# 1AC – Swing

# Plan

#### 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.

# Norms Advantage

**Advantage 1 is International Norms**

**Despite recent rhetoric, Obama’s executive authority and drone usage 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.

**Now is key- The US needs to set standards for drone usage – or it’ll lead to an international free for all**

**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 in**volved 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 drone usage sets a dangerous international precedent –The plan is necessary to prevent other countries from doing the same**

**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.

**Unrestricted drone prolif causes war and miscalc**

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

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

#### 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.

**This uniquely makes US-China war more likely**

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[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.

#### **And drones are the essential internal-link**

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."

#### Conflict is VERY LIKELY – it goes nuclear

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 Pacific, 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.

# Accountability

**Advantage 2 is Accountability**

**The Plan prevents the executive from overusing drones in Pakistan and Yemen – drones are key to stability but overuse is counterproductive**

Benjamin R. Farley 12, JD from Emory University School of Law, former Editor-in-Chief of the Emory International Law Review, “Drones and Democracy: Missing Out on Accountability?” Winter 2012, 54 S. Tex. L. Rev. 385, lexis

Effective accountability mechanisms constrain policymakers' freedom to choose to use force by increasing the costs of use-of-force decisions and imposing barriers on reaching use-of-force decisions. The accountability mechanisms discussed here, when effective, reduce the likelihood of resorting to force (1) through the threat of electoral sanctioning, which carries with it a demand that political leaders explain their resort to force; (2) by limiting policymakers to choosing force only in the manners authorized by the legislature; and (3) by requiring policymakers to adhere to both domestic and international law when resorting to force and demanding that their justifications for uses of force satisfy both domestic and international law. When these accountability mechanisms are ineffective, the barriers to using force are lowered and the use of force becomes more likely.¶ Use-of-force decisions that avoid accountability are problematic for both functional and normative reasons. Functionally, accountability avoidance yields increased risk-taking and increases the likelihood of policy failure. The constraints imposed by political, supervisory, fiscal, and legal accountability "make[] leaders reluctant to engage in foolhardy military expeditions... . If the caution about military adventure is translated into general risk-aversion when it comes to unnecessary military engagements, then there will likely be a distributional effect on the success rates of [democracies]." n205 Indeed, this result is predicted by the structural explanation of the democratic peace. It also explains why policies that rely on covert action - action that is necessarily less constrained by accountability mechanisms - carry an increased risk of failure. n206 Thus, although accountability avoidance seductively holds out the prospect of flexibility and freedom of action for policymakers, it may ultimately prove counterproductive.¶ In fact, policy failure associated with the overreliance on force - due at least in part to lowered barriers from drone-enabled accountability avoidance - may be occurring already. Airstrikes are deeply unpopular in both Yemen n207 and Pakistan, n208 and although the strikes have proven critical [\*421] to degrading al-Qaeda and associated forces in Pakistan, increased uses of force may be contributing to instability, the spread of militancy, and the failure of U.S. policy objectives there. n209 Similarly, the success of drone [\*422] strikes in Pakistan must be balanced against the costs associated with the increasingly contentious U.S.-Pakistani relationship, which is attributable at least in part to the number and intensity of drone strikes. n210 These costs include undermining the civilian Pakistani government and contributing to the closure of Pakistan to NATO supplies transiting to Afghanistan, n211 thus forcing the U.S. and NATO to rely instead on several repressive central Asian states. n212 Arguably the damage to U.S.-Pakistan relations and the destabilizing influence of U.S. operations in Yemen would be mitigated by fewer such operations - and there would be fewer U.S. operations in both Pakistan and Yemen if U.S. policymakers were more constrained by use-of-force accountability mechanisms.¶ From a normative perspective, the freedom of action that accountability avoidance facilitates represents the de facto concentration of authority to use force in the executive branch. While some argue that such concentration of authority is necessary or even pragmatic in the current international environment, 168 it is anathema to the U.S. constitutional system. Indeed, the founding generation’s fear of foolhardy military adventurism is one reason for the Constitution’s diffusion of use-of-force authority between the Congress and the President. 169 That generation recognized that a President vested with an unconstrained ability to go to war is more likely to lead the nation into war.

**Courts are key to better, more intelligent use – game theory proves**

Tiberiu Dragu 13, Assistant Prof in the Dept of Politics at NYU, PhD in Poli Sci from Stanford University, and Oliver Board, associate in the Corporate Department of Wachtell, Lipton, Rosen & Katz, former Assistant Prof of Economics at the University of Pittsburgh, D.Phil. in Economics from the University of Oxford, J.D. from NYU School of Law, “On Judicial Review in a Separation of Powers System,” June 3 2013, https://files.nyu.edu/tcd224/public/papers/judicial.pdf

Our analysis has relevance for existing debates on the scope of judicial review in the context of terrorism prevention. The polemic whether drone strikes and other counterterrorism policies should be subjected to judicial oversight is framed as a tradeoff between the legal accountability benefits of judicial oversight and the public policy harms of reviewing expert counterterrorism policy by non-expert judges. But starting the debate on these terms already assumes that (non-expert) judicial review can only have a negative effect on (expert) governmental policy. As such, it glosses over the prior question of what is the effect of legal review on the information available for counterterrorism policy-making. To answer this question one needs to assess the counterfactual of how informed counterterrorism policy decisions are in the absence of judicial review as compared to the scenario in which a court can review the legality of those policies. Our game-theoretical analysis provides this counterfactual analysis, an otherwise difficult task to effect, and thus contributes to the current debates regarding the appropriateness of judicial review in the context of terrorism prevention. It suggests that judicial checks can lead to more informed counterterrorism policy-making if one considers the internal structure of the executive and the electoral incentives of the president, conditions which we discuss in more detail below.¶ First, the argument that judicial review of drone strikes, and counterterrorism policy more generally, has a detrimental effect on expert policy-making overlooks the internal ecology of the executive branch. When asserting the superior expertise of the executive branch, scholars and commentators treat the executive as a unitary actor, or perhaps consider its internal structure to be incidental to the expertise rationale for limiting judicial review. However, as the description of the drone policy suggests, there is a separation between expertise and policy-making: the president (and his closest advisers) decides on counterterrorism policy, while lower-level bureaucrats provide the expertise and intelligence to make informed decisions. This separation of expertise from policy-making is not unique to counterterrorism. Rather this is a general fact of modern-day government, and scholars of bureaucratic politics, going back to Max Weber, have attempted to unravel its myriad implications for democratic governance (Rourke 1976; Wilson 1991).¶ Second, the president, like all elected representatives, is a politician making choices under the pressure of re-election and public opinion, and such incentives are going to shape his counterterrorism choices. When it comes to the electoral incentives of public officials, scholars have noted that the political costs of not reacting aggressively enough in matters of terrorism prevention and national security are going to be higher than the costs of overreaction (Cole 2008; Fox and Stephenson 2011; Ignatieff 2004; Richardson 2006; Swire 2004). This observation implies that the president and other elected officials have an electoral bias to engage in counterterrorism policies that are more aggressive than what would be necessary on the basis of available information regarding the terrorist threat.36 Inside accounts of the decision-making process within executive branch (Goldsmith 2007), empirical analyses (Merolla and Zechmeister 2009), and newspaper reports,37 they all document such electoral incentives to appear tough on terrorism. The former Vice-President Dick Cheney forcefully depicts this electoral bias in his articulation of the so-called one percent doctrine, which states that if there was even a one percent chance of terrorists getting a weapon of mass destruction, then the executive must act as if it were a certainty (Suskind 2007). In Cheney's view, “it is not about analysis; it's about our response... making suspicion, not evidence, the new threshold for action."38 The run-up to the invasion in Iraq provides a stark illustration of the one percent doctrine in action, the conflict between intelligence officials and policy-makers, and the issue of politicized expertise in the context of national security (Pillar 2011).¶ Our results suggest that (non-expert) judicial review has the potential to induce more informed counterterrorism decisions when the president makes security policy under the veil of public expectations to respond forcefully to terrorist threats. Courts are not immune to public opinion, of course, but precisely because judges are not elected, they are more insulated from public opinion than elected officials. This implies that, all else equal, the courts are less likely to prefer counterterrorism measures that respond to public expectations to be tough on terrorism. Under these conditions,39 our theory suggests a mechanism by which counterterrorism policy-making with judicial oversight can be superior to counterterrorism policy-making without it, even if courts are relatively ill-equipped to review executive decisions. Judicial review can serve as a commitment device to better align the preferences of policymakers with their experts, with the effect of inducing more information for counterterrorism decisions. This observation is missing from current public and scholarly discussions about the role of judicial review in the context of drone strikes and other counterterrorism policies. As such, our analysis has policy implications for ongoing debates on how to design the institutional structure of liberal governments when the social objective is terrorism prevention.

**Judicial review is key – prevents groupthink – executive targeting decisions are flawed – empirics prove**

Ahmad **Chehab 12**, Georgetown University Law Center, “RETRIEVING THE ROLE OF ACCOUNTABILITY IN THE TARGETED KILLINGS CONTEXT: A PROPOSAL FOR JUDICIAL REVIEW,” March 30 2012, abstract available at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572

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

**Unrestricted drone strikes are strengthening AQAP in Yemen**

Jacqueline Manning 12, Senior Editor of International Affairs Review, December 9 2012, “Free to Kill: How a Lack of Accountability in America’s Drone Campaign Threatens U.S. Efforts in Yemen,” http://www.iar-gwu.org/node/450

Earlier this year White House counter-terrorism advisor, John Brennan, named al-Qaeda in the Arabian Peninsula (AQAP) in Yemen the greatest threat to the U.S. Since 2009, the Obama administration has carried out an estimated 28 drone strikes and 13 air strikes targeting AQAP in Yemen, while the Yemeni Government has carried out 17 strikes, and another five strikes cannot be definitively attributed to either state . There is an ongoing debate over the effectiveness of targeted killings by drone strikes in the fight against al-Qaeda. However, what is clear is that the secrecy and unaccountability with which these drone strike are being carried out are undermining U.S. efforts in Yemen.¶ The drone campaign in Yemen is widely criticized by human rights activists, the local population and even the United Nations for its resulting civilian casualties. It is also credited with fostering animosity towards the U.S. and swaying public sentiment in Yemen in favor of AQAP. The long-term effects, as detailed by a 2012 report by the Center for Civilians in Conflict, seem to be particularly devastating. The resulting loss of life, disability, or loss of property of a bread-winner can have long-term impacts, not just on an individual, but on an entire family of dependents.¶ The effectiveness of drone technology in killing al-Qaeda militants, however, cannot be denied. Targeted killings by drone strikes have eliminated several key AQAP members such as Anwar al-Awlaki, Samir Khan, Abdul Mun’im Salim al Fatahani, and Fahd al-Quso . Advocates of the counterterrorism strategy point out that it is much less costly in terms of human lives and money than other military operations.¶ While there are strong arguments on both sides of the drone debate, both proponents and critics of targeted killings of AQAP operatives by drones agree that transparency and accountability are needed.¶ Authorizing the CIA to carry out signature strikes is of particular concern. In signature strikes, instead of targeting individual Al Qaeda leaders, the CIA targets locations without knowing the precise identity of the individuals targeted as long as the locations are linked to a “signature” or pattern of behavior by Al Qaeda officials observed over time. This arbitrary method of targeting often results in avoidable human casualties.¶ Secrecy surrounding the campaign often means that victims and families of victims receive no acknowledgement of their losses, much less compensation. There are also huge disparities in the reported number of deaths. In addition, according to The New York Times, Obama administration officials define “militants” as “all military-age males in a strike zone...unless there is explicit intelligence posthumously proving them innocent” This definition leads to a lack of accountability for those casualties and inflames anti-American sentiment.¶ In a report submitted to the UN Human Rights Council, Ben Emmerson, special rapporteur on the promotion and protection of human rights while countering terrorism, asserted that, "Human rights abuses have all too often contributed to the grievances which cause people to make the wrong choices and to resort to terrorism….human rights compliant counter-terrorism measures help to prevent the recruitment of individuals to acts of terrorism." There is now statistical evidence that supports this claim. A 2010 opinion poll conducted by the New America Foundation in the Federally Administered Tribal Areas (FATA) of Pakistan, where U.S. drone strikes have been carried out on a much larger scale, shows an overwhelming opposition to U.S. drone strikes coupled with a majority support for suicide attacks on U.S. forces under some circumstances.¶ It is clear that the drone debate is not simply a matter of morality and human rights; it is also a matter of ineffective tactics. At a minimum the U.S. must implement a policy of transparency and accountability in the use of drones. Signature strikes take unacceptable risks with innocent lives. Targets must be identified more responsibly, and risks of civilian casualties should be minimized. When civilian casualties do occur, the United States must not only acknowledge them, but also pay amends to families of the victims.

#### Strengthened AQAP undermines the Saudi regime

Colonel Hassan Abosaq 12, US Army War College, master of strategic studies degree candidate, 2012, "The Implications of Unstable on Saudi Arabia," Strategy Research Project, www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA560581

AQAP has been vociferous in its opposition to the Saudi regime, and is likely to continue targeting the Kingdom, particularly its oil installations and members of the royal family. In August 2009, an AQAP member attempted to assassinate Prince Mohammed bin Naif, the Saudi Assistant Interior Minister for security affairs. The prince’s attacker was trained in and launched his attack from Yemen, confirming to the Saudis that instability in Yemen poses a security threat to Saudi Arabia. A strengthened AQAP in Yemen is certain to try to put pressure on Saudi Arabia and to strike Saudi targets. AQAP’s military chief, Qasin al-Raymi, warned the Saudi Leadership in July 2011 that they are still regarded as apostates. And he specifically placed King Abdullah, the late Crown Prince Sultan, Interior Minister Prince Naif, and his son Mohammed Bin Naif on the target list.21 In March 2010, Saudi Arabia foiled several planned attacks on oil installation with the arrest of more than 100 suspected al-Qaeda militants. The arrests included 47 Saudis, 51 Yemenis, a Somali, a Bangladeshi, and an Eritrean.22 The wider domestic strife in Yemen has provided AQAP with some breathing space. More worrisome for Saudi Arabia is the increased lawlessness within Yemen. Not only does this provide the space that al-Qaeda needs to regroup, train, recruit, but it also deflects the state resources away from counterterrorism operations. Saudi Arabia has for years been working to infiltrate al-Qaeda in its unstable neighbor to south, Yemen. Saudi Arabia has also been giving Yemen a great deal of assistance to counterterrorism and it is worrying to the Saudis to see all of that assistance diverted from the purposes for which it was intended. In June 2011, AQAP leaped into the security vacuum created by Yemen’s political volatility, and 63 al-Qaeda in the Arabian Peninsula fighters escaped from a Yemeni prison.23 This exemplifies how Yemeni instability emboldens this lethal al-Qaeda affiliate. As the Yemeni military consolidates its strength in an attempt to maintain state control and fight two insurgencies and oppress the protesters, AQAP has further expanded its safe haven in the country’s interior, further increasing their operational capacity. This organization has not only attacked police, foreigners, and diplomatic missions within the country, but also served as a logistic base for acts of terrorism abroad. Yemen also has become the haven for jihad militants not just from Yemen and Saudi Arabia, but from all over the world which includes some Arabs, Americans, Europeans, Africans and others. Al-Qaeda camps, where terrorists from all over the world train are also situated in Yemen. The growing anarchy and al-Qaeda presence could spill over into Saudi Arabia.

#### That destabilizes the Middle East

Anthony Cordesman 11, Arleigh A. Burke Chair in Strategy at CSIS, former director of intelligence assessment in the Office of the Secretary of Defense, former adjunct prof of national security studies at Georgetown, PhD from London University, Feb 26 2011, “Understanding Saudi Stability and Instability: A Very Different Nation,” http://csis.org/publication/understanding-saudi-stability-and-instability-very-different-nation

History scarcely means we can take Saudi stability for granted. Saudi Arabia is simply too critical to US strategic interests and the world. Saudi petroleum exports play a critical role in the stability and growth of a steadily more global economy, and the latest projections by the Department of Energy do not project any major reductions in the direct level of US dependence on oil imports through 2025.¶ Saudi Arabia is as important to the region’s security and stability as it is to the world’s economy. It is the key to the efforts of the Gulf Cooperation Council to create local defenses, and for US strategic cooperation with the Southern Gulf states. It plays a critical role as a counterbalance to a radical and more aggressive Iran, it is the source of the Arab League plan for a peace with Israel, and it has become a key partner in the war on terrorism. The US strategic posture in the Middle East depends on Saudi Arabia having a friendly and moderate regime.

#### Middle East war escalates

The Earl of Stirling 11, hereditary Governor & Lord Lieutenant of Canada, Lord High Admiral of Nova Scotia, & B.Sc. in Pol. Sc. & History; M.A. in European Studies, “General Middle East War Nears - Syrian events more dangerous than even nuclear nightmare in Japan”, http://europebusines.blogspot.com/2011/03/general-middle-east-war-nears-syrian.html

Any Third Lebanon War/General Middle East War is apt to involve WMD on both side quickly as both sides know the stakes and that the Israelis are determined to end, once and for all, any Iranian opposition to a 'Greater Israel' domination of the entire Middle East. It will be a case of 'use your WMD or lose them' to enemy strikes. Any massive WMD usage against Israel will result in the usage of Israeli thermonuclear warheads against Arab and Persian populations centers in large parts of the Middle East, with the resulting spread of radioactive fallout over large parts of the Northern Hemisphere. However, the first use of nukes is apt to be lower yield warheads directed against Iranian underground facilities including both nuclear sites and governmental command and control and leadership bunkers, with some limited strikes also likely early-on in Syrian territory.¶ The Iranians are well prepared to launch a global Advanced Biological Warfare terrorism based strike against not only Israel and American and allied forces in the Middle East but also against the American, Canadian, British, French, German, Italian, etc., homelands. This will utilize DNA recombination based genetically engineered 'super killer viruses' that are designed to spread themselves throughout the world using humans as vectors. There are very few defenses against such warfare, other than total quarantine of the population until all of the different man-made viruses (and there could be dozens or even over a hundred different viruses released at the same time) have 'burned themselves out'. This could kill a third of the world's total population.¶Such a result from an Israeli triggered war would almost certainly cause a Russian-Chinese response that would eventually finish off what is left of Israel and begin a truly global war/WWIII with multiple war theaters around the world. It is highly unlikely that a Third World War, fought with 21st Century weaponry will be anything but the Biblical Armageddon.

**Current drone policy causes instability in Pakistan – leads to 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.

#### Overuse empowers militants and destabilizes the government

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

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 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.’75 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 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

#### Pakistan instability escalates and causes Indian intervention – that goes nuclear

Michael O’Hanlon 05, senior fellow with the Center for 21st Century Security and Intelligence and director of research for the Foreign Policy program at the Brookings Institution, visiting lecturer at Princeton University, an adjunct professor at Johns Hopkins University, and a member of the International Institute for Strategic Studies

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

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

**And it causes extinction**

**Pitt 09-** 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.

# Solvency

**Finally is solvency –**

**Authority of District Courts judges are key to solve – they’re fast and effective**

**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.

**Plan is the best policy for drones – Strict Scrutiny requires evidence based verification and definitional restraint to limit 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.

**Strict scrutiny undoubtedly prevents errors**

**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, 2012, Case Western Reserve Journal of International Law, 45 Case W. Res. J. Int'l L. 235, “Presidential Powers and Foreign Affairs: Rendition and Targeted Killings of Americans: Targeted Killings: When Proportionality Gets All Out of Proportion”)

The unitary executive theory aggressively articulated, and implemented, by the Bush Administration has been adopted in toto by the Obama Administration. While the executive clearly prefers to operate in a vacuum, the question whether that most effectively ensures effective operational counterterrorism is an open question. The advantage of institutionalized, process-based input into executive action prior to decision implementation is worthy of discussion in operational counterterrorism. The **solution** to this search for an actionable guideline **is the** **strict scrutiny** standard. What is strict scrutiny, and how is it to be implemented in the context of operational counterterrorism? Why is there a need, if at all, for an additional standard articulating self-defense? The strict scrutiny standard would enable operational engagement of a non-state actor predicated on intelligence information that would meet admissibility standards akin to a court of law. The strict scrutiny test seeks to strike a balance enabling the state to act sooner but subject to significant restrictions. The ability to act sooner is limited, however, by the requirement that intelligence information must be reliable, viable, valid, and corroborated. The strict scrutiny standard proposes that for states to act as early as possible in order to prevent a possible terrorist attack the information must meet admissibility standards similar to the rules of evidence. The intelligence must be reliable, material, and probative. [\*240] The proposal is predicated on the understanding that while states need to engage in operational counterterrorism, mistakes regarding the correct interpretation and analysis of intelligence information can lead to tragic mistakes. Adopting admissibility standards akin to the criminal law minimizes operational error. Rather than relying on the executive branch making decisions in a "closed world" devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information's admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur.

**Our epistemology is best- only judicial restrictions solve**

**Guiora 09** (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, Case Western Reserve Journal of International Law, 2009, 42 Case W. Res. J. Int'l L. 273, “The Appropriate Venue for Trying Terrorist Case: Not "By All Means Necessary": A Comparative Framework for Post-9/11 Approaches to Counterterrorism”, Lexis)

I have advocated in my scholarship the absolute importance of active judicial review. [n27](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.701736.3455682287&target=results_DocumentContent&returnToKey=20_T18140477957&parent=docview&rand=1379025902592&reloadEntirePage=true#n27) The basis for this deeply held belief is the seat that I had at the counterterrorism table. That is, I have been a direct participant (not witness) to extraordinarily complicated dilemmas and understand the tension between excess of power and limits of power. That tension and the  [\*286] need to respond justify active **judicial review**. The **legislative branches** in any country, including the U.S. and Israel-as historically documented-**are either incapable of or unwilling to restrain the executive**. Therefore, the only operational response to Justice Jackson's unfettered executive concern is an active, interventionist Court.

Judicial review is the best – Executive can’t solve

Guiora, 13 [Amos N., 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, “Targeted Killing: When Proportionality Gets All Out of Proportion,” University of Utah College of Law Research Paper No. 1, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2230686>, ALB]

Rather than relying on the executive branch making decisions in a “closed world” devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information’s admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur.¶ The logistics of this proposal are far less daunting than might seem—the court before which the executive would submit the evidence is the FISA Court. Presently, FISA Court judges weigh the reliability of intelligence information in determining whether to grant government ex parte requests for wire-tapping warrants. Under this proposal, judicial approval is necessary prior to undertaking a counterterrorism operation predicated solely on intelligence information. The standard the court would adopt in determining the information’s reliability is the same applied in the traditional criminal law paradigm. The intelligence must be reliable, material, and probative.¶ While the model is different—a defense attorney cannot question state witnesses—the court will assume a dual role. In this dual role capacity the court will cross-examine the representative of the intelligence community and subsequently rule as to the information’s admissibility. While some may suggest that the FISA court is largely an exercise in “rubber-stamping,” the importance of the proposal is in requiring the government to present the available information to an independent judiciary as a precursor to engaging in operational counterterrorism.

#### There are no checks on drone use – the Plan’s rule-oriented process is the only solution

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)

#### No other oversight solves – every empirical example proves

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]

2. Executive Oversight¶ The CIA identifies three executive oversight bodies examining its activities: the National Security Council (NSC), the Intelligence Oversight Board (IOB), and the President's Intelligence Advisory Board (PIAB). n335 The complex relationship between the NSC and the CIA goes well beyond the scope of the present Article. Moreover, almost all information on such oversight remains confidential. n336 Since 1993, the IOB has been a standing body under the PIAB.¶ The PIAB has existed in various guises, since 1956. Despite its longevity, there is relatively little publicly available information about its activities. n337 It has been suggested that this has resulted mainly from the very high level of access to intelligence that its members receive, which assures a low level of transparency, and from the fact that it is exempt from the declassification of documents regime that would otherwise have [\*381] exposed it to some scrutiny after a lengthy time interval. But its low profile might also be ascribed to its marginality, at least during certain presidencies. President Carter virtually abolished it, other presidents are said to have paid scant attention to it, and it has often been rather quiescent. Scholars have suggested that it has focused its work in three main areas: the impact of new technologies on intelligence, analyzing the significance of foreign political developments, and evaluating crisis management responses. other words, oversight in a critical sense has apparently not been high on its agenda.¶ In general the Board has been extensively criticized for duplicating the functions performed by other bodies, for having an undue number of appointees whose main qualification is being owed a favor by the President of the day, for a shortage of expertise, and for pursuing the agenda of the intelligence community rather than seeking to exact serious oversight. Its strongest defenders point mainly to its apparent potential rather than to its accomplishments. n339 President Obama revitalized the Board in 2009 and issued an Executive Order restoring some of the powers removed from the Board by his predecessor, in particular the requirement that the Board notify the Attorney General whenever it learns of "intelligence activities that involve possible violations of Federal criminal laws." n340 While his appointees to the Board appear to be well qualified, his stated "commitment to transparency and open government, even, when appropriate, on matters of national security and intelligence," n341 made on the occasion of his first meeting with the Board, has yielded no discernible results.¶ [\*382] In sum, there is little in the historical record, n342 nor any recent information, which would suggest that the PIAB is at all likely to be in the business of seeking to exact accountability from the intelligence agencies in relation to an activity such as targeted killings. And even if the Board were to bestir itself in this area, its outputs would almost certainly remain entirely secret.