# 1AC – KY RR

### 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.

**Democratic backsliding causes great power war**

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

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

### 1AC – Allied Coop

#### CONTENTION 2: Allied Coop

**European allies will insist on a policy that limits operations to declared zones of conflict with criminal prosecutions elsewhere---failure to codify US policy and build enduring norms risks executive overreach**

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 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 with laws--- makes criminal prosecutions effective outside zones of conflict**

**Hathaway 13**, Gerard C. and Bernice Latrobe Smith Professor of International Law

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**

David S. Kris 11 – Former Assistant Attorney General for National Security at the U.S. Department of Justice, Law Enforcement as a Counterterrorism Tool, Assistant Attorney General for National Security at the U.S. Department of Justice, from March 2009 to March 2011, Journal of Security Law & Policy, Vol5:1. 2011, http://jnslp.com//wp-content/uploads/2011/06/01\_David-Kris.pdf

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.

**Obama overreach triggers end of allied intel cooperation and dooms 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**.

**An effective NATO is necessary to link a hub of global security regimes that stabilize North Korea**

Frederick **Kempe 12**, President and CEO of the Atlantic Council, "How NATO can revitalize its role", May 16, blogs.reuters.com/thinking-global/2012/05/16/how-nato-can-revitalize-its-role/

However, beneath the third agenda item – partnerships – lies a potential revolution in how the world’s most important security alliance may operate globally in the future beside other regional organizations – and at the request of the United Nations. At a time of euro zone crisis, U.S. political polarization and global uncertainty, it provides a possible road map for “enlarging the West” and its community of common values and purpose. “NATO is now a hub for a global network of security partners which have served alongside NATO forces in Afghanistan, Libya and Kosovo,” Obama and Rasmussen agreed.¶ As America’s willingness and capability to act unilaterally declines, any U.S. president will find himself increasingly drawn to NATO as an even more vital tool for foreign and defense policy – against a host of global threats ranging from Syrian upheavals and **North Korean nuclear** weapons to cyber attacks and piracy. The problem, however, is that NATO members more often than not won’t be located where they are most needed. Or due to lack of political will or inadequate military muscle, many NATO members may not have the capability to intervene. That means **regional partners will be increasingly necessary** to provide both the credibility and resources for the most likely future operations.¶ Although many experts, including then-Secretary of Defense Robert Gates, opposed NATO’s 2011 intervention in Libya, the operation’s ultimate success provides something of a model for this sort of future. NATO operated alongside key regional and European non-alliance partners within NATO structures – with the blessing of the Arab League and the United Nations Security Council. The alliance – and by extension the United States – achieved its objectives with no allied casualties, minor collateral damage and limited U.S. engagement. The war lasted seven months and cost the alliance just $1.2 billion, the equivalent of one week of operations in Afghanistan.¶ Such situations never repeat themselves precisely. Should NATO ultimately be involved in Syria, for example, regional engagement would likely be far greater. In a North Korean scenario, it is hard to imagine any response that wouldn’t be coordinated with America’s Asia-Pacific allies and China. Regarding maritime security, the NATO countries involved and local partners would shift given the threat, whether off the Gulf of Guinea or the Straits of Hormuz. What’s clear is that for the model of NATO at the hub of a global security network, the alliance will need to become more flexible and adaptable – and to build a broader and deeper array of global partnerships.¶ The expected discussions of NATO leaders this weekend about how best to wind down their decade-long Afghan military operation and about how to maintain sufficient defense capabilities, despite growing budget cuts, risk leaving the impression of an alliance in retrenchment or decline. That’s hardly an inspiring or helpful message for a U.S. president heading home to Chicago at the beginning of his re-election campaign.¶ By contrast, NATO’s efforts to broaden and deepen cooperation with capable partner nations can be rolled out as a pro-active, forward-looking initiative that has NATO going on offense for a new era. So that no one misses his notion of NATO at the core of a global security network, President Obama and his allies will stage an unprecedented summit meeting with 13 partner nations – from South Korea, Japan, New Zealand and Australia in Asia-Pacific to Jordan, Morocco, Qatar and the United Arab Emirates in the Middle East and North Africa. Also present will be five European states that aren’t members of the alliance but routinely contribute to alliance activities – Austria, Finland, Sweden and Switzerland.¶ What they’ll be trying to do is give teeth to an agenda for NATO that I first saw discussed in detail by former National Security Adviser Zbigniew Brzezinski in a major Foreign Affairs article in October 2009. He argued against those who wished to expand NATO into a global alliance of democracies. He said that would dilute the crucial importance of the U.S.-European connection, which still accounts for half of the world’s economy, and that none of the world’s rising powers would be likely to accept membership in a global NATO. An ideologically defined democratic alliance would needlessly draw institutional lines between the U.S. and, for example, China.¶ “NATO, however, has the experience, the institutions, and the means to eventually become the hub of a globe-spanning web of various regional cooperative-security undertakings among states with the growing power to act,” he wrote. “In pursuing that strategic mission, NATO would not only be preserving transatlantic political unity; it would also be responding to the twenty-first century’s novel and increasingly urgent security agenda.”

#### Korean war goes nuclear---risk of miscalc is high and this time is different

Steven Metz 13, Chairman of the Regional Strategy and Planning Department and Research Professor of National Security Affairs at the Strategic Studies Institute, 3/13/13, “Strategic Horizons: Thinking the Unthinkable on a Second Korean War,” http://www.worldpoliticsreview.com/articles/12786/strategic-horizons-thinking-the-unthinkable-on-a-second-korean-war

Today, North Korea is the most dangerous country on earth and the greatest threat to U.S. security. For years, the bizarre regime in Pyongyang has issued an unending stream of claims that a U.S. and South Korean invasion is imminent, while declaring that it will defeat this offensive just as -- according to official propaganda -- it overcame the unprovoked American attack in 1950. Often the press releases from the official North Korean news agency are absurdly funny, and American policymakers tend to ignore them as a result. Continuing to do so, though, could be dangerous as events and rhetoric turn even more ominous. ¶ In response to North Korea's Feb. 12 nuclear test, the U.N. Security Council recently tightened existing sanctions against Pyongyang. Even China, North Korea's long-standing benefactor and protector, went along. Convulsed by anger, Pyongyang then threatened a pre-emptive nuclear strike against the United States and South Korea, abrogated the 1953 armistice that ended the Korean War and cut off the North-South hotline installed in 1971 to help avoid an escalation of tensions between the two neighbors. A spokesman for the North Korean Foreign Ministry asserted that a second Korean War is unavoidable. He might be right; for the first time, an official statement from the North Korean government may prove true. ¶ No American leader wants another war in Korea. The problem is that the North Koreans make so many threatening and bizarre official statements and sustain such a high level of military readiness that American policymakers might fail to recognize the signs of impending attack. After all, every recent U.S. war began with miscalculation; American policymakers misunderstood the intent of their opponents, who in turn underestimated American determination. The conflict with North Korea could repeat this pattern. ¶ Since the regime of Kim Jong Un has continued its predecessors’ tradition of responding hysterically to every action and statement it doesn't like, it's hard to assess exactly what might push Pyongyang over the edge and cause it to lash out. It could be something that the United States considers modest and reasonable, or it could be some sort of internal power struggle within the North Korean regime invisible to the outside world. While we cannot know whether the recent round of threats from Pyongyang is serious or simply more of the same old lathering, it would be prudent to think the unthinkable and reason through what a war instigated by a fearful and delusional North Korean regime might mean for U.S. security. ¶ The second Korean War could begin with missile strikes against South Korean, Japanese or U.S. targets, or with a combination of missile strikes and a major conventional invasion of the South -- something North Korea has prepared for many decades. Early attacks might include nuclear weapons, but even if they didn't, the United States would probably move quickly to destroy any existing North Korean nuclear weapons and ballistic missiles. ¶ The war itself would be extremely costly and probably long. North Korea is the most militarized society on earth. Its armed forces are backward but huge. It's hard to tell whether the North Korean people, having been fed a steady diet of propaganda based on adulation of the Kim regime, would resist U.S. and South Korean forces that entered the North or be thankful for relief from their brutally parasitic rulers. As the conflict in Iraq showed, the United States and its allies should prepare for widespread, protracted resistance even while hoping it doesn't occur. Extended guerrilla operations and insurgency could potentially last for years following the defeat of North Korea's conventional military. North Korea would need massive relief, as would South Korea and Japan if Pyongyang used nuclear weapons. Stabilizing North Korea and developing an effective and peaceful regime would require a lengthy occupation, whether U.S.-dominated or with the United States as a major contributor. ¶ The second Korean War would force military mobilization in the United States. This would initially involve the military's existing reserve component, but it would probably ultimately require a major expansion of the U.S. military and hence a draft. The military's training infrastructure and the defense industrial base would have to grow. This would be a body blow to efforts to cut government spending in the United States and postpone serious deficit reduction for some time, even if Washington increased taxes to help fund the war. Moreover, a second Korean conflict would shock the global economy and potentially have destabilizing effects outside Northeast Asia. ¶ Eventually, though, the United States and its allies would defeat the North Korean military. At that point it would be impossible for the United States to simply re-establish the status quo ante bellum as it did after the first Korean War. The Kim regime is too unpredictable, desperate and dangerous to tolerate. Hence regime change and a permanent ending to the threat from North Korea would have to be America's strategic objective. ¶ China would pose the most pressing and serious challenge to such a transformation of North Korea. After all, Beijing's intervention saved North Korean dictator Kim Il Sung after he invaded South Korea in the 1950s, and Chinese assistance has kept the subsequent members of the Kim family dictatorship in power. Since the second Korean War would invariably begin like the first one -- with North Korean aggression -- hopefully China has matured enough as a great power to allow the world to remove its dangerous allies this time. If the war began with out-of-the-blue North Korean missile strikes, China could conceivably even contribute to a multinational operation to remove the Kim regime. ¶ Still, China would vehemently oppose a long-term U.S. military presence in North Korea or a unified Korea allied with the United States. One way around this might be a grand bargain leaving a unified but neutral Korea. However appealing this might be, Korea might hesitate to adopt neutrality as it sits just across the Yalu River from a China that tends to claim all territory that it controlled at any point in its history. ¶ If the aftermath of the second Korean War is not handled adroitly, the result could easily be heightened hostility between the United States and China, perhaps even a new cold war. After all, history shows that deep economic connections do not automatically prevent nations from hostility and war -- in 1914 Germany was heavily involved in the Russian economy and had extensive trade and financial ties with France and Great Britain. It is not inconceivable then, that after the second Korean War, U.S.-China relations would be antagonistic and hostile at the same time that the two continued mutual trade and investment. Stranger things have happened in statecraft.

**Effective intel sharing is key to NATO effectiveness --- solves prolif**

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\*Note: SOF = Special Operation Forces

NATO’s essential purpose is to safeguard the freedom and security of all its members via political and military means in accordance with the North Atlantic Treaty and the principles of the United Nations Charter.3 “There is a common perspective among a variety of defense and security establishments around the world that the nature of the current and future security environment we face presents complex and irregular challenges that are not readily apparent and are difficult to anticipate.”4 SOF is being singled out and recognized as a key component of the North Atlantic Treaty Organization (NATO) alliance in the fight against contemporary and future threats, because SOF is “ideally suited to [the] ambiguous and dynamic irregular environment” facing NATO.5¶ SOF has traditionally been considered a national asset. NATO had no history of utilizing SOF in the Alliance when NATO nations first assumed responsibility for the conflicts in the Balkans. However the lessons learned during those conflicts were not applied due to a lack of a central NATO SOF entity until the NATO Riga summit of 2006. On December 22, 2006, Admiral William McRaven was appointed Director of the NATO SOF Coordination Center (NSCC) and ordered to start the transformation process. Three years later, on March 1, 2010, the NATO SOF Headquarters (NSHQ) was formally established as a three-star headquarters within the Alliance in Mons, Belgium.6¶ According to its mission statement, the purpose of NSHQ is twofold. First, it must optimize the employment of SOF by the Alliance. NSHQ further describes this as “the intention to make the employment of SOF as perfect, efficient, and effective as possible, so as to deliver to the Alliance a highly agile Special Operations capability across the range of military operations.”7 Second, it must provide a command capability when so directed by Supreme Allied Commander Europe (SACEUR). NSHQ further describes this as “the ability to deploy a robust C4I capability and enablers for the support and employment of SOF in NATO operations.”8 To be able to carry out successful special operations in support of the current and future operating environments, the Alliance needs adequate interoperability, command and control, and intelligence structures. ¶ Even **amongst the closest** **allies**, **challenges in intelligence sharing remain**. During the early years of Operation Iraqi Freedom, British operators were denied access to intelligence fused by the U.S. that the British had gathered themselves. The issue became so contentious that it had to be raised by British and Australian Prime Ministers with the U.S. President to be resolved.9 Having realized that intelligence sharing is always a compromise between the need to share and the need to protect (even with the best-designed organizations, much less a large, multinational, bureaucratic organization), the NSHQ has developed an innovative approach to solving its intelligence deficiencies. It has created its own organic intelligence collection, analysis, and exploitation capability. It has also acquired its own equipment and created a robust NATO SOF training facility and training program to supplement intelligence flow to NATO SOF forces.!¶ B. BACKGROUND ¶ Special operations often test the limits of both equipment and personnel. This extremity introduces a significant degree of uncertainty or “fog of war.” Success in special operations dictates that the **uncertainty** associated with the enemy, weather, and terrain **must be minimized** through access to **best available intelligence**.10 Most special operations conducted nationally benefit from access to the best national intelligence available. However, because of classification issues, special operations by international coalitions often lack access to the best available intelligence. This absence increases the likelihood of operational failure and further risks the personal safety of the operators. ¶ NATO (and many of the individual member states) foresees a future threat environment shaped by unconventional threats such as transnational crime, terrorist attacks, and the proliferation of **w**eapons of **m**ass **d**estruction.11 There are so many similarities in threats projected by the NATO member states and by official NATO strategy it is easy to conclude that a common enemy exists: transnational problems require transnational solutions. The complexities in the international order and the “significant challenges to the intelligence system [that] arise in targeting groups such as al-Qaeda due to their networked and volatile structure”12 make multinational intelligence sharing requisite. There is much to gain from multinational cooperation. The expected continued decline in military budgets and limited SOF human resources make burden-sharing and proper division of labor even more appropriate. ¶ C. PURPOSE AND SCOPE ¶ Intelligence is a decisive factor, sometimes **the decisive factor**, in special operations. As such, the NSHQ’s ultimate success will rely on its ability to solve some of the perennial problems related to intelligence sharing within coalitions. The newly established NSHQ in Mons, Belgium serves as an excellent testing ground to analyze SOF intelligence sharing issues within a coalition. NSHQ is attempting to streamline and optimize the intelligence available to NATO SOF units.

**Proliferation causes crisis escalation---leads to accidental nuclear war**

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

What’s Wrong with Proliferation Optimism?

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

### 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 warlike 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.

### Plan

#### The United States Federal Government should restrict the President's war making authority by limiting targeted killing operations and indefinite detention within zones of conflict to publically declared territories and through the statutory codification of current executive branch review policy for those practices; and in addition, by limiting targeted killing operations and indefinite detention outside zones of conflict to those reviewable operational practices that meet an individualized threat requirement, a least-harmful-means test, which contain procedural safeguards, on those occasions where prosecution through the criminal justice system is infeasible, and by statutory codification of executive branch review policy for those practices.

# 2AC

### AT: Circumvention

#### Obama won’t circumvent---empirics prove

Michael A. Cohen 12, is a fellow at the Century Foundation, “The Imperial Presidency: Drone Power and Congressional Oversight,” July 24, <http://www.worldpoliticsreview.com/articles/12194/the-imperial-presidency-drone-power-and-congressional-oversight>

Ironically, however, the administration stands on firmer legal ground here than it did on Libya. It has used the Authorization of Military Force (AUMF) granted in 2001 by Congress to justify nearly every aspect of these operations, including targeted killing campaigns carried out by both the military and the CIA, and the continued detention of prisoners in Guantanamo Bay and Afghanistan. As Yale Law School professor Bruce Ackerman told me, “The AUMF was a response to a real problem, namely the attacks of Sept. 11. It is now being transformed into a tool for fighting a 100-year war against terrorists.”¶ ¶ In a sense we are witnessing a perfect storm of executive branch power-grabbing: a broad authorization of military force giving the president wide-ranging discretion to act, combined with a set of tools -- drones, special forces and cyber technology -- that allows him to do so in unprecedented ways. And since few troops are put in harm’s way, there is barely any public scrutiny.¶ ¶ Congress has the ability to stop these excesses. On Libya, it possessed the power to turn off the financial spigot and cut off funding, and indeed, there was a tepid effort in the House of Representatives to do so. On the AUMF, Congress could simply repeal it or more realistically modify it to take into account the new battlefields in the war on terror. Finally, it could conduct greater oversight, in particular public hearings, of how the executive branch is utilizing military force. But not only has Congress not taken these steps, in deliberations over the National Defense Authorization Act earlier this year, it tried to expand the AUMF. On the use of drones and targeted killings, Congress has made little effort to demand greater information from the White House and has not held any public hearings on either of these issues. As Micah Zenko recently noted, claims “that congressional oversight of targeted killings exclusively by the intelligence committees in closed sessions is adequate” are “indefensible.”¶ The reasons for congressional abdication are legion. Partisanship plays an important role. For example, from 2001 to 2006, Republicans largely abstained from overseeing a Republican White House’s wars in Iraq and Afghanistan.¶ Since a Democrat became president, however, congressional oversight and scrutiny of the administration in terms of foreign policy has remained underwhelming, if not nearly as bad. Meanwhile, the White House has treated Congress dismissively and even with contempt. Historically, strong institutional prerogatives have been a check on such parochialism -- think William Fulbright and the Senate Foreign Relations Committee’s apostasy on Vietnam or even the bipartisan Iran-Contra hearings in the 1980s. Today, however, few in Congress have shown much interest in upholding even its most basic foreign policy responsibilities. Quite simply, there are no Frank Churches or even Russ Feingolds in Congress anymore. ¶ ¶ But there are also serious institutional obstacles to enhanced congressional scrutiny. Writing in the Harvard National Security Journal (.pdf), Andru Wall argues that much of the problem with congressional oversight can be traced to an antiquated understanding of how national security operations are actually carried out. At a time of greater interagency cooperation and coordination between the military and intelligence agencies, Congress still sees these functions as somehow discrete.¶ As Greg Miller noted in the Washington Post in December, “Within 24 hours of every CIA drone strike, a classified fax machine lights up in the secure spaces of the Senate Intelligence Committee, spitting out a report on the location, target and result. The outdated procedure reflects the agency’s effort to comply with Title 50 requirements that Congress be provided with timely, written notification of covert action overseas. There is no comparable requirement in Title 10, and the Senate Armed Services Committee can go days before learning the details of JSOC strikes. Neither panel is in a position to compare the CIA and JSOC kill lists or even arrive at a comprehensive understanding of the rules by which each is assembled.”¶ In addition, oversight responsibilities are often bifurcated by separate authorization and appropriation processes. The 9/11 Commission recommended ending this dysfunctional arrangement among intelligence committees and creating a single joint intelligence committee with both authorizing and appropriating responsibilities. Nearly 10 years later, it still hasn’t happened.¶ ¶ If history is any guide, so long as Congress fails to hold the president’s feet to the fire, the executive branch will take on more responsibilities that are outside the purview of Congress’ prying eyes. Ackerman called such “legislative irresponsibility and executive unilateralism” a self-perpetuating phenomenon that is a “recurrent dynamic in presidential systems.” With the lack of any strong institutional pride in Congress, an executive branch that for obvious reasons prefers less oversight and the advent of new tools for fighting America’s wars, this situation is likely to get worse before it gets better, if it ever does.

## T

### T-WPA

#### We meet – we limit the president’s authority to conduct TKs and indefinite detention outside of zones

#### We meet:

#### Plan’s TK restriction meets prohibition

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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

Of course, there are a number of possible ways to define the threat. For lethal targeting, I suggest two such categories: (1) those involved in the active planning or operationalization of specific, imminent, and externally focused attacks, regardless of their relative hierarchical position in the organization; and (2) operational leaders who present a significant, ongoing, and externally focused threat, even if they are not implicated in the planning of a specific, imminent attack. n141 The first definition is a conduct-based test that prohibits [\*1211] the use of lethal force absent a specific, imminent, and significant threat. The second definition encompasses those who pose a continuous and significant threat given their leadership roles within an organization. n142 Whether an individual meets this threat requirement depends on the individual's role within the organization, his capacity to operationalize an attack, and the degree to which the threat is externally focused. For example, an al Shabaab operational leader, whose attacks are focused on the internal conflict between al Shabaab and Somalia's Transnational Federal Government, would not qualify as a legitimate target in the separate conflict between the United States and al Qaeda, even if he had demonstrated associations with al Qaeda. He might, however, be a legitimate target if he were involved in the planning of externally focused attacks and had demonstrated the capacity and will to operationalize the attacks. n143¶ Such restrictions serve the important purpose of limiting state authority to target and kill to instances in which the individual poses an active, ongoing, and significant threat. The low-level foot soldier who is found thousands of miles from the hot conflict zone could not be targeted unless involved in the planning or preparation of a specific, imminent attack. Even mid-level operatives, such as the prototypical terrorist recruiter, would be off-limits, unless they were plotting, or recruiting for, a specific, imminent attack. n144 Such recruiters could, however, be prosecuted for providing material support to a terrorist organization. n145

#### Plan’s detention restriction meets prohibition

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

For detention, I suggest the same standards that apply to lethal targeting, as well as a third category of fighters whose actions are clearly linked to the zone of active hostilities. Under this standard, a low-level al Qaeda or Taliban foot soldier who is fleeing from or believed to be traveling in and out of the active conflict zone in Afghanistan could be subject to law-of-war detention. n147 However, once circumstances change, and the active conflict zone becomes a latent conflict zone, then this justification for law-of-war detention disappears. n148 Unless the detainee presents either a specific, imminent, and significant threat or the kind of ongoing, significant threat high-level leaders pose that would justify his continued detention, he would need to be either transferred to a third party government, released, or prosecuted - just as occurred with the detainees in U.S. custody in Iraq and is expected to eventually occur with respect to detainees in United States' custody in Afghanistan. n149

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

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

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

#### Prefer it

#### 1. Aff ground---only process-based affs can beat the executive CP

#### 2. Topic education---it’s the “authority” topic not the “war on terror” topic---only we allow a discussion of decision-making procedures

#### Reasonability – good is good enough---competing interpretations causes a race to the bottom to arbitrarily limit out every aff

## K

### Centralization/Law K

#### Pragmatic policy-focused approach is critical to productive change---K’s abstractions fail

William J. Novak 8, Associate Professor of History at the University of Chicago and Research Professor at the American Bar Foundation, “The Myth of the “Weak” American State”, June, http://www.history.ucsb.edu/projects/labor/speakers/documents/TheMythoftheWeakAmericanState.pdf

There is an alternative. In the early twentieth century, amid a first wave of nation- state and economic consolidation and assertiveness, American social science generated some fresh ways of looking at power in all its guises—social, economic, political, and legal. Overshadowed to some extent by exuberant bursts of American exceptionalism that greeted confrontations with totalitarianism and then terrorism, the pragmatic, critical, and realistic appraisal of American power is worth recovering. From Lester Frank Ward and John Dewey to Ernst Freund and John Commons to Morris Cohen and Robert Lee Hale, early American socioeconomic theorists developed a critique of a thin, private, and individualistic conception of American liberalism and interrogated the location, organization, and distribution of power in a modernizing United States. All understood the problem of power in America as complex and multifaceted, not simple or one-dimensional, especially as it concerned the relationship of state and civil society. Rather than spend endless time debating the proper definition of law or the correct empirical measure of the state, they concentrated instead on detailed investigations of power in action in the everyday practices and policies that constituted American public life. Rather than confine the examination of power to the abstract realm of political theory or the official political acts of elites, electorates, interest groups, or social movements, these analysts instead embraced a more capacious conception of governance as “an activity which is apt to appear whenever men are associated together.”35 More significantly, these political and legal realists never forgot, amid the rhetoric of law and the pious platitudes that routinely flow from American political life, the very real, concrete consequences of the deployment of legal and political power. They never forgot the brutal fact that Robert Cover would later state so provocatively at the start of his article “Violence and the Word” that legal and political interpretation take place “in a field of pain and death.” 36 The real consequences of American state power are all around us. In a democratic republic, where force should always be on the side of the governed, writing the history of that power has never been more urgent.

## CP

### 2AC Yemen PIC

#### Link Empirically False

#### A) We suspended Strikes in 2010/11

Shane ’12 - N.Y.T. Reporter on the U.S. Intelligence Community

Yemen’s Leader Praises U.S. Drone Strikes, SCOTT SHANE, September 29, 2012

http://www.nytimes.com/2012/09/29/world/middleeast/yemens-leader-president-hadi-praises-us-drone-strikes.html?\_r=0

American military strikes in Yemen against those suspected of terrorism began in December 2009 and were suspended for months after May 2010, in part because of concern about civilian casualties and the killing of a deputy provincial governor. The C.I.A. and the United States military later resumed strikes using missiles fired from drone aircraft, including the strike in 2011 that killed the American-born militant cleric Anwar al-Awlaki and another American.

#### Perm do both

#### Zero Link: Codification Locks in Strikes:

#### A) Law enforcement test proves

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

Simply put, the farther from the hot battlefield, the more likely alternative law enforcement means of addressing the threat are available and effective. Where such means are available - as they are in Montreal, London, and, of course, the United States - there should be an explicit requirement that [\*1218] they be employed. Where they are not available (as in Yemen or Somalia), additional tools may be justified, but only based on an actual showing of need.

#### B) Yemen consents

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

Even if the U.S. sees itself as acting within the bounds of Article 51, there nevertheless may be issues related to whether the nations in which the U.S. is conducting operations have consented to U.S. operations on their territory. More pointedly, if nations such as Pakistan or Yemen believe that the U.S. is conducting strikes within their territory without having obtained their consent, those states may claim that their sovereignty has been violated and could respond under international law with like force against the U.S.52 However, if the U.S. obtained the consent of the nations in which it plans to operate, that consent would satisfy a customary international law exception to the prohibition on the use of force. Absent such consent, the U.S. government claims the authority to use force if “the host nation is unable or unwilling to suppress the threat posed by the individual targeted.”53 With regard to consent, there is evidence to suggest that at least Yemen and Pakistan have consented to strikes within their countries.54 First, operations within a nation’s air space without their consent would be a violation of U.S. policy and a violation of that state’s sovereignty.55 Second, the actual record reveals evidence, or at least claims, of consent. For example, the Obama Administration claims that when it conducts strikes it does so “in full consent and cooperation with our partners internationally. This is something that the president has told us we need to work closely with these partners.”56 David Sanger wrote in his book Confront and Conceal that in 2008 Pakistan’s Prime Minister Yousuf Raza Gilani reportedly told U.S. Ambassador Anne Patterson, “I don’t care if they [conduct drone strikes] as long as they get the right people.”57 Over the years, the Pakistani military and intelligence services have allowed the U.S. to house UAVs on airfields in Pakistan, have given authorization to carry out strikes in designated “kill boxes” inside the Federally Administered Tribal Areas (FATA), and have directly assisted in identifying targets by providing actionable intelligence to the CIA and U.S. military.58 In fact, the U.S. and Pakistan even launched a joint program in 2009 where “Pakistani Officers [were given] significant control over routes, targets, and decisions to fire weapons.”59 In an article dated December 30, 2012 the New York Times reported that some individuals in Pakistan who have aided the U.S. in striking targets “have been hired through Pakistani military intelligence officials who are identified by name, directly contradicting the Pakistan government’s official stance that it vehemently opposes the drone strikes.”60 Other reports suggest that where the U.S. has not received explicit consent, they believe U.S. operations are justified due to “tacit consent.” Specifically, the U.S. government believes that because Pakistan has not said “no” to U.S. strikes, the strikes are permissible:

About once a month, the Central Intelligence Agency sends a fax to a general at Pakistan's intelligence service outlining broad areas where the U.S. intends to conduct strikes with drone aircraft, according to U.S. officials. The Pakistanis, who in public oppose the program, don't respond. On this basis, plus the fact that Pakistan continues to clear airspace in the targeted areas, the U.S. government concludes it has tacit consent to conduct strikes within the borders of a sovereign nation.61 Granted, “lawyers at the State Department, including top legal adviser Harold Koh, believe this rationale veers near the edge of what can be considered permission” and are concerned because “[c]onducting drone strikes in a country against its will could be seen as an act of war.”62 Nevertheless, the notion of consent is one that is hotly debated by opponents of targeted killings. The Bureau of Investigative Journalism reports that Pakistan “categorically rejects” the claim that it tacitly allows drone strikes in its territory63 and in the same New York Times article discussed above an official with Pakistani intelligence “said any suggestion of Pakistani cooperation was ‘hogwash.’”64 However, these protests lack credibility as Pakistan has not exercised its rights under international law to prevent strikes by asking the U.S. to stop, intercepting American aircraft, targeting U.S. operators on the ground, or lodging a formal protest with the UN General Assembly or the Security Council. If the strikes are truly without consent, are a violation of Pakistani sovereignty, and are akin to acts of war, one would expect something more from the Pakistani government. With regard to Yemen, the question of consent is far clearer as Yemeni officials have gone on the record specifically noting their approval of U.S. strikes.65

#### C) Doesn’t depart from SQ policy

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, Micah Zenko

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 Obama administration argues that drone strikes are only one tool of national power that is carefully integrated into broader foreign policy objectives. For example, operations conducted by JSOC are “coordinated” with the local U.S. ambassador and fall under the command of the regional combatant commander. Drone strikes conducted by the CIA in nonbattlefield settings are not similarly coordinated, however, and successive U.S. ambassadors to Pakistan have objected to the intensity and timing of certain CIA drone strikes.16 The articulated objective of the U.S. counterterrorism strategy is to destroy and eliminate al-Qaeda from “Afghanistan, Pakistan, Yemen, Africa, and other areas,” according to White House senior counterterrorism adviser John Brennan.17 In a narrow military sense, drone strikes have proven effective in achieving their initial objective: killing suspected “high-value” al-Qaeda leaders. In 2009, CIA director Leon Panetta observed that drones are “the only game in town in terms of confronting or trying to disrupt the al-Qaeda leadership,” which remains the position of the Obama administration.18 By December 2011, President Obama boasted, “twenty-two out of thirty top al-Qaeda leaders [have] been taken off the battlefield”—all but Osama bin Laden via drone strikes. In one of his final letters to his followers, bin Laden warned of “the importance of the exit from Waziristan of the brother leaders . . . and that you choose distant locations to which to move them, away from aircraft photography and bombardment.”19 Altogether, U.S. drone strikes in Pakistan, Yemen, and Somalia have significantly degraded the capability of al-Qaeda to plan or conduct acts of international terrorism.

#### D) Saudis & Oil Lobby will use clout to continue Yemen strikes

Kincaid ’13 - Director of the AIM Center for Investigative Journalism

Another Cover-up for the Saudis?, Cliff Kincaid - April 30, 2013, http://www.aim.org/aim-column/another-cover-up-for-the-saudis/

The Saudis claim they are cooperating with the U.S. They say that in October 2010, Saudi intelligence officials provided key information to American officials that foiled an attempted terrorist plot involving bombs heading to the United States that originated in Yemen. But the Saudi role in the drone attacks gives the Saudi regime leverage over the Obama Administration. It might come in handy if Saudis were implicated and detained in terrorist attacks on the United States. The Saudis and their U.S. allies, especially in the oil business, are heavy hitters in Washington, D.C. Last October we reported on the Arab-US Policymakers Conference, or AUSPC, sponsored by various American Big Oil companies, the U.S. Chamber of Commerce, and U.S. corporations such as Boeing. The government of Saudi Arabia and other Arab states were also major sponsors. On April 20, just five days after the Boston bombings, Defense Secretary Chuck Hagel left Washington for the Middle East where, among other things, he was going to discuss a $10 billion package of arms to Saudi Arabia. This follows a Saudi agreement in 2010 to purchase 84 F-15SA “Strike Eagle” fighter jets, a deal which had a value of $29.4 billion.

#### Net Turn:

#### A) Formalization inevitable & unpredictable---Congressional clarity reigns in the Courts

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.

#### B) Impact is total rollback

Jack Goldsmith 12, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March, Power and Constraint, P. 199-201

For the GTMO Bar and its cousin NGOs and activists, however, the al-Aulaqi lawsuit, like other lawsuits on different issues, was merely an early battle in a long war over the legitimacy of U.S. targeting practices—a war that will take place not just in the United States, but in other countries as well. When the CCR failed to achieve what it viewed as adequate accountability for Bush administration officials in the United States in connection with interrogation and detention practices, it started pursuing, and continues to pursue, lawsuits and prosecutions against U.S. officials in Spain, Germany, and other European countries. "You look for every niche you can when you can take on the issues that you think are important," said Michael Ratner, explaining the CCR's strategy for pursuing lawsuits in Europe.¶ Clive Stafford Smith, a former CCR attorney who was instrumental in its early GTMO victories and who now leads the British advocacy organization Reprieve, is using this strategy in the targeted killing context. "There are endless ways in which the courts in Britain, the courts in America, the international Pakistani courts can get involved" in scrutinizing U.S. targeting killing practices, he argues. "It's going to be the next 'Guantanamo Bay' issue."' Working in a global network of NGO activists, Stafford Smith has begun a process in Pakistan to seek the arrest of former CIA lawyer John Rizzo in connection with drone strikes in Pakistan, and he is planning more lawsuits in the United States and elsewhere against drone operators." "The crucial court here is the court of public opinion," he said, explaining why the lawsuits are important even if he loses. His efforts are backed by a growing web of proclamations in the United Nations, foreign capitals, the press, and the academy that U.S. drone practices are unlawful. What American University law professor Ken Anderson has described as the "international legal-media-academic-NGO-international organization-global opinion complex" is hard at work to stigmatize drones and those who support and operate them."¶ This strategy is having an impact. The slew of lawsuits in the United States and threatened prosecutions in Europe against Bush administration officials imposes reputational, emotional, and financial costs on them that help to promote the human rights groups' ideological goals, even if courts never actually rule against the officials. By design, these suits also give pause to current officials who are considering controversial actions for fear that the same thing might later happen to them. This effect is starting to be felt with drones. Several Obama administration officials have told me that they worry targeted killings will be seen in the future (as Stafford Smith predicts) as their administration's GTMO. The attempted judicial action against Rizzo, the earlier lawsuits against top CIA officials in Pakistan and elsewhere, and the louder and louder proclamations of illegality around the world all of which have gained momentum after al-Aulaqi's killing—are also having an impact. These actions are rallying cries for protest and political pushback in the countries where the drone strikes take place. And they lead CIA operators to worry about legal exposure before becoming involved in the Agency's drone program." We don't know yet whether these forces have affected actual targeting practices and related tactics. But they induce the officials involved to take more caution. And it is only a matter of time, if it has not happened already, before they lead the U.S. government to forgo lawful targeted killing actions otherwise deemed to be in the interest of U.S. national security.

### 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.

#### Internal fixes aren’t credible

Jack Goldsmith 13, Henry L. Shattuck Professor at Harvard Law School, May 1 2013, “How Obama Undermined the War on Terror,” <http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism>

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

### AT: OLC CP

#### OLC kills solvency:

#### A) Triggers litigation, OLC can’t speak to statutes, and White House Counsel Circumvents

Bruce **Ackerman 11**, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

To see why, consider that the relationship between the WHC and the OLC is utterly mysterious to most lawyers, let alone to most Americans. So imagine the scene when some future White House Counsel issues a legal opinion, rubberstamping the President’s latest power- grab, with the peroration: “Ever since Lloyd Cutler assumed the position as White House Counsel in NVTV, this office has, from to time, taken the lead in explaining the constitutional foundations for major presidential initiatives . . . .” ¶ Given pervasive ignorance dealing with Beltway arcana, this famous precedent will go a long way toward legitimating the White House decision to cut out the OLC. Instead of conceding impropriety, our hypothetical Counsel can summon up the great spirit of Lloyd Cutler in support of his leading role. After establishing his distinguished pedigree, Counsel can reinforce his claim to authority with a host of additional arguments: After all, there’s nothing in the Constitution that requires the President to prefer the OLC to the WHC. Article II simply tells the President to “take Care that the Laws be faithfully executed”69 — it doesn’t tell him where to get his legal advice. Moreover, as Morrison acknowledges, the OLC’s traditional role is principally based on executive order, not Congressional statutes.70 If the President prefers to treat his Counsel as a modern-day Cutler, there can be no question that the bureaucracy and military will follow his lead — at least until the courts enter into the field. ¶ Undoubtedly, the Cutler precedent won’t stifle all grumbling from Beltway cognoscenti.71 But it will make it much tougher to convince the generality of lawyerdom, as well as the broader public, that they are witnessing a dreadful act of legal usurpation — even if that’s precisely what is happening.72

#### OLC Links to Politics

Eric Posner 11, the Kirkland & Ellis Professor, University of Chicago Law School. “DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER 9/11 CONGRESS, THE COURTS AND THE OFFICE OF LEGAL COUNSEL” available at http://www.law.uchicago.edu/academics/publiclaw/index.html.

These two events neatly encapsulate the dilemma for OLC, and indeed all the president’s legal advisers. If OLC tries to block the president from acting in the way he sees fit, it takes the risk that he will disregard its advice and marginalize the institution. If OLC gives the president the advice that he wants to hear, it takes the risk that it will mislead him and fail to prepare him for adverse reactions from the courts, Congress, and the public. Can OLC constrain the executive? That is the position taken by many scholars, most notably Jack Goldsmith. 18 The underlying idea here is that even if Congress and the courts cannot constrain the executive, perhaps offices within the executive can. The opposite view, advanced by Bruce Ackerman, is that OLC is a rubber stamp. 19 I advocate a third view: OLC does not constrain the executive but enables him to accomplish goals that he would not otherwise be able to accomplish. It is more accurate to say that OLC enables than constrains. B. OLC as a Constraint on the Executive A number of scholars have argued that OLC can serve as an important constraint on executive power. I will argue that OLC cannot act as a constraint on executive power. Indeed, its only function is the opposite—as an “enabler” (as I will put it) or extender of executive power. A president must choose a course of action. He goes to OLC for advice. Ideally, OLC will provide him good advice as to the legality of the course of action. It will not provide him political advice and other relevant types of advice. The president wants to maximize his political advantage, 21 and so he will follow OLC’s advice only if the legal costs that OLC identifies are greater than the political benefits. On this theory, OLC will properly always give the president neutral advice, and the president will gratefully accept it although not necessarily follow it. If the story ended here, then it would be hard to see what the controversy over OLC could be about. As an adviser, it possesses no ability to constrain the executive. It merely provides doctrinal analysis, in this way, if it does its job properly, merely supplying predictions as to how other legal actors will react to the president’s proposed action. The executive can choose to ignore OLC’s advice, and so OLC cannot serve as a “constraint” on executive power in any meaningful sense. Instead, it merely conveys to the president information about the constraints on executive power that are imposed from outside the executive branch. However, there is an important twist that complicates the analysis. The president may choose to publicize OLC’s opinions. Naturally, the president will be tempted to publicize only favorable opinions. When Congress 22 claims that a policy is illegal, the president can respond that his lawyers advised him that the policy is legal. This response at least partially deflects blame from the president. There are two reasons for this. First, the Senate consented to the appointment of these lawyers; thus, if the lawyers gave bad advice, the Senate is partly to blame, and so the blame must be shared. Second, OLC lawyers likely care about their future prospects in the legal profession, which will turn in part on their ability to avoid scandals and to render plausible legal advice; they may also seek to maintain the office’s reputation. When OLC’s opinions are not merely private advice, but are used to justify actions, then OLC takes on a quasi-judicial function. Presidents are not obliged to publicize OLC’s opinions, but clearly they see an advantage to doing so, and they have in this way given OLC quasi-judicial status. But if the president publicizes OLC opinions, he takes a risk. The risk is that OLC will publicly advise him that an action is illegal. If OLC approval helps deflect blame from the president, then OLC disapproval will tend to concentrate blame on the president who ignores its advice. Congress and the public will note that after all the president is ignoring the advice of lawyers that he appointed and thus presumably he trusts, and this can only make the president look bad. To avoid such blame, the president may refrain from engaging in a politically advantageous action. In this way, OLC may be able to prevent the president from taking an action that he would otherwise prefer. At a minimum, OLC raises the political cost of the action. I have simplified greatly, but I believe that this basic logic has led some scholars to believe that OLC serves as a constraint on the president. But this is a mistake. OLC strengthens the president’s hand in some cases and weakens them in others; but overall it extends his power—it serves as enabler, not constraint. To see why, consider an example in which a president must choose an action that lies on a continuum. One might consider electronic surveillance. At one extreme, the president can engage in actions that are clearly lawful—for example, spying on criminal suspects after obtaining warrants from judges. At the other extreme, the president can engage in actions that are clearly unlawful—for example, spying on political opponents. OLC opinions will not affect Congress’s or the public’s reaction to either the obviously lawful or the obviously unlawful actions. But then there are middle cases. Consider a policy L, which is just barely legal, and a policy I, which is just barely illegal. The president would like to pursue policy L but fears that Congress and others will mistakenly believe that L is illegal. As a result, political opposition to L will be greater than it would be otherwise. In such a case, a favorable advisory opinion from a neutral legal body that has credibility with Congress will help the president. OLC’s approval of L would cause political opposition (to the extent that it is based on the mistaken belief that L is unlawful) to melt away. Thus, OLC enables the president to engage in policy L, when without OLC’s participation that might be impossible. True, OLC will not enable the president to engage in I, assuming OLC is neutral. And, indeed, OLC’s negative reaction to I may stiffen Congress’ resistance. However, the president will use OLC only because he believes that OLC will strengthen his hand on net.

## DA

### 2AC AUMF DA

**Implementation of existing system of executive policy solves legitimacy---no DA’s since its US policy now**

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

One might be skeptical that a nation like the United States would ever accept such constraints on the exercise of its authority. There are, however, several reasons why doing so would be in the United States' best interest.¶ First, as described in Section II.B, the general **framework is** largely **consistent with current U.S. practice** since 2006. The **U**nited **S**tates has, as a matter of policy, **adopted important limits** on its use of **out-of-battlefield** **targeting** and **law-of-war detention** - suggesting an implicit recognition of the value and benefits of restraint.¶ Second, while the proposed substantive and procedural safeguards are more stringent than those that are currently being employed, their **implementation will lead to increased restraint and enhanced legitimacy**, which in turn inure to the state. As the U.S. Counterinsurgency Manual explains, it is impossible and self-defeating to attempt to capture or kill every potential insurgent: "Dynamic insurgencies can replace losses quickly. Skillful counterinsurgents must thus cut off the sources of that recuperative power" by **increasing their own legitimacy** at the **expense of the insurgent's legitimacy**. n215 The Counterinsurgency Manual further notes, "Excessive use of force, unlawful detention ... and punishment without trial" comprise "illegitimate actions" that are ultimately "self-defeating." n216 In this vein, the Manual advocates moving "from combat operations to law enforcement as [\*1232] quickly as feasible." n217 In other words, the high profile and controversial nature of **killings outside conflict zones** and **detention without charge** can work to the advantage of terrorist groups and to the detriment of the state. Self-imposed **limits** on the use of detention without charge and targeted killing can **yield legitimacy and security benefits**. n218

### 2AC Shutdown

#### PC low and fails for fiscal fights

Greg Sargent 9-12, September 12th, 2013, "The Morning Plum: Senate conservatives stick the knife in House GOP leaders," Washington Post, factiva

All of this underscores a basic fact about this fall's fiscal fights: Far and away the dominant factor shaping how they play out will be the divisions among Republicans. There's a great deal of chatter (see Senator Bob Corker for one of the most absurd examples yet) to the effect that Obama's mishandling of Syria has diminished his standing on Capitol Hill and will weaken him in coming fights. But those battles at bottom will be about whether the Republican Party can resolve its internal differences. Obama's "standing" with Republicans -- if it even could sink any lower -- is utterly irrelevant to that question.¶ The bottom line is that, when it comes to how aggressively to prosecute the war against Obamacare, internal GOP differences may be unbridgeable. Conservatives have adopted a deliberate strategy of deceiving untold numbers of base voters into believing Obamacare will be stopped outside normal electoral channels. Central to maintaining this fantasy is the idea that any Republican leader who breaks with this sacred mission can only be doing so because he or she is too weak and cowardly to endure the slings and arrows that persevering against the law must entail. GOP leaders, having themselves spent years feeding the base all sorts of lies and distortions about the law, are now desperately trying to inject a does of reality into the debate by pointing out that the defund-Obamacare crusade is, in political and practical terms alike, insane. But it may be too late. The time for injecting reality into the debate has long since passed.

#### Obama won’t push the plan

Jack Goldsmith 13, Henry L. Shattuck Professor at Harvard Law School, Feb 13 2013, “The President’s SOTU Pledge to Work With Congress and Be Transparent on National Security Issues,” www.lawfareblog.com/2013/02/the-presidents-sotu-pledge-to-work-with-congress-and-be-transparent-on-national-security-issues/

As for a broader and sturdier congressional framework for the administration’s growing forms of secret war (not just targeted killing, but special forces activities around the globe, cyber attacks, modern forms of covert action, etc.) along the lines that I proposed last week, I also don’t think much will happen. Friends and acquaintances in and around the Obama administration told me they would cherish such a new statutory framework, but argued that Congress is too political, and executive-congressional relations too poisonous, for anything like this to happen. There is some truth in this charge, although I sense that Congress is preparing to work more constructively on these issues. But even in the face of a very political and generally unsupportive Congress, Presidents tend to get what they want in national security when they make the case publicly and relentlessly. (Compare the Bush administration’s successful push for FISA reform in the summer of 2008, when the President’s approval ratings were below 30%, and Democrats controlled both houses of Congress; or FDR’s push in late 1940 and early 1941 – against popular and congressional opposition – to secure enactment of Lend-Lease legislation to help to British fend off the Nazis; or the recent FISA renewal legislation.) And of course the administration can never succeed if it doesn’t try hard. Not fighting the fight for national security legal reform is just another way of saying that the matter is not important enough to the administration to warrant a fight. The administration’s failure to date to make a sustained push before Congress on these issues reveals a preference for reliance on ever-more-tenuous old authorities and secret executive branch interpretations in areas ranging from drones to cyber, and an implicit judgment that the political and legal advantages that would flow from a national debate and refreshed and clarified authorities are simply not worth the effort. The administration might be right in this judgment, at least for itself in the short run. But the President has now pledged something different in his SOTU address. We will see if he follows through this time. Count me as skeptical, but hopeful that I am wrong.

#### Plan’s bipartisan---Congress looking for TK limitations

AP 13, "Congress looks to limit drone strikes", February 5, www.cbsnews.com/8301-250\_162-57567793/congress-looks-to-limit-drone-strikes/

Uncomfortable with the Obama administration's use of deadly drones, a growing number in Congress is looking to limit America's authority to kill suspected terrorists, even U.S. citizens. The Democratic-led outcry was emboldened by the revelation in a newly surfaced Justice Department memo that shows drones can strike against a wider range of threats, with less evidence, than previously believed.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists, is expected to be a top topic of debate when the Senate Intelligence Committee grills John Brennan, the White House's pick for CIA chief, at a hearing Thursday.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.¶ It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons, D-Del., said in a recent interview.¶ Rep. Steny Hoyer of Maryland, the No. 2 Democrat in the House, said Tuesday that "it deserves a serious look at how we make the decisions in government to take out, kill, eliminate, whatever word you want to use, not just American citizens but other citizens as well."¶ Hoyer added: "We ought to carefully review our policies as a country."¶ The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said Tuesday, and Chairman Robert Menendez, D-N.J., and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations. And earlier this week, a group of 11 Democratic and Republican senators urged President Barack Obama to release a classified Justice Department legal opinion justifying when U.S. counterterror missions, including drone strikes, can be used to kill American citizens abroad.

#### DOD shift triggers the link

Carlo Munoz 13, 4/9/13, staff writer for defense and national security for the Hill, “Turf battle builds quietly in Congress over control of armed drone program,” http://thehill.com/homenews/administration/292501-turf-battle-builds-quietly-over-control-of-armed-drone-program-

A turf war is quietly building between congressional defense and intelligence committees over who will oversee the Obama administration’s controversial armed drone program. ¶ Lawmakers are scrambling to make their case for or against a White House proposal that would hand control of the drones to the Pentagon. ¶ Gordon Adams, a senior defense analyst at the Stimson Center, called the looming battle a “turf fight in the [disguise] of a policy debate.”¶ The Pentagon and CIA operate their own armed drone programs, which are both geared toward eliminating senior al Qaeda leaders and other high-level terror targets around the world. Under the Obama administration’s proposal, the CIA would continue to supply intelligence on possible targets, but actual control over the drone strikes would fall to the Pentagon. ¶ Senate Intelligence Committee Chairwoman Dianne Feinstein (D-Calif.) publicly questioned whether the Defense Department (DOD) would be able to shoulder the program alone. ¶ “We’ve watched the intelligence aspect of the drone program, how they function, the quality of the intelligence, watching the agency exercise patience and discretion,” Feinstein told reporters in March. “The military [armed drone] program has not done that nearly as well.” ¶ Sen. John McCain and other defense lawmakers say the drone program would be better off being run by the Pentagon. ¶ “It’s not the job of the Central Intelligence Agency. ... It’s the military’s job,” the Arizona Republican said in March. ¶ The fight is a typical battle over who on Capitol Hill will retain power over the program, according to several analysts, who described it as predictable. ¶ “There is always going to be a turf battle” when dealing with congressional oversight, said Lawrence Korb, a former DOD official and defense analyst at the liberal-leaning Center for American Progress. ¶ But that battle could become particularly heated, given the high-profile nature of the drone program, which since the Sept. 11, 2001, attacks has become a huge factor in shaping counterterrorism policy, given its success, Korb said.

#### Winner’s win

Hirsh 13 Michael, chief correspondent for National Journal; citing Ornstein, a political scientist and scholar at the American Enterprise Institute and Bensel, gov’t prof at Cornell, "There's No Such Thing as Political Capital", 2/7, [www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207](http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

#### Debt ceiling outweighs a government shutdown

Ezra Klein, 9-12-2013, "A government shutdown just became a bit more likely. That might be a good thing.," Washington Post, http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/12/a-government-shutdown-just-became-a-bit-more-likely-that-might-be-a-good-thing/

A government shutdown wouldn’t be the worst thing in the world. It’s breaching the debt ceiling that would be a disaster. There are two fiscal crack-ups on offer this fall. One is a government shutdown. That’s bad, but it’s not a catastrophe. The other is breaching the debt ceiling. That’s a complete and utter catastrophe. The timeline here is cold and unforgiving: Absent action, the government shutdown will happen at the end of this month. The debt ceiling could collapse as soon as Oct. 18. If the GOP needs to lose a giant showdown in order to empower more realistic voices and move forward, it’s better that showdown happens over a government shutdown then a debt-ceiling breach. A government shutdown is highly visible and dramatic, but it won’t actually destroy the economy. So an “optimistic” case might be that there’s a shutdown for the first few days of October, the GOP gets creamed in public opinion, the hostage-taking strategies of the party’s right flank are discredited, and Washington is at a much better equilibrium by the time the debt ceiling needs to be raised.

#### No impact---empirically proven

Andrew Taylor 9-19, Associated Press, “Here's the truth: The government doesn't shut down,” http://www.tri-cityherald.com/2013/09/19/2581831/heres-the-truth-the-government.html

WASHINGTON — Here's the truth about a government "shutdown." The government doesn't shut down.¶ So the world won't end if a dysfunctional Washington can't find a way to pass a funding bill before the new budget year begins on Oct. 1.¶ Social Security checks will still go out. Troops will remain at their posts. Doctors and hospitals will get their Medicare and Medicaid reimbursements. In fact, virtually every essential government agency, like the FBI, the Border Patrol and the Coast Guard, will remain open. Furloughed federal workers probably would get paid, eventually. Transportation Security Administration officers would continue to man airport checkpoints.¶ But lurking around the corner is far bigger danger: Sometime in late October or early November the government could run out of cash. The U.S. would be unable to pay all of its bills in full and on time for the first time in history if it couldn't borrow more money.¶ While the Treasury Department probably would make interest payments to bondholders to prevent a catastrophic default on the debt, it wouldn't be able to make other payments on time, which would mean delays in Social Security benefits and in paychecks for federal workers and troops in the field.¶ Americans would feel the pain.¶ To prevent a "shutdown," Congress must pass a temporary spending bill before Oct. 1. To prevent a default, it must raise the $16.7 trillion cap on government borrowing.¶ Averting a shutdown is supposed to be easy. There hasn't been one since the 1995-96 battle in which President Bill Clinton bested Newt Gingrich and his band of budget-slashing conservatives. This time, the conservatives want to hold government-funding hostage in order to derail the implementation of President Barack Obama's law to make people buy health insurance. GOP leaders want to avoid a shutdown and are trying to finesse a solution.¶ Raising the debt limit is typically more difficult, but it has always been done because the possible consequences of default are so dire: upheaval in financial markets, a spike in U.S. borrowing costs and a host of delayed payments to both individual Americans and businesses. Under current estimates, the "X date" by which the government can't meet all of its payments would come in the latter half of October or early November. So Congress needs to act by mid-October to be safe.¶ In the separate case of a shutdown, fewer than half of the 2.1 million federal workers subject to it would be forced off the job if the Obama administration follows the rules followed by previous Presidents Ronald Reagan, George H.W. Bush and Clinton. That's not counting about 500,000 Postal Service employees or 1.4 million uniformed military personnel who would be exempt.¶ The rules for who works and who doesn't date back to the early 1980s and haven't been significantly modified since. The Obama administration re-issued the guidance on Wednesday.¶ The air traffic control system, food inspection, Medicare, veterans' health care and many other essential government programs would run as usual. The Social Security Administration would not only send out benefits but would continue to take applications. The Postal Service, which is self-funded, would keep delivering the mail. The Federal Emergency Management Agency could continue to respond to disasters at the height of hurricane season.¶ The Washington Monument would be closed. But it's been closed anyway since an earthquake in 2011.¶ Museums along the National Mall would close, too. National parks would be closed to visitors, a loss often emphasized in shutdown discussions.¶ The Capitol would remain open, however. Congress is deemed essential, despite its abysmal poll ratings.¶ From a practical perspective, shutdowns usually aren't that big a deal. They happened every year when Jimmy Carter was president, averaging 11 days each. During President Reagan's two terms, there were six shutdowns, typically just one or two days apiece. Deals got cut. Everybody moved on.¶ In 1995-96, however, shutdowns morphed into political warfare, to the dismay of Republicans who thought they could use them to drag Clinton to the negotiating table on a balanced budget plan.¶ Republicans took a big political hit, but most Americans suffered relatively minor inconveniences like closed parks and delays in processing passport applications. Some 2,400 workers cleaning up toxic waste sites were sent home, and there were short delays in processing veterans' claims.¶ Under a precedent-setting memorandum by Reagan budget chief David Stockman, federal workers are exempted from furloughs if their jobs are national security-related or if they perform essential activities that "protect life and property."

### 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

## Case

### AT: Outsourcing

#### US can’t outsource detention

Benjamin Wittes 10, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution, “Detention and Denial–From the Introduction”, December 30, http://www.lawfareblog.com/2010/12/detention-and-denial-from-the-introduction/

But in keeping our detentions out of sight, the United States has a big problem that Europe does not have: We don’t have an America that can both do our dirty work and absorb our simultaneous criticism to ease our own consciences. While we can pawn off some detainees on local proxies, there is no extrinsic power whose detention needs entirely subsume our own and who therefore will serve all of our detention needs so that we don’t have to—even while we complain about it in public. Europe can have a no-detention policy because it knows that the United States will pick up the slack. Nobody, however, will pick up enough of our slack to allow us the same luxury. We can minimize detention. Through a combination of prosecution, release, proxies, and Predator attacks, we can keep the number of detainees small, at least for now. But at the end of the day, the United States cannot avoid detention entirely, not even under the Obama administration. The Obama administration itself has come to understand that. To protect U.S. security and the security of its allies, the United States simply has to maintain some detention capacity in a world that doesn’t believe in the project of detention anymore.

### AT: Deeks

#### Unwilling or unable fails---Deeks is wrong

Kevin Jon Heller 11, Opinio Juris, "Ashley Deeks' Problematic Defense of the "Unwilling or Unable" Test", December 15, opiniojuris.org/2011/12/15/ashley-deeks-failure-to-defend-the-unwilling-or-unable-test/

Ashley Deeks, a fellow at Columbia and a former member of the Office of the Legal Adviser, has posted an essay on SSRN — forthcoming in the Virginia Journal of International Law — entitled “Unwilling or Unable: Toward an Normative Framework for Extra-Territorial Self-Defense.” Here is the abstract:¶ Non-state actors, including terrorist groups, regularly launch attacks against states, often from external bases. When a victim state seeks to respond with force to those attacks, it must decide whether to use force on the territory of another state with which it may not be in conflict. International law traditionally requires the victim state to assess whether the territorial state is “unwilling or unable” to suppress the threat itself. Only if the territorial state is unwilling or unable to do so may the victim state lawfully use force. Yet there has been virtually no discussion, either by states or scholars, of what that test requires. The test‟s lack of content undercuts its legitimacy and suggests that it is not currently imposing effective limits on the use of force by states at a time when trans-national armed violence is pervasive.¶ This Article provides the first sustained descriptive and normative analysis of the test. Descriptively, it explains how the “unwilling or unable” test arises in international law as part of a state‟s inquiry into whether it is necessary to use force in response to an armed attack. It identifies the test‟s deep roots in neutrality law, while simultaneously illustrating the lack of guidance about what inquiries a victim state must undertake when assessing whether another state is “unwilling or unable” to address a particular threat. Normatively, the Article plumbs two centuries of state practice to propose a core set of substantive and procedural factors that should inform the “unwilling or unable” inquiry. It then applies those factors to a real-world example – Colombia‟s use of force in Ecuador in 2008 against the Revolutionary Armed Forces of Colombia – to explore how the use of these factors would affect the involved states‟ decision-making and the evaluation by other states of the action‟s legality. The Article argues that the use of these factors would improve the quality of state decision-making surrounding the use of force in important substantive and procedural ways.¶ The essay is a very interesting read, and Deeks should be commended for trying to think systematically about what the “unwilling or unable” test would require in practice. There is, however, a fundamental problem with the essay: it completely fails to establish its thesis that “[i]nternational law traditionally requires the victim state to assess whether the territorial state is ‘unwilling or unable’ to suppress the threat itself.” The current state of the legal regime governing extraterritorial attacks against non-state actors is one of the most difficult and controversial areas of international law, requiring a careful analysis of state practice and opinio juris. Unfortunately, such an analysis is absent from Deeks’ essay. Instead, Deeks relies on a mistaken understanding of neutrality law, provides little more than a few isolated examples of extraterritorial attacks that have ostensibly been justified under the “unwilling or unable” rubric, and ignores all of the contrary examples. That is a methodologically unsound approach, and it significantly weakens what is otherwise a very good essay.¶ Deeks begins her discussion of the supposed “historical lineage” of the “unwilling or unable” test by turning to the law of neutrality, arguing (p. 19) that “neutrality law permits a belligerent to use force on a neutral state’s territory if the neutral state is unable or unwilling to prevent violations of its neutrality by another belligerent.” The law of neutrality, however, applies only in international armed conflicts between two legitimate belligerents; it says nothing about the use of extraterritorial force against NSAs — as Deeks herself recognizes (p. 16):¶ Although neutrality law does not directly govern uses of force between states and non-state actors, this section will show that the equities and concerns of the neutral state and an offended belligerent in the neutrality law context are analogous to those of the territorial state and the state seeking to use force in self-defense against a non-state actor on that territory.¶ This is a very significant admission. The law of neutrality may provide normative support for the “unwilling or unable” test in the context of attacks against NSAs, but it does not provide legal support for it.¶ Again, Deeks recognizes this — so she then cites (p. 22) UK and U.S. laws that effectively applied neutrality law to situations of internal armed conflict, arguing that the existence of such laws “explain[s] how neutrality rules developed to govern acts by states during international armed conflict expanded beyond that context to govern acts by non-state actors during peacetime (and in non-international armed conflicts).” But that is simply mistaken. It is true that the UK and the U.S. enacted such laws (state practice), but they never claimed that they did so out of a sense of legal obligation — the necessary condition of such laws counting as opinio juris in favor of the “unwilling or unable” test. On the contrary, both states recognized that the law of neutrality in no way obligated them to prohibit their nationals from (to quote Lauterpacht) “committing such acts as amount to making the national territory a base for military or naval operations against a friendly state.” As the U.S. Attorney General said in 1895 (emphasis added):¶ While called neutrality laws, because their main purpose is to carry out the obligations imposed upon the United States while occupying a position of neutrality toward belligerents, our laws were intended also to prevent offenses against friendly powers whether such powers should or should not be engaged in war or in attempting to suppress revolt.¶ To quote Tucker, we must always distinguish between “the operation of the law of neutrality as determined by international law and the operation of municipal neutrality laws. The latter may be applied to situations other than war in the sense of international law.” That distinction, unfortunately, is lost on Deeks. (For a longer discussion of the distinction, see my response to Karl Chang’s essay on neutrality here.)¶ There is, of course, another problem with using the law of neutrality to support the “unwilling or unable” test: that law predates the adoption of the UN Charter, which strictly regulates the use of interstate force. Deeks recognizes the problem, but barely addresses it — simply claiming (n. 33) that “[t]he better view is that neutrality law remains relevant and applicable, at least to international armed conflicts,” and that “[e]ven if neutrality law were defunct… the existence of the ‘unwilling or unable’ test in that law provides historical depth to today‘s rule.” Historical depth, maybe. But legal support? Definitely not — especially as Deeks admits that the current relevance of the law of neutrailty is limited to international armed conflicts.¶ The real question, then, is what the customary rule governing extraterritorial force against NSA might be in the post-Charter world. Deeks discusses three different positions on the relationship between Article 2(4) of the UN Charter’s prohibition on interstate force and Article 51′s exception to that prohibition for acts of self-defense in response to an armed attack: (1) that the armed attack giving rise to the right of self-defense must involve a state; (2) that the armed attack can involve a non-state actor (NSA), but the actions of the NSA must be attributable to a state; and (3) that the armed attack can involve a NSA and does not require any kind of attribution to a state. Deeks says that a “premise” of her article, supposedly based on “extensive state practice,” is that the third position is correct. I’ll return to that supposed state practice below, but it’s worth noting here that Deeks attributes the three positions on self-defense to “groups of scholars” — and then relegates to a footnote (n. 17) the rather important fact that the second position is the one that has been specifically endorsed, in multiple cases, by the International Court of Justice. ICJ decisions are not themselves primary sources of international law, but the failure to discuss those decisions is a serious problem with Deeks’ essay — especially as the essay does not even mention the Nicaragua case, in which the ICJ held the most clearly that state attribution is required.¶ So what is this “extensive” state practice that Deeks cites as evidence that the “unwilling or unable” test reflects customary international law? Actually, it’s not extensive at all. In the essay’s introduction, she mentions (pp. 4-5) Russia’s attacks on Chechen rebels in Georgia; Israel’s attacks on Hezbollah and the PLO in Lebanon; and Turkey’s attacks on the PKK in Iraq. Later on, she mentions the Soviet Union’s 1921 attack on White Guard bands in Outer Mongolia; U.S. attacks on Viet Cong soldiers in Cambodia during the Vietnam War; U.S. attacks on al-Qaeda in Afghanistan and the Sudan; and Colombia’s attacks on FARC in Ecuador. That’s it. Pretty weak tea indeed — especially when we factor in the international response to many of those uses of force against “unwilling or unable” states, such as the Organization of American States’ unequivocal condemnation of Colombia’s attacks on FARC as a violation of Ecuador’s sovereignty.¶ More importantly, Deeks simply ignores the numerous instances in which the Security Council and/or states have condemned extraterritorial uses of force against NSAs whose actions were not attributable to the state whose territory was attacked. Examples include Israel’s 1985 raid of a PLO headquarters in Tunis; Iran’s cross-border attacks throughout the 1980s on Kurdish fighters in Iraq (which were vociferously condemned by the U.S.); and Rwanda’s attacks in the late 1990s on Hutu rebels in the DRC.¶ To be sure, it appears that customary international law is slowly evolving away from the Nicaragua standard, especially in the wake of 9/11. But it is far from clear whether that standard has been replaced by the “unwilling or unable” test. Neither Christian Tams nor Tom Ruys, the two scholars who have examined state practice and opinio juris most closely, are willing to go that far. Tams concludes that state attribution is still required, but can be satisfied by something less than Nicaragua‘s “effective control” of the NSA. And Ruys concludes that “[d]e lege lata, the only thing that can be said about proportionate trans-border measures of self-defence against attacks by non-State actors in cases falling below the Nicaragua threshold is that they are ‘not unambiguously illegal’.”¶ Indeed, what is most surprising about Deeks’ essay is that Deeks herself admits that the “unwilling or unable” test cannot be considered customary international law. If you look at footnote 55 of her essay, you find this remarkable statement:¶ I have found no cases in which states clearly assert that they follow the test out of a sense of legal obligation (i.e., the opinio juris aspect of custom), nor have I located cases in which states have rejected the test. Even if one concludes that the rule does not rise to the level of custom, however, the rule makes frequent appearances in state practice and therefore is the appropriate starting point from which to determine how the norm should develop.¶ That is a remarkable admission — and one that directly contradicts Deeks’ thesis that “[i]nternational law traditionally requires the victim state to assess whether the territorial state is ‘unwilling or unable’ to suppress the threat itself.” If there is no opinio juris that supports the “unwilling or unable” test, it is difficult to argue that the test reflects customary international law — especially in light of the consistent and contrary pre-9/11 state practice and opinio juris that both Tams and Ruys discuss.¶ The bottom line: de lege ferenda, there is much to recommend Deeks’ essay. De lege lata, however, it completely fails to make its case.

### Pakistan – Inside ZOC

#### Pakistan is in a ZOC

Alston 10 - John Norton Pomeroy Professor of Law

U.N. Human Rights Council, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 47, U.N. Doc. A/HRC/14/24/Add.6 (May 28, 2010), Philip Alston

http://www2. ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf

52. The tests for the existence of a non-international armed conflict are not as categorical as those for international armed conflict. This recognizes the fact that there may be various types of non-international armed conflicts. The applicable test may also depend on whether a State is party to Additional Protocol II to the Geneva Conventions. 100 Under treaty and customary international law, the elements which would point to the existence of a non-international armed conflict against a non-state armed group are: (i) The non-state armed group must be identifiable as such, based on criteria that are objective and verifiable. This is necessary for IHL to apply meaningfully, and so that States may comply with their obligation to distinguish between lawful targets and civilians. 101 The criteria include: 102 • Minimal level of organization of the group such that armed forces are able to identify an adversary (GC Art. 3; AP II). • Capability of the group to apply the Geneva Conventions (i.e., adequate command structure, and separation of military and political command) (GC Art. 3; AP II). • Engagement of the group in collective, armed, anti-government action (GC Art. 3). • For a conflict involving a State, the State uses its regular military forces against the group (GC Art. 3). • Admission of the conflict against the group to the agenda of the UN Security Council or the General Assembly (GC Art. 3). (ii) There must be a minimal threshold of intensity and duration. The threshold of violence is higher than required for the existence of an international armed conflict. To meet the minimum threshold, violence must be: 103 • “Beyond the level of intensity of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature” (AP II). • “[P]rotracted armed violence” among non-state armed groups or between a non-state armed group and a State; 104 • If an isolated incident, the incident itself should be of a high degree of intensity, with a high level of organization on the part of the non-state armed group; 105 (iii) The territorial confines can be: • Restricted to the territory of a St ate and between the State’s own armed forces and the non-state group (AP II); or • A transnational conflict, i.e., one that crosses State borders (GC Art. 3). 106 This does not mean, however, that there is no territorial nexus requirement. 53. Taken cumulatively, these factors make it problematic for the US to show that – outside the context of the armed conflicts in Afghanistan or Iraq – it is in a transnational non-international armed conflict against “al Qaeda, the Taliban, and other associated forces” 107 without further explanation of how those entities constitute a “party” under the IHL of non-international armed conflict, and whether and how any violence by any such group rises to the level necessary for an armed conflict to exist. 54. The focus, instead, appears to be on the “transnational” nature of the terrorist threat. Al-Qaeda and entities with various degrees of “association” with it are indeed known to have operated in numerous countries around the world including in Saudi Arabia, Indonesia, Pakistan, Germany, the United Kingdom and Spain, among others, where they have conducted terrorist attacks. Yet none of these States, with the possible exception of Pakistan, recognize themselves as being part of an armed conflict against al-Qaeda or its “associates” in their territory. Indeed, in each of those States, even when there have been terrorist attacks by al-Qaeda or other groups claiming affiliation with it, the duration and intensity of such attacks has not risen to the level of an armed conflict. Thus, while it is true that non-international armed conflict can exist across State borders, and indeed often does, that is only one of a number of cumulative factors that must be considered for the objective existence of an armed conflict.

### S----AT: Circumvention

#### 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.

#### 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.

## AT: AUMF

### Courts Now

#### Only codification prevents 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.

#### Congressional institutionalization critical – solves Court unpredictability

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.

#### Crushes effective targeting decisions

David W. Opderbeck 13, Professor of Law, Seton Hall University School of Law, 8/2/13, “Drone Courts,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2305315

As the foregoing discussion illustrates, drones represent a new paradigm for both technological and geopolitical reasons. Technologically, drones allow for great stealth and precision without putting human assets in harm’s way. Geopolitically, drones can be dropped selectively into the sort of discrete tactical situations that may arise on an ad hoc basis in an interminable, global “war on terror.” In many ways, drones have evolved as weapons of choice precisely because of the demands imposed by the “war on terror.”304¶ This geopolitical context complicates and often obscures the public conversation over drone courts. The most substantial objection to a drone court is that courts do not possess the expertise to judge the strategic merits of a military strike. Where the target is not a U.S. citizen, is located inside a recognized battle zone in which U.S. forces have been committed pursuant to proper Congressional authorization, and is a member of or actively assisting military forces engaged in or threatening combat with U.S. forces, the rationale for a judicial role seems thin. These circumstances implicate the broad discretion traditionally entrusted to the Commander-in-Chief and to the military officers in his or her chain of command, subject to the reporting requirements of the War Powers Act and the international laws of war.305

### AT: Indo-Pak

#### War won’t go nuclear

Enders 2 (Jan 30, David, Michigan Daily, “Experts say nuclear war still unlikely,” http://www.michigandaily.com/content/experts-say-nuclear-war-still-unlikely)

**\* Ashutosh Varshney – Professor of Political Science and South Asia expert at the University of Michigan**

**\* Paul Huth – Professor of International Conflict and Security Affairs at the University of Maryland**

**\* Kenneth Lieberthal – Professor of Political Science at the University of Michigan. Former special assistant to President Clinton at the National Security Council**

University political science Prof. Ashutosh Varshney becomes animated when asked about the likelihood of nuclear war between India and Pakistan.¶ "Odds are close to zero," Varshney said forcefully, standing up to pace a little bit in his office. "The assumption that India and Pakistan cannot manage their nuclear arsenals as well as the U.S.S.R. and U.S. or Russia and China concedes less to the intellect of leaders in both India and Pakistan than would be warranted."¶ The worlds two youngest nuclear powers first tested weapons in 1998, sparking fear of subcontinental nuclear war a fear Varshney finds ridiculous.¶ "The decision makers are aware of what nuclear weapons are, even if the masses are not," he said.¶ "Watching the evening news, CNN, I think they have vastly overstated the threat of nuclear war," political science Prof. Paul Huth said.¶ Varshney added that there are numerous factors working against the possibility of nuclear war.¶ "India is committed to a no-first-strike policy," Varshney said. "It is virtually impossible for Pakistan to go for a first strike, because the retaliation would be gravely dangerous."¶ Political science Prof. Kenneth Lieberthal, a former special assistant to President Clinton at the National Security Council, agreed. "Usually a country that is in the position that Pakistan is in would not shift to a level that would ensure their total destruction," Lieberthal said, making note of India"s considerably larger nuclear arsenal.¶ "American intervention is another reason not to expect nuclear war," Varshney said. "If anything has happened since September 11, it is that the command control system has strengthened. The trigger is in very safe hands."

### AT: China War

#### Economic interdependence prevents war

Bremmer and Gordon 12 Ian, president of Eurasia Group and author of ''Every Nation for Itself: Winners and Losers in a G-Zero World” and David, head of research at Eurasia Group and former director of policy planning at the State Department, "Where Commerce and Politics Collide," October 15, China US Focus, www.chinausfocus.com/uncategorized/where-commerce-and-politics-collide/

Whatever happened to the reassuring view that expanding trade ties make for a safer and more prosperous world? This idea has been long present in U.S. strategies toward China, even before being concretized in Robert Zoellick’s notion of integrating China into the world financial and commercial systems as a way of promoting ''responsible stakeholdership.''¶ The Chinese had a parallel concept – that promoting economic interdependence with America would counter Washington’s natural tendency to block China’s rise as an alternative power.¶ But as President Obama and Governor Mitt Romney argue over who can be tougher on China and its trade practices, and as a wave of anti-American nationalism surges across China, the commercial partnership meant to bring Washington and Beijing closer together appears to be pushing the world’s two largest economies further apart. Are we headed for some new form of Cold War-style confrontation?¶ We don’t think so. Behind all the finger-pointing and fist-shaking on both sides is a powerful economic interdependence that constrains both countries and was totally missing from U.S.-Soviet relations during the Cold War. What’s bad for one economy is still bad for the other, and both Washington and Beijing know it.¶ With trillions invested in U.S. Treasuries, and the continuing sluggishness of American consumer spending, China has a huge stake in a more robust U.S. recovery. And the prospect of a rapidly growing consumer sector in China creates enormous opportunities for American agriculture and industry.¶ But macro-economic interdependence brings with it a whole range of tactical tensions – over exchange rates, intellectual property, investment rules and standard-setting. Yet there is also a more strategic downside to mutually assured economic destruction, because neither side has perfect control over events that might undermine the relationship, and because reduced risk of all-out conflict lets them feel freer to play with fire.¶ There are a growing number of security risks around the world. In Asia, an expanding U.S. security and commercial presence has China’s next generation of leaders on edge, and Beijing finds itself in various forms of direct conflict with many of its neighbors, some of whom are America’s strategic allies. In the Middle East, a variety of new actors with competing agendas are jostling to fill emerging power vacuums. In Europe, Germany has taken a leadership role in what is sure to emerge as a quite different continent. In Russia’s sphere of influence, a government that faces rising risks at home may well respond more aggressively abroad.¶ In the past, these sorts of tectonic geopolitical shifts and the uncertainty they create might well have provoked war. But today, the economic dimension is at least as important as military muscle in shaping the balance of power. That makes for more complicated international relationships.¶ Look more closely at the contradictions. A military rivalry is a zero-sum relationship; what’s good for one side is bad for the other. But economic security is good for both. America and China both need oil to flow smoothly from the Middle East and for peace to prevail in the South China Sea. Deepening trade relations give each side a stake in the other’s success.