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### Plan Text

#### Plan: The United States Federal Government ought to substantially increase judicial restrictions on the war powers authority of the President of the United States by designating District Court judges to approve or reject targeted killings involving the use of drone strikes based on a strict scrutiny test.

### Advantage 1 – International Norms

#### Advantage One is International Norms—

#### Despite Obama’s recent rhetoric—Executive authority and usage of drones remains unrestricted

Kaplan 13 [Fred, Slate’s “War Stories” columnist, “Obama’s Post-9/11 World,” <http://www.slate.com/articles/news_and_politics/war_stories/2013/05/barack_obama_national_defense_university_speech_nothing_new_about_drones.single.html>, ALB]

President Obama’s speech today on U.S. counterterrorism policy was actually two speeches in one. The first outlined a supposedly new, restrictive policy on drone strikes that was neither new nor restrictive. The second called for shutting down the Guantánamo detention center—not a new position for the president but the revival of a long-dormant one, unfurled in blazing colors along with a vision of a genuinely new way of approaching global terrorism.**¶** In the days leading up to the speech, drones were assumed to be the main topic—specifically, whether and how to change the practice of using drones to kill terrorist suspects in countries outside formal war zones, namely, Pakistan, Yemen, and Somalia. These strikes have aroused intense bitterness abroad and growing controversy at home.**¶** Early on in his speech, Obama defended the use of drones, noting that they are often the only way to kill people who are planning attacks on the United States and that, while these weapons sometimes kill innocent civilians, they kill far fewer civilians than other forms of military power, such as conventional airstrikes or troop incursions on the ground.**¶** But then, Obama conceded that these weapons had to be subjected to restrictions, lest they be used too casually. Specifically, it had to be determined that the person killed poses a “continuing, imminent threat” against the United States; that capturing the person alive was infeasible; and that there was “near certainty” that the strike would kill or injure no civilians.**¶** This sounds reasonable, except that these same standards were outlined—with much of the exact same language**—**in a**n** unclassified 16-page “white paper” that the Justice Department released back in February. And the way that the paper defined those terms rendered the restrictions meaningless.¶ Key to this loophole was—and presumably still is—the definition of “imminent threat.” As the white paper put it, “The condition that an operational leader [of al-Qaida or an affiliated organization] presents an ‘imminent’ threat of violent attack against the United States does not require the United States to have clear evidence that a specific attack … will take place in the immediate future.”**¶** So, “imminent” doesn’t really mean imminent.¶ The paper’s logic was this. Al-Qaida is “continually planning strikes” against the United States. “By its nature, therefore,” an assessment of its threats “demands a broad concept of imminence.” In other words, the threat of an attack is always imminent; it’s a condition, not a restriction.¶ Similarly, because the threat is always imminent, the Justice Department paper went on, “the United States is likely to have only a limited window of opportunity” to mobilize a raid to capture the terrorist. Therefore, it is always “infeasible” to capture rather than kill.**¶** Obama’s (and the white paper’s) third condition for launching a drone strike—a near certainty that no innocents are killed in the attack—is a real restriction, and the Obama administration does seem to be at least trying to abide by it. According to data gathered from open sources by three private research organizations—the New America Foundation, the Bureau of Investigative Journalism, and Long War Journal—the number of civilians killed by drone strikes in Pakistan has declined dramatically in the past few years. So far this year, the estimates of civilian deaths range from zero to 11. In part, this is due to the fact that there have been only 12 drone strikes in Pakistan in 2013—which means, by the way, that there might have been, on average, as many as one civilian killed in nearly every strike.**¶** It is hard to gauge these estimates because the administration does not release figures about drone strikes in Pakistan or how many people they’ve killed—because all drone strikes outside war zones (that is, outside Afghanistan) are covert operations conducted not by the military but by the CIA. Everything about them, therefore, is classified.¶ This is another way in which Obama’s speech was disappointing. At a background press briefing held just two hours in advance of the speech, “senior administration officials” said that the president would “express preference” for putting the U.S. military, not the CIA, in charge of these sorts of strikes. The officials did not specify which part of the military—the regional combatant commands (which might be less likely to launch attacks across borders) or the Joint Special Operations Command (which has authority to wage secret strikes against al-Qaida worldwide). But still, this would be a change that would probably widen oversight.**¶** However, President Obama’s speech said nothing about this issue. (An official told me afterward that there’s still an internal debate on the subject.) Nor did it say anything about banning or restricting “signature strikes”—the phrase used for strikes aimed not at specific individuals but rather at people whose behavior bears the “signature” of terrorists, even if their names or precise roles in the terrorist network are unknown.**¶** In short, the speech heralded nothing new when it comes to drone strikes.

#### The US is key to set a precedent—Absent the plan Drone prolif is inevitable

Roberts 13 [Kristin, News Editor for National Journal, Master’s in Security Studies from Georgetown University, Master’s in Journalism from Columbia University, “When the Whole World Has Drones,” <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321?print=true>, ALB]

The proliferation of drone technology has moved well beyond the control of the United States government and its closest allies. The aircraft are too easy to obtain, with barriers to entry on the production side crumbling too quickly to place limits on the spread of a technology that promises to transform warfare on a global scale. Already, more than 75 countries have remote piloted aircraft. More than 50 nations are building a total of nearly a thousand types. At its last display at a trade show in Beijing, China showed off 25 different unmanned (SIC) aerial vehicles. Not toys or models, but real flying machines.¶ It’s a classic and common phase in the life cycle of a military innovation: An advanced country and its weapons developers create a tool, and then others learn how to make their own. But what makes this case rare, and dangerous, is the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use. This technology is snowballing through a global arena where the main precedent for its application is the one set by the United States; it’s a precedent Washington does not want anyone following.¶ America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts.¶ To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order.¶ “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things.”—Dennis Blair, former director of national intelligence¶ Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan.¶ This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself that would at minimum create a globally relevant standard for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation.¶

#### Lack of oversight on our drones sets a dangerous international precedent that spills over globally—Only the plan can solve

Alston 11 [Philip, Pomeroy Professor of Law, New York University School of Law, was UN Special Rapporteur on extrajudicial, summary, or arbitrary executions from 2004 until 2012, “The CIA and Targeted Killings Beyond Borders,” 2 Harv. Nat’l Sec. J. 283, pg. lexis, ALB]

3. Self-interest: Setting Prudent Precedents for Others¶ Because the United States inevitably contributes disproportionately to the shaping of global regime rules, and because it is making more extensive overt use of targeted killings than other states, its approach will heavily influence emerging global norms. This is of particular relevance in relation to the use of drones. There are strong reasons to believe that a permissive policy on drone-fired targeted killings will come back to haunt the United States in a wide range of potential situations in the not too distant future.¶ In 2011, a senior official noted that while for the past two decades the United States and its allies had enjoyed "relatively exclusive access to sophisticated precision-strike technologies," that monopoly will soon come to an end. In fact, in the case of drones, some 40 countries already possess the basic technology. Many of them, including Israel, Russia, Turkey, China, India, Iran, the United Kingdom, and France either have or are seeking drones that also have the capability to shoot laser-guided missiles. Overall, the United States accounts for less than one-third of worldwide investment in UAVs. On "Defense Industry Day," August 22, 2010, the Iranian President unveiled a new drone with a range of 1,000 kilometers (620 miles) and capable of carrying four cruise missiles. n607 He referred to the drones as a "messenger of honor and human generosity and a saviour of mankind," but warned ominously that it can also be "a messenger of death for enemies of mankind (SIC)." ¶ To date, the United States has opted to maintain a relatively flexible and open-ended legal regime in relation to drones, in large part to avoid setting precedents and restricting its own freedom of action. But this policy seems to assume that other states will not acquire lethal drone technology, will not use it, or will not be able to rely upon the justifications invoked by the United States. These assumptions seem questionable. American commentators favoring a permissive approach to targeted killings abroad are generally very careful to add that such killings would under no circumstances be permitted within the United States. ¶ Thus when the United States argues that targeted killings are legitimate when used in response to a transnational campaign of terror directed at it, it needs to bear in mind that other states can also claim to be so afflicted, even if the breadth of the respective terrorist threats is not comparable. Take Russia, for example, in relation to terrorists from the Caucasus. It has characterized its military operations in Chechnya since 1999 as a counter-terrorism operation and has deployed "seek and destroy" groups of army commandoes to "hunt down groups of insurgents." It has been argued that the targeted killings that have resulted are justified because they are necessary to Russia's fight against terrorism. Although [\*443] there are credible reports of targeted killings conducted outside of Chechnya, Russia has refused to acknowledge responsibility for, or otherwise justify, such killings. It has also refused to cooperate with any investigation or prosecution. n613¶ In 2006, the Russian Parliament passed a law permitting the Federal Security Service (FSB) to kill alleged terrorists overseas, if authorized to do so by the President. n614 The law defines terrorism and terrorist activity extremely broadly, including "practices of influencing the decisions of government, local self-government or international organizations by terrorizing the population or through other forms of illegal violent action," and also any "ideology of violence." n615¶ Under the law, there appears to be no restriction on the use of military force "to suppress international terrorist activity outside the Russian Federation." n616 The law requires the President to seek the endorsement of the Federation Council to use regular armed forces outside Russia, but the President may deploy FSB security forces at his own discretion. According to press accounts, at the time of the law's passage, "Russian legislators stressed that the law was designed to target terrorists hiding in failed States and that in other situations the security services would work with foreign intelligence services to pursue their goals." n617 There is no publicly available information about any procedural safeguards to ensure Russian targeted killings are lawful, the criteria for those who may be targeted, or accountability mechanisms for review of targeting operations. In adopting the legislation, Russian parliamentarians claimed that, "they were emulating Israeli and US actions in adopting a law [\*444] allowing the use of military and special forces outside the country's borders against external threats." n618¶ China is another case in point. It has consistently characterized unrest among its Uighur population as being driven by terrorist separatists. But Uighur activists living outside China are not so classified by other states. That means that China could invoke American policies on targeted killing to carry out a lethal attack against a Uighur activist living in Europe or the United States. The Chinese Foreign Ministry welcomed the killing of Osama bin Laden as "a milestone and a positive development for the international anti-terrorism efforts," adding ominously in reference to the Uighur situation that, "China has also been a victim of terrorism." When a journalist asked how American practice in Pakistan compared to possible Chinese external action against a Uighur to a senior United States counter-terrorism official, the latter distinguished the situations from one another on the unconvincing grounds of Pakistan's special relationship with the United States. ¶ A more realistic note was struck by Anne-Marie Slaughter after bin Laden's killing when she observed that "having a list of leaders that you are going to take out is very troubling morally, legally and in terms of precedent. If other countries decide to apply that principle to us, we're in trouble." The conclusion to be drawn is that the United States might, in the not too distant future, need to rely on international legal norms to delegitimize the behavior of other states using lethal drone strikes. For that reason alone, it would seem prudent today to be contributing to the construction of a regime that strictly limits the circumstances in which one state can seek to kill an individual in another state without the latter's consent and without complying with the applicable rules of international law. To the extent that the United States genuinely believes it is currently acting within the scope of those rules it needs to provide the evidence.

#### And, unchecked drone prolif collapses deterrence and guarantees Indo-Pak miscalc

Boyle 13 [Michael J., Assistant Professor of Political Science at La Salle University in Philadelphia, “The costs and consequences of drone warfare,” <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>, ALB]\*\*we reject any offensive language used in our evidence

A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, ¶ specifically nuclear deterrence. Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another. While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these ¶ states will exercise the same level of restraint with drone surveillance, which is unmanned (SIC), low cost, and possibly deniable. States may be more willing to engage ¶ in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response. This may have been Hezbollah’s logic in sending a drone into Israeli airspace in ¶ October 2012, possibly to relay information on Israel’s nuclear capabilities. After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities. One could imagine two rival states—for ¶ example, India and Pakistan—deploying drones to test each other’s capability ¶ and resolve, with untold consequences if such a probe were misinterpreted by ¶ the other as an attack. As drones get physically smaller and more precise, and as ¶ they develop a greater flying range, the temptation to use them to spy on a rival’s ¶ nuclear programme or military installations might prove too strong to resist. If ¶ this were to happen, drones might gradually erode the deterrent relationships that ¶ exist between nuclear powers, thus magnifying the risks of a spiral of conflict ¶ between them.

\*\*\*GENDERED LANGUAGE SAID IN CONTEXT\*\*\*

#### Lack of US-led norms cause Chinese drone aggression in maritime disputes—That increases tensions

**Bodeen 13** (Christopher Bodeen has a degree from Tufts University, correspondent on China at Associated Press, May 3rd, 2013, "China's Drone Program Appears To Be Moving Into Overdrive," Huffington Post, www.huffingtonpost.com/2013/05/03/china-drone-program\_n\_3207392.html)

BEIJING -- Determined to kill or capture a murderous Mekong River drug lord, China's security forces considered a tactic they'd never tried before: calling a drone strike on his remote hideaway deep in the hills of Myanmar.¶ The attack didn't happen – the man was later captured and brought to China for trial – but the fact that authorities were considering such an option cast new light on China's unmanned aerial vehicle program, which has been quietly percolating for years and now appears to be moving into overdrive.¶ Chinese aerospace firms have developed dozens of drones, known also as unmanned aerial vehicles, or UAVs. Many have appeared at air shows and military parades, including some that bear an uncanny resemblance to the Predator, Global Hawk and Reaper models used with deadly effect by the U.S. Air Force and CIA. Analysts say that although China still trails the U.S. and Israel, the industry leaders, its technology is maturing rapidly and on the cusp of widespread use for surveillance and combat strikes.¶ "My sense is that China is moving into large-scale deployments of UAVs," said Ian Easton, co-author of a recent report on Chinese drones for the Project 2049 Institute security think tank.¶ China's move into large-scale drone deployment displays its military's growing sophistication and could challenge U.S. military dominance in the Asia-Pacific. It also could elevate the threat to neighbors with territorial disputes with Beijing, including Vietnam, Japan, India and the Philippines. China says its drones are capable of carrying bombs and missiles as well as conducting reconnaissance, potentially turning them into offensive weapons in a border conflict.¶ China's increased use of drones also adds to concerns about the lack of internationally recognized standards for drone attacks. The United States has widely employed drones as a means of eliminating terror suspects in Pakistan and the Arabian Peninsula.¶ "China is following the precedent set by the U.S. The thinking is that, `If the U.S. can do it, so can we. They're a big country with security interests and so are we'," said Siemon Wezeman, a senior fellow at the arms transfers program at the Stockholm International Peace Research Institute in Sweden, or SIPRI.¶ "The justification for an attack would be that Beijing too has a responsibility for the safety of its citizens. There needs to be agreement on what the limits are," he said.¶ Though China claims its military posture is entirely defensive, its navy and civilian maritime services have engaged in repeated standoffs with ships from other nations in the South China and East China seas. India, meanwhile, says Chinese troops have set up camp almost 20 kilometers (12 miles) into Indian-claimed territory.

#### US precedent is key to prevent the collapse of our aircraft carriers and Chinese drone sales

Wood 12 [David, “American Drones Ignite New Arms Race from Gaza to Iran to China,” The Huffington Post, 11/27, <http://www.huffingtonpost.com/2012/11/27/american-drones_n_2199193.html>, ALB]\*\*we reject any offensive language used in this evidence

The drone wars are here.**¶** While President Obama ponders new legal and moral guidelines to govern America's growing use of armed robot aircraft, the world outside the White House is engaged in a revolutionary frenzy of building, arming and flying killer drones.**¶** Small, inexpensive and lethal, drones enable everyone from terrorists to theChinese People's Liberation Army to engage in what the Pentagon acknowledges is a new arms race with "alarming" consequences. More than 50 countries operate surveillance drones and, increasingly, are fitting them with weapons.**¶** The U.S. covertly uses armed drones to assassinate alleged terrorists or insurgents in Pakistan, Sudan and Somalia. In Pakistan alone, some 2,341 people identified as Taliban and al Qaeda leaders have been killed, according to one authoritative account. Armed drones are increasingly active in Afghanistan as well, where they've completed 1,160 strike missions since 2009, according to the latest Air Force data. American spy drones operate globally, from the Western Pacific to Iran, where a secret U.S. spy drone was shot down last December.**¶** But American drones are not alone in the sky. Spy drones routinely shadow U.S. aircraft carrier strike groups and other military exercises. Drones crisscross the Persian Gulf. Israeli drones have circled over Gaza during the recent fighting there. Experts say it's a rare conflict that doesn't attract spy drones; even the United Nations has considered using drones to monitor the fighting in Congo.**¶** Using unmanned (SIC) aircraft with cameras is nothing new, of course. But armed(SIC) drone technology is different: the rapidly spreading technology gives attackers a new edge, whether they are clandestine terrorist gangs or global superpowers. Small and highly maneuverable, drones can befuddle air defense systems built to intercept big, lumbering aircraft.**¶** In the dismaying history of war machinery, armed drones are a "game-changing technology, akin to gunpowder, the steam engine, the atomic bomb -- opening up possibilities that were fiction a generation earlier but also opening up perils that were unknown a generation ago," said Peter W. Singer**,** an expert on drone technology and its ramifications for the Brookings Institution, a Washington think-tank.**¶** A new Pentagon study frets that enemy drones could be a "very serious threat" to U.S. aircraft carriers in the Pacific and elsewhere, as well as to "supply convoys and other combat support assets which have not had to deal with an airborne threat in generations." On the battlefield, an enemy could create chaos and confusion simply by flooding the airspace with drones, and any U.S. bases within drone range would have to be closed, the report said.**¶** "For UAVs [Unmanned (SIC) Aerial Vehicles], the U.S. currently has limited dedicated defensive capabilities other than fighters or surface-to-air missiles, giving the enemy a significant asymmetric cost advantage," the Pentagon's Defense Science Board report concluded in its July 2012 study.**¶** In essence, **the study suggested,** armed drones are the equivalent of the Improvised Explosive Device (IED), a simple, cheap and effective weapon which has forced the U.S. to spend billions of dollars in defense while experiencing growing casualties: 1,330 Americans have been killed in Afghanistan by IEDs, including 125 so far this year.**¶** An incident early last month dispelled any doubts about the spread of drone technology. On Oct. 6, a small unmanned aircraft flew high over Israel's Mediterranean coast, headed for its nuclear reactor at Dimona. Soaring for 35 miles through heavily guarded Israeli airspace, the intruder was eventually shot down by an Israeli F-16.**¶** Against such small and maneuverable threats, Israel's missile defenses -- including its Arrow and Iron Dome missile defense systems, so effective against rockets fired from Gaza this month -- are less effective.**¶** Israeli officials speculated the drone in October was on a reconnaissance mission or possibly a practice run for a later suicide attack on the nuclear site. Hezbollah, the radical Islamic militia and political party based in Lebanon, later claimed that it had assembled and launched the drone. Experts said the aircraft was in all likelihood provided by Iran, which already has operational drones and claims its newest drone, the Shahed-129, has a range of 1,250 miles. The distance from Tehran to Tel Aviv: 988 miles.**¶** A day after Israel shot down the Hezbollah drone, an armed Israeli drone fired a missile that wounded two activists and eight passers-by in Gaza.**¶** On Nov. 1, two Iranian jet fighters fired multiple rounds at an American Predator drone over the Persian Gulf; the spy drone was conducting "routine surveillance," Pentagon spokesman George Little explained. The drone got away unharmed.**¶** Obama administration officials have said they are weighing various options to codify the use of armed U.S. drones, because the increased use of drones has been driven more by perceived necessity than by deliberative policy. But that effort is complicated by the wildfire spread of drone technology: how could the U.S. restrict its use of armed drones if others do not?¶ Already, the Pentagon is worried that China not only is engaged in an "alarming" effort to develop and field high-tech drones, but it intends to sell drone technology abroad, according to the Pentagon report.**¶** Indeed, the momentum of the drone wars seems irresistible. "The increasing worldwide focus on unmanned (SIC) systems highlights how U.S. military success has changed global strategic thinking and spurred a race for unmanned (SIC) aircraft," the Pentagon study reported.

#### Chinese drones guarantee US-China war by destroying U.S. aircraft carriers and drones—They’ll use dong-feng missiles

Gertz 13(Bill has been a media fellow at the [Hoover Institution on War, Revolution and Peace](http://en.wikipedia.org/wiki/Hoover_Institution_on_War,_Revolution_and_Peace) at [Stanford University](http://en.wikipedia.org/wiki/Stanford_University), He has also written for [*National Review*](http://en.wikipedia.org/wiki/National_Review), [*The Weekly Standard*](http://en.wikipedia.org/wiki/The_Weekly_Standard) and *Air Force Magazine*. He has lectured on defense, national security, and media issues at the [Defense Department’s](http://en.wikipedia.org/wiki/United_States_Department_of_Defense) National Security Leadership Program, [Johns Hopkins University](http://en.wikipedia.org/wiki/Johns_Hopkins_University) School of Advanced International Studies, the [FBI National Academy](http://en.wikipedia.org/wiki/FBI_National_Academy), the [National Defense University](http://en.wikipedia.org/wiki/National_Defense_University), and the [CIA](http://en.wikipedia.org/wiki/CIA).[[3]](http://en.wikipedia.org/wiki/Bill_Gertz#cite_note-3) , March 26, [http://www.washingtontimes.com/news/2013/mar/26/china-stepping-drone-deployment/?page=all)\*\*we](http://www.washingtontimes.com/news/2013/mar/26/china-stepping-drone-deployment/?page=all)**we) reject any offensive language used in our evidence

[China](http://www.washingtontimes.com/topics/china/)’s military is expanding its unmanned aerial vehicle forces with a new Predator-like armed(SIC) drone and a new unmanned combat aircraft amid growing tensions with neighbors in Asia, according to United States intelligence officials. New unarmed drone deployments include the recent stationing of reconnaissance and ocean surveillance drones in Northeast Asia near [Japan](http://www.washingtontimes.com/topics/japan/) and the Senkaku islands and along [China](http://www.washingtontimes.com/topics/china/)’s southern coast. Drones also are planned for the South China Sea where [China](http://www.washingtontimes.com/topics/china/) has been encroaching on international waters and bullying nations of that region in asserting control over international waters, said officials familiar with intelligence reports. “Unmanned aerial vehicles are emerging as critical enablers for PLA long range precision strike operations,” said [Mark Stokes](http://www.washingtontimes.com/topics/mark-stokes/), a former military intelligence official now with the Project 2049 Institute. “A general operational PLA requirement appears to be persistent surveillance of fixed and moving targets out to 3,000 kilometers of Chinese shores.” [Japan](http://www.washingtontimes.com/topics/japan/), meanwhile, is developing and purchasing military drone capabilities to counter what it regards as Chinese aggression and Beijing’s growing military capabilities as Tokyo’s dispute with [China](http://www.washingtontimes.com/topics/china/) over the Senkaku islands intensifies, the officials said. After Chinese aircraft intruded into Japanese airspace over the Senkakus undetected late last year, Tokyo stepped up efforts to seek drone capabilities. The efforts include building an indigenous missile-tracking drone and high-altitude U.S. drones. So far, unlike Beijing, Tokyo asserts its drone will be unarmed, the officials said. “[China](http://www.washingtontimes.com/topics/china/) has started deploying UAVs for reconnaissance and oceanic surveillance purposes in the vicinity of disputed maritime territories, such as the Senkaku Islands,” said one military source. Of particular concern to [U.S. intelligence](http://www.washingtontimes.com/topics/us-intelligence/) agencies are two new missile-equipped drones known as the CH-4 and [Yi](http://www.washingtontimes.com/topics/yi/) Long. The aircraft were shown off along with six other military drones at a major Chinese arms show last November in Zhuhai. Photos of the drones reveal the designs appear to be copied from the U.S. Predator armed(SIC) drone that has been leading the [Obama administration](http://www.washingtontimes.com/topics/barack-obama/)’s war on [al Qaeda](http://www.washingtontimes.com/topics/al-qaeda/) in [Pakistan](http://www.washingtontimes.com/topics/pakistan/) and elsewhere. Photos of the CH-4 show it armed with Blue Arrow-7 anti-tank missiles that appear similar in size to the U.S. Hellfire fired from Predators. Even more of a concern, according to the officials, are intelligence reports from Asia indicating that [China](http://www.washingtontimes.com/topics/china/) is well along in building a large stealth unmanned combat aerial vehicle (UCAV)—an upiloted jet—that was revealed recently in an online [Chinese military](http://www.washingtontimes.com/topics/peoples-liberation-army/) video. The drone combat jet is nearly identical in shape to the experimental batwing-shaped U.S. Air Force X-47B currently under development. The X-47B was tested on an aircraft carrier in December. The Chinese UCAV is expected to have enough range to reach the U.S. island of [Guam](http://www.washingtontimes.com/topics/guam/), some 1,800 miles from the Chinese coast and the hub of the [Pentagon](http://www.washingtontimes.com/topics/pentagon/)’s shift to Asia, officials said. Video and photos of the Chinese UCAV were posted on [Chinese military](http://www.washingtontimes.com/topics/peoples-liberation-army/) enthusiast Internet sites recently. Also, a model of the drone combat jet was on display at Zhuhai. The aircraft is being built by the China Shenyang Aerospace Institute and could be deployed on [China](http://www.washingtontimes.com/topics/china/)’s new aircraft carrier, officials said. [Richard Fisher](http://www.washingtontimes.com/topics/richard-fisher/), a [China](http://www.washingtontimes.com/topics/china/) military analyst with the [International Assessment](http://www.washingtontimes.com/topics/international-assessment/) and [Strategy Center](http://www.washingtontimes.com/topics/strategy-center/), said the first prototype flying wing UCAV was completed at [China](http://www.washingtontimes.com/topics/china/)’s [Hongdu Aircraft Corp](http://www.washingtontimes.com/topics/hongdu-aircraft-corp/) in mid-December. The drone weighs 10 to 14 tons and could be carrier based. “This means that the **U**.S. attempt to ‘outrange’ an emergent PLA anti-access systems, like the DF-21D anti-ship ballistic missile, could soon be outflanked by a new PLA carrier-based UCAV,” [Fisher](http://www.washingtontimes.com/topics/richard-fisher/) said. [Japan](http://www.washingtontimes.com/topics/japan/), alarmed at fierce Chinese reaction to its efforts to solve the Senkakus dispute by nationalizing several of the uninhabited but oil-rich islands last year, is bolstering its military forces with both missile-detecting and maritime surveillance with drones. [Japanese Defense Ministry](http://www.washingtontimes.com/topics/japanese-defense-ministry/) officials, quoted in press reports, have called the purchase of several long-range U.S. Global Hawk surveillance drones an urgent priority. Tokyo is seeking up to three Global Hawks by 2015 but could speed up purchases in response to what it regards as growing Chinese aggressiveness toward [Japan](http://www.washingtontimes.com/topics/japan/) over the Senkakus. The [U.S. military](http://www.washingtontimes.com/topics/us-military/) currently has Global Hawks deployed at [Guam](http://www.washingtontimes.com/topics/guam/). The Japanese do not plan to develop armed drones and plan to limit initial purchases to the Global Hawk, which fly nearly 60,000 feet for extended missions. It is able to track vessels using sensors and radar. [Japan](http://www.washingtontimes.com/topics/japan/) also is developing an unmanned drone aircraft that will be used to detect North Korean nuclear missile attacks and to counter the [Chinese military](http://www.washingtontimes.com/topics/peoples-liberation-army/) buildup, the officials said. The anti-missile drone program is being developed over the next four years with the first drone deployed by 2020. It will use infrared sensors designed to detect missiles shortly after launch. [China](http://www.washingtontimes.com/topics/china/)’s drone program is believed to have benefitted from its aggressive economic and cyber espionage operations against the United States. Those efforts have included breaking into both government and defense industry networks and stealing valuable drone technology. Officials also said [China](http://www.washingtontimes.com/topics/china/)’s drone program is receiving a boost from an unlikely source: Taiwan. The [largest Chinese drone production center](http://www.washingtontimes.com/topics/strategy-center/) is being built at Wuhan in Hubei province, site of a joint construction project by [China](http://www.washingtontimes.com/topics/china/)’s Wuhan Visiontek Inc. and Taiwan’s Carbon-Based Technology, Inc. Officials said [China](http://www.washingtontimes.com/topics/china/) launched a crash program to develop military drones beginning around 2007. Beijing is planning a range of unmanned aircraft capabilities, including high-altitude, long-endurance drones, integrated air and sea warfare drones, sea-based drones and UCAVs. More than 60 drones were on display in Beijing last June, including a drone helicopter, and a drone with simulated birds’ wings. Additionally, officials have said drone bases are being set up in the South China Sea to monitor Scarborough reef, which is claimed by Philippines and [China](http://www.washingtontimes.com/topics/china/); Macclesfield Bank; the Paracel Islands; and the Spratly Islands. [China](http://www.washingtontimes.com/topics/china/) also is using drone to monitor the Socotra Reef claimed by South Korea. A report made public March 11 by the Project 2049 Institute on Chinese drones estimated that [China](http://www.washingtontimes.com/topics/china/) has more than 280 military drones. “The PLA has developed one of the largest and most organizationally complex UAV programs in the world,” [the report stated.](http://issuu.com/openbriefing/docs/pla_uav_project) For the immediate future, the Chinese drones are monitoring disputed maritime and land boundaries that are likely to “increase tensions” since other states in the region lack the same capabilities. “**Like any new capability, UAVs may encourage the inexperienced to overreach and engage in risk taking,” the report said. “There could be a sense that because human pilot lives are not at stake, operators can push farther than they otherwise might**.” **An isolated UAV attack during a crisis** also **could lead to a major conflict**. “In the future, **PRC decision-makers might feel compelled to order ‘plausibly deniable’ UAV attacks as a means of sending a political signal only to inadvertently wind up escalating tensions**,” the report said. Over the long term, Chinese drones will support the expansion of [Chinese military](http://www.washingtontimes.com/topics/peoples-liberation-army/) operational areas by pushing the ability to hit targets further into the western Pacific. The report said [China](http://www.washingtontimes.com/topics/china/) likely will use its UAV force for targeting and guidance of the DF-21D anti-ship ballistic missile designed to strike U.S. aircraft carriers more than a thousand miles from [China](http://www.washingtontimes.com/topics/china/)’s coast. “While the potential for a large scale conflict in the region currently appears low, the lack of adequate preparation for worst case scenarios could encourage and invite adventurous adversary behavior, ultimately increasing risks to peace and stability,” the report stated.

#### Dong-feng missiles are the biggest threat—The US is unprepared

Johnson 13 (Robert, Jan 25, “China Successfully Tests 'Carrier Killer' Missile In The Gobi Desert [REPORT]”)

China's PLA "sunk" a U.S. aircraft carrier during a war game in remote China using its DF-21D "Carrier Killer" missile, reports Taiwan paper [Want China Times](http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20130123000112&cid=1101). The China Times is a 63 year old Taiwanese paper slightly [slanted toward unification](http://www.washingtonpost.com/world/tycoon-prods-taiwan-closer-to-china/2012/01/20/gIQAhswmFQ_story.html), but with a solid reputation and accurate reporting. The Times report originates with a Google Earth image published at [SAORBOATS](http://www.saorbats.com.ar/foro/index.php) Argentinian internet forum. The photo shows two big craters on a 600 foot platform deep in China's Gobi desert t**hat Chinese military testers used to simulate the flight deck of an aircraft carrier.** There has been [talk of the DF-21 for years](http://www.businessinsider.com/china-fire-carrier-killer-missile-taiwan-elections-2011-12) with estimates of its range, threat, and theater changing implications, but this could be the first known test of the rocket. The **Dong-Feng-21D ballistic missile is expected to ring China's coast on its truck-mounted launcher, posing a significant threat to U.S. Naval forces in the region.**

#### Drones are the biggest internal link to conflict

Koebler 13 (Jason is a Science and Technology Reporter and graduated from [University of Maryland College Park](http://www.linkedin.com/edu/school?id=18570), March 14, “Report: Chinese Drone 'Swarms' Designed to Attack American Aircraft Carriers”, [http://www.usnews.com/news/articles/2013/03/14/report-chinese-drone-swarms-designed-to-attack-ariersmerican-aircraft-car](http://www.usnews.com/news/articles/2013/03/14/report-chinese-drone-swarms-designed-to-attack-american-aircraft-carriers))

"**When** the **Chinese look at UAVs,** **they see tremendous capabilities for high-end conflict**. We've been using them for low-intensity situations," Easton says. "The **Chinese have done an overwhelming number of studies discussing using UAVs as having the capabilities of hitting U.S. aircraft carrier strike groups. That's what they're planning to do."** Easton says that in China, UAV development is studied by nearly every company that has its hands in aerospace technology. Other military tools are often built by a couple companies focused in a city or two, but the sheer scale of the Chinese drone industry might lead the country to innovate faster than the U.S. can. "**We** generally **don't worry about** the **Chinese building a better submarine, fighter plane, or** aircraft **carrier than us, but with UAVs**, I think it might be a little different," he says. "They have organized their UAV programs in such a way where they could be very innovative in terms of weapon systems."

#### South China Sea conflict goes nuclear—Tensions are high

Dupont 13 [“High stakes tension on the China Seas”, Alan Dupont, The Australian, 12 March 2013]

It is clear that the Senkaku/Diaoyu islands in the East China Sea have become the most dangerous, high-stakes maritime dispute in East Asia as a lightning rod for long-standing historical animositiesand rising Sino-Japanese tensions over their respective places in the region's new order.¶It is not simply a territorial dispute amenable to resolution by legal adjudication or reasonable political accommodation. This much is clear from the recent Falklands Islands analogy by Japanese Prime Minister Shinzo Abe, who has put Beijing on notice that he is determined to defend the Senkakus against perceived Chinese encroachments, whatever the cost.¶¶ Many observers are sceptical that Abe will match his words with deeds, given the disappointments of his first term, his reputation for pragmatism and deeply entrenched pacifist sentiment in Japan. But public attitudes towards China are hardening, providing more political space for Abe to play the role of defender of the national interest. Moreover, a consensus is emerging among Japan's previously quiescent foreign policy and strategic community, that the Senkakus are critical strategic links in the island chain running from Japan to Indonesia that geographically constrains China's maritime ambitions, and they must not be allowed to fall into Chinese hands**.¶¶**Should China take control of the Senkakus, they could quickly garrison the islands as they have in the South China Sea, building heliports and radar installations which would allow them to gather unique intelligence on the activities of Japanese and American forces on nearby Okinawa and the Sakashima Islands. This would significantly weaken US and Japanese control of the western Pacifi**c**, complicate the defence of Taiwan and breach what China has long regarded as an enclosing maritime ``great wall'**'**.¶¶ These strategic anxieties are increasingly driving Japanese and US policy on the Senkakus, and the jockeying for naval pre-eminence in the East and South China Seas explains much about China's preparedness to assert its territorial claims extending as far south as Indonesia's Natuna Islands, thousands of kilometres from the Chinese mainland.¶¶ Japan's options are few. They include appeasement and confrontation. But each, for diametrically opposed reasons, would be high-risk choices. Appeasement would only encourage China to ratchet up its pressure on Japan to make further territorial concessions. Confrontation risks serious military conflict, which is in no one's interests, least of all Japan's.¶¶ Abe knows this and is likely to pursue a more calibrated, carrot and stick approach, combining elements of co-operation and deterrence. Militarily, the key elements of his strategy are already apparent, notably a willingness to boost defence spending, redeploy significant numbers of troops to the southern region of Japan, increase intelligence collection against China, and the Peoples Liberation Army in particular, and loosen the self-imposed restraints on the export of sensitive defence technologies.¶¶ Politically, Abe has toughened his language on China, sought and received reassurances from the Obama administration that the Senkakus fall within the terms of the US-Japan Security Agreement and, unusually in post-war Japan, appealed to Japanese patriotism. He has also reminded China of the enormous investment both countries have in the relationship and that his door remains open to dialogue.¶¶ This constitutes a more coherent and workable strategy which ought to give the equally new Chinese leadership pause for reflection, provided Abe sticks to his guns. The worry is that already inflamed Chinese nationalism, never far from the surface on matters Japan, could be deliberately fanned by a PLA intent on dominating China's eponymously named contiguous seas, making it difficult for China's leader, Xi Jinping, to take a more conciliatory approach.¶¶The unwillingness of the Chinese government to curb provocative public interventions by Chinese military representatives is not reassuring. Along with credible reports that the PLA is engaged in aggressive, widespread cyber hacking, this indicates that hawks in the Chinese military have aspirations to play a far more influential role in Chinese domestic and foreign policy than has been the case since the early years of the Chinese Peoples Republic. This is not good news for Sino-Japanese relations.¶¶ Abe has to be careful that in taking a firmer stance on the islands, he does not provide China's hawks with gratuitous opportunities for exploiting existing tensions. But he should also resist any demands by Japan's own hawks for the military to pre-emptively occupy the Senkakus and establish a garrison force there. This would almost certainly trigger a countervailing Chinese response and further complicate attempts totake the heat out ofwhat threatens to rival North Korea's nuclear weapons program as East Asia's number one security concern.

### Advantage 2 – Pakistan

#### Advantage Two is Pakistan—

#### Current drone policy makes instability in Pakistan inevitable and triggers a coup

Boyle 13 [Michael J., Assistant Professor of Political Science at La Salle University in Philadelphia, “The costs and consequences of drone warfare,” <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>, ALB]\*\*we reject any offensive language used in this evidence  
Pakistan¶ The escalation of drone strikes in Pakistan to its current tempo—one every few ¶ days—directly contradicts the long-term American strategic goal of boosting the ¶ capacity and legitimacy of the government in Islamabad. Drone attacks are more ¶ than just temporary incidents that erase all traces of an enemy. They have lasting ¶ political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about ¶ because drones provide a powerful signal to the population of a targeted state that ¶ the perpetrator considers the sovereignty of their government to be negligible.¶ The popular perception that a government is powerless to stop drone attacks on its ¶ territory can be crippling(SIC) to the incumbent regime, and can embolden its domestic ¶ rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its ¶ government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ¶ ‘continuing drone attacks on our country, which result in loss of precious lives ¶ or property, are counterproductive and difficult to explain by a democratically ¶ elected government. It is creating a credibility gap.’ Similarly, the Pakistani High ¶ Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or ¶ indirectly contributed to destabilizing or undermining the democratic government. ¶ Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t ¶ listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing ¶ perception that the Pakistani civilian government is unable to stop drone attacks is ¶ particularly dangerous in a context where 87 percent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched ¶ coups before, remains a popular force.¶ The political effects of this signal are powerful and lasting even when the ¶ reality of the relationship between the perpetrator and the targeted state is more ¶ complex. For example, the government of Pakistan has been ambivalent about ¶ drone strikes, condemning them in some cases but applauding their results in ¶ others. Much has been made of the extent to which the Pakistani government ¶ has offered its ‘tacit consent’ for the US drone strikes on its territory. The US ¶ has been willing to provide details on drone strikes after the fact, but has refrained ¶ from providing advance warning of an attack to the Pakistani government for fear ¶ that the information might leak. Pakistan has been operationally compliant with ¶ drone strikes and has not ordered its air force to shoot down drones in Pakistani ¶ airspace. Despite official denials, it has been revealed that the Pakistani government has permitted the US to launch drones from at least one of its own airbases.80¶ Whatever the complexity of its position and the source of its ambivalence over ¶ drone strikes, the political effects of allowing them to escalate to current levels ¶ are increasingly clear. The vast expansion of drone warfare under the Obama ¶ administration has placed enormous pressure on Pakistan for its complicity with the US, multiplied the enemies that its government faces and undermined parts of ¶ the social fabric of the country. By most measures, Pakistan is more divided and ¶ unstable after the Obama administration’s decision to ramp up the tempo and scale ¶ of drone attacks than it was during the Bush administration.

#### Drones strikes aren’t ending—Kerry’s statement was wrong

Mazzetti and Landler 13 [Mark and Mark, NYT, “Despite Administration Promises, Few Changes in Drone War,” <http://www.nytimes.com/2013/08/03/us/politics/drone-war-rages-on-even-as-administration-talks-about-ending-it.html?pagewanted=all&_r=0>, ALB]

¶ ¶ There were more drone strikes in Pakistan last month than any month since January. Three missile strikes were carried out in Yemen in the last week alone. And after Secretary of State John Kerry told Pakistanis on Thursday that the United States was winding down the drone wars there, officials back in Washington quickly contradicted him.¶ ¶ ¶ More than two months after President Obama signaled a sharp shift in America’s targeted-killing operations, there is little public evidence of change in a strategy that has come to define the administration’s approach to combating terrorism.¶ ¶ Most elements of the drone program remain in place, including a base in the southern desert of Saudi Arabia that the Central Intelligence Agency continues to use to carry out drone strikes in Yemen. In late May, administration officials said that the bulk of drone operations would shift to the Pentagon from the C.I.A.¶ ¶ But the C.I.A. continues to run America’s secret air war in Pakistan, where Mr. Kerry’s comments underscored the administration’s haphazard approach to discussing these issues publicly. During a television interview in Pakistan on Thursday, Mr. Kerry said the United States had a “timeline” to end drone strikes in that country’s western mountains, adding, “We hope it’s going to be very, very soon.”¶ ¶ But the Obama administration is expected to carry out drone strikes in Pakistan well into the future. Hours after Mr. Kerry’s interview, the State Department issued a statement saying there was no definite timetable to end the targeted killing program in Pakistan, and a department spokeswoman, Marie Harf, said, “In no way would we ever deprive ourselves of a tool to fight a threat if it arises.”¶ ¶ Micah Zenko, a fellow with the Council on Foreign Relations, who closely follows American drone operations, said Mr. Kerry seemed to have been out of sync with the rest of the Obama administration in talking about the drone program. “There’s nothing that indicates this administration is going to unilaterally end drone strikes in Pakistan,” Mr. Zenko said, “or Yemen for that matter.”

#### Pakistani instability and a coup goes nuclear

Pitt 9 - a New York Times and internationally bestselling author of two books: "War on Iraq: What Team Bush Doesn't Want You to Know" and "The Greatest Sedition Is Silence." (5/8/09, William, “Unstable Pakistan Threatens the World,” http://www.arabamericannews.com/news/index.php?mod=article&cat=commentary&article=2183)

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But a suicide bomber in Pakistan rammed a car packed with explosives into a jeep filled with troops today, killing five and wounding as many as 21, including several children who were waiting for a ride to school. Residents of the region where the attack took place are fleeing in terror as gunfire rings out around them, and government forces have been unable to quell the violence. Two regional government officials were beheaded by militants in retaliation for the killing of other militants by government forces. As familiar as this sounds, it did not take place where we have come to expect such terrible events. This, unfortunately, is a whole new ballgame. It is part of another conflict that is brewing, one which puts what is happening in Iraq and Afghanistan in deep shade, and which represents a grave and growing threat to us all.Pakistan is now trembling on the edge of violent chaos, and is doing so with nuclear weaponsin its hip pocket,right in the middle ofone ofthe most dangerous neighborhoods in the world.The situation in brief: Pakistan for years has been a nation in turmoil, run by a shaky government supported by a corrupted system, dominated by a blatantly criminal security service, and threatened by a large fundamentalist Islamic population with deep ties to the Taliban in Afghanistan. All this is piled atop an ongoing standoff with neighboring India that has been the center of political gravity in the region for more than half a century. The fact thatPakistan, andIndia, and Russia, and China all possess nuclear weaponsand share the same space means any ongoing or escalating violence over there hasthe real potential to crack open the very gates of Hellitself. Recently, the Taliban made a military push into the northwest Pakistani region around the Swat Valley. According to a recent Reuters report: The (Pakistani) army deployed troops in Swat in October 2007 and used artillery and gunship helicopters to reassert control. But insecurity mounted after a civilian government came to power last year and tried to reach a negotiated settlement. A peace accord fell apart in May 2008. After that, hundreds — including soldiers, militants and civilians — died in battles. Militants unleashed a reign of terror, killing and beheading politicians, singers, soldiers and opponents. They banned female education and destroyed nearly 200 girls' schools.About 1,200 people were killed since late 2007 and 250,000 to 500,000 fled, leaving the militants in virtual control. Pakistan offered on February 16 to introduce Islamic law in the Swat valley and neighboring areas in a bid to take the steam out of the insurgency. The militants announced an indefinite cease-fire after the army said it was halting operations in the region. President Asif Ali Zardari signed a regulation imposing sharia in the area last month. But the Taliban refused to give up their guns and pushed into Buner and another district adjacent to Swat, intent on spreading their rule. The United States, already embroiled in a war against Taliban forces in Afghanistan, must now face the possibility that Pakistan could collapse under the mounting threat of Taliban forces there. Military and diplomatic advisers to President Obama, uncertain how best to proceed, now face one of the great nightmare scenarios of our time. "Recent militant gains in Pakistan," reported The New York Times on Monday, "have so alarmed the White House that the national security adviser, Gen. James L. Jones, described the situation as 'one of the very most serious problems we face.'" "Security was deteriorating rapidly," reported The Washington Post on Monday, "particularly in the mountains along the Afghan border that harbor al-Qaeda and the Taliban, intelligence chiefs reported, and there were signs that those groups were working with indigenous extremists in Pakistan's populous Punjabi heartland. The Pakistani government was mired in political bickering. The army, still fixated on its historical adversary India, remained ill-equipped and unwilling to throw its full weight into the counterinsurgency fight. But despite the threat the intelligence conveyed, Obama has only limited options for dealing with it. Anti-American feeling in Pakistan is high, and a U.S. combat presence is prohibited. The United States is fighting Pakistan-based extremists by proxy, through an army over which it has little control, in alliance with a government in which it has little confidence." It is believedPakistan is currently in possession of between 60 and 100 nuclear weapons. Because Pakistan's stability is threatened by the wide swath of its population that shares ethnic, cultural and religious connections to the fundamentalist Islamic populace of Afghanistan, fears over what could happen to those nuclear weapons if the Pakistani government collapses are very real. "As the insurgency of the Taliban and Al Qaeda spreads in Pakistan," reported the Times last week, "senior American officials say they are increasingly concerned about new vulnerabilities for Pakistan's nuclear arsenal, including the potential for militants to snatch a weapon in transport or to insert sympathizers into laboratories or fuel-production facilities. In public, the administration has only hinted at those concerns, repeating the formulation that the Bush administration used: that it has faith in the Pakistani Army. But that cooperation, according to officials who would not speak for attribution because of the sensitivity surrounding the exchanges between Washington and Islamabad, has been sharply limited when the subject has turned to the vulnerabilities in the Pakistani nuclear infrastructure." "The prospect of turmoil in Pakistan sends shivers up the spinesof those U.S. officials charged with keeping tabs on foreign nuclear weapons," reported Time Magazine last month. "Pakistan is thought to possess about 100 — the U.S. isn't sure of the total, and may not know where all of them are. Still, if Pakistan collapses, the U.S. military is primed to enter the country and secure as many of those weapons as it can, according to U.S. officials. Pakistani officials insist their personnel safeguards are stringent, but a sleeper cell could cause big trouble, U.S. officials say." In other words, a shaky Pakistan spells trouble for everyone, especially if America loses the footrace to secure those weapons in the event of the worst-case scenario. If Pakistani militants ever succeed in toppling the government, several very dangerous events could happen at once. Nuclear-armedIndia couldbe galvanized into military actionof some kind,as couldnuclear-armedChina ornuclear-armedRussia. If the Pakistani government does fall, and all those Pakistani nukes are not immediately accounted for and secured,the specter (or reality) ofloose nukes falling into the hands of terrorist organizations could place the entire world on a collision course with unimaginable disaster.We have all been paying a great deal of attention to Iraq and Afghanistan, and rightly so. The developing situation in Pakistan, however, needs to be placed immediately on the front burner. The Obama administration appears to be gravely serious about addressing the situation. So should we all.

#### Drone strikes uniquely destroy relations—They’re the biggest reason for anti-American sentiment

Boyle 13 [Michael J., Assistant Professor of Political Science at La Salle University in Philadelphia, “The costs and consequences of drone warfare,” <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>, ALB]

Drone strikes have an invidious and subtle effect on the social fabric of the societies ¶ where they occur. Drones do not just affect their targets, but spread fear and suspicion throughout the society in unexpected ways. As Brian Glyn Williams has ¶ noted, in Pakistan drones are often described by local villagers as machays (wasps) ¶ for their stings or bangana (thunder) for their ability to strike without warning.114¶ While drones terrify their intended targets, innocent villagers are equally terrified of being in the wrong place at the wrong time when an attack occurs. Drones ¶ produce among the civilian population a ‘wave of terror’ which has been described ¶ by some mental health professionals as ‘anticipatory anxiety’.David Rohde, ¶ a journalist who was captured and held by the Taliban, has described the fear ¶ produced by drone strikes as the aircraft were heard whirring overhead for hours ¶ at a time and calls them a ‘potent, unnerving symbol of unchecked American ¶ power’.116 This fear leads ordinary civilians to refrain from helping those wounded ¶ in drone strikes in case they are targeted in a ‘double tap’ strike. Drones have ¶ inhibited normal economic and social activity, and even made parents reluctant ¶ to send their children to schools that might be accidentally targeted. The drones ¶ have also turned neighbours on neighbours and fuelled communal mistrust in a ¶ society where overlapping family, tribal and social ties are crucial. The targets of ¶ drone strikes are often pinpointed by paid informants who place small electronic ¶ targeting devices in the homes or vehicles of suspected terrorists.118 Yet there is no ¶ way to tell whether these chips are left with real terrorist operatives or with those ¶ against whom the informant has a personal grudge. Rumours of these chips have ¶ produced high levels of mistrust in the community as ‘neighbors suspect neighbors of spying for the US, Pakistani or Taliban intelligence or using drone strikes ¶ to settle feuds’. While the drones circling overhead spread fear throughout the ¶ population and disrupt normal life, the suspicion produced by these chips and ¶ other means of nominating targets have eroded the trust that underlies much of ¶ religious, economic and political life in these societies.¶ The use of drones also has a series of second-order political effects that must ¶ be weighed against advantages accrued through the killing of terrorist operatives. ¶ Drones can subject governments to high levels of political pressure that make ¶ compliance with US requests more costly. They can multiply the ranks of enemies ¶ in insurgencies and undermine the social fabric that allows many of these societies ¶ to function. Many of these consequences are systematically discounted in analyses ¶ of drones that focus exclusively on how many terrorists are killed relative to civilians. More generally, these costs illustrate a central inconsistency of American ¶ policy: that if the commitment to degrade or destroy terrorists is put into practice with drone strikes, it will damage the perceived competence and legitimacy of ¶ governments that the US is most dependent upon for counterterrorism cooperation. The long-term goal of building strong and legitimate governments that can ¶ police their territory and work as reliable partners with the United States is undermined by a drones-first policy that sidelines these governments or treats them as ¶ subservient accomplices to the brute exercise of American power.

#### US-Pakistan relations are key to resolve Kashmir—Prevents Indo-Pak war

Riedel 8 Bruce, senior fellow in the Saban Center for Middle East Policy at the Brookings Institution, (“Pakistan and Terror: The Eye of the Storm”, The annals of the American academy of political and social science, July, 2008, sage journals)

But this does not rule out an option that would involve a major effort to resolve the Kashmir problem on a more realistic basis. The basis for such an approach would be to complement the ongoing Indo-Pakistani bilateral dialogue. That dia- logue has already produced a series of confidence-building measures between the two countries, reopening transportation links, setting up hotlines between military commands, and holding periodic discussions at the foreign secretary level on all the issues that divide the two. Unfortunately, the dialogue has not seriously addressed the Kashmir issue because of the significant gulf between the two parties and India’s refusal to negotiate while still a target of terrorist attacks planned and organized in Pakistan. The United States has been reluctant to engage more actively in the Kashmir dispute in light of the Indian posture that outside intervention is unwarranted and that Kashmir is a purely bilateral issue. Faced with the likelihood of India’s rejection of outside intervention, American diplomacy has put the Kashmir prob- lem in the “too hard” category and left it to simmer. The results are all too pre- dictable. The Kashmir issue periodically boils over, and the United States and the international community have to step in to try to prevent a full-scale war. This was the case during the Kargil crisis in 1999, after the terrorist attack on the Indian parliament in 2001, and again in 2002 when India mobilized its army for war on the Pakistani border. A unique opportunity for quiet American diplomacy to help advance the Kashmir issue to reach a better, more stable solution may exist in 2009. The U.S.- India nuclear deal agreed to during President Bush’s July 2005 visit to South Asia should create a more stable and enduring basis for U.S.-Indian relations than at any time in history. The deal removes the central obstacle to closer strategic ties between Washington and New Delhi: the nuclear proliferation problem, which has held back the development of their relationship for two decades. In the new era of U.S.-Indian strategic partnership, Washington should be more prepared to press New Delhi to be more flexible on Kashmir. It is clearly in the American interest to try to defuse a lingering conflict that has generated global terrorism and repeatedly threatened to create a full-scale military con- frontation on the subcontinent. It is also in India’s interest to find a solution to a conflict that has gone on for too long. Since Kargil, India has been more open to an American role in Kashmir because it senses Washington is fundamentally in favor of a resolution on the basis of the status quo, which favors India. The United States currently has better relations with both India and Pakistan than at any time in the past several decades. The U.S. rapprochement with India, begun by President Clinton and advanced by President Bush, is now supported by an almost unique bipartisan consensus in the American foreign policy estab- lishment and the Congress. At the same time, U.S.-Pakistani relations are stronger now than at any time since the Reagan years, and the sanctions that poi- soned U.S.-Pakistani ties for decades have been removed by legislation sup- ported by both Republicans and Democrats. It is a unique moment. A Kashmir solution would have to be based around a formula for both making the line of control a permanent and normal international border (perhaps with some minor modifications) and creating a permeable frontier between the two parts of Kashmir so that the Kashmiri people could live more normal lives. A spe- cial condominium might be created to allow the two constituencies to work together on issues that are internal to Kashmir, such as transportation, the envi- ronment, sports, and tourism. It is unlikely that the two states will be able to reach such an agreement on their own given the history of mistrust that pervades both sides of the problem. A quiet American effort to promote a solution, led by the next U.S. president, is probably essential to any effort to move the parties toward an agreement. Resolution of the Kashmiri issue would go a long way to making Pakistan a more normal state and less preoccupied with India. It would also remove a major rationale for the army’s disproportionate role in Pakistani national security affairs, thus helping to restore genuine civilian democratic rule in the country. A resolution of the major outstanding issue between Islamabad and New Delhi would reduce the arms race between the two countries and the risk of nuclear conflict. And it would remove the need for Pakistan to find allies, such as the Taliban, LeT, and al Qaeda, to fight asymmetric warfare against India. Of course, it would not resolve all the tensions between the two neighbors or end the problem of the Taliban in Afghanistan. But more than anything else it would set the stage for a different era in the subcontinent and for more produc- tive interaction between the international community and Pakistan. The alternative is to let Kashmir simmer and avoid trying to find a means to advance the Indo-Pakistani dialogue. In the long run, this approach is virtually certain to lead to another crisis in the subcontinent. Sooner or later, the two countries will again find themselves on the precipice of war. In a worst-case sce- nario, a terrorist incident like the July 2006 metro bombings in Mumbai or the hijacking of IA 814 could spark an Indian military response against targets in Pakistan allegedly involved in the planning and orchestration of terrorism. And that could lead to nuclear war. The next president must adopt a more sophisticated approach to Pakistan and its terror nexus that goes beyond threats and sanctions, beyond commando raids and intelligence cooperation, beyond aid and aircraft sales. It is time to come to grips with what motivates Pakistan’s behavior and make peace.

#### Extinction

Korb 12 Senior Fellow Center for American Progress, (Lawrence- Assistant Secretary of Defense under Reagan, (Lawrence, March/April, “No first use: The way to contain nuclear war in South Asia” Bulletin of Atomic Scientists, Vol 68 No 2, p 34-42, SagePub)

In the twenty-first century, the Indian subcontinent has surpassed Europe as the most likely region for nuclear war. Over the past three decades, the Cold War giants—the United States and Russia—have reduced their nuclear arsenals by more than 70 percent (Cirincione, 2011). Meanwhile, India and Pakistan have begun the world’s second nuclear arms race. Since their partition in 1947, India and Pakistan have fought three major wars and remained on the brink of conflict for more than six decades. The South Asian neighbors carried out rival nuclear weapons tests in 1998 and are now estimated to possess at least 80 nuclear weapons each (Oswald, 2011). Pakistan has more than doubled the size of its arsenal in the past four years, likely as a means of countering India’s greater conventional strength (Korb and Rothman, 2011). As these countries develop more advanced nuclear capabilities, chances increase that even a relatively small skirmish could escalate into a nuclear conflict. For example, earlier this year, Pakistan announced it had tested a small nuclear warhead designed to be used against invading troops on Pakistani soil (The Economist, 2011). A nuclear war between India and Pakistan would be an absolute catastrophe. A Natural Resources Defense Council study found that even a limited nuclear exchange consisting of as few as 10 warheads could result in about three million casualties (Natural Resources Defense Council, 2002). Moreover, the effects of such a conflict would not be confined to South Asia: According to a recent article in Scientific American, a major regional nuclear conflict could spark a global “nuclear winter,” with worldwide implications for agriculture (Robock and Toon, 2010). Given the terrible effects of a nuclear exchange, much ink has been spilled articulating policies to prevent war, particularly a nuclear war, between India and Pakistan. However, little has been written about how the United States should respond if diplomacy fails—that is, if a nuclear war breaks out between India and Pakistan, how can the United States contain the conflict so it does not come to involve other nations with alliances or interests in the region and significantly larger nuclear arsenals? Foreign interests and the Indian subcontinent On the surface, preventing foreign intervention in a nuclear conflict appears to be a simple task. Asking how to keep countries from jumping into a nuclear war seems like asking how people can be kept from running into burning buildings. It’s not hard; they have plenty of reasons to steer clear. But the web of alliances, rivalries, and power politics on the Indian subcontinent means that foreign intervention in any major conflict between India and Pakistan—even a nuclear one—cannot be discounted. China, in particular, has close ties to Islamabad and views Pakistan as integral to its strategy of containing Indian influence on the subcontinent. Beijing—which has provided military and, allegedly, nuclear aid to Islamabad—would almost certainly provide some sort of support to Pakistan, be it covert or open, in the event of a conflict with India. Such assistance could enflame the smoldering rivalry between Beijing and New Delhi.1 China is not the only nation with strong strategic interests in the region. As the United States attempts to extricate itself from Afghanistan without further destabilizing Central Asia, it will need the support of both India and Pakistan, who have dramatically different visions for the future of Afghanistan. The United States has long had an on-and-off relationship with Pakistan and now needs Islamabad’s support in cracking down on the region’s terrorist organizations. Pakistan, on the other hand, worries that when the NATO mission in Afghanistan ends, the Indians and Afghanis will join forces to encircle it. The United States is also seeking to establish a strategic partnership with India, cemented in part with a civilian nuclear cooperation agreement signed by the Bush administration. Finally, Russia has had a long-term relationship with India and is concerned about increasing Chinese influence on the subcontinent. The outbreak of hostilities between India and Pakistan is more than a remote possibility. The contentious issue of Kashmir presents one road to conflict. This territorial dispute has already prompted the two South Asian powers to go to war twice, and India and Pakistan remain far from resolving their differences on the disputed region. An attack by a terrorist organization with ties to Islamabad presents a second and far more frightening path to conflict. In 2008, the terrorist group Lakshar-e-Taiba carried out a brutal attack on Mumbai, India’s largest city, killing more than 160 people and bringing the city to a standstill for two days. A gunman captured in the attack said he trained in Pakistan for more than a year (Perlez and Sengupta, 2008). Lakshar-e-Taiba is widely believed to have ties to elements of the Pakistani government’s intelligence agency, and it operates and recruits openly in Pakistan (Goldberg and Ambinder, 2011). Further, Lakshar-e-Taiba is hardly the only militant organization with a hatred of India and connections to the Pakistani military or its intelligence service. While India showed tremendous restraint in responding to the Mumbai attacks, there are no guarantees that it would choose to restrain itself after another such incident.

### Solvency

#### Authority of District Courts judges are key—Most effective and speedy process

Rushforth 12 [Elinor June, Fall, Arizona Journal of International and Comparative Law, There's An App For That: Implications Of Armed Drone Attacks And Personality Strikes By The United States Against Non-Citizens, 2004-2012, .D. candidate, University of Arizona, James E. Rogers College of Law, Class of 2013]

Regardless of the type of judicial mechanism used to ensure the lawfulness of a targeted killing, the Chief Justice of the U.S. Supreme Court should designate district court judges from every region where CIA drone operators are stationed, with several in the District of Columbia. These judges will preside over courts with jurisdiction to "hear applications and grant orders," whose job would be approving or rejecting targeted killing warrants. n202 The hearings will be held expeditiously and records will be kept according to security measures "established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence." n203¶ The application for an order approving a targeted killing will be submitted by a designated CIA official, or DOJ official in conjunction with the CIA investigative team, "in writing upon oath or affirmation" after review and [\*654] approval by the supervisor of the drone program at a given outpost. n204 This application will include all necessary and pertinent information needed for the judge's decision. n205 This information shall include who the target is (if known), what action or information led to this targeting, any informant information, imminent threat analysis, known links to terrorists or terrorist organization, and a distinction and proportionality analysis (if available).¶ These warrants could be made before locating a target. Once a suitable application has been assembled, the designated official may submit the application and receive a warrant that would be good for a specific period. If the target is not found within that period, a renewal request may be made by adding an addendum to the above described application with any new and pertinent information. n206 An expedited process would also apply to newly acquired targets by which the CIA official could make an emergency application. Further, an authorization made by the President, through the Attorney General, could bypass this application process in appropriate exigent circumstances. There would also be a semi-annual report to Congress from CIA officials on targeted killing application procedures. An act creating this court would also address sanctions and liabilities, likely monetary fines or professional sanctions, of CIA and DOJ officials who do not comply with the procedures. Although any judicial action that encroaches on the Executive's autonomy in the national security realm will likely face pushback, judicial review is an important check on the Executive's power. To assuage the separation of powers issues that could arise in the creation of this court on targeted killing and drone strike operations, the legislative and judicial branches will have to ensure they are not unconstitutionally restricting the President's authority.

#### Strict Scrutiny is key—Requires evidence based verification and definitional restraint which prevents civilian casualties and reestablish credibility

Guiora 12 [Amos, Professor of Law, SJ Quinney College of Law, University of Utah, author of numerous books dealing with military law and national security including Legitimate Target: A Criteria-Based Approach to Targeted Killing, “Drone Policy: A Proposal Moving Forward,” <http://jurist.org/forum/2013/03/amos-guiora-drone-policy.php>, ALB]

Targeted killing sits at the intersection of law, morality, strategy and policy. I am a proponent of targeted killing because it enables the state to protect its innocent civilian population. However, my support for targeted killing is conditioned on the process being subject to rigorous standards, criteria and guidelines.¶ My advocacy of both targeted killing and criteria-based decision-making rests largely on 20 years of experience with a "seat at the table" of operational counterterrorism. The dangers inherent in the use of state power are enormous. On the opposite side of the equation, however, is the terrible cost of terrorism; after all, terrorists deliberately target innocent civilians.¶ However, broad definitions of imminence combined with new technological capabilities drastically affect the implementation of targeted killing ¶ predicated on legal and moral principles. The recently released US Department of Justice (DOJ) "white paper" regarding the Obama administration's drone policy defines "imminence" so expansively there need not be clear evidence of a specific attack to justify the killing of an individual, including US citizens. This extraordinary broadness creates a targeted killing paradigm akin to interrogation excesses under the Bush administration that followed in the wake of the Bybee Memo.¶ The solution to this search for an actionable guideline is adoption of a strict scrutiny standard which would enable operational engagement of a non-state actor predicated on intelligence information subject to admissibility standards akin to a court of law. Such intelligence would have to be reliable, material and probative.¶ To re-phrase, this strict scrutiny test seeks to strike a balance by enabling the state to act sooner but subjecting that action to significant restrictions. This paradigm would be predicated on narrow definitions of imminence and legitimate targets. Rather than enabling the consequences of the DOJ memo, the strict scrutiny test would ensure implementation of person-specific operational counterterrorism. That is the essence of targeted killing conducted in accordance with the rule of law and morality in armed conflict.¶ This proposal is predicated on the understanding that, while nation states need to engage in operational counterterrorism, mistakes regarding the correct interpretation and analysis of intelligence information can lead to tragic mistakes. Adopting admissibility standards akin to criminal law minimizes operational error.¶ Rather than relying on the executive branch to make decisions in a "closed world" devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information's admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur.¶ The logistics of this proposal are far less daunting than might seem — the court before which the executive would submit the evidence is the US Foreign Intelligence Surveillance Court (FISA Court), established by the Foreign Intelligence Surveillance Act. Presently, FISA Court judges weigh the reliability of intelligence information in determining whether to grant government ex parte requests for wire-tapping warrants. Under this proposal, judicial approval is necessary prior to undertaking a counterterrorism operation predicated solely on intelligence information. The standard the court would adopt in determining the information's reliability is the same applied in the traditional criminal law paradigm.¶ The court would cross-examine the representative of the executive branch and subsequently rule as to the information's admissibility. While some may suggest that the FISA Court is largely an exercise in "rubber-stamping," the importance of this proposal is in requiring the government to present the available information to an independent judiciary as a precursor to engaging in operational counterterrorism.¶ While this proposal explicitly calls for changing the nature of the relationship between the executive and the judicial branches of the government, it would serve to minimize collateral damage in drone attacks predicated on narrow definitions of legitimate target.¶ This proposal does not limit the state's fundamental right to self-defense. Rather, it creates a process seeking to objectify counterterrorism by seeking to establish standards for determining the reliability of intelligence information that is the backbone of targeted killing decision-making.¶ The practical impact? A drone policy predicated on the rule of law and morality rather than the deeply troubling paradigm established by the Obama administration in the DOJ white paper.

#### Zero checks on drone use now—The Plan’s rule-oriented process is key

Crandall 12 [Carla, Law Clerk to the Honorable Laura Denvir Stith, Supreme Court of Missouri, J.D., “Ready…Fire…Aim! A Case for Applying American Due Process Principles Before Engaging in Drone Strikes,” April, Florida Journal of International Law, pg. lexis]

In November 2002, a drone operated by the Central Intelligence Agency (CIA) launched a Hellfire missile at an automobile carrying suspected al-Qaeda members in Yemen. [n1](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n1) The airstrike, one of the first known operations of its type, [n2](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n2) allegedly resulted in six deaths, including those of a prominent al-Qaeda leader and a U.S. citizen. [n3](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n3) Since that assault, the use of drones by U.S. personnel engaged in the war on terror has increased dramatically, both in number and scope. [n4](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n4) Most starkly, as evidenced by the September 30, 2011 strike that killed U.S.-born Anwar al-Awlaki, government officials have even authorized drone operators to target American citizens believed to be engaged in the war on terror. [n5](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n5) Despite the expanded use of drones, however, the legitimacy of these attacks remains unclear. Most commentators who have addressed the legitimacy of more general targeted killings have examined the issue within the framework of either international humanitarian law (IHL) or international human rights law (IHRL). [n6](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n6) Those limited few who have [\*57] analyzed the subject through the lens of American due process have limited their scrutiny to the absence of post-deprivation rights. [n7](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n7) They suggest, for instance, that the United States should implement some sort of Bivens-type action as a remedy for the survivors of erroneous drone strikes. [n8](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n8) As this Article explains, however, none of these approaches yield wholly satisfactory answers as to which framework should govern the use of drones within the context of the war on terror. And though the idea that American due process principles ought to be applied ex post represents a significant contribution to the debate, it too ultimately falls flat. Indeed, such an approach unduly narrows the obligation of U.S. officials to the standard of readying, firing, and then aiming- requiring them to perform a detailed review of the strikes only after the fact. Instead, this Article argues that the United States ought to be held to a higher, ex ante standard-that of "aiming" before firing-and posits that such a standard is practically attainable. In doing so, the Article proceeds as follows. Part II describes the capabilities and current employment of drones and explains why resolving the legitimacy of their use is so critical. Specifically, it highlights that, despite the unsettled nature of the law in this area, targeted killings by drone strikes have increased exponentially in recent years-in some instances against arguably questionable targets. Part III examines current attempts to address the legitimacy of drone assaults and explains why they fail to adequately govern the use of these weapons. While this Part explores the applicability of IHRL and IHL, it does not undertake to resolve the debate as to which regime does or ought to apply to these operations. To the contrary, it argues that limitations within each framework have prevented consensus from forming around the applicability of either. Accordingly, U.S. officials [\*58] must arguably look to other sources to find guiding principles to legitimize targeted killings via drones. Though it is admittedly not entirely clear whether constitutional guarantees apply in the foreign locales where these strikes occur-or to the foreign nationals who are often their target-this Part proposes that American due process principles nevertheless ought to be invoked before such strikes occur, because failing to do so allows the executive to act with impunity in a legal void. Part IV argues that, in Hamdi v. Rumsfeld [n9](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n9) and Boumediene v. Bush, [n10](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n10) the Supreme Court signaled the process that may be due before drones are used to eliminate known terrorist targets. In extending the Hamdi and Boumediene analysis to targeted killings by drones, this Part also begins the inquiry into the procedural protections that due process may demand before U.S. officials engage in such actions. Part V concludes. II. Background & Context As used here, targeted killing is defined as the "extra-judicial, premeditated killing by a state of a specifically identified person not in its custody." [n11](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n11) Though some have argued that targeted killing so defined amounts to illegal assassination, [n12](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n12) others have instead suggested that "assassination generally is regarded as an act of murder for political reasons." [n13](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n13) Given that targeted killings via drones do not, to this point, appear to have been undertaken for political reasons, the author accepts, for present purposes, that these attacks "can be a legally and morally justifiable means of protecting the American people." [n14](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n14) The inquiry here is what procedures, if any, are necessary before the commencement of a drone strike to ensure that it is indeed legitimate. [n15](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n15) [\*59] Unfortunately, neither U.S. law nor U.S. policy has kept pace with evolving technological advances related to warfare, or with the changing operational realities presented specifically by the war on terror. This Part discusses why addressing this failing-at least as it pertains to drones-is of such critical importance. In particular, it highlights that the use of drones has expanded exponentially during the past two decades. There are two major explanations for this momentous growth. First, advances in technology have increased drone capabilities and, therefore, the contribution they make to various operational missions. As importantly, the asymmetrical nature of the war on terror [n16](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n16) has factored significantly in the employment of drones and made them a critical tool in the execution of military operations related to the war. A. The Development and Capabilities of Drones Today's drones were developed in the early 1990s, and as their value became more evident, their deployment by the CIA and U.S. military mushroomed. [n17](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n17) From 2000 to 2006, for instance, "the Department of Defense's inventory of unmanned aircraft grew from fewer than 50 to over 3,000." [n18](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n18) Originally designed to provide persistent surveillance of targets, drones offer a strategic advantage over conventional military aircraft because they can "hover above a target for up to forty hours before" refueling. [n19](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n19) They do this without an onboard pilot, [n20](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n20) so even when malfunctions or anti-aircraft weapons cause drones to crash, U.S. military casualties are limited. [n21](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n21) This feature has become increasingly important to U.S. military strategists and policymakers as public support for overseas troop deployments has waned. [n22](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n22) With "pilotless" weapons [\*60] systems like drones, operational missions can be carried out without such deployments. Beyond this, as technological innovations emerged, new capabilities were incorporated into drone platforms, making them more potent tools in military operations. Most significantly, though they were originally designed solely for reconnaissance purposes, drones became a self-contained weapons system when their platforms were reconfigured to support armament with laser-guided Hellfire missiles. [n23](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n23) This engineering development was accompanied by commensurate advance-ments in the onboard optics systems that facilitated better target identification. [n24](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n24) In the meantime, drones became more lethal given increases in both the speed and altitude at which they were capable of operating. [n25](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n25) Finally, the effectiveness of drones also increased as stealth technology emerged to make attacks more clandestine. [n26](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n26) B. The Use of Drones During the War on Terror As important as these developments were to the burgeoning of drones, it was not until the U.S. government had a sustained requirement for their deployment that their full force became evident. That requirement came after the attacks of September 11th with the commencement of the global war on terror. Since the very first night of the U.S. invasion in Afghanistan, [n27](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n27)drones have been used for a wide array of terrorism-related missions. For example, though their primary mission has remained reconnaissance, they have also been used for battle-damage assessments, relaying target information to on-ground operators, and spotting hazards to U.S. forces like roadside improvised [\*61] explosive devices. [n28](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n28) The most contentious aspect of drone operations, however, has been their role in targeted killings. 1. Killing via Drone News articles are littered with reports of drone strikes against alleged terrorists around the globe-from Afghanistan and Iraq, to Yemen and Pakistan. [n29](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n29) Though the classified nature of the drone program makes precise estimates difficult, one study indicates that in Pakistan alone, drones operated by the United States killed over one-thousand people between 2006 and 2009.[n30](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n30) Among these were numerous senior al-Qaeda leaders, and other high-value targets. In fact, "[c]ounterterrorism officials credit drones with having killed more than a dozen senior Al Qaeda leaders and their allies in the past year, eliminating more than half of the C.I.A.'s twenty most wanted 'high value' targets." [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n31) Drones have played such a significant part in the war on terror largely because conventional military force has proven ineffective at combating the asymmetrical threats posed by small pockets of al-Qaeda terrorists. [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n32) Moreover, given that the war's battlefields have often been located in urban environments, using drones has arguably limited collateral damage that might otherwise have occurred with more conventional weapons systems. [n33](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n33) Further, at least from the U.S. government's perspective, the results have been remarkable. During the early stages of the war, for example, General Tommy Franks, who was then commanding all U.S. troops in the Middle East, stated that drones [\*62] were his "most capable sensor[s] in hunting down and killing Al Qaeda and Taliban leadership and [that they proved] absolutely critical to [the U.S.] fight." [n34](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n34) Moreover, as the lethality of drones became more evident to insurgents, their utility increased simply because strikes began to "serve as a deterrent to potential combatants and sow paranoia and distrust among terrorists groups." [n35](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n35) Even those militants who remained true to their cause were forced to "operate far more cautiously, which divert[ed] their energy from planning new attacks." [n36](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n36) As apparently effective as these drone attacks have been, though, some commentators argue that in light of the collateral damage they cause, their use actually foments the terrorist insurgency. "[E]very one of these dead noncombatants represents an alienated family, a new desire for revenge, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased." [n37](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n37) Indeed, after a particularly high barrage of drone assaults in early 2009, one senior Pakistani Taliban leader specifically vowed to carry out suicide attacks against security forces until the strikes ceased. [n38](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n38) This response is indicative of the attitude that "[w]hile violent extremists may be unpopular, for a frightened population they seem less ominous than a faceless enemy that wages war from afar and often kills more civilians than militants." [n39](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n39) And though some may have believed the Obama Administration would stop both the literal and figurative bleeding carried out under the Bush Administration, drone strikes during the Obama presidency have only increased. [n40](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n40) "During his first nine and a [\*63] half months in office, [Barak Obama] authorized as many C.I.A. aerial attacks in Pakistan as George W. Bush did in his final three years in office." [n41](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n41) 2. The Hunted All of this raises the question of who precisely is being targeted by these drone strikes. Most operational details on this front are veiled in secrecy, preventing an entirely comprehensive understanding of the drone program. [n42](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n42) Nevertheless, given classified leaks and certain public disclosures, the program's broad contours are clear enough to raise concern. In 2002, for example, the New York Times reported that the U.S. government had created a secret list of terrorist leaders dubbed high-value targets. [n43](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n43) With the creation of the list came authority for the CIA to kill these targets should capture be impractical and if collateral civilian casualties could be minimized. [n44](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n44) Authority for such targeted killings apparently rested on law of war principles; namely, that the listed persons were enemy combatants, and thus legitimate targets. [n45](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n45) [\*64] Initially, this high-value target list evidently contained only "the worst of the worst" terrorists. [n46](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n46) The Yemeni drone strike mentioned at the outset, for instance, was allegedly carried out against a listed senior al-Qaeda leader who had directed the group's October 2000 attack against the U.S.S. Cole, a U.S. naval warship that had been refueling in Yemen's Gulf of Aden. [n47](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n47)Other notorious figures on the original list were Osama bin Laden and his deputy Ayman al- Zawahiri. [n48](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n48) Significantly, however, though the individuals on the initial list were perhaps the most incorrigible terrorists, the target selection was evidently not intended to remain static. While "[t]he precise criteria for adding someone to the list [were] unclear," anonymous government sources have indicated that "the evidence against each person [had to] be clear and convincing" before his or her name appeared. [n49](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n49) However rigorous the target selection process may have been in the beginning, it appears to have quickly devolved in ways that lead one to question the legitimacy of attacking listed persons. In August 2009, for example, a Senate Foreign Relations Committee report revealed principles for listing individuals on a kill-list called the Joint Integrated Prioritized Target List (JIPTL). [n50](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n50) The report noted that the "standards for getting on the list require two verifiable human sources and substantial additional evidence." [n51](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n51) Although this might sound robust, it led to a significant expansion of listed high-value targets. [n52](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n52) In fact, the report acknowledged that the JIPTL, which originally contained only about two dozen names, [n53](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n53) had over three-hundred and fifty targets by August 2009. [n54](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n54) Philip Alston, a former U.N. Special Rapporteur, explains that this is evidence of a type of mission-creep seen in other terrorism-related programs. [n55](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n55) It is a lot like the torture issue. You start by saying we will just go after the handful of 9/11 masterminds. But, once you have put the [\*65] regimen of waterboarding and other techniques in place, you use it much more indiscriminately. It becomes standard operating procedure. It becomes all too easy. Planners start saying, "Let's use drones in a broader context." Once you use targeting less stringently, it can become indiscriminate. [n56](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n56) Even as the list expands, multiple sources have indicated that informants with targeting information have been "notoriously unreliable." [n57](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n57) A former CIA officer noted, for example, that sources often "say an enemy of theirs is Al Qaeda because they just want to get rid of somebody. Or they [make information] up because they want[] to prove they [are] valuable, so that they [can] make money." [n58](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n58) Mistakes in discerning an informant's credibility are fatal; once an individual is placed on the JIPTL, "[t]he military places no restrictions on the use of force" against him or her. [n59](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.715167.991905467&target=results_DocumentContent&returnToKey=20_T17935585916&parent=docview&rand=1376007144291&reloadEntirePage=true" \l "n59)

## 2AC

### Pakistan

#### No chance of strike reduction---Influential opposition

TOI 2/7 (Times of India, US lawmaker against stopping drone strikes in Pakistan, http://timesofindia.indiatimes.com/world/pakistan/US-lawmaker-against-stopping-drone-strikes-in-Pakistan/articleshow/29985359.cms)

WASHINGTON: Asserting that al-Qaida leaders are still active, an influential US lawmaker has expressed his opposition to the Obama administration's reported move to curtail or minimise drone strikes inside Pakistan.¶ "At this point, I would not be prepared to vote for stop them (drone strikes) in Pakistan, but I am open to arguments," Congressman Adam Smith, Ranking member of powerful House Armed Services Committee, said in a meeting with the Defence Writers Group on Thursday.¶ The influential Democratic Congressman was responding to questions about the reported move of the Obama administration to curtail and finally stop drone strikes against high level terrorists inside Pakistan.¶ "There are still senior al-Qaida leaders in Pakistan and drone strike is the best way to go after them. It has been successful to this point in stopping them from plotting and planning attacks," Smith said.

#### Strikes still happening – no agreements were made

DeYoung and Miller 2-4 (“U.S. said to curtail drone strikes in Pakistan as officials there seek peace talks with Taliban”, By [Karen DeYoung](http://www.washingtonpost.com/karen-deyoung/2011/03/02/AB56xmP_page.html) and [Greg Miller](http://www.washingtonpost.com/greg-miller/2011/03/02/ABDOymP_page.html), Published: February 4)

 “That’s what they asked for, and we didn’t tell them no,” one U.S. official said. The administration indicated that it will still carry out strikes against senior al-Qaeda targets, if they become available, and move to thwart any direct, imminent threat to U.S. persons. Concern about Pakistani political sensitivities provides one explanation for the absence of strikes since December, the longest pause in the CIA’s drone campaign since a six-week lull in 2011, after [an errant U.S. air assault](http://www.washingtonpost.com/world/asia_pacific/nato-airstrike-strains-us-pakistan-relations/2011/11/27/gIQA69z32N_story.html) killed 24 Pakistani soldiers at a border post, triggering a diplomatic crisis. The current pause follows a November strike that killed Pakistani Taliban leader [Hakimullah Mehsud](http://www.washingtonpost.com/world/asia_pacific/pakistani-official-accuses-us-of-sabotage-as-drone-targets-taliban-leaders-in-northwest/2013/11/01/1463d0c2-431d-11e3-b028-de922d7a3f47_story.html) just days before an initial attempt at peace talks was scheduled to begin. Prime Minister Nawaz Sharif’s government accused the United States of trying to sabotage the talks, and the Taliban canceled the meeting. Since then, the Obama administration has worked to improve relations with Sharif, who took office last June in [the first democratic transfer of power](http://www.washingtonpost.com/world/asia_pacific/nawaz-sharif-formally-elected-prime-minister-of-pakistan/2013/06/05/2d1a1fee-cdd0-11e2-8f6b-67f40e176f03_story.html) in Pakistani history. Administration officials have praised his efforts to address serious structural problems in Pakistan and to promote peace in the region. A senior administration official, in response to queries, denied that any informal agreement had been reached, saying that “the issue of whether to negotiate with the Pakistani Taliban is entirely an internal matter for Pakistan.”

### T – Authority

#### 2. Counter interp—War powers authority is authority over national defense

Manget 91(Fred, Assistant General Counsel with the CIA, Presidential Powers and Foreign Intelligence Operations, International Journal of Intelligence and CounterIntelligence, 5:2, 131-153, DOI: 10.1080/08850609108435176)

5. National Defense Power¶ The president's war powers authority is actually a national defense power that¶ exists at all times, whether or not there is a war declared by Congress, armed¶ conflict, or any hostilities or fighting at all. In a recent case, the Supreme Court¶ upheld the revocation of the passport of a former CIA employee (Philip Agee)¶ and rejected his contention that certain statements of executive branch policy¶ were entitled to diminished weight because they concerned the powers of the¶ Executive in wartime, stating, "History eloquently attests that grave problems of¶ national security and foreign policy are by no means limited to times of formally¶ declared war."43 Another court has said that the war power is not only confined¶ to actual engagements on fields of battle but embraces every aspect of national¶ defense and comprehends everything required to wage war successfully.44 A¶ third court stated, "It is — and must — be true that the Executive should be¶ accorded wide and normally unassailable discretion with respect to the conduct¶ of the national defense and the prosecution of national objectives through¶ military means."45¶ Thus, the executive branch's constitutional war powers authority does not¶ spring into existence only when Congress declares war, nor is it dependent on¶ there being hostilities. It empowers the president to prepare for war as well as¶ wage it, in the broadest sense. It operates at all times.

### K – Legalism

**Perm – Do both, but don’t reject the aff**

Perm other instances

#### Legal restraints work – exception theory is self-serving and wrong

William E. Scheuerman 06, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices in order then to argue against legal or juridical solutions to them. The claim also suffers from a certain vagueness and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, legal devices have undoubtedly played a positive role in taming or at least minimizing the potential dangers of harsh political antagonisms. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, it is by no means self-evident that trying to give coherent legal form to a transitional political and social moment is always doomed to fail. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, the general trend towards extending basic protections to non-state actors is plausibly interpreted in a more positive – and by no means incoherent – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet one possible resolution of the dilemma he describes would be to figure how to reform the process whereby rules of war are adapted to novel changes in military affairs in order to minimize the danger of anachronistic or out-of-date law. Instead, Schmitt simply employs the dilemma of legal obsolescence as a battering ram against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

#### Ext 1st

#### Legal reforms restrain the cycle of violence and prevent error replication

Colm O’Cinneide 08, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### Conditionality is a voter-

#### Strat skew- 2AC can’t make all its best arguments, decreases in-depth debate and incentive to research specific strategies

#### Skills- Isn’t real world, you could never advance multiple contradictory arguments in policymaking- It’s the biggest impact- only portable benefit

#### Dispo solves your offense- causes us to examine argument interaction and preserves neg flex

#### Alt vague – voter – makes em a moving target kills AFF ground against the alt

### Politics DA

#### CIR won’t pass – multiple warrants – and PC can’t solve it

Pergram and Emanuel 2/6/2014 (Chad Pergram and Mike Emanuel, Fox News, Boehner hits brakes on immigration overhaul, http://www.foxnews.com/politics/2014/02/06/boehner-hits-brakes-on-immigration-overhaul/)

House Speaker John Boehner hit the brakes on immigration legislation on Thursday, saying it will be "difficult" to move any bill in the current climate -- comments that signal a rough road ahead for one of President Obama's top 2014 priorities. ¶ Obama had urged Congress to pass immigration reform during his State of the Union address last week. A glimmer of common ground appeared days later when, during the House Republican retreat, GOP leaders issued guidelines for what they would accept in a comprehensive immigration overhaul. The guidelines included a path to legal status for some illegal immigrants. ¶ But Boehner, under pressure from conservative rank-and-file members to slow things down, said Thursday that lawmakers remain concerned about the administration's willingness to enforce immigration law. ¶ "There's widespread doubt about whether this administration can be trusted to enforce our laws, and it's going to be difficult to move any immigration legislation until that changes," Boehner said. ¶ The speaker said he'd continue to look for a way forward. ¶ "I have made clear for 15 months the need for the Congress and the administration to work together on the issue of immigration reform. It needs to get done. I'm going to continue to talk to my members about how to move forward but the president is going to have to do his part as well," he said. ¶ Though Boehner did not go so far in his remarks, senior Republican sources told Fox News that Boehner is effectively putting up a stop sign on immigration legislation. ¶ "Tap the brakes on immigration reform," one senior aide said. "Just don't say dead." ¶ Another said Boehner doesn't feel there is any way he can move a bill when significant "trust" issues remain between GOP lawmakers and the president. ¶ The remarks are a shift from the tone of the House GOP document released last week, which stressed that any immigration bill must strengthen security and enforcement, but opened the door to allowing some illegal immigrants to achieve legal status. Though many Democrats ultimately want illegal immigrants to get a path to citizenship, Obama and others indicated they'd be willing to negotiate. ¶ Boehner's comments now throw into doubt whether the White House can convince House Republicans to pursue a bill this year. ¶ The White House, though, made clear that it will continue to push Congress to act. ¶ "We remain optimistic about the prospects for comprehensive immigration reform in 2014," White House Press Secretary Jay Carney said Thursday.

#### Won’t pass – GOP distrusts Obama.

Cassata 2/6/2914 (Donna, Associated Press, Speaker: Immigration Overhaul Tough to Pass, http://abcnews.go.com/Politics/wireStory/speaker-immigration-measure-tough-pass-22393562)

Speaker John Boehner on Thursday all but ruled out passage of immigration legislation before this fall's elections, saying it would be difficult for the Republican-led House to act on the issue that President Barack Obama has made a top domestic priority.¶ In his most pessimistic comments, Boehner blamed the stalemate on widespread skepticism that Obama would properly enforce any immigration reforms that Congress approved. The GOP leader didn't mention that his own members have balked at acting on the contentious issue, which could enrage core conservative voters in the midterm election year.¶ "The American people, including many of our members, don't trust that the reform we're talking about will be implemented as it was intended to be," Boehner told reporters at his weekly news conference. "The president seems to change the health care law on a whim, whenever he likes. Now, he is running around the country telling everyone he's going to keep acting on his own."¶ Just last week, Boehner and other House Republican leaders had unveiled broad principles for immigration changes, including legal status for the estimated 11 million immigrants living here illegally, tougher border security and a shot at citizenship for children brought to the country illegally.¶ National Republicans see the failure to act on immigration as a political drag on the party after 2012 presidential nominee Mitt Romney captured just 27 percent of the Hispanic vote, and they are pressing for action to moderate the party's image. The principles endorsed last week were seen as a congressional jump-start for an issue that had been stalled since Senate passage of a comprehensive, bipartisan bill last June.¶ But conservatives rebuffed their leaders and questioned the wisdom of acting this year, equating legal status with amnesty and resisting giving Obama a long-sought legislative victory. Republicans also worry about primary challenges from the right and fear that new Hispanic citizens will add to the Democrats' voter rolls.¶ Control of the Senate, Republicans say, is within reach, giving them hope for greater leverage in negotiations on immigration in 2015. But the year leading up to the presidential election could be a tough one for making progress since Republican candidates tend to move right to shore up support ahead of the primaries.¶ The latest unraveling on immigration came quickly.¶ Rep. Paul Ryan, R-Wis., who had advocated for action on immigration within his caucus, said this past weekend that passage of a bill was unlikely this year and cited distrust of Obama. Senate Minority Leader Mitch McConnell, R-Ky., who faces a primary challenge, said Tuesday that differences between the Senate and House were an "irresolvable conflict."

**CIR creates a backlog – impossible to solve**

David **North 10**, former Assistant to the U.S. Secretary of Labor and Center for Immigration Studies Fellow, April 7, 2010, “Would Legalization Backlogs Delay Other USCIS Applications? Probably,” Center for Immigration Studies, http://cis.org/north/legalization-backlogs

An interesting question has arisen as a result of a congressional hearing: would a massive legalization program, as many advocates want, slow the processing of applications filed routinely by citizens and legal aliens wanting immigration benefits? The numbers are daunting. U.S. Citizenship and Immigration Services (USCIS) currently faces six million applications a year according to one news story. The estimates of the number of illegal aliens in the nation runs to 11 or 12 million. Could USCIS handle both these multi-million caseloads with its current paper-based systems? There are many complaints that the backlogs are currently too long on the normal collection of six million cases a year. The government's expert on such things, Frank W. Deffer, Assistant Inspector General for Information Technology in the Department of Homeland Security, told a congressional committee on March 23: "adding 12 million more people to the system would be the **mother of all backlogs**. Clearly to us the systems **could not handle it** now."\

#### No link – courts are isolated

Whittington 05 Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Restricting the drone program has bipartisan support- prefer recent evidence on this question

NYT 7/26/2013 (Spy Agencies Under Heaviest Scrutiny Since Abuse Scandal of the '70s, lexis)

The report accuses the C.I.A. of misleading Congress, the Justice Department and even the administration of President George W. Bush about the interrogation program, which is now defunct. Some agency officials and Senate Republicans consider the report to be ill-informed second-guessing, but it will almost certainly come as another blow to the credibility of the spy agencies.¶ Until this year, the C.I.A.'s use of drones to kill terrorism suspects in Pakistan and Yemen -- stepped up in part because detaining and questioning such suspects had proven so problematic -- had generated little public controversy. That changed early this year, as Congress debated the wisdom of targeted killing for the first time, notably in a 13-hour filibuster by Senator Rand Paul, Republican of Kentucky, who challenged the drone killings of Americans overseas.¶ At a time of partisan gridlock in Congress, the drone debate and now the surveillance debate were remarkable for the bipartisan coalitions that took shape on both sides. Libertarian Republicans, wary of government power and especially of the Obama administration, found common cause with liberal Democrats who have long complained of the intelligence agencies' secrecy and power. That coalition could be repeated in the Senate, where Mr. Paul has worked with two Democrats, Ron Wyden of Oregon and Mark Udall of Colorado.¶ Clearly the narrow vote would not be the last word. Representative Mike D. Rogers, Republican of Michigan, the chairman of the House Intelligence Committee, promised lawmakers on Thursday that he would include new privacy safeguards in an intelligence policy bill he hopes to draft in September.¶ ''That's where the action may well be,'' Mr. Udall said.

#### Controversial cases now – that triggers the link

Blum 9/5/2013 (Bill Blum is a former judge and death penalty defense attorney, Sep 5, 2013, Supreme Court Preview: A Storm Is on the Horizon, http://www.truthdig.com/report/page2/supreme\_court\_preview\_a\_storm\_is\_on\_the\_horizon\_20130905/)

They’re b-a-c-k! As the war clouds gather over Washington in preparation for airstrikes against Syria, the nine justices who sit on the Supreme Court have returned from summer break and are preparing to kick up a legal storm of their own as they resume their quest to radically transform federal law and the Constitution. To be sure, there are four moderate to liberal voices on the high court, led by the frail but courageous Ruth Bader Ginsburg, who at the tender age of 80 has become the conscience of the tribunal. But with precious few detours, the court has become, in Ginsburg’s words, “one of the most activist courts in history.” So, as the court readies for the commencement of oral arguments next month in a brand new term, what can we expect from the gang of nine? Here are three cases slated for decisions on the merits with the potential to cause lasting social and political harm, and three more with sufficient weight to be added to the docket as the current term unfolds:

#### Not intrinsic

**We’re already the top and won’t decline anytime soon – prefer data**

**Adams 13** (Susan, 5-30, <http://www.forbes.com/sites/susanadams/2013/05/30/the-worlds-most-competitive-countries/>)[Note](http://articles.latimes.com/2013/may/30/business/la-fi-mo-us-economy-most-competitive-20130530)Note): IMD is International Institute for Management Development

The United States is back in first place. For the past 25 years, IMD, the international business school in Lausanne, Switzerland, has issued a list of the countries it says are the world’s most competitive. The U.S. was in first place until 2009, when the great recession knocked it down a notch. The impact on the banking system and other financial institutions was enough to keep the U.S. out of the top spot for the past three years, including last year, when Hong Kong was in first place and the U.S. came in second. But now that financial markets have recovered and business efficiency and profitability have revived, the U.S. has regained its dominant position. This year IMD ranked 60 countries across the world, measuring “how nations and enterprises manage the totality of their competencies to achieve increased prosperity.” The ranking relies on a staggering 333 criteria in four broad categories—economic performance, government efficiency, business efficiency and infrastructure. For one third of the ranking, **IMD** uses a **survey** of more than 4,200 international executives. For the rest, it **relies on hard statistical data** from organizations like the International Monetary Fund and the World Bank, which keep track of measures like direct investment, budget surpluses, revenues from tourism, and unemployment. IMD also takes advantage of 55 “partner institutes” around the world, like the Irish Development Agency, the German Federation of Industry, and the Mitsubishi Research Institute in Japan. (For more on the methodology, click [here](http://www.imd.org/wcc/research-methodology/).) Here is IMD’s list of the ten most competitive nations: 1. U.S.A. 2. Switzerland 3. Hong Kong 4. Sweden 5. Singapore 6. Norway 7. Canada 8. UAE 9. Germany 10. Qatar. For a complete ranking of all 60 countries, click [here](http://www.imd.org/news/World-Competitiveness-2013.cfm). I talked to Professor Stephane Garelli, director of IMD’s World Competitiveness Center, about the results. Garelli has served as Managing Director of the World Economic Forum, he has consulted with big companies like [Hewlett-Packard](http://www.forbes.com/companies/hewlett-packard/) [**HPQ** -0.72%](http://www.forbes.com/companies/hewlett-packard/) Europe, verification and testing company [SGS](http://www.forbes.com/companies/sgs/) , and Nestlé, and he is chairman of the Swiss newspaper *Le Temps*. After pouring over the competitiveness rankings, he has a thorough take on the macroeconomic picture in each of the 60 nations on the list. I interviewed Prof. Garelli about why some countries achieved their rankings. Here are excerpts from our conversation: **How did the U.S. get back to No. 1?** The financial markets are in better shape and companies are in good shape in terms of profitability. The cash available on balance sheets totals $2,150 billion. [Apple](http://www.forbes.com/companies/apple/) [**AAPL** -0.23%](http://www.forbes.com/companies/apple/) alone has $145 billion in cash. Also U.S. companies continue to be highly innovative. Over the last 15 years, most of the big innovations that have changed our lives, from Google to Facebook, were born in the U.S. In the longer run, there has been an energy renaissance in the U.S. In 2015 the U.S. will produce more gas than Russia. This is a consequence of shale gas, fracking and all that. In 2020 the U.S. will produce more oil than Saudi Arabia, 12 million barrels a day. By that year, the cost of electricity in the U.S. may be half the cost in Europe. It will be a huge competitive advantage for the U.S. Then you have the impact on infrastructure. You need to build pipelines from north to south. Spending that money also helps revive the economy.

### Flex DA

#### Flexibility is irrelevant in the hegemonic era—Rule-breaking is a greater risk

Knowles 9 (Robert, Assistant Professor, New York University School of Law, Spring 2009, "American Hegemony and the Foreign Affairs Constitution" Arizona State Law Journal, Lexis)

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

#### The AFF is key middle ground—Total flex causes worse decision-making in crises

Pearlstein 9 Deborah N lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs, July 2009, "Form and Function in the National Security Constitution," Connecticut Law Review, 41 Conn. L. Rev. 1549, lexis nexis

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disaster [sic] response." n198 In this sense, a decisionmaker with absolute flexibility in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance.¶ Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors replacing those rules with more than the most general guidance about custodial intelligence collection. available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200¶ Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.¶ In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without n205 As one Army General later investigating the abuses noted: "By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The uncertain effect of broad, general guidance, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208¶ Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.

#### Restrictions are key to Obama’s credibility

Dietrich 13(Christopher R. W. Dietrich is assistant professor of History at Fordham University, 2-11, “[Bad Precedent: Obama’s Drone Doctrine is Nixon’s Cambodia Doctrine (Dietrich)](http://www.juancole.com/2013/02/precedent-cambodia-dietrich.html)”, <http://www.juancole.com/2013/02/precedent-cambodia-dietrich.html>)

The cynical manipulation of legal and historical precedent regarding unmanned targeted killings vehicles damages the credibility of the Obama administration. The recently-leaked argument by the Justice Department is as weak and counterproductive in the light of contemporary international history as it is in terms of constitutional law. Commentators have admirably analyzed the flouting of the U.S. Constitution. The Obama administration vindicates the potential liquidation of American citizens through a spuriously broad redefinition of “imminent threat,” even when the U.S. government does not have clear evidence that a specific attack will take place. The administration holds that the use of deadly force is “reasonable” even in the case of relative ignorance. This “trust us” argument moves against a core constitutional right of citizens to neutral judicial review. Yet the Justice Department rationalizes quashing speech and assassinating citizens without sound evidence of an imminent threat.

#### That’s key to prevent great power wars

Fettweis 4 Christopher, Professor at the U.S. Army War College, December 2004, “Resolute Eagle or Paper Tiger? Credibility, Reputation and the War on Terror,” online: http://www.allacademic.com/meta/p67147\_index.html

The credibility of a state forms the basis of its reputation, which is little more than an impression of fundamental national character that serves as a guide for others trying to anticipate future actions.12 The loss of credibility can lead to reputations for weakness, fecklessness, and irresolution, which, the thinking goes, emboldens enemies and discourages the loyalty of allies. Credibility can be damaged in many ways, depending on the situation and the observer, but perhaps the surest is to fail to rise to a challenge or to pursue a goal with sufficient resolve. By doing so, a state may earn a reputation for irresolution, which can encourage more aggressive actions by revisionist powers.13 Threats made by a state without credibility may not be believed, inspiring the aggressor to press his advantage, which may lead to a challenge to an interest that is truly vital making a major war unavoidable. Thus the credibility imperative is also intimately related to the post-war American obsession with “appeasement,” which is of course a code word for a show of weakness that inadvertently encourages an aggressor.

#### No impact—Flex is self-defeating

Engelhardt 5 Tom, created and runs the Tomdispatch.com website, a project of The Nation Institute where he is a Fellow. Each spring he is a Teaching Fellow at the Graduate School of Journalism at the University of California, Berkeley. <http://www.tomdispatch.com/post/32668/>

Here it is worth reviewing the positions Yoo advocated while in the executive branch and since, and their consequences in the "war on terror." At every turn, Yoo has sought to exploit the "flexibility" he finds in the Constitution to advocate an approach to the "war on terror" in which legal limits are either interpreted away or rejected outright. Just two weeks after the September 11 attacks, Yoo sent an extensive memo to Tim Flanigan, deputy White House counsel, arguing that the President had unilateral authority to use military force not only against the terrorists responsible for the September 11 attacks but against terrorists anywhere on the globe, with or without congressional authorization.¶ Yoo followed that opinion with a series of memos in January 2002 maintaining, against the strong objections of the State Department, that the Geneva Conventions should not be applied to any detainees captured in the conflict in Afghanistan. Yoo argued that the president could unilaterally suspend the conventions; that al-Qaeda was not party to the treaty; that Afghanistan was a "failed state" and therefore the president could ignore the fact that it had signed the conventions; and that the Taliban had failed to adhere to the requirements of the Geneva Conventions regarding the conduct of war and therefore deserved no protection. Nor, he argued, was the president bound by customary international law, which insists on humane treatment for all wartime detainees. Relying on Yoo's reasoning, the Bush administration claimed that it could capture and detain any person who the president said was a member or supporter of al-Qaeda or the Taliban, and could categorically deny all detainees the protections of the Geneva Conventions, including a hearing to permit them to challenge their status and restrictions on inhumane interrogation practices.¶ Echoing Yoo, Alberto Gonzales, then White House counsel, argued at the time that one of the principal reasons for denying detainees protection under the Geneva Conventions was to "preserve flexibility" and make it easier to "quickly obtain information from captured terrorists and their sponsors." When CIA officials reportedly raised concerns that the methods they were using to interrogate high-level al-Qaeda detainees -- such as waterboarding -- might subject them to criminal liability, Yoo was again consulted. In response, he drafted the August 1, 2002, torture memo, signed by his superior, Jay Bybee, and delivered to Gonzales. In that memo, Yoo "interpreted" the criminal and international law bans on torture in as narrow and legalistic a way as possible; his evident purpose was to allow government officials to use as much coercion as possible in interrogations.¶ Yoo wrote that threats of death are permissible if they do not threaten "imminent death," and that drugs designed to disrupt the personality may be administered so long as they do not "penetrate to the core of an individual's ability to perceive the world around him." He said that the law prohibiting torture did not prevent interrogators from inflicting mental harm so long as it was not "prolonged." Physical pain could be inflicted so long as it was less severe than the pain associated with "serious physical injury, such as organ failure, impairment of bodily function, or even death."¶ Even this interpretation did not preserve enough executive "flexibility" for Yoo. In a separate section of the memo, he argued that if these loopholes were not sufficient, the president was free to order outright torture. Any law limiting the president's authority to order torture during wartime, the memo claimed, would "violate the Constitution's sole vesting of the Commander-in-Chief authority in the President."¶ Since leaving the Justice Department, Yoo has also defended the practice of "extraordinary renditions," in which the United States has kidnapped numerous "suspects" in the war on terror and "rendered" them to third countries with records of torturing detainees. He has argued that the federal courts have no right to review actions by the president that are said to violate the War Powers Clause. And he has defended the practice of targeted assassinations, otherwise known as "summary executions."¶ In short, the flexibility Yoo advocates allows the administration to lock up human beings indefinitely without charges or hearings, to subject them to brutally coercive interrogation tactics, to send them to other countries with a record of doing worse, to assassinate persons it describes as the enemy without trial, and to keep the courts from interfering with all such actions.¶ Has such flexibility actually aided the U.S. in dealing with terrorism? In all likelihood, the policies and attitudes Yoo has advanced have made the country less secure. The abuses at Guantánamo and Abu Ghraib have become international embarrassments for the United States, and by many accounts have helped to recruit young people to join al-Qaeda. The U.S. has squandered the sympathy it had on September 12, 2001, and we now find ourselves in a world perhaps more hostile than ever before.¶ With respect to detainees, thanks to Yoo, the U.S. is now in an untenable bind: on the one hand, it has become increasingly unacceptable for the U.S. to hold hundreds of prisoners indefinitely without trying them; on the other hand our coercive and inhumane interrogation tactics have effectively granted many of the prisoners immunity from trial. Because the evidence we might use against them is tainted by their mistreatment, trials would likely turn into occasions for exposing the United States' brutal interrogation tactics. This predicament was entirely avoidable. Had we given alleged al-Qaeda detainees the fair hearings required by the Geneva Conventions at the outset, and had we conducted humane interrogations at Guantánamo, Abu Ghraib, Camp Mercury, and elsewhere, few would have objected to the U.S. holding some detainees for the duration of the military conflict, and we could have tried those responsible for war crimes. What has been so objectionable to many in the U.S. and abroad is the government's refusal to accept even the limited constraints of the laws of war.¶ The consequences of Yoo's vaunted "flexibility" have been self-destructive for the U.S. -- we have turned a world in which international law was on our side into one in which we see it as our enemy. The Pentagon's National Defense Strategy, issued in March 2005, states,¶ "Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak, using international fora, judicial processes, and terrorism."¶ The proposition that judicial processes -- the very essence of the rule of law -- are to be dismissed as a strategy of the weak, akin to terrorism, suggests the continuing strength of Yoo's influence. When the rule of law is seen simply as a device used by terrorists, something has gone perilously wrong. Michael Ignatieff has written that "it is the very nature of a democracy that it not only does, but should, fight with one hand tied behind its back. It is also in the nature of democracy that it prevails against its enemies precisely because it does." Yoo persuaded the Bush administration to untie its hand and abandon the constraints of the rule of law. Perhaps that is why we are not prevailing.

#### Deference causes whistleblowers---causes worse intel leaks and restrictions

Peter Marguilies 10, Professor of Law, Roger Williams University, November 8th, 2010, “Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law” IOWA LAW REVIEW Vol. 96:195, http://www.uiowa.edu/~ilr/issues/ILR\_96-1\_Margulies.pdf

The categorical-deference approach also fails to acknowledge that those stymied by the lack of formal redress can substitute for litigation other paths that pose greater danger. For example, consider the perspective of the official who leaks a document, not to advance a personal agenda, but to focus public attention on government policy.170 Whistleblowers of this kind, like Daniel Ellsberg, who leaked the Pentagon Papers to the New York Times, 171 are advancing a constitutional vision of their own in which senior officials have strayed from the limits of the original understanding.172 If the courts and Congress do not work to restore the balance, the whistleblower engages in self-help. Because leakers are risk-seekers who believe the status quo is unacceptable, they lack courts’ interest in safeguarding sensitive information. Policy shaped by blowback from leaks is far more volatile than policy reacting to judicial precedent. 173 Similarly, the media has a constitutional role to play that includes investigative reporting. The media will step up its efforts if other institutions like courts take a more deferential stance.174 When government hides information, the media’s sense of its own role leads to greater distrust of government and a willingness to both uncover and publish more information. On some occasions, the First Amendment will oblige us to tolerate journalists’ disclosure of operational details of covert programs.175 Journalists will understandably view government’s claims that information is sensitive with greater skepticism when government has methodically locked down information in other settings. Similarly, shutting off damage suits regarding terrorism issues leaves other kinds of litigation, including litigation the government has initiated. Journalists and activists will seek to scrutinize and mobilize around these cases, even if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.