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

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

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

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

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

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

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

#### Retaining the legal option of first resort killing is key to military training---breaking that paradigm collapses operational effectiveness

Geoffrey Corn 10, Professor of Law and Presidential Research Professor, South Texas College of Law, 2010, “Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conﬂict,” International Humanitarian Legal Studies 1 (2010) 52–94

Furthermore, while it might be tempting to assume that shifting from one use of force paradigm to another is a simple task, those familiar with the relationship between training and operational eﬀectiveness know this is a highly complex process. As a result, eﬀective training must be mission driven, which means that preparation for armed conﬂict must focus primarily on developing a warrior ethos derived from the armed conﬂict use of force paradigm: deadly force as a measure of ﬁrst resort. 134 Therefore, soldiers are trained to employ deadly force against such targets, irrespective of the conduct they encounter. Furthermore, based on the relative clarity provided by the rule of military objective pursuant to which operational opponents are subject to attack with maximum lethality and all other individuals are the object of protection, it is the minimization of the harmful eﬀects of lawful targeting of military objectives that is the focus or proportionality analysis.

#### Specifically, special forces conduct first-resort targeted killings outside of armed conflict zones

Sascha-Dominik Bachmann 13, Reader in International Law (University of Lincoln), 2013, “Targeted Killings: Contemporary Challenges, Risks and Opportunities,” Journal of Conflict and Security Law, doi: 10.1093/jcsl/krt007

Targeted killing has also been used by the USA in theatres of actual combat operations, such as Afghanistan and Iraq, as well as outside these theatres of war and as part of CIA and US military run covert operations in Pakistan. The USA is using drone strikes and Special Forces there to conduct pre-emptive as well as defensive targeted killing operations against Al-Qaeda and the Taliban. The argument is brought forward that such operations are necessary to protect US forces and its allies in Afghanistan and to disrupt the existent terrorist infrastructure. The focus of such operations is on the so-called ‘Tribal Areas’ of Pakistan, Waziristan, where the Taliban have effectively established an autonomous sphere of influence to the exclusion of the central government in Peshawar.32 Other such covert operations have seen CIA operated drone strikes in Yemen, Somalia as well Sudan, where a lack of cooperation and/or relative capabilities of the respective governments have created areas which are outside effective state control.33

#### Special forces readiness is key to counter-prolif---solves nuclear war

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

WMD do not represent new threats to U.S. security interests, but as nascent nuclear powers grow their arsenals and aspirants like Iran continue to pursue nuclear capabilities, the threat of nuclear proliferation, as well as the potential for the actual use of nuclear weapons, will increase. Upheaval in failing or outlaw states like Libya and Syria, which possess chemical weapons and a range of missiles, highlights the possibility that in future instances of state collapse or civil war, such weapons could be used by failing regimes in an act of desperation, fall into the hands of rebel forces, or be seized by parties hostile to the United States or its interests. SOF can contribute across the spectrum of counter-WMD efforts, from stopping the acquisition of WMD by hostile states or terrorist groups to preventing their use. The global CT network SOF have built over the last decade could be repurposed over the next decade to become a global counter-WMD network, applying the same logic that it takes a network to defeat a network. Increasing the reach and density of a global counter-WMD network will require expanding security cooperation activities focused on counter-proliferation. Finally, SOF may offer the most viable strategic option for deposing WMD-armed regimes through UW campaigns should the need arise.

### Warfighting DA---2NC

#### First-resort targeting outside conflict zones is key to deny terrorist safe havens---it’s reverse-causal---codifying the restriction in the plan signals a massive victory for terrorists across the globe---and it’s unique because Obama’s able to re-expand first-resort targeted killings as long as he has the legal authority

Geoffrey Corn 13, Professor of Law and Presidential Research Professor, South Texas College of Law, 2013, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring,” International Legal Studies, 89 INT’L L. STUD. 77 (2013)

TAC=Transnational Armed Conflict

Prior to September 11 and the advent of TAC, there was virtually no discourse on the permissible geographic scope of armed conflict. This is un-surprising, considering almost all armed conflicts of this period were internal, or relatively confined inter–State conflicts.34 Even when internal armed conflicts “spilled over” into neighboring territories, no State asserted the authority to conduct “global” operations against the non–State insurgent enemy. Use of the term “Global War on Terror” fundamentally altered the existing paradigm. Suddenly, a State was invoking the authority to engage what it determined were belligerent operatives wherever the opportunity to do so arose. U.S. global reach and dominant combat capability made it clear that this new enemy could not afford the risk of “basing” operations out of operational clusters confined to one geographic area. Because dispersion had to, by necessity, become the modus operandi of this new enemy,35 it inherently drove operations to extend beyond the “hot zone” of Afghan-istan.36

Of course, it also fueled criticism of the armed conflict characterization. Critics, relying on the “organization” and “intensity” test for assessing the existence of non–international armed conflict adopted in the Tadic appeals judgment by the International Criminal Tribunal for the former Yu-goslavia, insisted that TAC was a legal nullity.37 In contrast, the United States has adopted more of a totality–of–the–circumstances approach to assess the existence of armed conflict, relying on the intense risk presented by al Qaeda and that organization’s objective of inflicting harm on the United States and its interests wherever and whenever possible to offset the organization element of the Tadic test.38 Such an approach is justified when the effectiveness of operations against an opponent disables the abil-ity of that opponent to manifest traditional organizational characteristics. Indeed, proponents of TAC (a typology of armed conflict frequently asso-ciated with this author) implicitly understand that a strict two–prong test for assessing armed conflict produces a perverse windfall for the transna-tional terrorist enemy: as their operations become more unconventional and dispersed, the authority of the State to press the attack dissipates. Recent speeches by Obama administration officials seem to indicate that the assessed risk of future terrorist attacks is driving the decision to mount unrelenting pressure on al Qaeda.39 Depriving the State of legal freedom of maneuver to press the advantage against a degraded non–State enemy is ultimately inconsistent with its strategic and operational imperative. At a minimum, it raises the complex issue of assessing the point at which a non–international armed conflict recedes back into a category of non–conflict and nullifies LOAC applicability—an issue lacking clear and consistent standards.40

Where the United States presses this advantage has been and remains the other major source of consternation with the TAC concept. Critics assert an inherent invalidity to a claim of armed conflict authority that exceeds the geographic bounds of a “hot zone” of operations.41 While tactical spillover operations into contiguous States may be tolerable in limited cir-cumstances, extending combat operations to the territory of States far re-moved from a traditional battlespace is condemned as the ultimate mani-festation of an overbroad conception of armed conflict. This criticism cuts to the core of the TAC concept. Expansive geographic scope was the very genesis of TAC, an invocation of LOAC principles to address a transnational non–State belligerent threat.42 What these criticisms seem to overlook is a critical strategic foundation for TAC itself: the relationship between the scope of counterterror military operations and the evolution of the TAC concept reveals that like other evolutions of armed conflict typol-ogies, threat dynamics and strategic realities drove the law applicability assessment, and not vice versa.

The U.S. response to the September 11 terrorist attacks indicated the intent to leverage military power to maximum effect whenever and wher-ever the opportunity arose.43 Employing combat power in a manner indica-tive of armed conflict—by targeting terrorist operatives as a measure of first resort—would not be the exclusive modality to achieve this objective. However, unlike previous counterterror efforts it did become a significant, and in many cases primary, modality. Of course, selecting between military force and other capabilities involved a complex assessment of a variety of considerations, including the feasibility of alternate means to disable the threat—a classic illustration of national security policy making. What was clear, however, was that the nature of the threat drove a major shift in the response modality.

While the TAC typology seemed to defy accepted international law cat-egorizations of armed conflict, it was never really remarkable. National security strategy is always threat driven: intelligence defines the risk created by various threats; and strategy is developed to prioritize national effort to protect the nation from these threats, including defining the tools of na-tionalpower that will be leveraged to achieve this objective. When national security policy makers determine that military power must be used as one of these tools, this is translated into a military mission. That mission is then refined in the form of military strategy, which seeks to identify threat vul-nerabilities and match combat capabilities to address them.44 Once again, the nature of the threat becomes the dominant driving force in this strate-gic analysis. Thus, when the threat capability and/or vulnerability is identified outside a “hot zone,” it in no way nullifies the imperative of addressing the threat. In short, as others have noted, once the armed conflict door is open, threat–based strategy—focusing military action in response to threat dynamics in order to destroy or disable threat capabilities—is essentially opportunity driven: the conflict follows the belligerent target.45

#### Our link destroys all their spin about the plan merely codifying current policy---the current approach makes limits on first-resort killings part of the rules of engagement, not a legal restriction on authority---legally codifying them would destroy flexibility

Geoffrey Corn 13, Professor of Law and Presidential Research Professor, South Texas College of Law, 2013, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring,” International Legal Studies, 89 INT’L L. STUD. 77 (2013)

Ironically, when Professor Gabrielle Blum proposed such a limitation in her article The Dispensable Lives of Soldiers,76 I was quite skeptical. However, my skepticism focused primarily on two considerations. First, her proposal extended to “hot zones”. I remain opposed to such an extension, as I believe it would inject a dangerous dilution of tactical initiative into the ex-ecution of combat operations.77 Second, it was unclear whether Professor Blum was proposing a legal norm, or a policy constraint on permissible legal authority. Once it was clear that we shared opposition to modifying the existing legal authority to attack even an inoffensive enemy belligerent operative (such as an enemy soldier sleeping in a barracks or assembly area or attempting to retreat from an ongoing attack), and that she was in fact proposing consideration of policy limits on that authority, we were much more closely aligned in our views.78

This latter aspect of the “capture or kill” debate is critical, and in my opinion, if such a limitation on targeting authority is justified, it must be framed as a policy limit on otherwise lawful authority: a rule of engagement.79 This is because there may be situations, even where these conditions are satisfied, when an attack is justified because of the influence it will produce on enemy leadership and other belligerent operatives. It is this corporate, as opposed to individualized, approach to attack justification that distinguishes targeting belligerent operatives from targeting civilians taking a direct part in hostilities. It therefore requires strictly limiting any “capture or kill” obligation to a policy applique restricting underlying legal authority. In short, even when capture is a completely feasible option to incapacitate an enemy belligerent operative, there still are times when attack is preferred because of the shock effect it will produce on the corporate enemy capability.80

#### The disad turns the entire case---legally codifying geographic limits causes the U.S. to circumvent the ban by relying on even worse legal justifications---that’s clearly net worse for both norms and allied perception

Geoffrey Corn 13, Professor of Law and Presidential Research Professor, South Texas College of Law, 2013, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring,” International Legal Studies, 89 INT’L L. STUD. 77 (2013)

**\*\*NOTE**: “Sub rosa” denotes secrecy or confidentiality – Wikipedia

The law of conflict regulation is arguably at a critical crossroads. If threat drives strategy, and strategy drives the existence of armed conflict, the concept of TAC seems an unavoidable reality in the modern strategic environment. Opponents of TAC will continue to argue for limiting armed conflict to the well–accepted inter–State or intra–State hostilities frame-works, but this would only drive States to adopt sub rosa uses of the same type of power under the guise of legal fictions. Concepts such as self–defense targeting, or internationalized law enforcement, might avoid the armed conflict characterization, but they would do little to resolve the un-derlying uncertainties associated with TAC. Even worse, they would inject regulatory uncertainty into the planning and execution of military counter-terror operations, and expose those called upon to put themselves in harm’s way to protect the State to legal liabilities based on inapposite legal norms.

#### The plan causes massive resistance and backlash by the executive:

#### a) The U.S. views itself as in an armed conflict with al-Qaeda, regardless of the geographical zone of combat

Laurie R. Blank 10, Director, International Humanitarian Law Clinic, Emory Law School, 9/16/10, “DEFINING THE BATTLEFIELD IN CONTEMPORARY CONFLICT AND COUNTERTERRORISM: UNDERSTANDING THE PARAMETERS OF THE ZONE OF COMBAT,” Georgia Journal of International and Comparative Law, Vol. 39, No. 1, 2010, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677965>

This Article will focus on a related question, but one that has not yet been asked: where can we conduct an armed conflict against terrorist groups? Questions of whether the law of armed conflict applies to conflicts with al Qaeda or other terrorist groups are beyond the scope of this Article. Rather, accepting that the United States views itself as engaged “in an armed conflict with al-Qaeda, as well as the Taliban and associated forces,”16 this Article will focus on two hitherto unexamined issues—when and for how long is an area part of the zone of combat, and how far does this designation extend geographically. Although questions of applicable law have been central to legal and policy discussions for the past several years, these issues have remained below the surface and in the shadows. These questions of where and when with regard to the zone of combat are critical foundational questions that bear directly on the applicable law within (and without) the zone of combat.

#### b) The plan applies the human rights law framework to areas that the U.S. currently understands as governed by the law of armed conflict---that causes military backlash against both the plan and any broader effort to make battlefield conduct comply with human rights law---that’s net offense against both advantages

Geoffrey Corn 10, Professor of Law and Presidential Research Professor, South Texas College of Law, 2010, “Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conﬂict,” International Humanitarian Legal Studies 1 (2010) 52–94

Perhaps the most critical premise of this article is that failing to recognize the existence of a logical boundary for the complementary application 8 of these two bodies of law leads to a distortion of this historic authority/restraint balance inherent in the LOAC 9 ; a distortion that will almost inevitably be perceived as operationally illogical by armed forces. 10 This, in turn, will produce one of three outcomes. The ﬁrst would be the routine disregard of purported human rights obligations during armed conﬂict. The second would be an absolute resistance to any application of human rights norms in relation to any issues arising during armed conﬂict. The third would be the application of regulatory norms derived from operationally inapposite human rights instruments based on a perceived necessity to comply with human rights during armed conﬂ ict. This third outcome is actually far from hypothetical, but instead is increasingly apparent in the conduct of operations by many NATO member armed forces, and is a trend that seems to be gaining substantial momentum with very little critical analysis of whether it will produce results that are consistent with the very nature of armed conﬂict. 11

Each of these outcomes is problematic. In the ﬁ rst instance, noncompliance inevitably discredits the law; in the second the outright rejection of application of the law disables its eﬀectiveness in situations where its application is logical and pragmatic. 12 Th e third instance might appear to be ideal to many human rights advocates. However, without careful and critical assessment of when and where human rights norms are logically applicable during armed conﬂ ict and where that logic dissipates, the risk of overbroad application creates the potent to disable the eﬃcacy of military operations.

### Plan Limits TKs

#### Uniqueness---there’s currently no legal consensus over how to define the battlefield in the war on terror---but clearly conflict takes place outside traditional battlefields

Laurie R. Blank 10, Director, International Humanitarian Law Clinic, Emory Law School, 9/16/10, “DEFINING THE BATTLEFIELD IN CONTEMPORARY CONFLICT AND COUNTERTERRORISM: UNDERSTANDING THE PARAMETERS OF THE ZONE OF COMBAT,” Georgia Journal of International and Comparative Law, Vol. 39, No. 1, 2010, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677965>

The English language and traditional military discourse contain numerous terms to describe wartime areas. A battlefield is “a place where a battle is fought”; a combat area is a military area where combat forces operate.1 A theater of operations is a region in which active combat operations are in progress, and a theater of war refers to “the entire land, sea, and air area that is or may become involved directly in war operations.”2 These common terms provide generally clear descriptions of physical areas during traditional armed conflicts. United States Civil War enthusiasts thus visit battlefields at Antietam, Gettysburg, Chancellorsville, and elsewhere. World War II historians have the beaches at Normandy. We can identify the major battles of the Vietnam War, Operation Desert Storm, and even Operation Iraqi Freedom. Moreover, with the exception of the second Gulf War, we can also identify—often to the day—when each of these conflicts began and ended.

We cannot say the same for the current struggle against terrorism, often called the “global war on terror.” Many contemporary conflicts, in which states fight against non-state actors and terrorist groups unbounded by sovereign territorial boundaries and preferring tactics aimed at civilians often far from any traditionally understood battlefield,3 can easily confound attempts to use these existing terms effectively. In particular, the present conflict between the United States and al Qaeda and affiliated terrorist groups poses significant yet seemingly fundamental questions about not only the law applicable to operations against terrorists but also about where the conflict is taking place and where that law applies. Beyond the obvious areas of Afghanistan, Iraq, and the border areas of Pakistan, there is, at present, little agreement on where the battlefield is—i.e., where this conflict is taking place—and an equal measure of uncertainty regarding when it started and how it might end. “A war against groups of transnational terrorists, by its very nature, lacks a well-delineated timeline or a traditional battlefield context . . . .”4 In addition to the clear political challenges these uncertainties produce, they also lead to complex legal conundrums regarding the application of the law to military and counterterrorism operations.

#### The plan’s standard would prohibit targeted killings as first resort anywhere that lacks large-scale military presence or consistent aerial attacks---their author concedes that would cover most future conflicts

Jennifer C. Daskal 13, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, “ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE,” University of Pennsylvania Law Review, 161 U. Pa. L. Rev. 1165

This Article has assumed the existence of one or more zones of active hostilities, involving either a large-scale military presence or consistent aerial attacks. But what happens when no such center of gravity exists? Professor Anne-Marie Slaughter predicts that future conflicts are unlikely to resemble those in Afghanistan and Iraq, which involved the large-scale ground invasion of one state by others. n204 Rather, they are more likely to involve targeted operations conducted by special forces and intelligence operatives without any active zone of hostilities. n205 In fact, this description may fit the situation in Afghanistan once the United States and NATO remove their troops. n206

### Capture Link

#### The only alternative to first-resort killing is a capture mandate

Geoffrey Corn 13, Professor of Law and Presidential Research Professor, South Texas College of Law, 2013, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring,” International Legal Studies, 89 INT’L L. STUD. 77 (2013)

One of the issues Daskal addresses in her article beyond that of target identification is the legitimacy of applying the authority to kill as a measure of first resort to enemy belligerents outside “hot zones” of hostilities.64 This issue is obviously a focal point of the contemporary debate over the use of unmanned aerial systems (armed drones) to attack belligerent operatives. It is also at the center of the debate related to the authority to engage civilians taking a direct part in hostilities.65 What Daskal proposes, which is analogous to the ICRC DPH Interpretive Guidance,66 is that capture (rather than kill) should be obligatory when it is a feasible alternative to employing deadly force.67

No single aspect of the DPH Interpretive Guidance generated more controversy than Section IX of the study, which asserted an identical obligation to capture instead of kill civilians engaged in DPH whenever feasible.68 In support of this assertion, the study relies on an article published by Jean Pictet (the well–known author of the ICRC commentaries to the 1949 Geneva Conventions) in which he asserts that the principle of humanity obli-gates belligerents to refrain from using deadly force against enemy belligerents when capture is a “risk free” alternative.69 Many LOAC experts, including this author, contest this interpretation of the law, arguing instead that unless and until the enemy belligerent becomes hors de combat, the law permits the application of deadly force as a measure of first resort.70

#### The plan bans targeted killings as long as there’s the potential that capture might become viable in the future

David Cole 13, professor at Georgetown University Law Center, 2/6/13, “Lethal Force Must Be Last Resort,” http://www.nytimes.com/roomfordebate/2013/02/05/what-standards-must-be-met-for-the-us-to-kill-an-american-citizen/lethal-force-must-be-last-resort

Killing is also sometimes justified in self defense, or when necessary for law enforcement purposes, as when a woman kills her husband who is threatening her with a gun, or when the police recently shot the kidnapper in Alabama to save his hostage’s life. But killing in self defense requires a truly imminent threat of attack, and a finding that capture is not feasible, so that lethal force is a last resort.

Carried away by the technology of drones, which permit remote-control killing anywhere in the world from the safety of home, the Obama administration has stretched these rules beyond recognition. It asserts the power to kill Americans far from any battlefield, even if they are not a member of Al Qaeda, and even when they pose no threat of an immediate attack on the United States. It essentially defines any operational leader of Al Qaeda or its undefined “associated forces” as presumptively and continually posing an imminent threat, permitting their killing at any time.

But even if capture is not feasible at the moment, if the suspect is not about to attack us, it is possible that capture will become feasible later. Self defense requires that lethal force be used only as a last resort; the Obama administration’s redefinition of “imminence” permits it to be used as a first resort. Is it any wonder that the administration has killed hundreds of suspected terrorists outside Afghanistan, but captured almost none?

#### New detentions are politically impossible---requiring capture before killing means we won’t do either

Lisa Hajjar 12, chair of the Law and Society Program at the University of California, Santa Barbara, Fall 2012, “Anatomy of the US Targeted Killing Policy,” Middle East Report, No. 264, http://www.merip.org/mer/mer264/anatomy-us-targeted-killing-policy?ip\_login\_no\_cache=fe0d21bdc1a90052f29270e6930e1752

These uncertain answers in the spring of 2011 highlighted the lack of a clear detention policy. Harvard law professor Jack Goldsmith, who served in the Defense and Justice Departments under the Bush administration, summed up the dilemma: “We are all obsessed with Gitmo, but I don’t think that’s where the important action is. The important action is who we are not detaining because Gitmo has become this black-eye place where we can’t have future detentions.” [7] The reason, as he explained, stems from domestic politics: Congress has restricted the president’s ability to move people out of Guantánamo, whether for trials in federal courts, which are now prohibited by legislation, or through transfers to other countries because of the burdensome assurances that the secretary of defense would have to provide Congress that anyone exiting would pose no future threat to national security. The barriers to getting people out of Guantánamo function as a political deterrent to moving anyone new in; the last detainee arrived there in 2008. According to Goldsmith, “The lack of a detention policy and the inability to detain members of the enemy going forward creates a heightened incentive to kill people.”

### Surrender link

#### Restricting targeted killing as a first resort establishes a requirement that the U.S. offer opportunities for surrender before targeting

Laurie R. Blank 12, Director, International Humanitarian Law Clinic, Emory Law School, 2012, “NATIONAL SECURITY: PART II: ARTICLE: TARGETED STRIKES: THE CONSEQUENCES OF BLURRING THE ARMED CONFLICT AND SELF-DEFENSE JUSTIFICATIONS,” William Mitchell Law Review, 38 Wm. Mitchell L. Rev. 1655

In the immediate aftermath of the May 1, 2011 raid that killed Osama bin Laden, one issue that dominated news stories and blogs for several days was the question of whether the Navy Seals executing the mission were obligated to attempt to capture bin Laden before killing him and, as a subsidiary question, whether bin Laden attempted to surrender before he was killed. n92 This issue highlights the distinction between the armed conflict and self-defense regimes and the dangers of conflating them most directly.

Under the LOAC, an individual who is a legitimate target can be targeted with deadly force as a first resort. Once an individual is hors de combat, either through injury, sickness or capture, he or she may not be attacked. n93 Furthermore, the LOAC outlaws any [\*1684] denial of quarter. n94 Indeed, killing or wounding an enemy fighter who has laid down his arms and surrendered is a war crime under Article 8(2)(b)(vi) of the Rome Statute of the International Criminal Court. n95 The prohibition on killing or harming detained persons, whether prisoners of war or other detainees, does not extend to an obligation to seek to capture before killing, however. Rather, "combatants and civilians directly participating in the hostilities must be hors de combat ... before an obligation to capture attaches." n96 Thus, while combatants must not attack persons who have surrendered (technically there is no obligation to actually capture persons who surrender; the law prohibits attacking persons who have surrendered), they have no obligation to offer opportunities for surrender. n97 As one scholar has explained,

Once an armed conflict exists, it is not incumbent on the army of the one party to inquire whether members of a military unit of the other party wish to surrender before attacking it. The onus is on the party that wishes to surrender and thereby prevent attack to make this clear. n98

At the heart of the matter, therefore, the legal issue centers on a clear expression of the intent to surrender. n99 Surrender must be [\*1685] accepted but need not be solicited. By all accounts, for example, this appeared to be the rules of engagement for the bin Laden raid. According to then-CIA director Leon Panetta's explanation,

The authority here was to kill bin Laden. And obviously, under the rules of engagement, if he had in fact thrown up his hands, surrendered and didn't appear to be representing any kind of threat, then they were to capture him. But they had full authority to kill him. n100

In contrast, human rights law's requirement that force only be used as a last resort when absolutely necessary for the protection of innocent victims of an attack creates an obligation to attempt to capture a suspected terrorist before any lethal targeting. n101 A state using force in self-defense against a terrorist cannot therefore target him or her as a first resort but can only do so if there are no alternatives - meaning that an offer of surrender or an attempt at capture has been made or is entirely unfeasible in the circumstances. Thus, if non-forceful measures can foil the terrorist attack without the use of deadly force, then the state may not use force in self-defense. n102 The supremacy of the right to life means that "even the most dangerous individual must be captured, rather than killed, so long as it is practically feasible to do so, bearing in mind all of the circumstances." n103 No more, this obligation to capture first rather than kill is not dependent on the target's efforts to surrender; the obligation actually works the other way: the forces [\*1686] may not use deadly force except if absolutely necessary to protect themselves or innocent persons from immediate danger, that is, self-defense or defense of others. As with any law enforcement operation, "the intended result ... is the arrest of the suspect," n104 and therefore every attempt must be made to capture before resorting to lethal force.

#### Targeted killings using drones are literally incapable of offering surrender---means the plan results in banning drones everywhere outside Afghanistan

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

The legal determination of what constitutes "the battlefield" has particular significance for the use of drones, particularly armed drones. This is because "the battlefield" is used to effectively define the scope of IHL's application. n31 In situations outside the scope of IHL, international human rights law (IHRL) n32 applies.

For the [\*300] purposes of this Article, the salient difference between these two bodies of law lies in their disparate provisions regarding the use of lethal force. IHL allows for lethal force to be employed based upon the status of the target. n33 A member of the enemy's forces may be targeted with lethal force based purely on his status as a member of those forces. n34 That individual does not have to pose a current threat to friendly forces or civilians at the time of targeting. n35 In contrast, IHRL permits lethal force only after a showing of dangerousness. n36 Under IHRL (the law enforcement model), lethal force may only be employed if the individual poses an imminent threat to law enforcement officers attempting arrest or to other individuals. n37 Further, IHRL requires that an opportunity to surrender be offered before lethal force is employed. n38

Because drones are incapable of offering surrender before utilizing lethal force, armed drones may not be legally employed in situations governed by IHRL. n39 This absolute prohibition does not apply to other forces commonly used in counterinsurgency or counterterrorism operations, such as special forces units, because it is possible for them to operate within the parameters of IHRL. Although the use of special forces in law enforcement operations has the potential to be legally problematic, n40 appropriately clear and restrictive rules of engagement that include the requirement of a surrender offer can allow special forces to operate under an IHRL regime. n41 Similarly, almost any other part of the armed forces, from regular army units to military police to Coast Guard and naval forces, can adapt their operating procedures to comply with IHRL's requirements. Armed drones cannot.

[\*301] As a result, the debate about what constitutes the legal boundaries of the battlefield has a particularly significant impact on the use and development of drones. Because their operational limitations prevent drones from being employed outside of the permissive environments found in counterterrorism or counterinsurgency operations, their usefulness as a weapons system is strongly tied to the scope of IHL's application. If the strict geographic approach to defining IHL's scope (described in more detail below) is accepted, then drone use would be considered illegal everywhere outside Afghanistan.

### Yes Prolif Impact

#### Prolif causes rational crisis escalation---causes accidents

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.

## CP

### 1nc

#### The United States Federal Government should condition the use of the President’s authority for targeted killings as a first resort to instances of self-defense or response to attack by a non-state actor located within a state has consented to the United States’ carrying out targeted killing missions within its borders, or that is unwilling or unable to prosecute or neutralize such actors.

#### The standard of “unable or unwilling” should require offering notice, when feasible, to the targeted state and allowance of time for a good-faith effort to neutralize the threat to the United States. “Ability” should be defined by analysis of the level of sovereign control the state exercises over the territory in which the relevant non-state groups are located.

#### Competes---it’s functionally distinct from the plan because it makes no reference to active hostilities or geographical limits on targeted killing authority.

#### Solves the case---the U.S. and every other state already justify targeted killings with an “unable or unwilling” framework---no other legal model will ever achieve status as a norm---the plan forfeits the ability to shape that norm by clarifying its criteria

Ashley S. Deeks 12, Academic Fellow, Columbia Law School, Spring 2012, “ARTICLE: "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense,” Virginia Journal of International Law, 52 Va. J. Int'l L. 483

In an August 2007 speech, then-Presidential candidate Barack Obama asserted that his administration would take action against high-value leaders of al-Qaida in Pakistan if the United States had actionable intelligence about them and President Musharraf would not act. n1 He later clarified his position, stating, "What I said was that if we have actionable intelligence against bin Laden or other key al-Qaida officials ... and Pakistan is unwilling or unable to strike against them, we should." n2

On May 2, 2011, the United States put those words into operation. Without the consent of Pakistan's government, U.S. forces entered Pakistan to capture or kill Osama bin Laden. In the wake of the successful U.S. military operation, the Government of Pakistan objected to the "unauthorized unilateral action" of the United States. n3 U.S. officials, on the other hand, suggested that the United States declined to provide Pakistan with advance knowledge of the raid because it was concerned that doing so might have compromised the mission. n4 This failure to notify suggests that the United States determined that Pakistan was indeed "unwilling or unable" to suppress the threat posed by bin Laden. n5 Unfortunately, international law currently gives the United States (or any state in a similar position) little guidance about what factors are relevant when making such [\*486] a determination. Yet the stakes are high: the U.S.-Pakistan relationship has come under serious strain as a result of the operation. If, in the future, a state in Pakistan's position deems another state's use of force in its territory pursuant to an "unwilling or unable" determination to be unlawful, the territorial state could use force in response. The lack of guidance therefore has the potential to be costly.

President Obama's speech invoked an important but little understood legal standard governing the use of force. More than a century of state practice suggests that it is lawful for State X, which has suffered an armed attack by an insurgent or terrorist group, to use force in State Y against that group if State Y is unwilling or unable to suppress the threat. n6 Yet there has been virtually no discussion, either by states or scholars, of what that standard means. What factors must the United States consider when evaluating Pakistan's willingness or ability to suppress the threats to U.S. (as well as NATO and Afghan) forces? Must the United States ask Pakistan to take measures itself before the United States lawfully may act? How much time must the United States give Pakistan to respond? What if Pakistan proposes to respond to the threat in a way that the United States believes may not be adequate?

Many states agree that the "unwilling or unable" test is the correct standard by which to assess the legality of force in this context. For example, Russia used force in Georgia in 2002 against Chechen rebels who had conducted violent attacks in Russia, based on Russia's conclusion that Georgia was unwilling or unable to suppress the rebels' attacks. n7 Israel has invoked the "unwilling or unable" standard periodically in justifying its use of force in Lebanon against Hezbollah and the Palestine Liberation Organization, noting, "Members of the [Security] Council need scarcely be reminded that under international law, if a State is unwilling or unable to prevent the use of its territory to attack another State, that latter State is entitled to take all necessary measures in its own defense." n8 Similarly, [\*487] Turkey defends its use of force in Iraq against the Kurdish Workers' Party (PKK) by claiming that Iraq is unable to suppress the PKK. n9 Several U.S. administrations have stated that the United States will inquire whether another state is unwilling or unable to suppress the threat before using force without consent in that state's territory. n10

Given that academic discussion of the test has been limited thus far, we may describe what "unwilling or unable" means only at a high level of generality. n11 In its most basic form, a state (the "victim state") suffers an armed attack from a nonstate group operating outside its territory and concludes that it is necessary to use force in self-defense to respond to the continuing threat that the group poses. The question is whether the state in which the group is operating (the "territorial state") will agree to suppress the threat on the victim state's behalf. The "unwilling or unable" test requires a victim state to ascertain whether the territorial state is willing and able to address the threat posed by the nonstate group before using force in the territorial state's territory without consent. If the territorial state is willing and able, the victim state may not use force in the territorial state, and the territorial state is expected to take the appropriate steps against the nonstate group. If the territorial state is unwilling or unable to take those steps, however, it is lawful for the victim state to use [\*488] that level of force that is necessary (and proportional) to suppress the threat that the nonstate group poses.

A test constructed at this level of generality offers insufficient guidance to states. Although many inquiries in the use of force area lack precision, including questions about what constitutes an "armed attack" and when force is proportional, states and commentators have discussed the possible meanings of these terms at length and in great detail. n12 The same is not true for the "unwilling or unable" test; strikingly little attention has been paid to the nature and consequences of -- or solutions to -- the imprecision surrounding the "unwilling or unable" test.

The test's lack of content undermines the legitimacy of the test as it currently is framed and suggests that it is not, in its current form, imposing effective constraints on a state's use of force. n13 To address this flaw, this Article first identifies the test's historical parentage in the law of neutrality and then conducts an original analysis of two centuries of state practice in order to develop normative factors that define what it means for a territorial state to be "unwilling or unable" to suppress attacks by a nonstate actor.

Identifying the test's pedigree demonstrates the legitimacy of the core test and helps to frame the relevant law that should inform the test's content. As Thomas Franck has noted, "Pedigree ... pulls toward rule compliance by emphasizing the deep rootedness of the rule." n14 Embedded in this argument is an assumption that states are reasonable actors, that they develop particular rules for good reasons, and that rules with a long pedigree may be seen as particularly instructive because they draw from the collective wisdom of states over time. While following precedent and tradition does not always result in the ideal normative outcome, n15 this Article will demonstrate why it is useful to consider the historical development and applications of the test in ascertaining what its meaning should be.

It is worth noting that this test is not the only standard around which states could have coalesced. Although it is possible to imagine a range of [\*489] alternative regimes, it is beyond the scope of this Article to explore those other regimes in detail. n16 Instead, this Article takes as a given that states currently view the "unwilling or unable" test as the proper test. The fact that states currently are acclimated to using the "unwilling or unable" test suggests that any other test would have to overcome a high bar to become the preferred test, a hurdle no other option is poised to meet.

In considering the appropriate content of the test, I argue that the "unwilling or unable" test, properly conceived, should advance three goals, derived from Abram Chayes's articulation of how international law can influence foreign policy decisions. n17 First, the "unwilling or unable" test should constrain victim state action by reducing the number of situations [\*490] in which a victim state resorts to force. Second, the test should be clear and detailed enough to serve to justify or legitimate a victim state's use of force when that force is consistent with the test. Third, the test should establish procedures that will improve the quality of decision-making by the victim and territorial states and by those international bodies that are seized with use of force issues. In considering these goals, I identify the relevance of the "rules versus standards" debate and discuss why, in this context, we should favor a more precise rule over a less determinate standard. A test that promotes the goals I have described within the framework of the UN Charter is likely to be seen as a credible international legal norm. It therefore will legitimize those uses of force that are consistent with the test's requirements and delegitimize (and possibly reduce the frequency of) those that stand in tension with the test.

### 2nc solves terror

#### Headshot---European allies specifically support the CP

Anthony Dworkin 13, senior policy fellow at the European Council on Foreign Relations, “Drones And Targeted Killing: Defining A European Position”, July, <http://ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf>

Outside an armed conflict, the default European assumption would be that the threat of terrorism should be confronted within a law enforcement framework. This framework would not absolutely prohibit the deliberate killing of individuals, but it would set an extremely high threshold for its use – for example, it might be permitted where strictly necessary to prevent an imminent threat to human life or a particularly serious crime involving a grave threat to life.37 Where the threat was sufficiently serious, the state’s response might legitimately include the use of military force, but every use of lethal force would have to be justified as a necessary and proportionate response to an imminent threat. In any action that involved the deliberate taking of human life, there would have to be a rigorous and impartial post-strike assessment, with the government disclosing the justification for its action. Finally, EU states might perhaps agree that in the face of an armed attack or an imminent armed attack, states can use force on the territory of another state without its consent, if that state is unable or unwilling to act effectively to restrain the attack.

This consensus provides a basis on which the EU can step up engagement with the US on drones and targeted killing. At the heart of the EU position is the belief that the use of lethal force outside zones of active hostilities is an exceptional measure that can only be justified on the basis of a serious and imminent threat to human life. At a time when drone technology is proliferating rapidly, EU leaders should be more forthright in making this argument publicly – especially since Obama has adopted it, at least rhetorically, as an element of his policy. While Europeans may be reluctant to accuse Obama of having violated international law, they can assert their own vision and encourage Obama to follow through on his rhetoric by elevating the idea of a strict imminent threat-based approach to the use of deadly force outside the battlefield. European leaders and officials should welcome Obama’s latest moves to restrain drone strikes and his intimation that the armed conflict against al-Qaeda may be nearing its end. In this way they would reinforce the standards implicit in his speech and make clear that America’s closest allies will be watching to see how far he matches his words with action.

#### Kris – their ONLY INTERNAL LINK CARD --- is exclusively writing about detention--- means they can’t solve ANY of the internal link and there’s only a risk we do --- the key line in this card is that “Our friends accept only a law enforcement response outside theatres of active armed conflict”---that line has a footnote right after it, which says:

76. As discussed in Part I, supra, the Obama administration has made clear that it will use military commissions and law of war detention. See infra Part IV.

#### Last paragraph of their card makes clear it’s only talking about detention:

This is not simply abstract philosophy. It is an important reality in our military’s effort to defeat the enemy in places like Iraq and Afghanistan. As the U.S. military’s counterinsurgency field manual states, “to establish legitimacy, commanders transition security activities from combat operations to law enforcement as quickly as feasible. When insurgents are seen as criminals, they lose public support.”80 Adherence to the rule of law is central to this approach: “The presence of the rule of law is a major factor in assuring voluntary acceptance of a government’s authority and therefore its legitimacy. A government’s respect for preexisting and impersonal legal rules can provide the key to gaining widespread enduring societal support. Such respect for rules – ideally ones recorded in a constitution and in laws adopted through a credible, democratic process – is the essence of the rule of law. As such, it is a powerful potential tool for counterinsurgents.”81 Indeed, the U.S. military has been implementing such a transition to civilian law enforcement in Iraq, where detentions and prosecutions of insurgents are now principally processed through the domestic criminal justice system,82 and we are moving in that direction in Afghanistan, where transfer of detention and prosecution responsibilities to Afghan civilian authorities is our goal.83 I think these are principles that are well worth keeping in mind as we think about the impact of employing different tools in the context of our conflict with al Qaeda. It would not only be ironic, but also operationally counterproductive, if our partners in Iraq and Afghanistan rely increasingly on law enforcement tools to detain terrorists, even in areas of active hostilities, while we abandon those tools here in the United States.84

### 2nc solves norms

#### Only the CP solves norms because it’s based on reforming a long-standing precedent of action by states---the plan isn’t

Ashley S. Deeks 12, Academic Fellow, Columbia Law School, Spring 2012, “ARTICLE: "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense,” Virginia Journal of International Law, 52 Va. J. Int'l L. 483

Deriving factors largely from the statements and explanations of victim states means that those factors will be shaped by states that have the political power and military capacity to use force in another state's territory. This means the factors inevitably will contain some bias toward victim state equities, and will be shaped by states willing to use force. n115 However, if one believes that an "unwilling or unable" test that has greater legal content and that is consistent with the objectives in Part III.A will serve as a more effective restraint on the use of force, then the test will impose constraints on the very actors that helped shape the test. In response to skepticism that those actors will abide by such constraints, the fact that many of these factors have their roots in state practice drawn from a range of states across different time periods suggests that states generally will find these factors workable. This matters because state decision-makers, acting in good faith, "are more likely to respect standards rationally related to concerns they recognize as appropriate." n116

## No Precedent

### 1nc

#### No causal link between U.S. drone doctrine and other’ countries choices---means can’t set a precedent

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way:

Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat.

“Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.”

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

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

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

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

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

#### U.S. drone use doesn’t set a precedent, restraint doesn’t solve it, and norms don’t apply to drones at all in the first place

Amitai Etzioni 13, professor of international relations at George Washington University, March/April 2013, “The Great Drone Debate,” Military Review, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage.

Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of selfconstraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

I am not arguing that there are no natural norms that restrain behavior. There are certainly some that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). However drones are but one step—following bombers and missiles—in the development of distant battleﬁeld technologies. (Robotic soldiers—or future ﬁghting machines— are next in line). In such circumstances, the role of norms is much more limited.

#### Zero chance that U.S. self-restraint causes any other country to give up their plans for drones

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

The New York Times engages in some scare-mongering today about a drone ams race. Scott Shane notes correctly other nations such as China are building their own drones and in the future U.S. forces could be attacked by them–our forces will not have a monopoly on their use forever. Fair enough, but he goes further, suggesting our current use of drones to target terrorists will backfire:

If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them.

“The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the University of Pittsburgh and author of Missile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.”

This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.

The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example. In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.

Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected assassination of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone?

While a decision on our part to stop drone strikes would be unlikely to alter Russian or Chinese thinking, it would have one immediate consequence: al-Qaeda would be strengthened and could regenerate the ability to attack our homeland. Drone strikes are the only effective weapon we have to combat terrorist groups in places like Pakistan or Yemen where we don’t have a lot of boots on the ground or a lot of cooperation from local authorities. We cannot afford to give them up in the vain hope it will encourage disarmament on the part of dictatorial states.

### 2nc no precedent/AT Anderson votes aff

#### The ‘drone precedent’ arg is incoherent---their claim is that other states will use drones in far different ways than the U.S. does---proves our drone policies are irrelevant, and pretexts at best for what states will inevitably do

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

This critique often leads, however, to the further objection that the American use of drones is essentially laying the groundwork for others to do the same. Steve Coll wrote in the New Yorker: "America's drone campaign is also creating an ominous global precedent. Ten years or less from now, China will likely be able to field armed drones. How might its Politburo apply Obama's doctrines to Tibetan activists holding meetings in Nepal?"

The United States, it is claimed, is arrogantly exerting its momentary technological advantage to do what it likes. It will be sorry when other states follow suit. But the United States does not use drones in this fashion and has claimed no special status for drones. The U.S. government uses drone warfare in a far more limited way, legally and morally, and entirely within the bounds of international law. The problem with China (or Russia) using drones is that they might not use them in the same way as the United States. The drone itself is a tool. How it is used and against whom -- these are moral questions. If China behaves malignantly, drones will not be responsible. Its leaders will be.

### AT: SCS

#### SCS tension inevitable but won’t escalate, even if they win a huge internal link

Michal Meidan 12, China Analyst at the Eurasia Group, 8/7/12, “Guest post: Why tensions will persist, but not escalate, in the South China Sea,” <http://blogs.ft.com/beyond-brics/2012/08/07/guest-post-why-tensions-will-persist-but-not-escalate-in-the-south-china-sea/#axzz2Cbw54ORc>

These tensions are likely to persist. And Beijing is not alone in perpetuating them. Vietnam and the Philippines, concerned with the shifting balance of powers in the region, are pushing their maritime claims more aggressively and increasing their efforts to internationalise the question by involving both ASEAN and Washington. Attempts to come up with a common position in ASEAN have failed miserably but as the US re-engages Asia, it is drawn into the troubled waters of the South China Sea.¶ Political dynamics in China – with a once in a decade leadership transition coming up, combined with electoral politics in the US and domestic constraints for both Manila and Hanoi – all augur that the South China Sea will remain turbulent. No government can afford to appear weak in the eyes of domestic hawks or of increasingly nationalistic public opinions. The risk of a miscalculation resulting in prolonged standoffs or skirmishes is therefore higher now than ever before. But there are a number of reasons to believe that even these skirmishes are unlikely to escalate into broader conflict.¶ First, despite the strong current of assertive forces within China, cooler heads are ultimately likely to prevail. While a conciliatory stance toward other claimants is unlikely before the leadership transition, China’s top brass will be equally reluctant to significantly escalate the situation, since this will send southeast Asian governments running to Washington. Hanoi and Manila also recognize that despite their need for assertiveness to appease domestic political constituencies, a direct confrontation with China is overly risky.¶ Second, military pundits in China also realize that the cost of conflict is too high, since it will strengthen Washington’s presence in the region and disrupt trade flows. And even China’s oil company CNOOC, whose portfolio of assets relies heavily on the South China Sea, is diversifying its interests in other deepwater plays elsewhere, as its attempted takeover of Nexen demonstrates.

#### Economics prevent conflict escalation

Creehan 12 – Senior Editor of the SAIS Review of International Affairs (Sean, “Assessing the Risks of Conflict in the South China Sea,” Winter/Spring, SAIS Review, Vol. 32, No. 1)

Regarding Secretary Clinton’s first requirement, the risk of actual closure of the South China Sea remains remote, as instability in the region would affect the entire global economy, raising the price of various goods and commodities. According to some estimates, for example, as much as 50 percent of global oil tanker shipments pass through the South China Sea— that represents more than three times the tanker traffic through the Suez Canal and over five times the tanker traffic through the Panama Canal.4 It is in no country’s interest to see instability there, least of all China’s, given the central economic importance of Chinese exports originating from the country’s major southern ports and energy imports coming through the South China Sea (annual U.S. trade passing through the Sea amounts to $1.2 trillion).5 Invoking the language of nuclear deterrence theory, disruption in these sea lanes implies mutually assured economic destruction, and that possibility should moderate the behavior of all participants. Furthermore, with the United States continuing to operate from a position of naval strength (or at least managing a broader alliance that collectively balances China’s naval presence in the future), the sea lanes will remain open. While small military disputes within such a balance of power are, of course, possible, the economic risks of extended conflict are so great that significant changes to the status quo are unlikely.

#### And, US will always deter China---even if they acted it would only cause a diplomatic fuss

Vu Duc ‘13 "Khanh Vu Duc is a Vietnamese-Canadian lawyer who researches on Vietnamese politics, international relations and international law. He is a frequent contributor to Asia Sentinel and BBC Vietnamese Service, "Who's Bluffing Whom in the South China Sea?" www.asiasentinel.com/index.php?option=com\_content&task=view&id=5237&Itemid=171

Conversely, China would find an increased American presence unacceptable and a nuisance. Of course, **neither country is likely to find itself staring down the barrel of the other's gu**n. China's plans for the region would undoubtedly be under greater American scrutiny if Washington decides to allocate more assets to Asia-Pacific.

For the US, returning in force to Asia-Pacific would prove to be a costly endeavour, resources the country may or may not be able to muster. Yet, even if this is true, Washington's calculations may determine that the security risk posed by China in the region outweighs whatever investment required by the US.

China's dispute with Japan over the Senkaku/Diaoyu Island, however heated, will prove to be a peripheral issue with respect to China's dispute with the several claimant states over the Spratlys. Ultimately, it is not improbable that China would seize one or several of the Spratlys under foreign control as a means to demonstrate its resolve in the disputes and the region; but to do so is to engage in unnecessary risk. The consequences stemming from such action are too great for Beijing to ignore.

**Although it is unlikely that China's neighbors would be able to mount more than a diplomatic protest**, the fuss deriving from such an incident could prove more burdensome for China than it is willing to risk. The real consequence for China of any and all conflict in the region is and has always been an American intervention. As is, it would benefit Beijing to seek a peaceful, mutually agreed upon resolution, rather than brute force.

#### China’s just posturing---they’ll back down after the leadership change

VOA 12 – Voice of America News, 9/4/12, “Will South China Sea Disputes Lead to War?,” http://www.voanews.com/content/south-china-sea-war-unlikely/1501780.html

“If the PRC continues on its current path, it would seem that it is willing to militarize the whole South China Sea issue,” said Dean Cheng, a China military and foreign policy expert at the Heritage Foundation.

Cheng offers another possibility – Beijing’s current hardline policies might be DUE to the power shift.

“Once Xi Jinping, Li Keqiang, et. al., have secured their position in 2013-2014,” said Cheng, “they [could] focus on domestic issues and assume a LESS hardline position.”

In that case, Cheng said it is possible the Chinese will become more conciliatory.

#### Rising tensions cause peaceful resolution

VOA 12 – Voice of America News, 9/4/12, “Will South China Sea Disputes Lead to War?,” http://www.voanews.com/content/south-china-sea-war-unlikely/1501780.html

Defusing Asia’s biggest flashpoint would be in everyone’s interest.

“All countries have a strongly vested interest in the maintenance of freedom of navigation in Southeast Asian waters,” said Ian Storey. “Ensuring the free flow of maritime trade through the sea is especially important at a time of global economic downturn.”

Secretary Clinton’s discussions in Beijing could fall flat, or they could go a long way easing tensions.

“As long as both sides take appropriate precautionary measures, we should be okay,” said David Arase. “The rising tension could be productive if it prompts an effort to find compromise.”

#### China needs stability in the South China Sea—no aggression

Andrew H. Ring 12, Lieutenant Commander in the U.S. Navy and former Federal Executive Fellow at the Weatherhead Center for International Affairs at Harvard University, "A U.S. South China Sea Perspective: Just Over the Horizon," July 4, Weatherhead Center for International Affairs, projects.iq.harvard.edu/sites/projects.iq.harvard.edu/files/fellows/files/ring.pdf

China has maintained peaceful relations with the fourteen countries it shares land borders with for over thirty years. This peaceful environment helped China’s rise. It allowed a majority of China’s resources to be poured into economic development versus defense infrastructure, and encouraged foreign investment and trade. China’s continued ascendancy will depend in part on Chinese leaders’ ability to maintain this peaceful environment and effectively address the emerging domestic issues (e.g., the demands of the rising middle class, entitlements, and its aging population). With its growing sphere of influence comes a need, and some may say, a responsibility, to maintain a peaceful environment within the South China Sea as well. China realizes that needless aggressive military action against its Southeast Asian neighbors will likely draw world powers into the South China Sea dispute.

### AT: Senkakus

#### No war is the Senkakus

Reuters 12 “Japan, China Military Conflict Seen Unlikely Despite Row,” 9/24, http://www.cnbc.com/id/49142182

Hawkish Chinese commentators have urged Beijing to prepare for military conflict with Japan as tensions mount over disputed islands in the East China Sea, but most experts say chances the Asian rivals will decide to go to war are slim. A bigger risk is the possibility that an unintended maritime clash results in deaths and boosts pressure for retaliation, but even then Tokyo and Beijing are expected to seek to manage the row before it becomes a full-blown military confrontation. "That's the real risk — a maritime incident leading to a loss of life. If a Japanese or Chinese were killed, there would be a huge outpouring of nationalist sentiment," said Linda Jakobson, director of the East Asia Program at the Lowy Institute for International Policy in Sydney. "But I still cannot seriously imagine it would lead to an attack on the other country. I do think rational minds would prevail," she said, adding economic retaliation was more likely. A feud over the lonely islets in the East China Sea flared this month after Japan's government bought three of the islands from a private owner, triggering violent protests in China and threatening business between Asia's two biggest economies. Adding to the tensions, China sent more than 10 government patrol vessels to waters near the islands, known as the Diaoyu in China and the Senkaku in Japan, while Japan beefed up its Coast Guard patrols. Chinese media said 1,000 fishing boats have set sail for the area, although none has been sighted close by. Despite the diplomatic standoff and rising nationalist sentiment in China especially, experts agree neither Beijing nor Tokyo would intentionally escalate to a military confrontation what is already the worst crisis in bilateral ties in decades. US Pressure "The chances of a military conflict are very, very slim because neither side wants to go down that path," said former People's Liberation Army officer, Xu Guangyu, now a senior consultant at a government-run think tank in Beijing. Pressure from the United States, which repeated last week that the disputed isles were covered by a 1960 treaty obliging Washington to come to Japan's aid if it were attacked, is also working to restrain both sides, security experts said. "I very seriously do not think any of the involved parties — Japan, China and including the United States because of its defence treaty (with Japan) — want to see a military conflict over this dispute," said the Lowy Institute's Jakobson. "They don't want to risk it, they don't seek it and they do not intend to let it happen." Still, the possibility of a clash at sea remains. While the presence of the Chinese surveillance ships — none of which is a naval vessel — and Japan Coast Guard ships in the area might appear to set the stage for trouble, military experts said each side would try to steer clear of the other. "The bad news is that China sent ships to the area. The good news is that they are official ships controlled by the government," said Narushige Michishita at the National Graduate Institute for Policy Studies in Tokyo. "This is good news because they are not likely to engage in aggressive action because that would really exacerbate the situation and turn it into a major crisis," said Michishita. The Chinese ships, he said, had another mission besides asserting China's claims to the islands and nearby waters. "My guess is that some (Chinese) official patrol boats are there to watch out for fishing boats ... to stop them from making problems," Michishita said. Fishing Boats Wild Card Military specialists say the Chinese patrol vessels are well disciplined as are the Japan Coast Guard ships, while the two sides have grown accustomed to communicating. "Both sides are ready, but both sides are very well under control," said a former senior Japanese military official. What worries observers most is the risk that a boat carrying Chinese fishermen slips through or activists try to land, sparking clashes with Japan's Coast Guard that result in deaths - news of which would spread like wildfire on the Internet. In 1996, a Hong Kong activist drowned in the nearby waters. Diplomatic and economic relations chilled sharply in 2010 after Japan arrested a Chinese trawler captain whose boat collided with a Japan Coast Guard vessel. This time, tensions are already high and China is contending with a tricky once-in-a-decade leadership change while Japan's ruling party faces a probable drubbing in an election expected in months. "Two rational governments of major countries would not intentionally decide to enter into a major war with each other over a few uninhabited rocks," said Denny Roy, an Asia security expert at the East-West Center in Hawaii. "But unfortunately, you can arrive at war in ways other than that — through unintended escalation, in which both countries start out at a much lower level, but each of them think that they must respond to perceived provocation by the other side, both very strongly pushed into it by domestic pressure. That seems to be where we are now and it is difficult to see how countries can get out of that negative spiral." Others, however, were more confident that an unplanned clash could be kept from escalating into military conflict. "That's not really a major possibility, because there are still broad channels of communication between the two sides, and they would help prevent that happening. Both sides could still talk to each other," said former senior PLA officer Xu. "Even before anything happened, you would also have the U.N Secretary General and others stepping in to ensure that the situation does not get out of control."

#### Econ interdependence prevents it

Richard Katz 13, Editor of the semiweekly The Oriental Economist Alert and the monthly The Oriental Economist Report, “Mutual Assured Production”, Foreign Affairs, July/August 2013, EBSCO

Why Trade Will Limit Conflict Between China and Japan¶ During the Cold War, the United States and the Soviet Union carefully avoided triggering a nuclear war because of the assumption of "mutual assured destruction": each knew that any such conflict would mean the obliteration of both countries. Today, even though tensions between China and Japan are rising, an economic version of mutual deterrence is preserving theuneasy status quo between the two sides.¶Last fall, as the countries escalated their quarrel over an island chain that Japan has controlled for more than a century, many Chinese citizens boycotted Japanese products and took to the streets in anti-Japanese riots. This commotion, at times encouraged by the Chinese government, led the Japanese government to fear that Beijing might exploit Japan's reliance on China as an export market to squeeze Tokyo into making territorial concessions. Throughout the crisis, Japan has doubted that China would ever try to forcibly seize theislands -- barren rocks known in Chinese as the Diaoyu Islands and in Japanese as the Senkaku Islands -- if only because the United States has made it clear that it would come to Japan's defense. Japanese security experts, however, have suggested that China might try other methods of intimidation, including a prolonged economic boycott.¶But these fears have not materialized, for one simple reason: China needs to buy Japanese products as much as Japan needs to sell them. Many of the high-tech products assembled in and exported from China, often on behalf of American and European firms, use advanced Japanese-made parts. China could not boycott Japan, let alone precipitate an actual conflict, without stymieing the export-fueled economic miracle that underpins Communist Party rule.¶For the moment, the combination of economic interdependence and Washington's commitment to Japan's defense will likely keep the peace. Still, an accidental clash of armed ships around the islands could lead to an unintended conflict. That is why defense officials from both countries have met with an eye to reducing that particular risk. With no resolution in sight, those who fear an escalation can nonetheless take solace in the fact that China and Japan stand to gain far more from trading than from fighting.

#### No Sino-Japanese/Senkaku conflict

Reuters 12, “Japan, China military conflict seen unlikely despite strain,” 9/23/12, http://www.reuters.com/article/2012/09/23/us-china-japan-confrontation-idUSBRE88M0F220120923

Hawkish Chinese commentators have urged Beijing to prepare for military conflict with Japan as tensions mount over disputed islands in the East China Sea, but most experts say chances the Asian rivals will decide to go to war are slim. ¶ A bigger risk is the possibility that an unintended maritime clash results in deaths and boosts pressure for retaliation, but even then Tokyo and Beijing are expected to seek to manage the row before it becomes a full-blown military confrontation. ¶ "That's the real risk - a maritime incident leading to a loss of life. If a Japanese or Chinese were killed, there would be a huge outpouring of nationalist sentiment," said Linda Jakobson, director of the East Asia Program at the Lowy Institute for International Policy in Sydney. ¶ "But I still cannot seriously imagine it would lead to an attack on the other country. I do think rational minds would prevail," she said, adding economic retaliation was more likely. ¶ A feud over the lonely islets in the East China Sea flared this month after Japan's government bought three of the islands from a private owner, triggering violent protests in China and threatening business between Asia's two biggest economies. ¶ Adding to the tensions, China sent more than 10 government patrol vessels to waters near the islands, known as the Diaoyu in China and the Senkaku in Japan, while Japan beefed up its Coast Guard patrols. Chinese media said 1,000 fishing boats have set sail for the area, although none has been sighted close by.¶ Despite the diplomatic standoff and rising nationalist sentiment in China especially, experts agree neither Beijing nor Tokyo would intentionally escalate to a military confrontation what is already the worst crisis in bilateral ties in decades.

#### The U.S. can effectively restrain both sides now

Reuters 12, “Japan, China military conflict seen unlikely despite strain,” 9/23/12, http://www.reuters.com/article/2012/09/23/us-china-japan-confrontation-idUSBRE88M0F220120923

"The chances of a military conflict are very, very slim because neither side wants to go down that path," said former People's Liberation Army officer, Xu Guangyu, now a senior consultant at a government-run think tank in Beijing. ¶ Pressure from the United States, which repeated last week that the disputed isles were covered by a 1960 treaty obliging Washington to come to Japan's aid if it were attacked, is also working to restrain both sides, security experts said. ¶ "I very seriously do not think any of the involved parties - Japan, China and including the United States because of its defense treaty (with Japan) - want to see a military conflict over this dispute," said the Lowy Institute's Jakobson.¶ "They don't want to risk it, they don't seek it and they do not intend to let it happen."

#### China will not use military power in disputes

**Qingguo and Rosecrance 10** (Jia and Richard, Global Asia Journal, East Asia Foundation, “Delicately Poised: Are China and the US Heading for Conflict?” January 2010, <http://globalasia.org/V4N4_Winter_2010/Jia_Qingguo_Richard_Rosecrance.html>)

Will China and the US Go to War? If one accepts the previous analysis, the answer is “no,” or at least not likely. Why? First, despite its revolutionary past, China has gradually accepted the US-led world order and become a status quo power. It has joined most of the important inter-governmental international organizations. It has subscribed to most of the important international laws and regimes. It has not only accepted the current world order, it has become a strong supporter and defender of it. China has repeatedly argued that the authority of the United Nations and international law should be respected in the handling of international security crises. China has become an ardent advocate of multilateralism in managing international problems. And China has repeatedly defended the principle of free trade in the global effort to fight the current economic crisis, despite efforts by some countries, including the US, to resort to protectionism. To be sure, there are some aspects of the US world order that China does not like and wants to reform. However, it wishes to improve that world order rather than to destroy it. Second, China has clearly rejected the option of territorial expansion. It argues that territorial expansion is both immoral and counterproductive: immoral because it is imperialistic and counterproductive because it does not advance one’s interests. China’s behavior shows that instead of trying to expand its territories, it has been trying to settle its border disputes through negotiation. Through persistent efforts, China has concluded quite a number of border agreements in recent years. As a result, most of its land borders are now clearly drawn and marked under agreements with its neighbors. In addition, China is engaging in negotiations to resolve its remaining border disputes and making arrangements for peaceful settlement of disputed islands and territorial waters. Finally, even on the question of Taiwan, which China believes is an indisputable part of its territory, it has adopted a policy of peaceful reunification. A country that handles territorial issues in such a manner is by no means expansionist. Third, China has relied on trade and investment for national welfare and prestige, instead of military conquest. And like the US, Japan and Germany, China has been very successful in this regard. In fact, so successful that it really sees no other option than to continue on this path to prosperity. Finally, after years of reforms, China increasingly finds itself sharing certain basic values with the US, such as a commitment to the free market, rule of law, human rights and democracy. Of course, there are still significant differences in terms of how China understands and practices these values. However, at a conceptual level, Beijing agrees that these are good values that it should strive to realize in practice.

#### Zero chance of conflict

Wang Shuo 12, managing editor of Caixin Media, "Closer Look: Why War Is Not an Option," September 12, Caixin Online, english.caixin.com/2012-09-12/100436770.html

There won't be a war in East Asia.¶ The United States has five military alliances in the western Pacific: with South Korea, Japan, Thailand, the Philippines and Singapore, and American battleships are busy patrolling the seas. Without a go-ahead from Washington, there is no possibility of a hot war between battleships of sovereign countries here. As to conflicts between fishing boats and patrol boats, that's not really a big deal.¶ The Chinese have to ponder several questions: If the country has battleship wars with Japan, can it win without using ground-based missiles? Will the war escalate if missiles are deployed? What will happen if the war continues with no victory in sight?¶ In the last few days, one country bought islands, and the other announced the base points and the baselines of its territorial waters. But look closely, China and Japan have at least two things in common in this hostile exchange: At home they fan up nationalism, and in the international arena no activities have exceeded the scope of previous, respective claims on sovereignty.¶ This means there is no possibility of a war in East Asia, not even remotely.

## Terror

### Intel Sustainable

#### Intel sharing is sustainable

NYT 13, 1/30, “Drone Strike Prompts Suit, Raising Fears for U.S. Allies”

The issue is more complex than drone-strike foes suggest, the current and former officials said, and is based on decades of cooperation rather than a shadowy pact for the United States to do the world’s dirty work. The arrangements for intensive intelligence sharing by Western allies go back to World War II, said Richard Aldrich, professor of international security at the University of Warwick, when the United States, Canada, Britain, Australia and New Zealand agreed to continue to collaborate. “There’s a very high volume of intelligence shared, some of which is collected automatically, so it’s impossible to track what every piece is potentially used for,” said Mr. Aldrich, who is also the author of a history of the Government Communications Headquarters, the British signal-intelligence agency. Britain’s history and expertise in South Asia means that the intelligence it gathers in Pakistan, Afghanistan and the tribal areas in between is in high demand, Mr. Aldrich said. The arrangement has been focused recently by a chill in relations between the United States and Pakistan, and by the shared war in Afghanistan. Other nations, too, intercept communications in the region that are shared broadly with the United States, he said. In Afghanistan, for example, German and Dutch forces run aggressive electronic interception operations, he said, because their rules on collaborating with local interpreters are less stringent than those of the United States. A spokesman for the coalition forces in Afghanistan, Lt. Col. Lester Carroll, declined to give details about intelligence sharing, saying agreements were classified. But he confirmed that American military forces “do share information with other U.S. government organizations on a need-to-know basis.” Few argue against the notion that European nations, many of which have been attacked by terrorists, have benefited from the drone killing, however controversial, of many of the most hardened Islamic extremist leaders.

#### Extremely broad support for intel sharing

Maciej Osowski 11, 3/8, EU-US intelligence sharing post 9/11: predictions for the future, [www.e-ir.info/2011/03/08/eu-us-intelligence-sharing-post-911-predictions-for-the-future/](http://www.e-ir.info/2011/03/08/eu-us-intelligence-sharing-post-911-predictions-for-the-future/)

Intelligence cooperation between the US and other EU member states. The 9/11 attacks started increased intelligence cooperation not only between the ‘old allies’ such as the US and the UK but also by necessity with many other states, many of them European Union member states[37]. Suffice it to mention the words of the Deputy Secretary of State Richard Armitage: “Probably the most dramatic improvement in our intelligence collection and sharing has come in bilateral cooperation with other nations — those we considered friendly before 9/11, and some we considered less friendly. This is marked change, and one that I believe comes not just from collective revulsion at the nature of the attacks, but also the common recognition that such groups present a risk to any nation with an investment in the rule of law”[38]. It is reasonable to assume that all European partners were considered friendly before 9/11. However, what is the most important in this quote is that Armitage recognises that cooperation comes from the common position of states whereby Islamic terrorism is a serious danger for every state, not only European. The majority of academic voices claim that “Since 9/11, liaison relationships between the United States and foreign services have increased in number and, in the case of pre-existing partnerships, have grown deeper”[39]. This is confirmed by many European intelligence responsible civil servants: “Contacts have been increased and there is more cooperation in all areas,”[40] revealed to the journalists the director of Spain’s National Intelligence Centre Jorge Dezcallar. It has been taking place in many areas despite political condemnation of the US military actions in Iraq or covert programs such as extraordinary renditions. Immediately after 9/11 all members of EU and NATO were supporting the US in their anti-terrorist actions and military mission in the Afghanistan. It changed radically when the US started the operation in Iraq on the basis of weak preconditions that Saddam Hussein is in possession of WMD and cooperates with Al-Qaeda. The ‘Old Europe’ (France, Germany) was against this intervention, probably because they knew the weakness of the evidence confirming American assumptions (especially as it was partially delivered by them – the German agent from Iraq known as ‘Curveball’). Despite this withdrawal of the political support, both Germany and France, as well as the rest of Europe have been closely cooperating with the US since after 9/11 and still are, as will be demonstrated in this sub-chapter. Usually reluctant towards Americans, France started close cooperation with the US just after the 9/11 attacks. An article in the daily Le Monde “Nous sommes tous Américains” expressed not only emotions and cultural unity with the USA, but was also a sign of what was bound to happen on the platform of secret intelligence sharing. In 2002, the CIA and the French Direction Générale de la Sécurité Extérieure (DGSE) established an intelligence cooperation centre in Paris called ‘Alliance Base’[41]. According to newspaper articles[42], ‘Alliance Base’ is led by a French general from the DGSE and staffed with intelligence officers from Germany, Britain, France, Australia, Canada and in large numbers from the United States. This secret institution is more than just intelligence sharing body. It is forum for operational collaboration and covert actions in anti-terrorist actions, also those involved extraordinary renditions condemned by whole EU. There is a paradox in the fact that while publicly criticising American program of renditions, European governments took part in it. This kind of hypocrisy was fiercely criticised by the CIA Director Michael Hayden who pointed to European political leaders that they publicly condemn the CIA, but privately enjoy the protection of the enhanced security provided by joint intelligence operations[43]. Indeed, recent history suggests that intelligence cooperation ties are affected by disagreements over ideals, strategy, politics or Human Rights observance, at least within the Transatlantic relationships. This is crucially important to the whole issue of intelligence liaison, as it shows that practice of intelligence sharing is independent of politics. This can have both its advantages and disadvantages. It is surely profitable that the US and the EU members can cooperate in the area of intelligence while disagreeing in politics. However, this bias can be the result of the lack of control by governments and parliaments over European intelligence services actions. Should this be the case, it should be used as food for thought in European capitals. Nevertheless, in the meantime the cooperation between American and EU member states intelligence services has arguably been highly successful. For example, decisions and steps taken by Algemene Inlichtingen- en Veiligheidsdienst (the Dutch General Intelligence and Security Service) allowed to prevent the attack on US embassy just after the 9/11 events in the US[44]. This was possible thanks to the international intelligence cooperation. Germany and the US have share intelligence on terrorism since 1960s. This relation has remained robust after the 9/11 attacks and has even increased, not only through the ‘Alliance Base’ but also in bilateral relation. A case in point here is the unfortunate example of the German intelligence service HUMINT source agent named ‘Curveball’. The final outcome of that case, which led to the US’s invasion of Iraq – based on false suspicions that the country possessed WMD – seems to suggest that sharing information here was faulty and misleading. However, it seems less so in light of the declassified documents[45]. These show that the case of ‘Curveball’ was properly described by Bundesnachrichtendienst, especially as far as his credibility was concerned – it was in fact believed to be dubious and unclear. However, as it was the only American human source, and it was delivering information desired by the Executive, the BND kept sending reports to the United States Defense Intelligence Agency. In other words, cooperation between both services was smooth, it was the American side that used the information despite warnings coming even from home intelligence[46]. Based on this case, it can be assumed that intelligence sharing between Germany and the US has increased to the extent that even not confirmed sources were delivered to the US on special request. Once again, this confirms the argument whereby intelligence cooperation between the US and European partners has existed despite European reluctance to the US international policy. To take this argument even further, it can be argued that the transatlantic intelligence liaison will increase in the future, as long as a new threat in the form of Islamic terrorism is deemed serious danger by both the US and the European Union member states. Apart from the UK, a traditional ally of the US, there has been a group of newly accepted EU members which were, most of them, supporting the US policy after 9/11, including the intervention in Iraq. It can be assumed that those states (Poland, the Czech Republic, Hungary, Romania, Bulgaria, and the Baltic states) were prepared to seek intelligence cooperation with the US. However, it is obvious that these states did not probably have much intelligence to offer, while their first concern has always been Russia and its actions. It this particular case, there are all reasons to suspect that the ‘complex’ intelligence liaison took place. It has been confirmed in the cases of Poland and Romania when both states have hosted the secret CIA prisons used for extraordinary renditions. That they did host such prisons was confirmed by both the European Parliament inquiry[47] and investigative journalists[48]. In exchange, those states received a mixture of military, political and intelligence support. From the above analysis it appears that after the 9/11 attacks the US increased intelligence cooperation with the EU member states. There is also no doubt that most European states were willing to increase this cooperation as they saw real threat that Islamic terrorism constituted not only for the US but also for European states. It was the nature of both in multilateral and bilateral relationships. The level of cooperation has been different depending on a state. Usually, the biggest ally of the US – the UK, has led in intelligence liaison. But it is now visible that the rest of the EU has not stayed behind, and tried to contribute to the liaison in many different ways. All those alleged facts lead to the conclusion that the future liaison between the US and the European member states will increase even further as long as there will be a common strong threat to the security to all participating states.