholar has convinced himself that statutes don’t apply to the President. The DC court of appeals has just given Obama a basic lesson in constitutional law, one that stretches from the Nevada mountainside to the doors of HHS. Perhaps the House might think about filing suit under this precedent to force Obama to come back to Congress.

#### No circumvention – review mechanism distributes power and insulates from pressure

Siegel 12 - Senior Editor for UCLA Law Review, UCLA Law Review, April, 2012, 59 UCLA L. Rev. 1076Reconciling Caperton and Citizens United: When Campaign Spending Should Compel Recusal of Elected Officials, Samuel P. Siegel

BIO: \* AUTHOR Samuel P. Siegel is a Senior Editor for UCLA Law Review

The influence of campaign expenditures is further lessened when an adjudicatory decision is made by a group of executive officials, even if each of those officials is directly accountable to the elected official. For example, the Committee on Foreign Investment in the United States - comprised of top-ranking officials from various executive departments n258 - is a body authorized by Congress to screen and investigate foreign-investment proposals "to determine the effects of the transaction on the national security of the United States," n259 negotiate mitigation agreements with foreign investors to minimize national security concerns, n260 and, should mitigation efforts fail, recommend to the president that she block the [\*1119] deal, n261 powers that are "like individual adjudications (or quasi-adjudications)." n262 Yet the very fact that a committee, rather than a single officer, exercises this adjudicatory power insulates its decisions from presidential control: "With a single agency, the President could credibly threaten to remove or otherwise pressure or discipline that agency's Secretary or Administrator. But there is strength in numbers." n263 Thus, even within a unitary executive, such a structure would likely temper the influence that campaign expenditures would have on the outcome of an adjudication.

### AT: Corn

#### Doesn’t undermine CT – preserves effectiveness in zones – that’s Daskal

#### Corn agrees---the plan is a mitigation measure that is necessary to resolve backlash, not “arbitrary geographic limitation” they assume

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

This does not mean that the uncertainties created by the intersection of threat-based scope and TAC are insignificant. To the contrary, extending the concept of armed conflict to a transnational non-State opponent has resulted in significant discomfort related to the assertion of State military power. But attempting to decouple the permissible geography of armed conflict from threat driven strategy by imposing some arbitrary legal limit on the geographic scope of TAC is an unrealistic and ultimately futile endeavor. Other solutions to these uncertainties must be pursued—solutions that mitigate the perceived over-breadth of authority associated with TAC. As explained below, these solutions should focus on four considerations:¶ (1) managing application of the inherent right of self-defense when it results in action within the sovereign territory of a non-consenting State;¶ (2) adjusting the traditional targeting methodology to account for the increased uncertainties associated with TAC threat identification;¶ (3) considering the feasibility of a “functional hors de combat” test to account for incapacitating enemy belligerents incapable of offering hostile resistance; and¶ (4) continuing to enhance the process for ensuring that preventive detention of captured belligerent operatives does not become unjustifiably protracted in duration.¶ This essay does not seek to develop each of these mitigation measures in depth. Instead, it proposes that focusing on these (and perhaps other innovations in existing legal norms) is a more rational approach to mitigating the impact of TAC than imposing an arbitrary geographic scope limitation. Other scholars have already begun to examine some of these concepts, a process that will undoubtedly continue in the future. Whether these innovations take the form of law or policy is another complex question, which should be the focus of exploration and debate. In short, rejecting the search for geographic limits on the scope of TAC should not be equated with ignorance of the risks attendant with this broad conception of armed conflict. Instead, it must be based on the premise that even if such a limit were proposed, it would ultimately prove ineffective in preventing the conduct of operations against transnational non-State threats where the State concludes such operations will produce a decisive effect. Instead, focusing on the underlying issues themselves and considering how the law might be adjusted to account for actual or perceived authority over-breadth is a more pragmatic response to these concerns.¶ A. Jus ad Bellum and the Authority to Take the Fight to the Enemy¶ One example of proposals to mitigate the risk of over-breadth associated with TAC is the “unable or unwilling” test highlighted by the scholarship of Professor Ashley Deeks.53 Deeks proposes a methodology for balancing a State’s inherent right to defend itself against transnational non-State threats and the sovereignty of other States where threat operatives are located. Because the law of neutrality cannot provide the framework for balancing these interests (as it does in the context of international armed conflicts), Deeks acknowledges that some other framework is necessary to limit resort to military force outside “hot zones,” even when justified as a measure of national self-defense. The test she proposes seeks to limit selfhelp uses of military force to situations of absolute necessity by imposing a set of conditions that must be satisfied to provide some objective assurance that the intrusion into another State’s territory is a genuine measure of last resort.54 This is pure lex lata,55 so is Deeks, to an extent. However, Deeks, having served in the Department of State Legal Advisor’s Office, recognizes that if TAC is a reality (which it is for the United States), these innovations are necessary to ensure it does not result in unjustifiably overbroad U.S. military action.¶ B. Target Identification and Engagement¶ This is precisely the approach that should be considered in the jus in bello branch of conflict regulation to achieve an analogous balance between necessity and risk during the execution of combat operations. Even assuming the “unable or unwilling” test effectively limits the exercise of national selfdefense in response to transnational terrorism, it in no way mitigates the risks associated with the application of combat power once an operation is authorized.¶ The in bello targeting framework is an obvious starting point for this type of exploration of the concept and its potential adjustment.56 Indeed, it seems increasingly apparent that while TAC suggests a broad scope of authority to employ combat power in a LOAC framework with no geographic constraint, the consternation generated by this effect is a result of the uncertainty produced by the complexity of threat recognition. This consternation is most acute in relation to three aspects of action to incapacitate terrorist belligerent operatives: the relationship between threat recognition and the authority to kill as a measure of first resort (the difficulty of applying the principle of distinction when confronting irregular enemy belligerent forces); the pragmatic illogic of asserting the right to kill as a measure of first resort to an individual subject to capture with virtually no risk to U.S. forces; and the ability to apply this targeting authority against unconventional enemy operatives located outside of “hot zones”.57¶ These concerns flow from the intersection of a battlespace that is functionally unrestricted by geography and the unconventional nature of the terrorist belligerent operative. The combined effect of these factors is a target identification paradigm that defies traditional threat recognition methodologies: no uniform, no established doctrine, no consistent locus of operations, and dispersed capabilities.58 It is certainly true that threat identification challenges are in no way unique to TAC; threat identification has always been difficult, especially in the context of “traditional” noninternational armed conflicts involving unconventional belligerent opponents. Yet, when this threat recognition uncertainty was confined to the geography of one State, it was never perceived to be as problematic as it is in the context of TAC. This is perplexing. In both contexts, the unconventional nature of the enemy increases the risk of mistake in the target selection and engagement process.59 Thus, employing the same approach is completely logical.¶ Two factors appear to provide an explanation for the increased concern over the threat identification uncertainty in the context of TAC. One of these is beyond the scope of “mitigation solutions,” while the other is not. The first is the increased public awareness and interest in both the legal authority to use military force and the legality of the conduct of hostilities, a factor that inevitably increases the scrutiny on military power under the rubric of TAC. This pervasive and intense interest in and legal critique of military operations associated with what is euphemistically called the war on terror is truly unprecedented. In this “lawfare” environment, it is unsurprising that government action that deprives individuals of life as a measure of first resort or subjects them to preventive detention that may last a lifetime—often impacting individuals located far beyond a “hot zone” of armed hostilities—generates intense legal scrutiny.60 This factor, whether a net positive or negative, is a reality that is unlikely to abate in the foreseeable future.¶ In an article published in the Brooklyn Law Review, I proposed a sliding quantum of information related to the assessment of targeting legality based on relative proximity to a “hot zone.”62 In essence, I proposed that when conducting operations against unconventional non-State operatives, the reasonableness of a target legality judgment requires increased informational certainty the more attenuated the nominated target becomes to a zone of traditional combat operations. The concept was proposed as a measure to mitigate the increased risk of targeting error when engaging an unconventional belligerent operative in an area that itself does not indicate belligerent activity. Jennifer Daskal offers a similar proposal in her article, The Geography of the Battlefield.63 Daskal presents a more comprehensive approach to adjusting the traditional targeting framework when applied to the TAC context. Both of these articles seek to mitigate the consequence of applying broad LOAC authority against a dispersed and unconventional enemy; both methods that should continue to be explored.¶ [Note: This clarifies Corn is talking about proposals that seek to legally limit TAC authority (transnational armed conflict) – that is referring to the “armed conflict” legal apparatus that regulates the US armed conflict against AQ, which allows for the use of force and what not. If the US did legally confine the armed conflict, then law enforcement and human rights law would apply outside of the battlefield. Clearly, that is not the plan, as we only add a mitigation measure to a single armed conflict operation.]

### AT: Nuke Terror

#### No scenario for nuclear terror---consensus of experts

Matt Fay 13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

# Off-Case

### 2AC EU CP

#### The CP independently kills legitimacy and NATO

Hulett 11 (Sue, Richard P. and Sophia D. Henke Distinguished Professor of Political Science and chair of the Political Science Department at Knox College, 2011, “Sue Hulett: Has Obama abandoned global leadership?”, <http://www.galesburg.com/newsnow/x1638741805/Sue-Hulett-Has-Obama-abandoned-global-leadership>)

We also know a bit more about Obama’s semi-idealist (Americans support democracy and freedom promotion), semi-pragmatic (we fear over-extension), and short-range thinking (focus only on Libya), perspective. I say short-range because of the Obama administration’s seeming under-attention to the long-term impact of an American policy of (1) unwillingness to take the lead in combating injustice and regional bullies or tyrants, (2) weakness (hesitancy to take risk or suffer expense), and (3) abandonment of leadership responsibility. This policy of “leading from behind” negatively influences allies, friends, neutrals and adversaries who must now question American commitment, strength, and staying power.

Finally, we know more about Obama’s approach to intervention and the conditions required to prompt U.S. action on behalf of humanitarian crises or national interests. The United States may intervene (as in Libya’s case) WHEN (1) there is large popular uprising against a nasty dictatorship; (2) the always hesitant Arab League (or similar regional groups) gets partially on-board; (3) the often divided 190-plus member U.N. agrees that some slight use of force for humanitarian protection is U.N.-authorized [this same U.N. placed Qaddafi’s Libya on its Human Right’s Commission several times]; (4) the underfunded and U.S.-dependent NATO can agree to use force “to protect;” (5) there is American popular support; (6) Russia and China do not veto “engagement” on behalf of peoples attempting to liberate themselves; and (7) when the U.S. can leave early and have others do the heavy-lifting. In other words, Obama might intervene against tyranny and on behalf of interests ONLY when circumstances are perfect and risks and costs are low.

Good to know; hard to replicate. Perhaps the unlikelihood of intervention is good news for left or right-leaning isolationists; idealists who support intervention for humanitarian causes but not for national interest; and for fiscal-first folks who prefer a focus on U.S. domestic concerns.

But the news is mixed for realists who worry that the United States will abandon global leadership in the hope that peace and harmony will break out everywhere and that some other state or group (like NATO or the UN) will be willing and able to do the heavy lifting. Realist worry about power imbalances, the constant company of crisis and potential terrorism in global affairs, lack of attention to national security because military expenditures are costly or unpopular, and the persistence of a diverse set of global rivals for power and regional dictators. Rivals and tyrants may assume that without much of a threat of U.S. intervention they are mostly in the clear to act as they will to expand and abuse power or to crush the liberty and rights of their own people.

Obama gets a cheer for joining the game against Gadhafi, even if he waited until the later innings to deploy the full force of U.S. military and technological superiority. But weaknesses in the line-ups and hitting power were also displayed. NATO cannot succeed without American military and intel-gathering components; victories are delayed and made more costly by U.S tardiness; and on-lookers see the limits of American power pressed home by an administration that abstains from global leadership.

Obama can be moved to action when all signals are “go,” but what about in times of uncertainty? What will he do if the “right” thing to do is unpopular or costly or if U.N. members (perhaps not thinking of the greater good) are unwilling to join in coalition with the United States? I believe that if stubborn, risk-prone, values-impaired, and/or militarily expanding adversaries see repeated signs of American weakness, they will be tempted to exploit that weakness, rather than fear U.S. action.

In sum, while Libya was victory on the cheap for Obama and may have a “Be Gone” effect on Assad in Syria, the picture of Obama foot dragging, burden shifting, indecision, and obsession with multilateral-only action and approval seems likely to further the decline in respect for American power in the world. This picture, previewed in Obama’s intentional failure to help protestors in Iran in 2009 and his last-on-board support for Arab Spring uprisings in Tunisia, Egypt, Libya, and Syria seems to have demonstrated Obama’s vacillation or indecisiveness and confusion about the occasional necessity of American leadership on behalf of promoting democracy and liberty.

#### EU burden sharing collapses cooperation

Erlanger 11 (Stevene Erlanger, Paris bureau chief for the New York Times, 9/21, What the War in Libya Tells Europe, [www.carnegieendowment.org/2011/09/21/what-war-in-libya-tells-europe/57ij](http://www.carnegieendowment.org/2011/09/21/what-war-in-libya-tells-europe/57ij))

But less happily, he said, "if 'leading from behind' becomes the rule rather than the exception,'' which he regards as likely given U.S. budget cuts, "then European force planners will have to invest'' in air-defense suppression and more close-air support. And how likely, after all, is that? And if France, Britain and others do invest more in these areas, they will have to cut in others, and will be less likely to engage in over-the-horizon expeditions like the war in Afghanistan. So Libya may be a dark model for NATO's future: internal coalitions of the willing, hemmed in by conditions and national "caveats," running out of ammunition and targets, with inadequate means to stated political goals. The economic crisis has only exacerbated Europe's unwillingness to live up to its grand ambitions to play a global role in foreign and defense matters. The biting complaints of former U.S. defense secretary Robert Gates about the fading of Europe and a "dim if not dismal future'' for an increasingly "irrelevant'' alliance were only an echo, if said more harshly, of similar speeches that many NATO secretary-generals have made before him. In February, at the Munich Security Conference, NATO's current head, Anders Fogh Rasmussen, ominously noted that in the last two years alone, European defense spending had shrunk by $45 billion—the equivalent of Germany's entire military budget. Only France, Britain, and Greece (which can't afford it), are spending the agreed 2 percent of GDP on defense, and Britain is now cutting sharply. If these trends continue, Rasmussen said, "we risk a divided Europe" and "a Europe increasingly adrift from the United States." He noted the rise of China and the impatience of Washington: "If Europe becomes unable to make an appropriate contribution to global security, then the United States might look elsewhere for reliable defense partners."

### 2AC Executive CP (Top Shelf)

#### CP alienates allies

Schwarz 7 senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, (Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201)

The Administration insists that its plunge into torture, its lawless spying, and its lock-up of innocents have made the country safer. Beyond mere posturing, they provide little evidence to back up their claims. Executive unilateralism not only undermines the delicate balance of our Constitution, but also lessens our human liberties and hurts vital counterterrorism campaigns. How? Our reputation has always mattered. In 1607, Massachusetts governor John Winthrop warned his fellow colonists that because they were a "City on a Hill," "the eyes of all people are upon us."4 Thomas Jefferson began the Declaration of Independence by invoking the need for a "decent respect to the opinions of mankind:' In today's battle against stateless terrorists, who are undeterred by law, morality, or the mightiest military power on earth, our reputation matters greatly.¶ Despite its military edge, the United States cannot force needed aid and cooperation from allies. Indeed, our status as lone superpower means that only by persuading other nations and their citizens—that our values and interests align with theirs, and so merit support, can America maintain its influence in the world. Military might, even extended to the globe's corners, is not a sufficient condition for achieving America's safety or its democratic ideals at home. To be "dictatress of the world," warned John Quincy Adams in 1821, America "would be no longer the ruler of her own spirit." A national security policy loosed from the bounds of law, and conducted at the executive's discretion, will unfailingly lapse into hypocrisy and mendacity that alienate our allies and corrode the vitality of the world's oldest democracy.5

#### Exec fiat is a voter---avoids the core topic question by fiating away Obama’s behavior in the squo---no comparative lit means the neg wins every debate

Victor Hansen 12, Professor of Law, New England Law, New England Law Review, Vol. 46, pp. 27-36, 2011, “Predator Drone Attacks”, February 22, 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009313>, PDF

Any checks on the President’s use of drone attacks must come domestically. In the domestic arena the two options are either the courts or Congress. As discussed above, the courts are institutionally unsuited and incapable of providing appropriate oversight. Congress is the branch with the constitutional authority, historical precedent, and institutional capacity to exercise meaningful and effective oversight of the President’s actions.

#### Perm do both---shields the link

#### Perm do the CP---plan text says USFG

#### Congress necessary to prevent Court evisceration of War Powers

Benjamin Wittes 8, Senior Fellow in Governance Studies at the Brookings Institution, co-founder and editor-in-chief of the Lawfare blog, member of the Hoover Institution’s Task Force on National Security Law, Law and the Long War: The Future of Justice in the Age of Terror, google books

What the Supreme Court has done is carve itself a seat at the table. It has intimated, without ever deciding, that a constitutional basis for its actions exists—in addition to the statutory bases on which it decided the cases—meaning that its authority over overseas detentions may be an inherent feature of judicial power, not a policy question on which the legislature and executive can work their will. Whether the votes exist on the court to go this extra step we will find out soon enough. But the specter of a vastly different judicial posture in this area now haunts the executive branch—one in which the justices assert an inherent authority to review executive detention and interrogation practices, divine rights to apply with that jurisdiction based on due process and vaguely worded international humanitarian law principles not clearly implemented in U.S. law, and allow their own power to follow the military’s anywhere in the world. Such a posture would constitute an earthquake in the relationships among all three branches of government, and the doctrinal seeds for it have all been planted. Whether they ultimately take root depends on factors extrinsic to the war on terror—particularly the future composition of a Supreme Court now closely divided on these questions. It will also pivot on the manner in which the political branches posture the legal foundations of the war in the future. Building a strong legislative architecture now may be the only way to avert a major expansion of judicial power over foreign policy and warfare.

#### CP exposes US forces to prosecution, wrecking ops – only Congressional limits solve

Maxwell 12 - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

The Obama administration, like its predecessor, disagrees. Its legal justification for targeted killings outside a current zone of armed conflict is anticipatory self-defense. The administration cites the inherent and unilateral right every nation has to engage in anticipatory self-defense. This right is codified in the United Nations charter43 and is also part of the U.S. interpretation of customary international law stemming from the Caroline case in 1837. A British warship entered U.S. territory and destroyed an American steamboat, the Caroline. In response, U.S. Secretary of State Daniel Webster articulated the lasting acid test for anticipatory self-defense: “[N]ecessity of self defense [must be] instant, overwhelming, leaving no choice of means and no moment for deliberation . . . [and] the necessity of self defense, must be limited by that necessity and kept clearly within it.”44¶ A state can act under the guise of anticipatory self-defense. This truism, however, leaves domestic policymakers to struggle with two critical quandaries: first, the factual predicate required by the state to invoke anticipatory self-defense, on the one hand; and second, the protections the state’s soldiers possess when they act under this authority, on the other. As to the first issue, there is simply no guidance from Congress to the President; the threshold for triggering anticipatory self-defense is ad hoc. As to the second issue, under the law of war, a soldier who kills an enemy has immunity for these precapture or warlike acts.45 This “combatant immunity” attaches only when the law of war has been triggered. Does combatant immunity attach when the stated legal authority is self-defense? There is no clear answer.¶ The administration is blurring the contours of the right of the state to act in Yemen under self-defense and the law of war protections afforded its soldiers when so acting. Therefore, what protections do U.S. Airmen enjoy when operating the drone that killed an individual in Yemen, Somalia, or Libya? If they are indicted by a Spanish court for murder, what is the defense? Under the law of war, it is combatant immunity. But if the law of war is not triggered because the killing occurred outside the zone of armed conflict, the policy could expose Airmen to prosecution for murder.¶ In order to alleviate both of these quandaries, Congress must step in with legislative guidance. Congress has the constitutional obligation to fund and oversee military operations.46 The goal of congressional action must not be to thwart the President from protecting the United States from the dangers of a very hostile world. As the debates of the Church Committee demonstrated, however, the President’s unfettered authority in the realm of national security is a cause for concern. Clarification is required because the AUMF gave the President a blank check to use targeted killing under domestic law, but it never set parameters on the President’s authority when international legal norms intersect and potentially conflict with measures stemming from domestic law.

### AT: Michaels Mech

#### Guts transparency – President will obscure the mechanisms of self-constraint

**Michaels 11** - Professor of Law @ UCLA

The (Willingly) Fettered Executive: Presidential Spinoffs in National Security Domains and Beyond

Jon D. Michaels, University of California, Los Angeles - School of Law, May 19, 2011, Virginia Law Review, Vol. 97, No. 4, pp. 801-898, 2011, UCLA School of Law Research Paper No. 11-23, Lexis

In all, the In-Q-Tel and CFIUS examples compel us to reconsider the relationship between institutional design and legal and political accountability. Indeed, they suggest a new template, a way of understanding and reconfiguring regulatory space deprived of [\*898] the traditional mechanisms employed to ensure reasoned and reasonable public administration. As such, the case studies pose a real challenge **to the dominant understandin**g of the Executive as power-aggrandizing. Yet, in marking that challenge, we ought not lose sight of the subtlety with which that challenge is presented. Indeed, the fact that the Executive seemingly **takes pains to obscure the** acts and mechanisms **of** **self-constraint** itself pays fealty to the durability and resonance of **that dominant understanding**.

### Links to Ptix

#### Links to politics through bypassing debate

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.

### 2AC Warfighting DA

#### A) Congress makes deterrence credible

Matthew C. Waxman 8/25, Professor of Law, Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 2013, PDF

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

#### Plan preserves flexibility and operational capacity

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

Conversely, some object to the use of courts or court-like review as stymying executive power in wartime, and interfering with the President's Article II powers. n183 According to this view, it is dangerous - and potentially unconstitutional - to require the President's wartime targeting decisions to be subject to additional reviews. These concerns, however, can be dealt with through emergency authorization mechanisms, the possibility of a presidential override, and design details that protect against ex ante review of operational decisionmaking. The adoption of an Article II review board, rather than an Article III-FISC model, further addresses some of the constitutional concerns.¶ Some also have warned that there may be no "case or controversy" for an Article III, FISC-like court to review, further suggesting a preference for an Article II review board. n184 That said, similar concerns have been raised with respect to FISA and rejected. n185 Drawing heavily on an analogy to courts' roles in issuing ordinary warrants, the Justice Department's Office of Legal Counsel concluded at the time of enactment that a case and controversy existed, even though the FISA applications are made ex parte. n186 [\*1224] Here, the judges would be issuing a warrant to kill rather than surveil. While this is significant, it should not fundamentally alter the legal analysis. n187 As the Supreme Court has ruled, killing is a type of seizure. n188 The judges would be issuing a warrant for the most extreme type of seizure. n189¶ It is also important to emphasize that a reviewing court or review board would not be "selecting" targets, but determining whether the targets chosen by executive branch officials met substantive requirements - much as courts do all the time when applying the law to the facts. Press accounts indicate that the United States maintains lists of persons subject to capture or kill operations - lists created in advance of specific targeting operations and reportedly subject to significant internal deliberation, including by the President himself. n190 A court or review board could be incorporated into the existing ex ante decisionmaking process in a manner that would avoid interference with the conduct of specific operations - reviewing the target lists but leaving the operational details to the operators. As suggested above, emergency approval mechanisms could and should be available to deal with exceptional cases where ex ante approval is not possible. n191

### 2AC Haphazard Restrictions Inevitable

#### Restrictions inevitable---only a question of whether they are deliberate or haphazard

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several years.

### AT: Operational Readiness (Blank)

#### Further executive policy refinement inevitable

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

Brennan further argued that it was the rigor of the process that ensured accountability in the policy. While he refrained from going into great detail about the bureaucratic process of reviewing individuals who are both legitimate and necessary targets of lethal force, he gave assurances that the administration would continue to “strengthen and refine these standards and processes.”88 Although recent news reports suggest that the process has been further refined and formalized, a singular account of the process does not yet exist. Nevertheless, it is possible to construct a somewhat comprehensive depiction of the process based on the publicly available record.

### AT: Arctic Impact

#### Russia has abandoned aggression in favor of cooperation

Sawczak 11 [Dr. Peter Sawczak, Adjunct Research Fellow at Monash University, “Obama’s Russia Policy: The Wages and Pitfalls of the Reset,” peer reviewed paper presented at the 10th Biennial Conference of the Australasian Association for Communist and Post-Communist Studies, Feb 3-4 2011, <http://cais.anu.edu.au/sites/default/files/Sawczak_Obama.pdf>]

As a measure of their optimism, US officials like to point – cautiously – to a discernible shift in Russian foreign policy towards a more pragmatic, cooperative approach. Whether or not the Obama administration can claim credit for this, the United States has at least shown Russia the dividends which could flow from enhanced cooperation. This is most palpably reflected in the Russian foreign policy paper leaked in May 2010, which identifies a “need to strengthen relations of mutual interdependence with the leading world powers, such as the European Union and the US,” 5 as well as, more indirectly, in Medvedev’s modernisation agenda. The fact that Russia has sought, in the tragic circumstances attending commemoration ceremonies at Katyn, rapprochement with Poland and moved to demarcate its border with Norway, in addition to partnering with the US on arms control, Iran and Afghanistan, suggests to US policy-makers that a rethink, however tenuous, is underway. Noteworthy also is the fact that Russia, gladdened by the emergence of more compliant leaders in Ukraine and Kyrgyzstan, has been remarkably restrained of late in its dealings closer to home, not having waged any major gas wars, threatened leaders, or incited civil war.

#### Zero chance of Arctic war---experts

Mahony 3/19 Honor, EU Observer, "Fear of Arctic conflict are 'overblown'", 2013, euobserver.com/foreign/119479

The Arctic has become a new frontier in international relations, but fear of potential conflict in the resource-rich region is overblown, say experts.¶ For long a mystery because of its general impenetrability, melting ice caps are revealing more and more of the Arctic region to scientists, researchers and industry.¶ Climate change experts can take a more precise look at a what global warming is doing to the planet, shipping trade routes once considered unthinkable are now possible, and governments and businesses are in thrall to the potential exploitation of coal, iron, rare earths and oil.¶ The interest is reflected in the growing list of those wanting to have a foot in the Arctic council, a forum of eight countries with territory in the polar region.¶ While the US, Denmark, Iceland, Finland, Norway, Sweden, Russia and Canada form the council, the EU commission, China, India, South Korea and Japan have all expressed an interest in having a permanent observer status.¶ "The Arctic has become a new meeting place for America, Europe and the Asia Pacific," says Damien Degeorges, founder of the Arctic Policy and Economic Forum.¶ During a recent conference on Arctic shipping routes in the European Parliament, Degeorges noted that "China has been the most active by far in the last years."¶ He points to its red-carpet treatment of politicians from Greenland, a territory that recently got full control over its wealth of natural resources. Bejing also cosied up to Iceland after the island's financial meltdown. The two undertook a joint expedition to the North Pole and the Chinese have the largest foreign embassy in Reykjavik.¶ Meanwhile, South Korea's president visited Greenland last year and shipping hubs like Singapore are holding Arctic conferences.¶ The interest is being spurred by melting icebergs.¶ Last year saw a record low of multi-year ice - permanent ice - in the polar sea. This means greater shipping and mineral exploitation potential. There were 37 transits of the North East Passage (NEP), running from the Atlantic to the Pacific along the top of Russia, in 2011. This rose to 47 in 2012.¶ For a ship travelling from the Netherlands to China, the route around 40 percent shorter than using the traditional Suez Canal. A huge saving for China, where 50 percent of its GDP is connected to shipping. Russia is also keen to exploit the route as the rise in temperatures is melting the permafrost in its northern territory, playing havoc with its roads and railways.¶ According to Jan Fritz Hansen, deputy director of the Danish shipowners’ association, the real breakthrough will come when there is a cross polar route. At the moment there are are two options - the North East Passge for which Russia asks high fees for transiting ships - or the much-less developed North West Passage along Canada.¶ His chief concern is that "trade up there is free. We don't want protectionism. Everyone should be allowed to compete up there."¶ And he believes the biggest story of the Arctic is not how it is traversed but what will be taken out of it. According to the US Geological Survey (2009), the Arctic holds 13 percent of undiscovered oil and 30 percent of undiscovered gas supplies.¶ Greenland is already at the centre of political tussle between the EU and China over future exploitation of its rare earths - used in a range of technologies such as hybrid cars or smart phones.¶ "The biggest adventure will be the Arctic destination. There is a lot of valuable goods that should be taken out of nature up there," he said.¶ This resource potential - although tempered by the fact that much of it is not economically viable to exploit - has led to fears that the Arctic region is ripe for conflict.¶ But this is nonsense, says Nil Wang, a former Danish admiral and Arctic expert.¶ Most resources have an owner¶ "There is a general public perception that the Arctic region holds great potential for conflict because it is an ungoverned region where all these resources are waiting to be picked up by the one who gets there first. That is completely false," he said.¶ He notes that it is an "extremely well-regulated region," with international rules saying that coastal states have territorial jurisdiction up to 12 nautical miles off their coast.¶ On top of that is a further 200 nautical miles of exclusive economic zone "where you own every value in the water and under the seabed."¶ "Up to 97 percent of energy resources is actually belonging to someone already," says Wang.¶ He suggest the actors in the region all want to create a business environment, which requires stable politics and security.

### 2AC Immigration DA

#### Won’t pass---GOP and Obama won’t spend PC

Zeke J. Miller 10/24, TIME, "Obama's New Immigration Pivot Isn't About Immigration", 2013, swampland.time.com/2013/10/24/obamas-new-immigration-pivot-isnt-about-immigration/

But privately, administration officials and congressional Democrats admit that they are unlikely to get immigration reform through Congress any time soon. Minutes after Obama spoke, Brendan Buck, a spokesman for Speaker John Boehner released a statement rejecting Obama’s calls for a comprehensive plan. “The House will not consider any massive, Obamacare-style legislation that no one understands,” Buck wrote. “Instead, the House is committed to a common sense, step-by-step approach that gives Americans confidence that reform is done the right way.”¶ Obama has long approached the issue of immigration cautiously, preferring to let congressional Democrats shoulder the burden of trying to push legislation through Congress—a fact that didn’t go unnoticed by activists. Obama has deported illegal immigrants at a faster rate than any other president, quickly approaching 2 million deportations in five years in office. That careful path shifted in 2012 when Obama signed an executive order deferring action for young illegal immigrants, known by advocates as “DREAMers” for the stymied legislation that would grant them a path to citizenship. The poll-tested election-year action helped Obama capture over 70 percent of the national Hispanic vote last November, and quickly after the election Obama made immigration reform a top priority.¶ Earlier this year the conditions were ripe for a compromise. Moderate Republicans, sensing that their party was rushing toward a demographic time bomb, were ready to compromise. Now the situation is entirely different. Some Republican proponents, like Sen. Marco Rubio, have gone quiet. The shutdown and debt limit battle has only emboldened the party’s conservative wing, who are less likely than ever before to embrace a part of the president’s agenda.

#### No immigration vote and won’t pass

Politico 10/25/13, “House GOP plans no immigration vote in 2013” <http://www.politico.com/story/2013/10/house-gop-plans-no-immigration-vote-in-2013-98824_Page2.html>

House Republican leadership has no plans to vote on any immigration reform legislation before the end the year. The House has just 19 days in session before the end of 2013, and there are a number of reasons why immigration reform is stalled this year. Following the fiscal battles last month, the internal political dynamics are tenuous within the House Republican Conference. A growing chorus of GOP lawmakers and aides are intensely skeptical that any of the party’s preferred piecemeal immigration bills can garner the support 217 Republicans — they would need that if Democrats didn’t lend their votes. Republican leadership doesn’t see anyone coalescing around a single plan, according to sources across GOP leadership. Leadership also says skepticism of President Barack Obama within the House Republican Conference is at a high, and that’s fueled a desire to stay out of a negotiating process with the Senate. Republicans fear getting jammed. Of course, the dynamics could change. Some, including Majority Leader Eric Cantor (R-Va.), are eager to pass something before the end of the year. Speaker John Boehner (R-Ohio) has signaled publicly that he would like to move forward in 2013 on an overhaul of the nation’s immigration laws. If Republicans win some Democratic support on piecemeal bills, they could move forward this year. But still, anything that makes its way to the floor needs to have significant House Republican support And Obama is also ramping up his messaging on immigration reform. “It’s good for our economy, it’s good for our national security, it’s good for our people, and we should do it this year,” Obama said Thursday. That same afternoon his chief of staff Denis McDonough met with business CEOs to strategize on immigration reform. Attendees included representatives from the U.S. Chamber of Commerce and the National Association of Manufacturers. Getting immigration through this deeply divided Congress in 2014 — an election year — would be incredibly difficult. That’s why immigration reform supporters are growing increasingly worried that the window for a bigger reform package could be slipping away since it would be even more difficult to try and forge ahead in an election year. “I think there are a lot of folks who are concerned about this issue not getting solved, and I think legitimately so,” Rep. Mario Diaz-Balart (R-Fla.) told POLITICO. “Because I do think that every day that goes by, it makes it more and more difficult.” Other prominent immigration supporters like Sen. Marco Rubio (R-Fla.) have also backed off any deal, saying the Obama administration has “undermined” negotiations by not defunding his signature health care law. Rep. Raul Labrador (R-Idaho) went further, saying Obama is trying to “destroy the Republican Party” and that GOP leaders would be “crazy” to enter into talks with Obama. That rhetoric combined with signals in private conversations with lawmakers and staff has led some immigration advocates to say they see the writing on the wall and they aren’t going to invest heavily until there’s more momentum. “After Obama poisoned the well in the fiscal showdown and [House Minority Leader Nancy] Pelosi now is actively trying to use immigration as a political weapon, the chances for substantive reforms, unfortunately, seem all but gone,” said one GOP operative involved in the conservative pro-immigration movement. Many of the groups that ran ads after the Senate passed its immigration bill — including the American Action Network and U.S. Chamber of Commerce — have gone silent on air. Several immigration reform proponents said that until House Republicans come up with legislation, there won’t be any television advertising campaigns. Liberals’ patience with House Republicans is also waning, as many argue that its time for the Obama administration to step in. National Day Laborer Organizing Network Executive Director Pablo Alvarado has been leading the charge, pressing the White House to use his “existing legal authority to alleviate the suffering of immigrants.” Frank Sharry of America’s Voice said there is a “strong preference” for action before the end of the year. “We’re either going to pass immigration reform or punish Republicans who block it,” Sharry said. “If they can’t convince their leadership then of course we want a Democratic majority that will … We’d much rather have a signing ceremony on immigration reform than a punishing electoral campaign where we’re trying to take people out.”

#### PC not key to immigration

Russell Berman 10/25/2013, “GOP comfortable ignoring Obama pleas for vote on immigration bill,” Hill, http://thehill.com/homenews/house/330527-gop-comfortable-ignoring-obama-pleas-to-move-to-immigration-reform

For President Obama and advocates hoping for a House vote on immigration reform this year, the reality is simple: Fat chance. [Video] Since the shutdown, Obama has repeatedly sought to turn the nation’s focus to immigration reform and pressure Republicans to take up the Senate’s bill, or something similar. But there are no signs that Republicans are feeling any pressure. Speaker John Boehner (R-Ohio) has repeatedly ruled out taking up the comprehensive Senate bill, and senior Republicans say it is unlikely that the party, bruised from its internal battle over the government shutdown, would pivot quickly to an issue that has long rankled conservatives. Rep. Tom Cole (R-Okla.), a leadership ally, told reporters Wednesday there is virtually no chance the party would take up immigration reform before the next round of budget and debt-ceiling fights are settled. While that could happen by December if a budget conference committee strikes an agreement, that fight is more likely to drag on well into 2014: The next deadline for lifting the debt ceiling, for example, is not until Feb. 7. “I don’t even think we’ll get to that point until we get these other problems solved,” Cole said. He said it was unrealistic to expect the House to be able to tackle what he called the “divisive and difficult issue” of immigration when it can barely handle the most basic task of keeping the government’s lights on. “We’re not sure we can chew gum, let alone walk and chew gum, so let’s just chew gum for a while,” Cole said. In a colloquy on the House floor, Minority Whip Steny Hoyer (D-Md.) asked Majority Leader Eric Cantor (R-Va.) to outline the GOP's agenda between now and the end of 2013. Cantor rattled off a handful of issues — finishing a farm bill, energy legislation, more efforts to go after ObamaCare — but immigration reform was notably absent. When Hoyer asked Cantor directly on the House floor for an update on immigration efforts, the majority leader was similarly vague. “There are plenty of bipartisan efforts underway and in discussion between members on both sides of the aisle to try and address what is broken about our immigration system,” Cantor said. “The committees are still working on this issue, and I expect us to move forward this year in trying to address reform and what is broken about our system.” Immigration reform advocates in both parties have long set the end of the year as a soft deadline for enacting an overhaul because of the assumption that it would be impossible to pass such contentious legislation in an election year. Aides say party leaders have not ruled out bringing up immigration reform in the next two months, but there is no current plan to do so. The legislative calendar is also quite limited; because of holidays and recesses, the House is scheduled to be in session for just five weeks for the remainder of the year. In recent weeks, however, some advocates have held out hope that the issue would remain viable for the first few months of 2014, before the midterm congressional campaigns heat up. Democrats and immigration reform activists have long vowed to punish Republicans in 2014 if they stymie reform efforts, and the issue is expected to play prominently in districts with a significant percentage of Hispanic voters next year. With the shutdown having sent the GOP’s approval rating plummeting, Democrats have appealed to Republicans to use immigration reform as a chance to demonstrate to voters that the two parties can work together and that Congress can do more than simply careen from crisis to crisis. “Rather than create problems, let’s prove to the American people that Washington can actually solve some problems,” Obama said Thursday in his latest effort to spur the issue on. But Republicans largely dismiss that line of thinking and say the two-week shutdown damaged what little trust between the GOP and Obama there was at the outset. “There is a sincere desire to get it done, but there is also very little goodwill after the president spent the last two months refusing to work with us,” a House GOP leadership aide said. “In that way, his approach in the fiscal fights was very short-sighted: It made his achieving his real priorities much more difficult.”

**Plan boosts Obama’s capital**

Douglas **Kriner 10**, Assistant Profess of Political Science at Boston University, 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

#### Regardless of PC, Obama has no cred which wrecks his agenda

Keith Koffler 10/11, who covered the White House as a reporter for CongressDaily and Roll Call, is editor of the website White House Dossier, "Obama's crisis of credibility", 2013, www.politico.com/story/2013/10/obamas-crisis-of-credibility-98153.html

President Barack Obama is like a novice flier thrust into the cockpit of a 747. He’s pushing buttons, flipping switches and radioing air traffic control, but nothing’s happening. The plane is just slowly descending on its own, and while it may or may not crash, it at least doesn’t appear to be headed to any particularly useful destination.¶ Obama’s ineffectiveness, always a hallmark of his presidency, has reached a new cruising altitude this year. Not even a year into his second term, he looks like a lame duck and quacks like a lame duck. You guessed it — he’s a lame duck.¶ On the world stage, despite Obama’s exertions, Iran’s centrifuges are still spinning, the Israelis and Palestinians remain far apart, Bashar Assad is still in power, the Taliban are gaining strength and Iraq is gripped by renewed violence.¶ At home, none of Obama’s agenda has passed this year. Republicans aren’t bowing to him in the battle of the budget, and much of the GOP seems uninterested in House Speaker John Boehner’s vision of some new grand bargain with the president.¶ Obama has something worse on his hands than being hated. All presidents get hated. But Obama is being ignored. And that’s because he has no credibility.¶ A president enters office having earned a certain stock of political capital just for getting elected. He then spends it down, moving his agenda forward, until he collects a fresh supply by getting reelected.¶ But political capital is only the intangible substrate that gives a president his might. His presidency must also be nourished by credibility — a sense he can be trusted, relied upon and feared — to make things happen.¶ A president enters office with a measure of credibility. After all, he seemed at least trustworthy enough to get elected. But unlike political capital, credibility must be built in office. Otherwise, it is squandered.¶ Obama has used every credibility-busting method available to eviscerate any sense that he can be counted on. He’s dissimulated, proven his unreliability, ruled arbitrarily and turned the White House into a Chicago-style political boiler room. His credibility has been sapped with his political opponents, a public that thinks him incompetent, our allies, who don’t trust him, and, even worse, our enemies, who don’t fear him.¶ There’s not going to be any grand bargain on the budget this year. Republicans are not only miles from the president ideologically — they’re not going to trust him with holding up his end of the bargain. If they had a president they thought they could do business with, their spines might be weakening more quickly in the current budget impasse and they would be looking for an exit.¶ There are the unkept promises like closing Guantanamo, halving the deficit during his first term and bringing unemployment down below 8 percent as a result of the 2009 stimulus. Then there are the moments when one has to conclude that Obama could not have possibly been telling the truth.¶ His contention when selling Obamacare that people would be able to keep their insurance and their doctors is not simply “turning out” to be wrong. That some people would lose either their doctors or their insurance is an obvious result of a properly functioning Affordable Care Act. He could not possibly have known so little about his signature program that he didn’t foresee such a possibility.¶ Last year, the independent Politifact.com rated Obama’s vow to pass health care reform that reduces premiums for the average family by $2,500 a “promise broken,” suggesting that premiums might in fact go up slightly. Obama’s claim that Obamacare reduces the deficit is also probably wrong. In an article published Wednesday, Charles Blahous, the Republican-appointed Medicare Public Trustee, notes that he has estimated Obamacare would add $340 billion to federal deficits in its first decade, and that recent evidence suggests the tally is likely to be higher. But certainly Obama has performed a sleight of hand, since budget savings used to “pay for” Obamacare can no longer be used to subtract from the deficit.¶ Meanwhile, Republicans can’t trust the president to abide by any deal he might sign since he has a record of picking and choosing which laws to enforce. He stopped enforcing the Defense of Marriage Act before it was declared unconstitutional. Having not gotten the “Dream Act” out of Congress, he wrote it himself, choosing not to send certain children of illegal immigrants back to their native countries. He attacked Libya without the consent of Congress.¶ Sapping his credibility further is willingness to harbor and express vicious contempt for his ideological opposites, whom he variously describes as terrorists, “extremists,” and “enemies.” Behaving like a Chicago ward boss is not going to advance his agenda very far on Capitol Hill.¶ Obama’s failure to enforce his “red line” with Syria on the use of chemical weapons and punt the matter to a dubious weapons destruction process is only the latest example of his inconstancy. The president failed to maintain a needed troop presence in Iraq, resulting in disastrous and sustained violence that is wasting our efforts there; he tarried in supporting a potential Iranian uprising; he dumped a stalwart U.S. ally, Egypt, into the hands of the Muslim Brotherhood; he said Assad had to go, and then Assad didn’t go; he broke his promise to Hispanic voters to move immigration reform during his first term; and he dropped an additional $400 million in revenue on the table to blow up a potentially massive 2011 budget bargain with Republicans.¶ The only thing Obama can truly be counted on is to make his tee time on Saturdays, though the government shutdown has temporarily cramped his golf game.¶ During his first year in office, Ronald Reagan crushed an illegal strike by air traffic controllers by firing them all, defying charges that he was a union-busting thug and that planes would soon be dropping out of the sky. It was a moment that convinced observers at home and abroad that Reagan was not to be taken lightly, that he was a serious man of his word, and that he was to be respected and even feared. And so he got things done.¶ Obama has never shown similar fortitude to the world for the simple reason that he lacks it. Obama is not to be feared, or even trusted. And that’s a fatal flaw in a president.

#### Laundry list pounds the agenda

WSJ 10/17, Peter Nicholas and Carol E. Lee, "Obama's Agenda Faces Rocky Road", 2013, online.wsj.com/news/articles/SB10001424052702303680404579141472200495820

Yet as much as he wants to shift the focus to immigration and the farm bill, Mr. Obama will have trouble pulling it off. His administration is under pressure to fix the operational problems that have bedeviled the new health-care exchanges.¶ The next set of fiscal deadlines, and worries about the next round of the across-the-board spending cuts, scheduled to take effect in mid-January, are likely to overshadow other efforts. That leaves lawmakers with only a narrow window of time to tackle any remotely complex legislation before the 2014 midterm dynamics overtake Washington.¶ Messy internal GOP politics over the farm bill could also complicate lawmakers' efforts to reconcile the different measures passed by the House and Senate.¶ As for immigration, House Republicans have said they plan to consider piecemeal immigration bills, but so far not one has reached the House floor.¶ Rep. Raul Labrador (R., Idaho), a conservative who has urged Republicans to tackle immigration changes, said Wednesday the budget fight would make it harder for GOP leaders to negotiate with the president on immigration.

#### Johnson nomination triggers the link

Kevin Mathews 10/23/13, staff writer, “5 Worrisome Facts About Obama’s Homeland Security Nominee” <http://www.care2.com/causes/5-worrisome-facts-about-obamas-homeland-security-nominee.html>

President Barack Obama has selected Jeh Johnson to lead the Department of Homeland Security this week. Johnson, who accepted Obama’s nomination, is considered a favorable choice by some liberals due to his purported desire to end the war on terror and having played a pivotal legal role in overturning the military’s Don’t Ask, Don’t Tell policy. That said, others are worried by details that have them question what kind of DHS head Johnson will be. Here are five of the troublesome factors: 1. Drones As the United Nations begins to take a firmer stance against U.S. drone attacks (they believe it may violate international humanitarian law and that the strikes are killing more innocent civilians than the United States acknowledges), the new homeland security nominee takes a contrary position. As Johnson posits, drones are not only extremely necessary, but also certainly legal. In his previous position as a leading attorney for the military, Johnson was the man to authorize specific drone strikes on foreign targets. Worse yet, he even has no problem with one of the more controversial talking points of drone warfare: targeted assassinations of United States citizens. Though many argue that citizens are Constitutionally guaranteed due process when suspected of criminal behavior, Johnson sees it differently. “Belligerents who also happen to be U.S. citizens do not enjoy immunity,” he claimed last year.

#### Reform fails---changes cause backlog

Murthy 9 Law Firm, “What if CIR Passes? Can USCIS Handle the Increased Workload?”, NewsBrief, 10-30, http://www.murthy.com/news/n\_cirwkl.html

Any type of legalization program will face significant opposition, particularly during an economic downturn. However, given the numbers of individuals possibly eligible, even under a less expansive program, the USCIS must prepare for a potential onslaught of applications if any type of CIR passes and becomes the law. As many MurthyDotCom and MurthyBulletin readers know from personal experience, the USCIS has historically suffered from backlogs and capacity issues. Were such a measure to pass, absent substantial changes, a flood of new applications could pose a significant challenge to the processing capacity of the USCIS. *USCIS Preparing to Expand Rapidly, Should Need Arise* A Reuters blog quoted USCIS spokesman, Bill Wright, as saying, “The agency has been preparing for the advent of any kind of a comprehensive immigration reform, and if that means a surge of applications and operations, we have been working toward that.” USCIS Director, Alejandro Mayorkas, has stated that the goal of the USCIS is to be ready to expand rapidly to handle the increase in applications that would result from CIR. In the past, opponents have used lack of capacity and preparation as an argument against CIR and expansion of eligibility for immigration benefits. *Will CIR Result in Increased or Reduced Backlogs for Others?* Legal immigrants and their employers have concerns about being disadvantaged by any CIR legislation that would provide benefits to undocumented workers. However, true CIR is not limited to these provisions, and would be expected to contain provisions regarding various aspects of legal immigration. CIR certainly will be hotly debated and any proposed legislation will be modified throughout the debate process. As part of the preparations of the USCIS, and in order not to harm those who have already initiated cases under existing law, the USCIS needs to continue to work on backlogs. While significant progress has been made in many areas, and case processing times have been improved greatly, there are still case backlogs that need to be addressed.

### AT: Economy Impact

#### CIR not key to economy

Mike Flynn 13, Breitbart reporter, July 13, "White House Oversells Economic Benefits of Immigration Reform," www.breitbart.com/Big-Government/2013/07/13/white-house-oversells-economic-benefits-of-immigration-reform

On Saturday, President Obama used his weekly radio address to tout the economic benefits of passing the Senate immigration reform bill. On Wednesday, the White House issued a report saying the immigration reform bill would both trim the deficit and boost the economy over the next two decades. Even accepting the Administration's numbers at face-value, the report shows how little would be gained economically from reform in the long-term. In the short-term, however, there are some very real costs ignored by the White House.¶ The White House report draws heavily from a CBO analysis on the economic impact of the Senate bill, released in mid-June. The CBO estimates that, under the Senate bill, in 20 years, the nation's GDP would be $1.4 trillion higher than it otherwise would be if the bill didn't pass. The Administration claims the bill will grow the economy by 5.4% in that time-frame. ¶ Which sounds impressive, until one realizes that we are talking about a 20 year window here. An incremental growth of 5% over two decades isn't exactly an economic bonanza. In that time-span the US economy will generate $300-500 trillion in total economic impact. An extra few trillion is at the margins or the margins.¶ Worse, the economic benefits the CBO estimates will accrue only begin at least a decade after enactment. Through 2031, Gross National Product, which measures the output of US residents and firms, would be lower than it otherwise would be. In ten years, the per capita GNP would be almost 1% lower than without the Senate bill. ¶ The CBO analysis also shows that average wages of American workers would be lower than they otherwise would be through at least the first 10 years of the law's enactment. The unemployment rate would also rise for the first decade, due to a large increase in the labor force.¶ Supporters and opponents of immigration reform both overstate its economic impact. In a nation of more than 300 million people and a $16 trillion economy, any economic impact is going to be felt at the margins. The CBO, however, finds that, for at least a decade, the economic effects of the Senate bill are negative at the margins. After 2 decades, the CBO says the effects become positive at the margin. ¶ A decade of relatively worse economic performance to secure marginally better performance 20 years from now is not an obviously good bargain. One can make many argument in favor of immigration reform. Economic growth, however, seems a very weak one.

### AT: Econ = War

#### No econ decline war---best and most recent data

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. ¶ The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40¶ None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

# 1AR

## Norms

### Yes Norms Modeling

#### Norm setting is effective---reverse causal

Micah Zenko 13, CFR Douglas Dillon Fellow in the Center for Preventive Action, PhD in Political Science from Brandeis University, “Reforming U.S. Drone Strike Policies,” CFR Special Report 65, January 2013

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.¶ In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies.

## S

### AT: Circumvention

#### President believes he is constrained by statute

Saikrishna Prakash 12**,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

#### No circumvention for military adjudication

#### A) Their link author votes aff

Baron et.al. 8 – Prof of Law @ Harvard & Lederman, Vsting Prof @ Georgetown Law Center

Harvard Law Review, vol 121, no 4, Feb 2008, THE COMMANDER IN CHIEF AT THE LOWEST EBB — A CONSTITUTIONAL HISTORY, http://www.scribd.com/doc/142282896/Barron-Lederman2

However, even if Congress cannot transfer military discretion from the President to one of his subordinates, the contours of a principle of presidential superintendence over discretionary military decisions have historically been limited in important respects. Each of the branches has long accepted, for example, that Congress can provide for courts-martial to have a decisive role, even countermanding the President’s judgments, in some personnel questions, including dismissal from the service. 660 This example is representative of what appears to be a more general consensus understanding among the branches — unchallenged until the George W. Bush Administration — that if Congress establishes a substantive standard for wartime executive detention, Congress can also decide that the President’s adherence to such standards may be assessed by an adjudicatory tribunal. As cases from Brown , Milligan , and Youngstown to Rasul and Hamdan appear to demonstrate, Congress can empower the federal courts to adjudicate cases challenging the Executive’s exercise of war powers (for example, on petitions for habeas corpus, including those filed by alleged enemy detainees), and to issue orders compelling the President to comply with statutory and treaty-based (and constitutional) mandates. Such an understanding has obvious echoes in the longstanding doctrine, exemplified in Humphrey’s Executor v. United States , 661 that executive constitutional prerogatives are less seriously implicated where adjudicatory (rather than purely “executive”) functions are exercised free from presidential control, even within the executive branch. In other, non-military contexts the Court has more recently pulled back from the task of strictly distinguishing between “quasi-judicial” and “purely executive” functions and officers. 662 Nevertheless, there are strong indications that in the context of the Commander in Chief’s preclusive prerogative of military superintendence, an “adjudicatory” exception persists, although its contours are far from clear. 663

### AT: ZoAH Bad

#### Zone of active hostilities is the best definition

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

The Zone of Active Hostilities Commentary, political discourse, court rulings, and academic literature are rife with references to the distinction between the so-called "hot battlefield" and elsewhere. Yet despite the salience of this distinction, there is no commonly understood definition of a "hot battlefield," let alone a common term applied by all. n118 In what follows, I briefly survey the relevant treaty [\*1203] and case law and offer a working definition of what I call the "zone of active hostilities." This definition takes into account such sources of law as well as the normative and practical reasons for this distinction 1. Treaty and Case Law While not explicitly articulated, the notion of a distinct zone of active hostilities where fighting is underway is implicit in treaty law. The Geneva Conventions, for example, specify that prisoners of war and internees must be moved away from the "combat zone" in order to keep them out of danger, n119 and that belligerent parties must conduct searches for the dead and wounded left on the "battlefield." n120 While there are no explicit definitions provided, the context suggests that these terms refer to those areas where fighting is currently taking place or very likely to occur. The related term "zones of military operations," which is spelled out in a bit more detail in the Commentaries to the Geneva Conventions, is described as covering those areas where there is actual or planned troop movement, even if no active fighting. n121 [\*1204] In a variety of contexts, U.S. courts also have opined on whether certain activities fall within or outside of a zone of active hostilities, indicating that the existence and quantity of fighting forces are key. In Hamdi v. Rumsfeld, for example, the Supreme Court observed that the large number of troops on the ground in Afghanistan supported the finding that the United States was involved in "active combat" there. n122 A panel of the D.C. Circuit subsequently noted that the ongoing military campaign by U.S. forces, the attacks against U.S. forces by the Taliban and al Qaeda, the casualties U.S. personnel incurred, and the presence of other non-U.S. troops under NATO command supported its finding that Afghanistan was "a theater of active military combat." n123 Previous cases have similarly used the presence of fighting forces, the actual engagement of opposing forces, and casualty counts to identify a theater of active conflict. n124 Conversely, U.S. courts have often assumed that areas in which there is no active fighting between armed entities fall outside of the zone of active hostilities. Thus, the Al-Marri and Padilla litigations were premised on the notion that the two men were outside of the zone of active hostilities when [\*1205] taken into custody in the United States. n125 The central issue in those cases was how much this distinction mattered. n126 The D.C. Circuit in Al Maqaleh similarly distinguished Afghanistan - defined as part of "the theater of active military combat" - from Guantanamo - described as outside of this "theater of war" - presumably because of the absence of active fighting there. n127 In the context of the Guantanamo habeas litigation, D.C. District Court judges have at various times also described Saudi Arabia, Gambia, Zambia, Bosnia, Pakistan, and Thailand as outside an active battle zone. n128

## Flex

### AT: Arctic War

#### No Arctic war - multiple checks

Young**,** Professor – Institutional and International Governance, Environmental Institutions @ UCSB, Arctic expert, PhD – Yale, ‘11 (Oran R, “The future of the Arctic: cauldron of conflict or zone of peace?” *International Affairs* 87:1, p. 185-193)

Popular accounts of the Arctic’s jurisdictional issues are regularly couched in terms of provocative phrases like the afore-mentioned ‘who owns the Arctic’ or ‘use it or lose it’. But these phrases turn out to be highly misleading in this context. There are virtually no disputes in the Arctic regarding sovereignty over northern lands; no one has expressed a desire to redraw the map of the Arctic with regard to the terrestrial boundaries of the Arctic states. Most of the disagreements are to do with jurisdiction over marine areas where the idea of ownership in the ordinary sense is irrelevant. While some of these disagreements are of long standing and feature relatively entrenched positions, they are not about establishing ownership, and they do not indicate that some level of ‘use’ is required to avoid the erosion of sovereignty. There is little prospect that these disputes will spawn armed clashes. As both Michael Byers and Shelagh Grant make clear in their excellent analyses of Arctic sovereignty, recent efforts to address matters involving sovereignty in the Arctic are marked by a spirit of rule-based problem-solving,

rather than an escalating spiral of politically charged claims and counterclaims. The process of delineating jurisdictional boundaries regarding the seabed beyond the limits of Exclusive Economic Zones (EEZs) is taking place in conformity with the rules and procedures set forth in Article 76 of UNCLOS. Norway and Russia have signed an international treaty resolving their differences regarding jurisdictional boundaries in the Barents Sea. There are signs that Canada and the United States are interested in a similar approach with regard to the Beaufort Sea. The Russians, whose much ballyhooed 2007 initiative to plant the Russian flag on the seabed at the North Pole is widely discussed in the books under review, have acted in conformity with the relevant rules of international law in addressing jurisdictional matters and repeatedly expressed their readiness to move forward in a cooperative manner in this realm. There are, of course, significant sensitivities regarding the legal status of the Northern Sea Route and especially the Northwest Passage. But given that commercial traffic on these routes is likely to be limited during the near future, and that the use of these routes will require the active cooperation of the coastal states, regardless of their formal legal status, opportunities arise for devising pragmatic arrangements governing the use of these waterways. The progress now being made regarding the development of a mandatory Polar Code covering Arctic shipping is good news. The fact that ‘hot spots’ in the search for oil and gas in the Arctic are located, for the most part, in areas that are not subject to jurisdictional disputes is also helpful. Overall, it seems fair to conclude that the Arctic states are living up to their promises to deal with jurisdictional issues in the region in a peaceful manner.

**Their evidence is just fear mongering - there's no risk of Arctic conflict**

**Ackerman 11** (Spencer, National Security Reporter @ WIRED, " War For the Arctic: Never Mind," June 8th, http://www.wired.com/dangerroom/2011/06/war-for-the-arctic-never-mind/, EMM)

It wasn’t long ago that the press was running wild with hyperbolic claims of the U.S. losing out in an impending Arctic conflict. After all, global warming is freeing up access to large deposits of oil, gas and minerals right in the backyard of the Russians. But the press forgot to tell other polar nations to freak out. Indeed, at a forum convened on Wednesday by the Center for Strategic and International Security, ambassadors from four polar nations, including some traditionally menaced by Russia, were sanguine about the future of polar exploration. “We actually think we handled these areas for decades during the Cold War rather well,” said Wegger Strommen, Norway’s man in Washington. The U.S Geological Survey assesses that the North Pole holds about 13 percent of the world’s untapped oil supplies. Companies and nations are champing at the bit to expand exploration as the ice caps melt. The Russians have an advantage: a fleet of six nuclear powered icebreakers on its northern shore. By contrast, the U.S. Coast Guard has just one, the cutter Healy. But no one’s sweating it. Should there actually be an arctic sea conflict, the U.S. submarine fleet is second to none, as my colleague David Axe has pointed out. And a massive Arctic oil rush is “years off,” Strommen added, since the “climate is harsh, the conditions are difficult and it’s incredibly expensive.” Beyond that, the Russians are warm in the Arctic. Russia finalized a maritime border with Norway on Tuesday that took 30 years to negotiate. Strommen’s colleagues from Greenland, Canada and Sweden gave high marks to a meeting last month of the Arctic Council, the diplomatic contact group of arctic nations, in which Russia signed onto an accord for search and rescue missions in the cold waters. Think of it as a diplomatic thaw.

**All case studies prove - diplomatic solutions are more likely**

IN, Ice News – Iceland national news source, 11/29/’9 (“Military dispute over Arctic resources unlikely,” <http://www.icenews.is/index.php/2009/12/29/military-dispute-over-arctic-resources-unlikely/>)

The natural resources of the Arctic region are unlikely to lead to any military conflict in the region according to new research by the Fridtjof Nansen Institute (FNI) of Norway. The study further found that a diplomatic solution to any dispute resolution is far likelier and more rational than armed action. In a statement posted on their website, FNI downplays the threat of lawlessness in the Arctic. “Contrary to the general picture drawn by the media and some commentators over the last couple of years, the Arctic region does not suffer under a state of virtual anarchy. The era when states could claim rights to territory and resources by simply planting their flag is long gone,” the statement reads. International law largely regulates any issues in the Arctic region that have been dubbed “security policy challenges” in the past, SikuNews reports, while adding that the report claims that regional states prefer an observation-based approach over any desire for military conflict. Those issues which arise that are not clearly governed by international law in respect to resolution procedures are generally only minor, say researchers. The focus of the majority of the case studies contained in the findings was on relations in the Barents Sea, between Russia and Norway. These included the management of ocean resources, the status of the continental shelf and waters around Svalbard and the delimitation of unresolved boundaries. These case studies collectively found little or no threat of armed dispute likely and concluded that the Arctic region has little rationale or legal space for military conflict resolution.