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#### **aff’s use of the law is a militaristic tactic that creates legal legitimacy to propel more frequent, more deadly violent interventions that ensure infrastructural violence that maims civilians – they actively displace moral questions in favor of a pathologically detached question of legality**

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(Thomas, *International Studies Quarterly* 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, the Pentagon wields law with technical precision. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Rup- pert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shot- well, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating. The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombuds- men either. The article acknowledged that the JAG faces pressure to demonstrate that he can be a “force multiplier” who can “show the tactical and political soundness of his interpretation of the law” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade the focus has shifted visibly from restraining violence to legitimizing it. The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept” ~The Guardian, 2001!. Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law. As noted, humanitarian law is firmest in areas of marginal military utility. When opera- tional demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that civilian discrimination is “one of the least codified portions” of the law of war ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” muni- tions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collat- eral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack” ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!. Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding antici- pated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calcu- lated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.” Legal fine print, hand-in-hand with new technology, replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. The crowning irony is that NATO went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroying the country’s infrastructure. Perhaps the most powerful justification was provided by law itself. War is often dressed up in patriotic abstractions—Periclean oratory, jingoistic newsreels, or heroic memorials. Bellum Americanum is cloaked in the stylized language of law. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. Most striking is the use of legal language to justify the erosion of noncombatant immunity. Hewing to the legal- isms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Har- vard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic word- play, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.” The Pentagon’s legal narrative is certainly detached from the carnage on the ground, but it also oversimplifies and even actively obscures the moral choices involved in aerial bombing. Lawyers and tacticians made very deliberate decisions about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians. While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design. Does the law of war reduce death and destruction? International law certainly has helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has mirrored wartime practice. On the ad bellum side, the erosion of right authority and just cause has eased the path toward war. Today, foreign offices rarely even bother with formal declarations of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its members have been extremely reluctant to brand states as aggressors. If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane. For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war” ~Woollacott, 1999!. “We’ve come to expect the immacu- late,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “Precision-guided munitions make it very much easier to go to war than it ever has been historically.” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do” ~Belsie, 1999!. Conclusion The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications. The aspirations of humanitarian law are sound. Rather, it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast. This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script. While the attack on the World Trade Center confirmed a thousand times over the illegality and inhu- manity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor. A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage. Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9 No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law. But these disputes have only underscored the ambiguities of human- itarian law. As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.

#### **militarism is a fundamentally unsustainable system that is the root cause of all extinction threats and ensures mass structural violence – non-violence is the only possible response**

Kovel 2

(Joel, “The United States Military Machine”, http://www.joelkovel.org/americanmilitary.htm; Jacob)

I want to talk to you this evening about war - not the immediate threat of us war against Iraq, but about how this conflict is an instance of a larger tendency toward war-making endemic to our society. In other words, the phrase from the folksong, “I ain’t gonna study war no more,” should be rethought. I think we do have to study war. Not to make war but to understand more deeply how it is put together and about the awful choices that are now being thrust upon us. These remarks have been stimulated by recent events, which have ancient roots, but have taken on a new shape since the collapse of the Soviet Union, the rise of the second Bush administration, and the inception of the so-called “War on Terror.” The shape is that of permanent warfare- war-making that has no particular strategic goal except total us dominance over global society. Hence, a war without end and whose internal logic is to perpetuate itself. We are, in other words, well into World War III, which will go on whether or not any other state such as Iraq is involved. It is quite probable that this administration will go to war in Iraq, inasmuch as certain very powerful people crave it. But it is not necessarily the case, given the fact that the war against Iraq is such a lunatic proposal that many other people in high places are against it and too many people are marching against it. And while war against Iraq is a very serious matter that needs to be checked by massive popular resistance, equally serious are the structures now in place in the United States dictating that whether or not the war in Iraq takes place, there will be another war to replace it, and others after that, unless some very basic changes take place. America Has Become a War-Making Machine The United States has always been a bellicose and expansive country, built on violent conquest and expropriation of native peoples. Since the forming of the American republic, military interventions have occurred at the rate of about once a year. Consider the case of Nicaragua, a country utterly incapable of being any kind of a threat to its giant northern neighbor. Yet prior to the Sandinista revolution in 1979 (which was eventually crushed by us proxy forces a decade later), our country had invaded Nicaragua no fewer than 14 times in the pursuit of its imperial interests. A considerable number of contemporary states, such as Britain, South Africa, Russia, and Israel, have been formed in just such a way. But one of the special conditions of the formation of America, despite its aggressivity, was an inhibition against a military machine as such. If you remember, no less a figure than George Washington warned us against having a standing army, and indeed the great bulk of us interventions prior to World War II were done without very much in the way of fixed military institutions. However, after WWII a basic change set in. War-weary America longed for demobilization, yet after a brief beginning in this direction, the process was halted and the permanent warfare state started to take shape. In part, this was because policy planners knew quite well that massive wartime mobilization had been the one measure that finally lifted America out of the Great Depression of the 1930s. One of the lessons of that time was that propounded by the British economist John Maynard Keynes, to the effect that capitalist societies could ameliorate chronic [economic] crises by infusions of government spending. The Great War had certified this wisdom, and permanent military expenditure readily became the received wisdom. This was greatly reinforced by the drastic realignment of capitalist power as a result of the war. America was essentially the only capitalist power in 1945 that did not lay in ruins and/or have its empire shattered. The world had been realigned and the United States had assumed a global imperial role. Policy planners like George Kennan lucidly realized that this meant safeguarding extreme inequalities in wealth, which implied a permanent garrison to preserve the order of things. The notion was especially compelling given that one other state, the Soviet Union, had emerged a great power from the war and was the bellwether of those forces that sought to break down the prevailing distribution of wealth. The final foundation stone for the new military order was the emergence of frightful weapons of mass destruction, dominance over which became an essential element for world hegemony. The Iron Triangle These factors crystallized into the Cold War, the nuclear arms race, and, domestically, into those structures that gave institutional stability and permanence to the system: the military-industrial complex (mic). Previously the us had used militarism to secure economic advantage. Now, two developments greatly transformed our militarism: the exigencies of global hegemony and the fact that militarism became a direct source of economic advantage, through the triangular relations of the mic with the great armament industries comprising one leg, the military establishment another, and the state apparatus the third, profits, power, and personnel could flow through the system and from the system. Clearly, this arrangement had the potential to greatly undermine American democracy. It was a “national security state” within the state but also extended beyond it into the economy and society at large, virtually insulated from popular input, and had the power to direct events and generate threats. Another conservative war hero-become-president, Dwight Eisenhower, warned the nation in a speech in 1961 against the emerging permanent war machine, but this time, the admonitions were not heeded.\* The machine made a kind of war against the Soviet system for 35 years. Although actual guns were not fired between the two adversaries, as many as 10 million people died in its varied peripheral conflicts, from Korea to Vietnam, Angola, El Salvador, Nicaragua, and Guatemala. The Cold War divided the world into bipolar imperial camps, directed by gigantic superpowers that lived off each other’s hostility. It was a terrible war whose immense suffering took place largely outside the view of the American people, but it also brought about an uneasy kind of stability in the world order, in part through the standoff in nuclear weapons. During the Ford and Carter administrations, another great crisis seized the world capitalist economy. Having matured past the rebuilding that followed the world war, a period of stagnation set in, which still has the global economy in its grip despite episodic flashes of vigor. Predictably, a spate of militarism was central to the response. A “Second Cold War” took place under Reagan, featuring an accelerated nuclear arms race, which was deliberately waged so as to encourage Soviet countermeasures in the hope that this would cause breakdown in the much weaker, bloated, and corrupt Russian system. The plan worked splendidly: by 1989-91, the mighty Soviet empire collapsed, and the bipolar world order became unipolar, setting a stage for the current phase. The fall of the Soviet Union was widely expected to bring a ìpeace dividend.î This would have been the case according to the official us line, parroted throughout the media and academe, that our military apparatus was purely defensive (after all, we have no Department of War, only one of "Defense") and reactive to Soviet expansionism and military/nuclear threat. As this was no longer a factor, so the reasoning wentóindeed, as the us now stood bestride the world militarily as had no power since the Roman Empireóconventional logic predicted a general diminution in American militarism after 1991, with corresponding benefits to society. The last decade has at least settled this question, for the effect on us aggression, interventionism, and the militarization of society has been precisely the opposite. In other words, instead of braking, the machine accelerated. Removal of Soviet power did not diminish Americaís imperial appetite: it removed inhibitions on its internally driven expansiveness. As a result, enhanced war-making has replaced the peace dividend. The object of this machine has passed from dealing with Soviet Communism to a more complex and dispersed set of oil wars (Iraq I and now II), police actions against international miscreants (Kosovo), and now the ubiquitous War Against Terror, aimed variously at Islamic fundamentalists, Islam as a whole, or anybody irritated enough with the ruling order to take up some kind of arms against it. The comparison with the Roman Empire is here very exact. As the eminent economist and sociologist Joseph Schumpeter described Rome in 1919: “There was no corner of the known world where some interest was not alleged to be in danger or under actual attack. If the interests were not Roman, they were those of Rome’s allies. And if Rome had no allies existed, the allies would be invented. The fight was always invested with the order of legality. Rome was always being attacked by evil-minded neighbors.” The logic of constant threat meshes with that of ruthless expansion, which we see everywhere in this epoch of unipolar world dominion. Currently, the military budget of the us is 334 billion dollars. The budget for the next fiscal year is 379 billion dollars- an increase of more than 10 percent. By 2007, the projected military budget of the us is to be an astounding 451 billion dollars: almost half a trillion dollars, without the presence of anything resembling a conventional war. The present military budget is greater than the sum of all other military budgets. In fact, it is greater than the entire federal budget of Russia, once America's immortal adversary, and comprises more than half - 52 percent of all discretionary spending by the us government. (By comparison, education accounts for 8 percent of the federal budget.) A considerable portion of this is given over to "military Keynesianism," according to the well-established paths of the mic. Thus, although in the first years after the fall of the ussr certain firms like General Dynamics, which had played a large role in the nuclear arms race, suffered setbacks, that problem has been largely reversed for the entire class of firms fattening at the trough of militarism. It is fair to say, though, that the largesse is distributed over a wider scale, in accordance with the changing pattern of armaments. us Armies Taking Root Everywhere From having scarcely any standing army in 1940, American armies now stand everywhere. One feature of us military policy since WWII is to make war and then stay where war was made, rooting itself in foreign territory. Currently, the us has military bases in 113 countries, with 11 new ones formed since the beginning of the War Against Terror. The us now has bases in Kazakhstan, Uzbekistan, and Kurdistan, encircling China and creating new sources of military tension. On these bases, the us military has erected some 800,000 buildings. Imagine that: 800,000 buildings in foreign countries that are now occupied by us military establishments. And America still maintains large forces in Germany, Japan, and Korea, with tens of thousands of troops permanently on duty (and making mischief, as two us servicemen recently ran over and killed two Korean girls, provoking massive demonstrations). After the first Gulf War the us military became installed in Saudi Arabia and Kuwait, in which latter place it currently occupies one quarter of the country - 750 square miles devoted to military activity. This huge investment is no doubt determined by proximity to Iraq. Again, after going to war in Kosovo, the us left behind an enormous base in a place called Bondsteel. These self-expanding sites of militarism are permanent goads to terrorist organizations. Recall that one of Osama bin Laden's professed motivations for al-Qaeda's attacks on American facilities was the presence of us bases in his home country of Saudi Arabia. The bases are also permanent hazards to the environment - indeed, the us, with some 800,000 buildings on these military sites, is the world's largest polluter and the largest consumer of fossil fuels. With territorial expansion of the us military apparatus, there is a corresponding expansion of mission. For instance, in Colombia, where billions of us dollars are spent in the "War on Drugs," us troops are now being asked to take care of pipelines through which vital oil reserves are passing. In addition, the War on Drugs is now subsumed into the War Against Terror. The signifier of Terror has virtually unlimited elasticity, for once an apparatus reaches the size of the us military machine, threats can be seen anywhere. With the inauguration of the new hard-line president of Colombia, Alvaro Uribe, the us authorized the use of 1.7 billion dollars in military aid hitherto limited to anti-drug operations for direct attacks on deeply entrenched farc guerrillas. This redirection of aid came after Colombian officials and their American supporters in the Congress and Bush administration argued that the change was needed as part of the global campaign against terrorism. Within this overall picture, American armed forces are undergoing a qualitative shift of enormous proportion. In words read by President Bush: “Our forces in the next century must be agile, lethal, readily deployable, and must require a minimum of logistical support. We must be able to project our power over long distances in days or weeks rather than months. On land our heavy forces must be lighter, our light forces must be more lethal. All must be easier to deploy.” Crossing Weapons Boundaries - Both Nuclear and Conventional As a result, many boundaries and limits of the bipolar era have been breached. For example, the distinction between nuclear and conventional weapons had always constituted a radical barrier. The standoff between the us and the ussr was epitomized by mind-numbing hydrogen bomb-missiles facing each other in a scenario called “Mutual Assured Destruction.î”In short, a strategic condition of deterrence prevailed, which made nuclear weapons seem unthinkable. With the demise of the ussr, deterrence no longer inhibits us nuclear weaponry, and the weapons themselves have proliferated downward, becoming miniaturized and increasingly tactical rather than strategic. Meanwhile, the genie of the weapons industries has developed ever more destructive “conventional” weapons. These include non-explosive devices of awesome power, such as laser beams, microwaves, and large-scale climate manipulation, along with a new generation of super-powerful explosive devices. Thus the strongest non-nuclear weapons are now considerably more lethal than the least powerful nuclear weapons, making the latter thinkable and eliminating a major barrier against their employment. These so-called conventional bombs have already been used, for example, in Afghanistan, where the us employed a gigantic explosive weapon, called a “Bunker Buster” to root out al-Qaeda combatants in underground bunkers. They are based upon the “daisy cutter,” a giant bomb about the size of a Volkswagen Beetle and capable of destroying everything within a square kilometer. Significantly, the model used in Afghanistan, the B61-11, already employs nuclear technology, the infamous depleted uranium warhead, capable by virtue of its extreme density, of great penetrating power. Depleted uranium (du) is a by-product of the nuclear power industry (chiefly being U-238 created in the extraction of U-235 from naturally occurring uranium ore). Over 500,000 tons of deadly du have accumulated and 4-5,000 more tons are being produced every year. Like all products of the nuclear power industry, du poses immense challenges of disposal. It has this peculiar property of being almost twice as dense as lead and it is radioactive with a half-life of 4.5 billion years. Wherever depleted uranium is used, it has another peculiar property of exploding, vaporizing at 56 degrees centigrade, which is just like a little more than half the way to boiling water. So it is very volatile, it explodes, it forms dust and powders that are inhaled, disburses widely, and produces lethal cancers, birth defects, and so forth for 4.5 billion years. In the case of depleted uranium, the challenge of disposal was met by incorporating the refuse from the “peaceful” branch of nuclear technology into the war-making branch. Already used in anti-tank projectiles in the first Iraq war (approximately 300 tons worth) and again in Yugoslavia (approximately 10-15 tons were used in each of the various Yugoslav wars), it is presumed, although the defense department coyly denies it, that this material was also used in the Afghanistan war. Depleted uranium has spread a plague of radioactivity and further rationalized the use of nuclear weapons as such. Consequently, the B61-11 is about to be replaced with the BLU113, where the bunker buster will now be a small nuclear weapon, almost certainly spear-tipped with du. Pollutants to Earth and Space To the boundaries crossed between nuclear and non-nuclear weapons, and between the peaceful and militaristic uses of atomic technology, we need to add those between earth and its lower atmosphere on the one hand, and space on the other. The administration is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. In November 2002, Bush proposed that nato allies build missile defense systems, with components purchased, needless to add, from Boeing, Raytheon, etc, even as Congress was approving a fiscal 2003 defense budget containing $7.8 billion authorization for missile defense research and procurement, as part of the $238 billion set aside for Star Wars over the next 20 years. The administration now is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. A new missile defense system bureaucracy has risen. It is currently developing such wild items as something called ìbrilliant pebblesî which involves the release of endless numbers of mini satellites into outer space. All of this was to protect the world against the threat of rogue states such as North Korea. As the Seattle Times reported, the us expects the final declaration to, “express the need to examine options to protect allied forces, territories, and population centers against the full range of missile threats.” As an official put it, "This will establish the framework within which nato allies could work cooperatively toward fielding the required capabilities. With the us withdrawal this year from the anti-ballistic treaty with Russia, it is no longer a question of whether missile defenses will be deployed. The relevant questions are now what, how, and when. The train is about to pull out of the station; we invite our friends, allies, and the Russian Federation to climb on board." The destination of this train is defensive only in the Orwellian sense, as the missiles will be used to defend us troops in the field. In other words, they will be used to defend armies engaged in offensive activities. What is being “defended” by the Strategic Defense Initiative (sdi), therefore, is the initiative to make war everywhere. Space has now become the ultimate battlefield. And not just with use of these missiles. The High Frequency Active Aural Research Program (haarp) is also part of sdi. This amounts to weather warfare: deliberately manipulating climate to harm and destroy adversaries. A very dubious enterprise, to say the least, in an age when global warming and climate instability are already looming as two of the greatest problems facing civilization. The chief feature is a network of powerful antennas capable of creating controlled local modifications of the ionosphere and hence producing weather disturbances and so forth. All of these technical interventions are accompanied by many kinds of institutional and political changes. The National Aeronautics and Space Administration, nasa, for instance, is now a partner in the development of this strategic defense initiative. The very way in which the United Nations was drawn into the resolution in the war against Iraq is a breach and a violation of the original un Charter, which is to never make war, never to threaten to make war on any member state. The un was a peacemaking institution, but now the Super power has forced it into its orbit. The scrapping of the abm and other elements of the treaty structure (non- proliferation, test-ban) that had organized the world of the Cold War is one part of a process of shedding whatever might inhibit the cancerous growth of militarism. It also creates an atmosphere of general lawlessness in the world. This is felt at all levels, from the rise of an ultra-militarist clique in the White House to the formal renunciation of no-first-use nuclear strategy, the flouting of numerous un regulations, the doctrine of pre-emptive war, and, as the logical outcome of all these developments, the condition of Permanent War and its accompaniment of general lawlessness, media slavishness, and a wave of repression for whose parallel we have to go back to the Alien and Sedition acts of the 1790s, or Trumanís loyalty oaths of 1947. Militarism cannot be reduced to politics, economics, technology, culture, or psychology. All these are parts of the machine, make the machine go around, and are themselves produced by the actions of the machine. There is no doubt, in this regard, that the machine runs on natural resources (which have to be secured by economic, political, and military action), and that it is deeply embedded in the ruling corporate order. There is no contradiction here, but a set of meshing parts, driven by an insensate demand for fossil fuel energy. As a man from Amarillo, Texas put it when interviewed by npr as to the correctness of Bush’s plan to go to war in Iraq: “I agree with the president, because how else are we going to get the oil to fly the F-16s?” We go to war, in other words, to get the oil needed to go to war. A Who's Who List of MIC Beneficiaries The fact that our government is front-loaded with oil magnates is another part of the machine. It is of interest, therefore, that Unocal, for example, celebrated Condoleezza Riceís ascendancy to the post of National Security Advisor by naming an oil tanker after her. Or that Dick Cheney, originally a poor boy, became a rich man after the first Gulf War, when he switched from being Secretary of Defense, in charge of destroying the Kuwait oil fields, to ceo of a then-smallish company, Halliburton, in charge of rebuilding the same oil fields. Or that G.W. Bush himself, aside from his failed venture with Harken Oil, is scion of a family and a dynasty that controls the Carlyle Group, founded in 1987 by a former Carter administration official. Carlyle is now worth over $13 billion and its high officials include President Bush I, his Secretary of State (and fixer of the coup that put Bush II in power) James Baker, Reaganís Secretary of Defense Frank Carlucci, former British Prime Minister John Major, and former Phillipine President Fidel Ramos, among others. The Carlyle Group has its fingers everywhere, including ìdefenseî, where it controls firms making vertical missile launch systems currently in use on us Navy ships in the Arabian sea, as well as a range of other weapons delivery systems and combat vehicles. And as a final touch which the worldís people would be much better off for knowing, there are very definite connections between Carlyle and the family of Osama bin Laden - a Saudi power whose fortunes have been fused with those of the United States since the end of World War II. Thus the military-industrial complex lives, breathes, and takes on new dimensions. There is a deep structural reason for the present explosion of us militarism, most clearly traceable in the activities of Vice President Cheney, made clear in the energy report that he introduced with the generous assistance of Enron executives in May 2001. According to the report, American reliance on imported oil will rise by from about 52 percent of total consumption in 2001 to an estimated 66 percent in 2020. The reason for this is that world production, in general, and domestic production in particular are going to remain flat (and, although the report does not discuss this, begin dropping within the next 20 years). Meanwhile consumptionówhich is a direct function of the relentless drive of capitalism to expand commodity productionóis to grow by some two- thirds. Because the usage of oil must rise in the worldview of a Cheney, the us will actually have to import 60 percent more oil in 2020 to keep itself going than it does today. This means that imports will have to rise from their current rate of about 10.4 million barrels per day to about 16.7 million barrels per day. In the words of the report: “The only way to do this is persuade foreign suppliers to increase their production to sell more of their output to the us.” The meaning of these words depends of course on the interpretation of “persuade”, which in the us lexicon is to be read, I should think, as requiring a sufficient military machine to coerce foreign suppliers. At that point they might not even have to sell their output to the us, as it would already be possessed by the superpower. Here we locate the root material fact underlying recent us expansionism. This may seem an extravagant conclusion. However an explicit connection to militarismóand Iraqóhad been supplied the month before, in April 2001, in another report prepared by James Baker and submitted to the Bush cabinet. This document, called “Strategic Energy Policy Challenges for the 21st Century,” concludes with refreshing candor that ìthe us remains a prisoner of its energy dilemma, Iraq remains a destabilizing influence to the flow of oil to international markets from the Middle East, Saddam Hussein has also demonstrated a willingness to threaten to use the oil weapon and to use his own export program to manipulate oil markets, therefore the us should conduct an immediate policy review toward Iraq, including military, energy, economic, and political diplomatic assessments. Note the absence of reference to “weapons of mass destruction,” or aid to terrorism, convenient rationalizations that can be filled in later. Clearly, however things turn out with Iraq, the fundamental structural dilemma driving the military machine pertains to the contradictions of an empire that drives toward the invasion of all social space and the total control over nature. Since the former goal meets up with unending resistance and the latter crashes against the finitude of the material world, there is no recourse except the ever-widening resort to force. But this, the military monster itself, ever seeking threats to feed upon, becomes a fresh source of danger, whether of nuclear war, terror, or ecological breakdown. The situation is plainly unsustainable, a series of disasters waiting to happen. It can only be checked and brought to rationality by a global uprising of people who demand an end to the regime of endless war. This is the only possible path by which we can pull ourselves away from the abyss into which the military machine is about to plunge, dragging us all down with it.

#### **the aff’s certain calculations about war ease the path towards war and provides ammunition for militarists. our alternative is a pacifist analysis that injects moral and epistemic doubt into our decisionmaking about war – this is the only way to formulate better policies that address structural causes of war and avoids inevitable cycles of violence**

Neu 13 – prof @ U of Brighton

(Michael, International Relations 27(4), December, The Tragedy of Justified War)

Just war theory is not concerned with millions of starving people who could be saved from death and disease with a fraction of the astronomical amount of money that, every year, goes into the US defence budget alone (a budget that could no longer be justified if the United States ran out of enemies one day). It is not interested in exposing the operat- ing mechanisms of a global economic structure that is suppressive and exploitative and may be conducive to outbreaks of precisely the kind of violence that their theory is con- cerned with. As intellectually impressive as analytical just war accounts are, they do not convey any critical sense of Western moralism. It is as though just war theory were written for a different world than the one we occupy: a world of morally responsible, structurally unconstrained, roughly equal agents, who have non-complex and non-exploitative relationships, relationships that lend themselves to easy epistemic access and binary moral analysis. Theorists write with a degree of confidence that fails to appreciate the moral and epistemic fragility of justified war, the long-term genesis of violent conflict, structural causes of violence and the moralistic attitudes that politicians and the media are capable of adopting. To insist that, in the final analysis, the injustice of wars is completely absorbed by their being justified reflects a way of doing moral philosophy that is frighteningly mechanical and sterile. It does not do justice to individual persons,59 it is nonchalant about suffering of unimaginable proportions and it suffocates a nuanced moral world in a rigid binary structure designed to deliver unambiguous, action-guiding recommendations. According to the tragic conception defended here, justified warfare constitutes a moral evil, not just a physical one – whatever Coates’ aforementioned distinction is supposed to amount to. If we do not recognise the moral evil of justified warfare, we run the risk of speaking the following kind of language when talking to a tortured mother, who has witnessed her child being bombed into pieces, justifiably let us assume, in the course of a ‘just war’: See, we did not bomb your toddler into pieces intentionally. You should also consider that our war was justified and that, in performing this particular act of war, we pursued a valid moral goal of destroying the enemy’s ammunition factory. And be aware that killing your toddler was not instrumental to that pursuit. As you can see, there was nothing wrong with what we did. (OR: As you can see, we only infringed the right of your non-liable child not to be targeted, but we did not violate it.) Needless to say, we regret your loss. This would be a deeply pathological thing to say, but it is precisely what at least some contemporary just war theorists would seem to advise. The monstrosity of some accounts of contemporary just war theory seems to derive from a combination of the degree of certainty with which moral judgments are offered and the ability to regard the moral case as closed once the judgments have been made. One implication of my argument for just theorists is clear enough: they should critically reflect on the one-dimensionality of their dominant agenda of making binary moral judgments about war. If they did, they would become more sympathetic to the pacifist argument, not to the conclusion drawn by pacifists who are also caught in a binary mode of thinking (i.e. never wage war, regardless of the circumstances!) but to the timeless wisdom that forms the essence of the pacifist argument. It is wrong to knowingly kill and maim people, and it does not matter, at least not as much as the adherents of double effect claim, whether the killing is done intentionally or ‘merely’ with foresight. The difference would be psychological, too. Moral philosophers of war would no longer be forced to concede this moral truth; rather, they would be free to embrace it. There is no reason for them to disrespect the essence of pacifism. The just war theorist Larry May implicitly offers precisely such a tragic vision in his sympathetic discussion of ‘Grotius and Contingent Pacifism’. According to May, ‘war can sometimes be justified on the same grounds on which certain forms of pacifism are themselves grounded’.60 If this is correct, just war theorists have good reason to stop calling themselves by their name. They would no longer be just war theorists, but unjust war theorists, confronting politicians with a jus contra bellum, rather than offering them a jus ad bellum. Beyond being that, they would be much ‘humbler in [their] approach to considering the justness of war’ (or, rather, the justifiability), acknowledging that: notions of legitimate violence which appear so vivid and complete to the thinking individual are only moments and snapshots of a wider history concerning the different ways in which humans have ordered their arguments and practices of legitimate violence. Humility in this context does not mean weakness. It involves a concern with the implicit danger of adopting an arrogant approach to the problem of war.61 Binary thinking in just war theory is indeed arrogant, as is the failure to acknowledge the legitimacy of – and need for – ambiguity, agony and doubt in moral thinking about war. Humble philosophers of war, on the contrary, would acknowledge that any talk of justice is highly misleading in the context of war.62 It does not suffice here, in my view, to point out that ‘we’ have always understood what ‘they’ meant (assuming they meant what we think they meant). Fiction aside, there is no such thing as a just war. There is also no such thing as a morally justified war that comes without ambiguity and moral remainders. Any language of justified warfare must therefore be carefully drafted and constantly questioned. It should demonstrate an inherent, acute awareness of the fragility of moral thinking about war, rather than an eagerness to construct unbreakable chains of reasoning. Being uncertain about, and agonised by, the justifiability of waging war does not put a moral philosopher to shame. The uncertainty is not only moral, it is also epistemic. Contemporary just war theorists proceed as if certainty were the rule, and uncertainty the exception. The world to which just war theory applies is one of radical and unavoidable uncertainty though, where politicians, voters and combatants do not always know who their enemies are; whether or not they really exist (and if so, why they exist and how they have come into existence); what weapons the enemies have (if any); whether or not, when, and how they are willing to employ them; why exactly the enemies are fought and what the consequences of fighting or not fighting them will be. Philosophers of war should also become more sensitive to the problem of political moralism. The just war language is dangerous, particularly when spoken by eager, self- righteous, over-confident moralists trying to make a case. It would be a pity if philosophers of war, despite having the smartest of brains and the best of intentions, effectively ended up delivering rhetorical ammunition to political moralists. To avoid being inadvertently complicit in that sense, they could give public lectures on the dangers of political moralism, that is, on thinking about war in terms of black and white, good and evil and them and us. They could warn us against Euro-centrism, missionary zeal and the emperors’ moralistic clothes. They could also investigate the historical genesis and structural conditionality of large-scale aggressive behaviour in the global arena, deconstruct- ing how warriors who claim to be justified are potentially tied into histories and structures, asking them: Who are you to make that claim? A philosopher determined to go beyond the narrow discursive parameters provided by the contemporary just war paradigm would surely embrace something like Marcus’ ‘second-order regulative principle’, which could indeed lead to ‘“better” policy’.63 If justified wars are unjust and if it is true that not all tragedies of war are authentic, then political agents ought to prevent such tragedies from occurring. This demanding principle, however, may require a more fundamental reflection on how we ‘conduct our lives and arrange our institutions’ (Marcus) in this world. It is not enough to adopt a ‘wait and see’ policy, simply waiting for potential aggressions to occur and making sure that we do not go to war unless doing so is a ‘last resort’. Large-scale violence between human beings has causes that go beyond the individual moral failure of those who are potentially aggressing, and if it turns out that some of these causes can be removed ‘through more careful decision-making’ (Lebow), then this is what ought to be done by those who otherwise deprive themselves, today, of the possibility of not wronging tomorrow.

### CP

Text: The United States federal judiciary should require that the president cannot continue the detention of personnel that have successfully won a habeas corpus hearing.

#### Counterplan solves credibility—perception of US provision of habeas rights is critical to US soft power—the vital aspect of US legal jurisprudence—court action is key

Sidhu 11

[2011, Dawinder S. Sidhu, J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania, Judicial Review as Soft Power: How the Courts Can Help Us Win the Post-9/11 Conflict”, NATIONAL SECURITY LAW BRIEF, Vol. 1, Issue 1 http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb]

The “Great Wall” The writ of habeas corpus enables an individual to challenge the factual basis and legality of his detention,91 activating the judiciary’s review function in the separation of powers scheme.92 Because the writ acts to secure individual liberty by way of the judicial checking of unlawful executive detentions, the writ has been regarded as a bulwark of liberty. The Supreme Court has observed, for example, that “There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus . . . .”93 The writ is seen as a vital aspect of American jurisprudence, and an essential element of the law since the time of the Framers.94 The United States is a conspicuous actor in the world theater, subject to the interests and inclinations of other players, and possessing a similar, natural desire to shape the global community in a manner most favorable to its own objects. The tendency to attempt to inﬂuence others is an inevitable symptom of international heterogeneity and, at present, the United States is mired in an epic battle with fundamentalists bent on using terrorism as a means to repel,95 if not destroy, America.96 American success in foreign policy depends on the internal assets available to and usable by the United States, including its soft power. The law in America is an aspect of its national soft power. In particular, the moderates in the Muslim world—the intended audience of America’s soft power— may ﬁnd attractive the American constitutional system of governance in which 1) the people are the sovereign and the government consists of merely temporary and recallable agents of the people, 2) federal power is diffused so as to diminish the possibility that any branch of the government, or any of them acting in tandem, can infringe upon the liberty of the people, 3) structural protections notwithstanding, the people are entitled to certain substantive rights including the right to be free of governmental interference with respect to religious exercise, 4) the diversity of interests inherent in its populace is considered a critical safeguard against the ability of a majority group to oppress the minority constituents, 5) the courts are to ensure that the people’s rights to life, liberty, and property are not abridged, according to law, by the government or others, and 6) individuals deprived of liberty have available to them the writ of habeas corpus to invoke the judiciary’s checking function as to executive detention decisions. The Constitution, in the eyes of Judge Learned Hand, is “the best political document ever made.”97 If the aforementioned constitutional principles are part of the closest approximation to a just and reasoned society produced by man, surely they may have some persuasive appeal to the rest of the world, including moderate Muslims who generally live in areas less respectful of minority rights and religious pluralism. Such reverence is to be expected and warranted only if the United States has remained true to these constitutional principles in practice, and in particular, in its behavior in the aftermath of the 9/11 attacks, when national stress is heightened and the option of deviating from such values in favor of an expedient “law of necessity” similarly tempting.98 The extent to which the United States has remained true to itself as a nation of laws—and thus may credibly claim such legal soft power—is the subject of the next section. II. THE COURTS AND SOFT POWER The Judiciary In Wartime The United States has been charged with being unfaithful to its own laws and values in its prosecution of the post-9/11 campaign against transnational terrorism. With respect to its conduct outside of the United States, following 9/11, America has been alleged to have tortured captured individuals in violation of its domestic and international legal obligations,99 and detained individuals indeﬁnitely without basic legal protections.100 Closer to home, the United States is thought to have proﬁ led Muslims, Arabs, and South Asians in airports and other settings,101 conducted immigration sweeps targeting Muslims,102 and engaged in mass preventative detention of Muslims in the United States,103 among other things. These are serious claims. The mere perception that they bear any resemblance to the truth undoubtedly impairs the way in which the United States is viewed by Muslims around the world, including Muslim-Americans, and thus diminishes the United States’ soft power resources.104 The degree to which they are valid degrades the ability of the United States to argue persuasively that it not only touts the rule of law, but exhibits actual ﬁdelity to the law in times of crisis. These claims relate to conduct of the executive and/or the legislature in the aftermath of the 9/11 attacks. This Article is concerned, however, with the judiciary, that is whether the courts have upheld the rule of law in the post-9/11 context—and thus whether the courts may be a source of soft power today (even if the other branches have engaged, or are alleged to have engaged, in conduct that is illegal or unwise). As to the courts, it is my contention that the judiciary has been faithful to the rule of law after 9/11 and as such should be considered a positive instrument of American soft power. Prior to discussing post-9/11 cases supporting this contention, it is important to provide a historical backdrop to relationship between the courts and wartime situations because judicial decision-making in cases implicating the wars in Afghanistan and Iraq does not take occur on a blank slate, despite the unique and modern circumstances of the post-9/11 conﬂ ict.

### DA 1

#### Judicial deference to executive war powers high now

McCormack 13, Professor of Law at Utah

(8/20, Wayne, U.S. Judicial Independence: Victim in the “War on Terror”, today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.

#### Judicial restriction of Presidential War Powers makes warfighting impossible

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(8/22, Stephen F., War by Lawyer, www.libertylawsite.org/2013/08/22/war-by-lawyer/)

It is important to keep this in mind in light of the recent National Security Agency surveillance “scandal” which has led to calls for increased judicial oversight of the nation’s intelligence community. These calls, unfortunately, are not coming solely from the usual liberal suspects, but from conservatives who proclaim their devotion to the Constitution. This is an unfortunate turn of events, for if legislating from the bench is inappropriate in the domestic arena, it is completely unwarranted, and altogether dangerous, in the national security arena. This newfound appreciation for judicial activism from normally sober-minded conservatives can be seen in Senator Rand Paul’s (R-KY) and Representative Justin Amash’s (R-MI) proposal that class action lawsuits be filed against the National Security Agency in order to alter its practices. Paul recently announced that he would challenge “this [NSA surveillance] at the Supreme Court level. I’m going to be asking all the Internet providers and all of the phone companies, ask your customers to join me in a class-action lawsuit. If we get 10 million Americans saying ‘We don’t want our phone records looked at,’ then somebody will wake up and say things will change in Washington.” A program authorized by Congress, managed by the executive, and sanctioned by the FISA court will now be challenged by a class action lawsuit, mimicking the traditional liberal tactic of going to court when you cannot prevail in the political process. Additionally, Senator Patrick Leahy (D-VT), a longtime critic of the American intelligence community, has sponsored legislation with Senator Mike Lee (R-Utah) to “increase judicial review” of terrorist related surveillance requests. The FISA Accountability and Privacy Protection Act of 2013 would, as its sponsors put it, add more “meaningful judicial review” of requests by the government to intercept suspected terrorist communications. On top of this, President Ob ama has proposed that a “special advocate” be appointed to serve as an adversary to the government in FISA court proceedings. In other words, government officials will have to joust in front of a judge with a lawyer concerned about the civil rights of a suspected Al Qaeda sympathizer living in the United States. While it is not surprising that President Obama and Patrick Leahy would adopt these positions, it is surprising to see prominent Republicans, including potential 2016 GOP nominees, jumping on Pat Leahy’s bandwagon. Terrorist attacks directed from abroad are acts of war against the United States, requiring a response by the nation’s armed forces under the direction of the commander-in-chief. Unity in the executive is critical to the conduct of war, as Alexander Hamilton noted in The Federalist, and war by committee, especially a committee of lawyers, brings to armed conflict the very qualities that are the antithesis of Publius’s “decision, activity, secrecy, and dispatch.” The American military, with the assistance of the American intelligence community, fulfill the constitutional mandate to provide for the common defense. The nation’s defense establishment is not the Internal Revenue Service or the Department of Health and Human Services; if one dislikes the social welfare policies of the Obama administration or disagrees with President Obama for whatever reason, that is all well and good, but true conservatives should reject the principle that judicial review is applicable to the conduct of national defense. The founders understood that the decision to use force, the most important decision any government can make, were non-judicial in nature and were to be made by the elected representatives of the people. Nonetheless, for those weaned during an era when “privacy” was elevated to the be-all and end-all of the American experiment, the war power and related national security powers granted by the Constitution to the elected branches are trumped by modern notions of a limitless “right to privacy.” The civil liberties violations of the War on Terror are considered so egregious as to require the intervention of an appointed judiciary lacking any Constitutional mandate, and lacking the wherewithal, including information and staff, to handle sensitive national security matters. This is judicial activism at its worst and further evidence that the “political questions doctrine,” the idea of deferring to the elected branches of government on matters falling under their constitutional purview, is, for all practical purposes, dead (See the case of Totten vs. U.S., 1875, for an example of judicial deference to the elected branches on intelligence matters. This deference persisted until the late 20th century). Simply put, according to the Constitution and to almost 220 years of tradition, Congress and the President are constitutionally empowered, among other things, to set the rules regarding the measures deemed necessary to gather intelligence and conduct a war. One of the latest demands from advocates of increased judicial oversight is for a “targeted killing court.” In a similar vein, Senator Marco Rubio has called for the creation of a “Red Team” review of any executive targeting of American citizens, which would include a 15 day review process – “decision, activity, secrecy, and dispatch” be damned. A 15 day review process of targeting decisions would horrify Alexander Hamilton and all the framers of the Constitution. No doubt our 16th President would be horrified as well – imagine Abraham Lincoln applying for targeting permits on American citizens suspected of assisting the Confederacy. (“Today, we begin a 15 day review of case #633,721, that of Beauregard Birdwell of Paducah, Kentucky.”) War by lawyer might in the not too distant future include these types of targeting decisions, followed by endless appeals to unelected judges. All of this is a prescription for defeat. We are, sadly, almost at this point, for a new conception about war and national security has taken root in our increasingly legalistic society. We saw this during the Bush years when the Supreme Court for the first time in its history instructed the executive and legislative branches on the appropriate manner of treating captured enemy combatants. The Courts are now micromanaging the treatment of detainees at Guantanamo, to the point of reviewing standards for groin searches of captured Al Qaeda members. True conservatives understand the pitfalls of this legalism, especially of the ill-defined international variety. Conservatives should be especially alert to the dangers arising from elevating international law over the national interest as the standard by which to measure American conduct. The legalistic approach to the war on terror now being endorsed by prominent conservatives would cede presidential authority to executive branch lawyers and to their brethren in the judiciary who are playing a role they were never intended to play. Michael Scheuer, the former head of the CIA’s unit charged with tracking down Osama bin Laden, observed that “at the end of the day, the U.S. intelligence community is palsied by lawyers, and everything still depends on whether the lawyers approve it or not.” This is as far removed from conducting war, as Hamilton described it, with decision and dispatch, and with the “exercise of power by a single hand,” as one can get. War conducted by the courts is not only unconstitutional, it is, to borrow a phrase from author Philip K. Howard, part of the ongoing drift toward the death of common sense.

#### Court decisions spill over – military decisionmaking

Chesney et al 10 – Senior Fellow of Governance Studies @ Brookings

(Robert, Benjamin Wittes – Senior Fellow of Governance Studies @ Brookings, Rabea Benhalim – Legal Fellow of Governance Studies @ Brookings, The Emerging Law of Detention: The Guantánamo Habeas Cases as Lawmaking, http://www.brookings.edu/research/papers/2010/01/22-guantanamo-wittes-chesney)

It is hard to overstate the resulting significance of these cases. They are more than a means to decide the fate of the individuals in question. They are also the vehicle for an unprecedented wartime law-making exercise with broad implications for the future. The law established in these cases will in all likelihood govern not merely the Guantánamo detentions themselves but any other detentions around the world over which American courts acquire habeas jurisdiction. What’s more, to the extent that these cases establish substantive and procedural rules governing the application of law-of-war detention powers in general, they could end up impacting detentions far beyond those immediately supervised by the federal courts. They might, in fact, impact superficially-unrelated military activities, such as the planning of operations, the selection of interrogation methods, or even the decision to target individuals with lethal force.

#### Executive control of warmaking is key to avoiding nuclear war and terrorism

Li 2009 - J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University (Zheyao, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE)

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modern state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### DA 2

#### Trade promotion authority will be introduced soon --- it can pass if Obama effectively persuades opponents

Wingfield, 1/6 (Brian, 1/6/2014, “Business Groups Back Obama on Trade Amid Historic Debate (2)” [http://www.businessweek.com/news/2014-01-06/business-groups-back-obama-on-trade-as-historic-debate-begins)](http://www.businessweek.com/news/2014-01-06/business-groups-back-obama-on-trade-as-historic-debate-begins%29))

Some of the largest U.S. business groups are lining up behind President Barack Obama to pressure Congress to clear the way for a pair of trade deals that could set rules for more than half the world’s economy. The agreements, with 11 Pacific Rim countries and the 28-nation European Union may also help Obama deliver on his promise to double U.S. exports above 2009 levels by the end of the year, an increasingly distant goal. Standing in his way: almost 200 Democrats and Republicans who say they won’t yield to him the “fast track” authority to hammer out agreements without congressional amendments. “Fast-track authority is an undemocratic seizure of power that usurps our ability to represent the American people,” Representative Louise Slaughter, a New York Democrat, said. “There’s absolutely no reason why it should be renewed.” In the coming days, Senate Finance Committee leaders Max Baucus, a Montana Democrat, Orrin Hatch, a Utah Republican, and House Ways and Means Committee Chairman Dave Camp, a Michigan Republican, plan to introduce a bill to give Obama fast-track authority. The ensuing debate may produce one of the most contentious discussions of trade policy on Capitol Hill since the passage of the North American Free Trade Agreement 20 years ago. Roundtable, Chamber The Trade Benefits America Coalition, led by groups including the Business Roundtable, the U.S. Chamber of Commerce, the American Farm Bureau Federation and the National Association of Manufacturers, is backing Obama. The coalition -- whose approximately 160 members include Boeing Co. (BA:US), MetLife Inc. (MET:US), Pfizer Inc. and Wal-Mart Stores Inc. (WMT:US) -- has ramped up its lobbying campaign in recent months. The coalition has held hundreds of meetings with federal, state and local officials to counter growing opposition to the administration’s agenda. They’ve run ads in influential papers and started a website to tout what they see as the benefits of trade-promotion authority, or TPA, as fast-track is formally known. The group says the authority is constitutional and it doesn’t cede power to the president. “Updated TPA legislation would provide clear guidance on Congress’ requirement for trade agreements,” Doug Oberhelman, chief executive officer of Caterpillar Inc. (CAT:US) of Peoria, Illinois, wrote in an opinion piece running in McClatchy Co. (MNI:US) newspapers. Oberhelman is also chairman of the Business Roundtable’s international engagement committee. Trade Representative The lobbying campaign runs parallel to a White House push for trade-promotion authority. U.S. Trade Representative Michael Froman, who is seeking to complete the Pacific-region accord this year, recently stepped up his calls for a TPA bill. Commerce Secretary Penny Pritzker made it a prominent part of her agenda for the agency that she unveiled in November. Trade-promotion authority is “a congressional prerogative,” and we want to work closely with Congress to get a broad, bipartisan bill, Froman said today in an interview on Bloomberg Television’s “In the Loop with Betty Liu.” Lawmakers are “very much aware of what it is we’re negotiating,” adding that his office has had more than 1,100 meetings about the Pacific-region deal on Capitol Hill. While fast-track authority allows only for an up-or-down vote on the accords, it also lets lawmakers set parameters for the agreements on issues including labor and environmental protections, digital commerce and agricultural trade. Expired Authority Congress last voted on a fast-track bill in 2002, and the authority expired in 2007. Supporters say it can help the U.S. strike better trade deals by assuring other nations that the accords won’t be altered at a later date. Obama asked Congress for the special privilege during a speech in Chattanooga, Tennessee on July 30. Lawmakers have been working since early last year on a bill. Critics and opponents say they expect a high-profile battle on Capitol Hill this month.“This is truly an historic moment in international trade policy,” said Mike Dolan a lobbyist for the International Brotherhood of Teamsters, a group that wants more protections for workers. “It’s the last time we’re going to be talking about the model” for future trade accords, he said. “If it comes back looking and smelling like the old fast-track, we’d be opposed to it,” Leo Gerard, president of the United Steelworkers of America union, said in an interview. Dolan said the Teamsters would be in “lockstep solidarity” against a version of the bill that waters down U.S. regulations. American Jobs Opponents say a new bill must show that trade deals will create jobs for Americans and include protections for workers whose employment may be affected by such matters as outsourcing, Internet trade, currency manipulation and government competition. “Flawed free-trade agreements like NAFTA have destroyed American manufacturers and American jobs for more than 20 years,” Slaughter said on a Dec. 10 conference call with reporters. “We have to stop that from happening again.” In November, 151 of the House’s 201 Democrats wrote to Obama with the same complaint. A day earlier, 23 conservative Republicans said they wouldn’t approve legislation that would cede congressional powers to the president. Fourteen other lawmakers of both parties have also expressed concerns. Lawmaker Attention “There won’t be fast track granted if it doesn’t change,” Representative Rosa DeLauro, a Connecticut Democrat who was one of the leaders behind the House letter, said today in a telephone interview. Issues including renewal of long-term unemployment benefits, which expired last week, will compete with fast-track legislation for lawmakers’ attention in the weeks ahead, she said. With the debate about to unfold this month, advocates of the measure and the Pacific trade agreement are starting to push back against opposition. “On my side of the aisle, Republicans need to resist the temptation to buy the misleading narrative that TPA would simply give away the store to the Obama administration,” Senator Jeff Flake, an Arizona Republican who supports fast track, said during a Dec. 18 speech in Washington. Several elements could prolong the discussion. Representative Sander Levin of Michigan, the top Democrat on the House Ways and Means Committee, has said he wants a stronger role for Congress and measures to prevent currency manipulation. Baucus, the Senate’s top trade official and co-author of the trade legislation, is also Obama’s nominee to be ambassador to China and may leave Congress in the coming months. Senate’s Agenda Lori Wallach, director of the Global Trade Watch program at Public Citizen, a Washington-based consumer group, said the outlook for congressional approval of fast-track legislation is uncertain ahead of November elections, and Senate Majority Leader Harry Reid probably won’t act before a House vote. “Given prospects in the House for passage look so dim, I can’t imagine leader Reid would bring up a vote on something this unpopular given the many dicey Senate elections coming unless and until the House votes,” she said in a phone interview. Reid’s office didn’t respond to a request for comment. Ed Gresser, a former adviser in the U.S. Trade Representative’s office under President Bill Clinton, said a similar number of Republicans opposed giving the White House fast-track negotiating authority in 2002, and that Obama will be able to persuade enough Democrats to support a new bill.“It actually is quite do-able for the administration,” he said in a phone interview.

#### Only this leadership and prioritization by Obama will ensure passage

Business Times Singapore, 12/17 (“Obama must make the case for freer trade,” 12/17/2013, Factiva))

The TPA bill, which is expected to be introduced in January, will face fierce opposition from Democratic legislators affiliated with the labour unions and environmentalist forces who warn that free trade accords such as the TPP encourage American companies to relocate operations to low-wage emerging economies that don't adhere to environmental standards. There will also be pushback from conservative Republican lawmakers with ties to the Tea Party movement who don't want to strengthen the power of President Barack Obama by granting him a new TPA.

So the president now has his work cut out. He must place the goal of liberalising global trade on the top of his policy agenda and exert leadership to ensure that the TPA legislation gets approved by Congress early, before Democrats and Republicans start preparing for next year's midterm Congressional elections. But he must articulate a coherent global trade narrative which highlights the benefits that liberalising trade, especially with Asia, can bring to the American economy - by creating new jobs and investments, while strengthening US global leadership.

#### Congressional opposition to transferring detainees and trying them in civilian courts

LAT, 13 (5/1/2013, “Erasing the stain of Guantanamo,” [http://articles.latimes.com/2013/may/01/opinion/la-ed-guantanamo-hunger-strike-20130501)](http://articles.latimes.com/2013/may/01/opinion/la-ed-guantanamo-hunger-strike-20130501%29))

It has been more than four years since the newly inaugurated president issued an executive order promising "promptly to close detention facilities at Guantanamo." Yet the prison remains open (though its population has dwindled from a high of nearly 800 inmates in 2005). Of those remaining, about half have been cleared for release but continue to be detained because of congressional opposition to their repatriation to Yemen and other countries whose authorities might not be able to prevent them from engaging in terrorism. Congress also has used its authority to prevent Obama from transferring detainees to the U.S. mainland, a factor in the decision to try Khalid Shaikh Mohammed and other alleged 9/11 conspirators before a military commission rather than in civilian courts.

#### Undercutting Obama’s authority undermines his leverage on other agenda fights

Lillis & Wasson, 13 (9/7/2013, Mike Lillis and Erik Wasson, “Fears of wounding Obama weigh heavily on Democrats ahead of vote,” [http://thehill.com/homenews/house/320829-fears-of-wounding-obama-weigh-heavily-on-democrats)](http://thehill.com/homenews/house/320829-fears-of-wounding-obama-weigh-heavily-on-democrats%29))

The prospect of wounding President Obama is weighing heavily on Democratic lawmakers as they decide their votes on Syria. Obama needs all the political capital he can muster heading into bruising battles with the GOP over fiscal spending and the debt ceiling. Democrats want Obama to use his popularity to reverse automatic spending cuts already in effect and pay for new economic stimulus measures through higher taxes on the wealthy and on multinational companies. But if the request for authorization for Syria military strikes is rebuffed, some fear it could limit Obama's power in those high-stakes fights. That has left Democrats with an agonizing decision: vote "no" on Syria and possibly encourage more chemical attacks while weakening their president, or vote "yes" and risk another war in the Middle East. “I’m sure a lot of people are focused on the political ramifications,” a House Democratic aide said. Rep. Jim Moran (D-Va.), a veteran appropriator, said the failure of the Syria resolution would diminish Obama's leverage in the fiscal battles. "It doesn't help him," Moran said Friday by phone. "We need a maximally strong president to get us through this fiscal thicket. These are going to be very difficult votes." “Clearly a loss is a loss,” a Senate Democratic aide noted.Publicly, senior party members are seeking to put a firewall between a failed Syria vote — one that Democrats might have a hand in — and fiscal matters. Rep. Gerry Connolly (D-Va.) said Friday that the fear of damaging Obama just eight months into his second term "probably is in the back of people's minds" heading into the Syria vote. But the issue has not percolated enough to influence the debate. "So far it hasn't surfaced in people's thinking explicitly," Connolly told MSNBC. "People have pretty much been dealing with the merits of the case, not about the politics of it — on our side." Moran said he doesn't think the political aftershocks would be the “deciding factor” in their Syria votes. "I rather doubt that most of my colleagues are looking at the bigger picture," he said, "and even if they were, I don't think it would be the deciding factor." Moran said the odds of passing the measure in the House looked slim as of Friday. Other Democrats are arguing that the Syria vote should be viewed in isolation from other matters before Congress. “I think it’s important each of these major issues be decided on its own — including this one,” Rep. Sander Levin (Mich.), senior Democrat on the House Ways and Means Committee, said Friday. With Obama scheduled to address the country Tuesday night, several Democrats said the fate of the Syria vote could very well hinge on the president's ability to change public opinion. “This is going to be a fireside chat, somewhat like it was in the Thirties," Levin said. "I wasn’t old enough to know, one has to remember how difficult it was for President Roosevelt in WWII." Rep. Elijah Cummings (D-Md.), who remains undecided on the Syria question, agreed. "It's very, very important that the case for involvement in Syria not only be made to the members of Congress and the Senate, but it must also be made to the American people," Cummings said Friday in the Capitol. Still other Democrats, meanwhile, are arguing that the ripple effects of a Syria vote are simply too complicated to game out in advance. Some said the GOP has shown little indication it will advance Obama’s agenda even after his reelection, so a Syria failure would do little damage. “There is a constant wounding [of Obama] going on with the Tea Party on budgets, appropriations and the debt ceiling,” said Rep. Sheila Jackson Lee (D-Texas). “I am going to reach out to my colleagues, Tea Party or not, and ask is this really the way you want to project the political process?” Jackson Lee said using Syria to score political points would be “frolicking and frivolity” by the Tea Party. Yet others see a more serious threat to the Democrats' legislative agenda if the Syria vote fails. A Democratic leadership aide argued that Republicans — some of whom are already fundraising on their opposition to the proposed Syria strikes — would only be emboldened in their fight against Obama's agenda if Congress shoots down the use-of-force resolution. "It's just going to make things harder to do in Congress, that's for sure," the aide said Friday. But other aides said Obama could also double down on fighting the cuts from sequestration if he becomes desperate for a win after Syria, and the net effect could be positive. A leading Republican strategist echoed that idea. “Should the President lose the vote in Congress, he will be severely weakened in the eyes of public opinion, the media, the international crowd and the legislative branch," The Hill columnist John Feehery said Friday on his blog. "Unless he wants to take the rest of his Presidency off and leave the keys with Harry Reid, that means he will have to show that he is still relevant to the process, which means he will need to somehow get a victory in the debt limit/appropriations battles that are now coming close to being engaged."

#### TPA is key to reverse slow growth and ensure U.S. global competitiveness

Oberhelman, 12/30 --- chairman and CEO of Caterpillar in Illinois and chairman of Business Roundtable’s International Engagement Committee (Doug, 12/30/2013, “Guest: Should Congress give Obama fast-track authority for trade deals? Yes,” [http://seattletimes.com/html/opinion/2022546185\_dougoberhelmanprotradeoped30xml.html)](http://seattletimes.com/html/opinion/2022546185_dougoberhelmanprotradeoped30xml.html%29)

LIKE most Americans, I’m frustrated with the slow rate of economic growth in the United States over the last several years.

Most proposals to fix the problem focus on domestic issues — government spending, taxes and infrastructure projects, to name a few.

As the chairman and chief executive officer of Caterpillar, I particularly like to talk about the need to invest in our nation’s infrastructure, which helps to make America more competitive in the world economy.

But while all of these issues are critically important to the U.S. economy, the opportunity to increase U.S. investment, growth and jobs requires us to go beyond America’s border.

Ninety-six percent of the world’s consumers live outside of the United States. In fact, in the last five years, Caterpillar has exported more than $82 billion in products manufactured at our factories in the United States, supporting tens of thousands of jobs. Creating opportunities for American companies to reach these consumers through new and expanded free-trade agreements can help to get our economy back on track and keep our nation globally competitive.

Today, trade supports more than one in five American jobs. U.S. exports have grown more than twice as fast as GDP since 2002, accounting for 14 percent of GDP in 2012. And workers in U.S. companies that export goods earn on average up to 18 percent more than those in similar jobs in non-exporting companies.

The United States is currently pursuing one of the most ambitious trade agendas in a generation, trade agreements that would open markets in the Asia-Pacific region and in Europe.

Also being negotiated is an agreement aimed at knocking down barriers to boost the global competitiveness of U.S. services companies. But to realize the economic benefits of these pending trade deals, Congress must update and pass Trade Promotion Authority legislation.

A partnership between Congress and the Administration, TPA legislation helps shape a strategic vision for U.S. trade policy and the goals the United States wants to accomplish in trade negotiations.

It provides a framework for Congress and the president to work together to craft that vision, and it helps define the critical constitutional relationship between Congress and the president with respect to foreign commerce.

From the 1930s until 2007, Congress has authorized every president to pursue trade agreements that open markets for U.S. goods and services. Such authority was last passed by Congress in 2002 and expired in 2007.

Updated TPA legislation would provide clear guidance on Congress’ requirements for trade agreements. It would also provide our trade negotiating partners with a degree of comfort that the United States is committed to the international trade negotiating process and the trade agreements we negotiate.

In the coming weeks it is expected that Congress will introduce updated TPA legislation. Congress should seize the opportunity to shore up the benefits of current and future trade agreements — increased U.S. investment, growth and jobs — by passing updated TPA legislation.

Working with the president to do so would ensure that the United States continues to pursue trade agreements that not only would allow companies like Caterpillar to remain globally competitive, but also would benefit America.

#### The impact is global nuclear war

Freidberg & Schonfeld, 8 --- \*Professor of Politics and IR at Princeton’s Woodrow Wilson School, AND \*\*senior editor of Commentary and a visiting scholar at the Witherspoon Institute in Princeton (10/21/2008, Aaron and Gabriel, “The Dangers of a Diminished America”, Wall Street Journal, http://online.wsj.com/article/SB122455074012352571.html?mod=googlenews\_wsj)

With the global financial system in serious trouble, is America's geostrategic dominance likely to diminish? If so, what would that mean? One immediate implication of the crisis that began on Wall Street and spread across the world is that the primary instruments of U.S. foreign policy will be crimped. The next president will face an entirely new and adverse fiscal position. Estimates of this year's federal budget deficit already show that it has jumped $237 billion from last year, to $407 billion. With families and businesses hurting, there will be calls for various and expensive domestic relief programs. In the face of this onrushing river of red ink, both Barack Obama and John McCain have been reluctant to lay out what portions of their programmatic wish list they might defer or delete. Only Joe Biden has suggested a possible reduction -- foreign aid. This would be one of the few popular cuts, but in budgetary terms it is a mere grain of sand. Still, Sen. Biden's comment hints at where we may be headed: toward a major reduction in America's world role, and perhaps even a new era of financially-induced isolationism. Pressures to cut defense spending, and to dodge the cost of waging two wars, already intense before this crisis, are likely to mount. Despite the success of the surge, the war in Iraq remains deeply unpopular. Precipitous withdrawal -- attractive to a sizable swath of the electorate before the financial implosion -- might well become even more popular with annual war bills running in the hundreds of billions. Protectionist sentiments are sure to grow stronger as jobs disappear in the coming slowdown. Even before our current woes, calls to save jobs by restricting imports had begun to gather support among many Democrats and some Republicans. In a prolonged recession, gale-force winds of protectionism will blow. Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that **rogue states may choose to become ever more reckless with their nuclear toys**, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures. As for our democratic friends, the present crisis comes when many European nations are struggling to deal with decades of anemic growth, sclerotic governance and an impending demographic crisis. Despite its past dynamism, Japan faces similar challenges. India is still in the early stages of its emergence as a world economic and geopolitical power. What does this all mean? There is no substitute for America on the world stage. The choice we have before us is between the potentially disastrous effects of disengagement and the stiff price tag of continued American leadership.

### Terror

#### Terrorist networks are weak – Bin Laden’s death, Abbottabad intelligence, no safe haven

WILLIAM MCCANTS - Center for Strategic Studies / Johns Hopkins – Sept/Oct 2011, Al Qaeda's Challenge, Foreign Affairs, http://www.foreignaffairs.com/articles/68160/william-mccants/al-qaedas-challenge?page=show

Al Qaeda now stands at a precipice. The Arab Spring and the success of Islamist parliamentarians throughout the Middle East have challenged its core vision just as the group has lost its founder. Al Qaeda has also lost access to bin Laden's personal connections in Afghanistan, Pakistan, and the Persian Gulf, which had long provided it with resources and protection. Bin Laden's death has deprived al Qaeda of its most media-savvy icon; and most important, al Qaeda has lost its commander in chief. The raid that killed bin Laden revealed that he had not been reduced to a figurehead, as many Western analysts had suspected; he had continued to direct the operations of al Qaeda and its franchises. Yet the documents seized from bin Laden's home in Abbottabad, Pakistan, reveal how weak al Qaeda had become even under his ongoing leadership. Correspondence found in the raid shows bin Laden and his lieutenants lamenting al Qaeda's lack of funds and the constant casualties from U.S. drone strikes. These papers have made the organization even more vulnerable by exposing its general command structure, putting al Qaeda's leadership at greater risk of extinction than ever before. Al Qaeda has elected Zawahiri as its new chief, at least for now. But the transition will not be seamless. Some members of al Qaeda's old guard feel little loyalty to Zawahiri, whom they view as a relative newcomer. Al Qaeda's members from the Persian Gulf, for their part, may feel alienated by having an Egyptian at their helm, especially if Zawahiri chooses another Egyptian as his deputy. Despite these potential sources of friction, al Qaeda is not likely to split under Zawahiri's reign. Its senior leadership will still want to unite jihadist groups under its banner, and its franchises will have little reason to relinquish the recognition and resources that come with al Qaeda affiliation. Yet those affiliates cannot offer al Qaeda's senior commanders shelter. Indeed, should Pakistan become too dangerous a refuge for the organization's leaders, they will find themselves with few other options. The Islamic governments that previously protected and assisted al Qaeda, such as those in Afghanistan and Sudan in the 1990s, either no longer exist or are inhospitable (although Somalia might become a candidate if the militant group al Shabab consolidates its hold there). In the midst of grappling with all these challenges, al Qaeda must also decide how to respond to the uprisings in the Arab world. Thus far, its leaders have indicated that they want to support Islamist insurgents in unstable revolutionary countries and lay the groundwork for the creation of Islamic states once the existing regimes have fallen, similar to what they attempted in Iraq. But al Qaeda's true strategic dilemma lies in Egypt and Tunisia. In these countries, local tyrants have been ousted, but parliamentary elections will be held soon, and the United States remains influential. The outcome in Egypt is particularly personal for Zawahiri, who began his fight to depose the Egyptian government as a teenager. Zawahiri also understands that Egypt, given its geostrategic importance and its status as the leading Arab nation, is the grand prize in the contest between al Qaeda and the United States. In his recent six-part message to the Egyptian people and in his eulogy for bin Laden, Zawahiri suggested that absent outside interference, the Egyptians and the Tunisians would establish Islamic states that would be hostile to Western interests. But the United States, he said, will likely work to ensure that friendly political forces, including secularists and moderate Islamists, win Egypt's upcoming elections. And even if the Islamists succeed in establishing an Islamic state there, Zawahiri argued, the United States will retain enough leverage to keep it in line. To prevent such an outcome, Zawahiri called on Islamist activists in Egypt and Tunisia to start a popular (presumably nonviolent) campaign to implement sharia as the sole source of legislation and to pressure the transitional governments to end their cooperation with Washington. Yet Zawahiri's attempt to sway local Islamists is unlikely to succeed. Although some Islamists in the two countries rhetorically support al Qaeda, many, especially the Muslim Brotherhood, are now organizing for their countries' upcoming elections -- that is, they are becoming Islamist parliamentarians. Even Egyptian Salafists, who share Zawahiri's distaste for parliamentary politics, are forming their own political parties. Most ominous for Zawahiri's agenda, the Egyptian Islamist organization al-Gama'a al-Islamiyya (the Islamic Group), parts of which were once allied with al Qaeda, has forsworn violence and recently announced that it was creating a political party to compete in Egypt's parliamentary elections. Al Qaeda, then, is losing sway even among its natural allies. This dynamic limits Zawahiri's options. For fear of alienating the Egyptian people, he is not likely to end his efforts to reach out to Egypt's Islamist parliamentarians or to break with them by calling for attacks in the country before the elections. Instead, he will continue urging the Islamists to advocate for sharia and to try to limit U.S. influence. In the meantime, Zawahiri will continue trying to attack the United States and continue exploiting less stable postrevolutionary countries, such as Libya, Syria, and Yemen, which may prove more susceptible to al Qaeda's influence. Yet to operate in these countries, al Qaeda will need to subordinate its political agenda to those of the insurgents there or risk destroying itself, as Zarqawi's group did in Iraq. If those insurgents take power, they will likely refuse to offer al Qaeda safe haven for fear of alienating the United States or its allies in the region. Thanks to the continued predominance of the United States and the growing appeal of Islamist parliamentarians in the Muslim world, even supporters of al Qaeda now doubt that it will be able to replace existing regimes with Islamic states anytime soon. In a recent joint statement, several jihadist online forums expressed concern that if Muammar al-Qaddafi is defeated in Libya, the Islamists there will participate in U.S.-backed elections, ending any chance of establishing a true Islamic state. As a result of all these forces, al Qaeda is no longer the vanguard of the Islamist movement in the Arab world. Having defined the terms of Islamist politics for the last decade by raising fears about Islamic political parties and giving Arab rulers a pretext to limit their activity or shut them down, al Qaeda's goal of removing those rulers is now being fulfilled by others who are unlikely to share its political vision. Should these revolutions fail and al Qaeda survives, it will be ready to reclaim the mantle of Islamist resistance. But for now, the forces best positioned to capitalize on the Arab Spring are the Islamist parliamentarians, who, unlike al Qaeda, are willing and able to engage in the messy business of politics.

#### No threat of nuclear terrorism – bin Laden documents prove terrorists have no money

John Mueller- Prof poli sci, Ohio State, August 2, 2011, The Truth About al Qaeda, Foreign Affairs, http://www.foreignaffairs.com/articles/68012/john-mueller/the-truth-about-al-qaeda?page=show

The chief lesson of 9/11 should have been that small bands of terrorists, using simple methods, can exploit loopholes in existing security systems. But instead, many preferred to engage in massive extrapolation: If 19 men could hijack four airplanes simultaneously, the thinking went, then surely al Qaeda would soon make an atomic bomb. As a misguided Turkish proverb holds, "If your enemy be an ant, imagine him to be an elephant." The new information unearthed in Osama bin Laden's hideout in Abbottabad, Pakistan, suggests that the United States has been doing so for a full decade. Whatever al Qaeda's threatening rhetoric and occasional nuclear fantasies, its potential as a menace, particularly as an atomic one, has been much inflated. The public has now endured a decade of dire warnings about the imminence of a terrorist atomic attack. In 2004, the former CIA spook Michael Scheuer proclaimed on television's 60 Minutes that it was "probably a near thing," and in 2007, the physicist Richard Garwin assessed the likelihood of a nuclear explosion in an American or a European city by terrorism or other means in the next ten years to be 87 percent. By 2008, Defense Secretary Robert Gates mused that what keeps every senior government leader awake at night is "the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear." Few, it seems, found much solace in the fact that an al Qaeda computer seized in Afghanistan in 2001 indicated that the group's budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was some $2,000 to $4,000. In the wake of the killing of Osama bin Laden, officials now have more al Qaeda computers, which reportedly contain a wealth of information about the workings of the organization in the intervening decade. A multi-agency task force has completed its assessment, and according to first reports, it has found that al Qaeda members have primarily been engaged in dodging drone strikes and complaining about how cash-strapped they are. Some reports suggest they've also been looking at quite a bit of pornography. The full story is not out yet, but it seems breathtakingly unlikely that the miserable little group has had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-tech facility to fabricate a bomb. It is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew, all the while attracting no attention from outsiders. The documents also reveal that after fleeing Afghanistan, bin Laden maintained what one member of the task force calls an "obsession" with attacking the United States again, even though 9/11 was in many ways a disaster for the group. It led to a worldwide loss of support, a major attack on it and on its Taliban hosts, and a decade of furious and dedicated harassment. And indeed, bin Laden did repeatedly and publicly threaten an attack on the United States. He assured Americans in 2002 that "the youth of Islam are preparing things that will fill your hearts with fear"; and in 2006, he declared that his group had been able "to breach your security measures" and that "operations are under preparation, and you will see them on your own ground once they are finished." Al Qaeda's animated spokesman, Adam Gadahn, proclaimed in 2004 that "the streets of America shall run red with blood" and that "the next wave of attacks may come at any moment." The obsessive desire notwithstanding, such fulminations have clearly lacked substance. Although hundreds of millions of people enter the United States legally every year, and countless others illegally, no true al Qaeda cell has been found in the country since 9/11 and exceedingly few people have been uncovered who even have any sort of "link" to the organization. The closest effort at an al Qaeda operation within the country was a decidedly nonnuclear one by an Afghan-American, Najibullah Zazi, in 2009. Outraged at the U.S.-led war on his home country, Zazi attempted to join the Taliban but was persuaded by al Qaeda operatives in Pakistan to set off some bombs in the United States instead. Under surveillance from the start, he was soon arrested, and, however "radicalized," he has been talking to investigators ever since, turning traitor to his former colleagues. Whatever training Zazi received was inadequate; he repeatedly and desperately sought further instruction from his overseas instructors by phone. At one point, he purchased bomb material with a stolen credit card, guaranteeing that the purchase would attract attention and that security video recordings would be scrutinized. Apparently, his handlers were so strapped that they could not even advance him a bit of cash to purchase some hydrogen peroxide for making a bomb. For al Qaeda, then, the operation was a failure in every way -- except for the ego boost it got by inspiring the usual dire litany about the group's supposedly existential challenge to the United States, to the civilized world, to the modern state system. Indeed, no Muslim extremist has succeeded in detonating even a simple bomb in the United States in the last ten years, and except for the attacks on the London Underground in 2005, neither has any in the United Kingdom. It seems wildly unlikely that al Qaeda is remotely ready to go nuclear. Outside of war zones, the amount of killing carried out by al Qaeda and al Qaeda linkees, maybes, and wannabes throughout the entire world since 9/11 stands at perhaps a few hundred per year. That's a few hundred too many, of course, but it scarcely presents an existential, or elephantine, threat. And the likelihood that an American will be killed by a terrorist of any ilk stands at one in 3.5 million per year, even with 9/11 included. That probability will remain unchanged unless terrorists are able to increase their capabilities massively -- and obtaining nuclear weapons would allow them to do so. Although al Qaeda may have dreamed from time to time about getting such weapons, no other terrorist group has even gone so far as to indulge in such dreams, with the exception of the Japanese cult Aum Shinrikyo, which leased the mineral rights to an Australian sheep ranch that sat on uranium deposits, purchased some semi-relevant equipment, and tried to buy a finished bomb from the Russians. That experience, however, cannot be very encouraging to the would-be atomic terrorist. Even though it was flush with funds and undistracted by drone attacks (or even by much surveillance), Aum Shinrikyo abandoned its atomic efforts in frustration very early on. It then moved to biological weapons, another complete failure that inspired its leader to suggest that fears expressed in the United States of a biological attack were actually a ruse to tempt terrorist groups to pursue the weapons. The group did finally manage to release some sarin gas in a Tokyo subway that killed 13 and led to the group's terminal shutdown, as well as to 16 years (and counting) of pronouncements that WMD terrorism is the wave of the future. No elephants there, either.

#### Can’t steal, build, or buy a bomb- experts agree

Peter Bergen- fellow @ the New America Foundation and NYU’s Center on Law and Security- Sept 2010, Reevaluating Al-Qa`ida’s Weapons of Mass Destruction Capabilities, Combating Terrorism Center @ West Point, CTC Sentinel, Vol 3 Issue 9, http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=122242

Bin Ladin’s and al-Zawahiri’s portrayal of al-Qa`ida’s nuclear and chemical weapons capabilities in their post-9/11 statements to Hamid Mir was not based in any reality, and it was instead meant to serve as psychological warfare against the West. There is no evidence that al-Qa`ida’s quest for nuclear weapons ever went beyond the talking stage. Moreover, al-Zawahiri’s comment about “missing” Russian nuclear suitcase bombs floating around for sale on the black market is a Hollywood construct that is greeted with great skepticism by nuclear proliferation experts. This article reviews al-Qa`ida’s WMD efforts, and then explains why it is unlikely the group will ever acquire a nuclear weapon. Al-Qa`ida’s WMD Efforts In 2002, former UN weapons inspector David Albright examined all the available evidence about al-Qa`ida’s nuclear weapons research program and concluded that it was virtually impossible for al-Qa`ida to have acquired any type of nuclear weapon.8 U.S. government analysts reached the same conclusion in 2002.9 There is evidence, however, that al-Qa`ida experimented with crude chemical weapons, explored the use of biological weapons such as botulinum, salmonella and anthrax, and also made multiple attempts to acquire radioactive materials suitable for a dirty bomb.10 After the group moved from Sudan to Afghanistan in 1996, al-Qa`ida members escalated their chemical and biological weapons program, innocuously code-naming it the “Yogurt Project,” but only earmarking a meager $2,000-4,000 for its budget.11 An al-Qa`ida videotape from this period, for example, shows a small white dog tied up inside a glass cage as a milky gas slowly filters in. An Arabic-speaking man with an Egyptian accent says: “Start counting the time.” Nervous, the dog barks and then moans. After struggling and flailing for a few minutes, it succumbs to the poisonous gas and stops moving. This experiment almost certainly occurred at the Darunta training camp near the eastern Afghan city of Jalalabad, conducted by the Egyptian Abu Khabab.12 Not only has al-Qa`ida’s research into WMD been strictly an amateur affair, but plots to use these types of weapons have been ineffective. One example is the 2003 “ricin” case in the United Kingdom. It was widely advertised as a serious WMD plot, yet the subsequent investigation showed otherwise. The case appeared in the months before the U.S.-led invasion of Iraq, when media in the United States and the United Kingdom were awash in stories about a group of men arrested in London who possessed highly toxic ricin to be used in future terrorist attacks. Two years later, however, at the trial of the men accused of the ricin plot, a government scientist testified that the men never had ricin in their possession, a charge that had been first triggered by a false positive on a test. The men were cleared of the poison conspiracy except for an Algerian named Kamal Bourgass, who was convicted of conspiring to commit a public nuisance by using poisons or explosives.13 It is still not clear whether al-Qa`ida had any connection to the plot.14 In fact, the only post-9/11 cases where al-Qa`ida or any of its affiliates actually used a type of WMD was in Iraq, where al-Qa`ida’s Iraqi affiliate, al-Qa`ida in Iraq (AQI), laced more than a dozen of its bombs with the chemical chlorine in 2007. Those attacks sickened hundreds of Iraqis, but the victims who died in these assaults did so largely from the blast of the bombs, not because of inhaling chlorine. AQI stopped using chlorine in its bombs in Iraq in mid-2007, partly because the insurgents never understood how to make the chlorine attacks especially deadly and also because the Central Intelligence Agency and U.S. military hunted down the bomb makers responsible for the campaign, while simultaneously clamping down on the availability of chlorine.15 Indeed, a survey of the 172 individuals indicted or convicted in Islamist terrorism cases in the United States since 9/11 compiled by the Maxwell School at Syracuse University and the New America Foundation found that none of the cases involved the use of WMD of any kind. In the one case where a radiological plot was initially alleged—that of the Hispanic-American al-Qa`ida recruit Jose Padilla—that allegation was dropped when the case went to trial.16 Unlikely Al-Qa`ida Will Acquire a Nuclear Weapon Despite the difficulties associated with terrorist groups acquiring or deploying WMD and al-Qa`ida’s poor record in the matter, there was a great deal of hysterical discussion about this issue after 9/11. Clouding the discussion was the semantic problem of the ominous term “weapons of mass destruction,” which is really a misnomer as it suggests that chemical, biological, and nuclear devices are all equally lethal. In fact, there is only one realistic weapon of mass destruction that can kill tens or hundreds of thousands of people in a single attack: a nuclear bomb.17 The congressionally authorized Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism issued a report in 2008 that typified the muddled thinking about WMD when it concluded: “It is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013.”18 The report’s conclusion that WMD terrorism was likely to happen somewhere in the world in the next five years was simultaneously true but also somewhat trivial because terrorist groups and cults have already engaged in crude chemical and biological weapons attacks.19 Yet the prospects of al-Qa`ida or indeed any other group having access to a true WMD—a nuclear device—is near zero for the foreseeable future. If any organization should have developed a serious WMD capability it was the bizarre Japanese terrorist cult Aum Shinrikyo, which not only recruited 300 scientists—including chemists and molecular biologists—but also had hundreds of millions of dollars at its disposal.20 Aum embarked on a large-scale WMD research program in the early 1990s because members of the cult believed that Armageddon was fast-approaching and that they would need powerful weapons to survive. Aum acolytes experimented with anthrax and botulinum toxin and even hoped to mine uranium in Australia. Aum researchers also hacked into classified networks to find information about nuclear facilities in Russia, South Korea and Taiwan.21 Sensing an opportunity following the collapse of the Soviet Union, Aum recruited thousands of followers in Russia and sent multiple delegations to meet with leading Russian politicians and scientists in the early 1990s. The cult even tried to recruit staff from inside the Kurchatov Institute, a leading nuclear research center in Moscow. One of Aum’s leaders, Hayakawa Kiyohide, made eight trips to Russia in 1994, and in his diary he made a notation that Aum was willing to pay up to $15 million for a nuclear device.22 Despite its open checkbook, Aum was never able to acquire nuclear material or technology from Russia even in the chaotic circumstances following the implosion of the communist regime.23 In the end, Aum abandoned its investigations of nuclear and biological weapons after finding them too difficult to acquire and settled instead on a chemical weapons operation, which climaxed in the group releasing sarin gas in the Tokyo subway in 1995. It is hard to imagine an environment better suited to killing large numbers of people than the Tokyo subway, yet only a dozen died in the attack.24 Although Aum’s WMD program was much further advanced than anything al-Qa`ida developed, even they could not acquire a true WMD. It is also worth recalling that Iran, which has had an aggressive and well-funded nuclear program for almost two decades, is still some way from developing a functioning nuclear bomb. Terrorist groups simply do not have the resources of states. Even with access to nuclear technology, it is next to impossible for terrorist groups to acquire sufficient amounts of highly enriched uranium (HEU) to make a nuclear bomb. The total of all the known thefts of HEU around the world tracked by the International Atomic Energy Agency between 1993 and 2006 was just less than eight kilograms, well short of the 25 kilograms needed for the simplest bomb;25 moreover, none of the HEU thieves during this period were linked to al-Qa`ida. Therefore, even building, let alone detonating, the simple, gun-type nuclear device of the kind that was dropped on Hiroshima during World War II would be extraordinarily difficult for a terrorist group because of the problem of accumulating sufficient quantities of HEU. Building a radiological device, or “dirty bomb,” is far more plausible for a terrorist group because acquiring radioactive materials suitable for such a weapon is not as difficult, while the construction of such a device is orders of magnitude less complex than building a nuclear bomb. Detonating a radiological device, however, would likely result in a relatively small number of casualties and should not be considered a true WMD. There is also the concern that a state may covertly provide a nuclear device to a terrorist group. This was one of the underlying rationales to topple Saddam Hussein’s government in Iraq in 2003. Yet governments are not willing to give their “crown jewels” to organizations that they do not control, and giving a terrorist group a nuclear weapon would expose the state sponsor to large-scale retaliation.26 The United States destroyed Saddam’s regime on the mere suspicion that he might have an active nuclear weapons program and that he might give some kind of WMD capacity to terrorists. Also, nuclear states are well-aware that their nuclear devices leave distinctive signatures after they are detonated, which means that even in the unlikely event that a government gave a nuclear weapon to terrorists, their role in the plot would likely be discovered.27 Just as states will not give nuclear weapons to terrorists, they are unlikely to sell them either. This leaves the option of stealing one, but nuclear-armed states, including Pakistan, are quite careful about the security measures they place around the most strategic components of their arsenals. After 9/11, the United States gave Pakistan approximately $100 million in aid to help secure its nuclear weapons.28 The U.S. Department of Defense has assessed that “Islamabad’s nuclear weapons are probably stored in component form,”29 meaning that the weapons are stored unassembled with the fissile core separated from the non-nuclear explosive.30 Such disassembling is just one layer of protection against potential theft by jihadists.31 A further layer of protection is Permissive Action Links (PAL), essentially electronic locks and keys designed to prevent unauthorized access to nuclear weapons; Pakistan asserts that it has the “functional equivalent” of these.32 As a result of these measures, Michael Maples, the head of the U.S. Defense Intelligence Agency at the time, told the Senate Armed Services Committee in March 2009 that “Pakistan has taken important steps to safeguard its nuclear weapons.”33

#### Intel cooperation is high – Snowden leaks prove

NYT 2013 (July 9, “For Western Allies, a Long History of Swapping Intelligence” <http://www.nytimes.com/2013/07/10/world/europe/for-western-allies-a-long-history-of-swapping-intelligence.html?pagewanted=all&_r=1&&pagewanted=print>)

When Edward J. Snowden disclosed the extent of the United States data mining operations in Germany, monitoring as many as 60 million of the country’s telephone and Internet connections in one day and bugging its embassy, politicians here, like others in Europe, were by turns appalled and indignant. But like the French before them, this week they found themselves backpedaling. In an interview released this week Mr. Snowden said that Germany’s intelligence services are “in bed” with the National Security Agency, “the same as with most other Western countries.” The assertion has added to fresh scrutiny in the European news media of Berlin and other European governments that may have benefited from the enormous American snooping program known as Prism, or conducted wide-ranging surveillance operations of their own. The outrage of European leaders notwithstanding, intelligence experts and historians say the most recent disclosures reflect the complicated nature of the relationship between the intelligence services of the United States and its allies, which have long quietly swapped information on each others’ citizens. “The other services don’t ask us where our information is from and we don’t ask them,” Mr. Snowden said in the interview, conducted by the documentary filmmaker Laura Poitras and Jacob Appelbaum, a computer security researcher, and published this week in the German magazine Der Spiegel. “This way they can protect their political leaders from backlash, if it should become public how massively the private spheres of people around the globe are being violated.” Britain, which has the closest intelligence relationship with the United States of any European country, has been implicated in several of the data operations described by Mr. Snowden, including claims that Britain’s agencies had access to the Prism computer network, which monitors data from a range of American Internet companies. Such sharing would have allowed British intelligence agencies to sidestep British legal restrictions on electronic snooping. Prime Minister David Cameron has insisted that its intelligence services operate within the law. Another allegation, reported by The Guardian newspaper, is that the Government Communications Headquarters, the British surveillance center, tapped fiber-optic cables carrying international telephone and Internet traffic, then shared the information with the N.S.A. This program, known as Tempora, involved attaching intercept probes to trans-Atlantic cables when they land on British shores from North America, the report said. President François Hollande of France was among the first European leaders to express outrage at the revelations of American spying, and especially at accusations that the Americans had spied on French diplomatic posts in Washington and New York. There is no evidence to date that French intelligence services were granted access to information from the N.S.A., Le Monde reported last week, however, that France’s external intelligence agency maintains a broad telecommunications data collection system of its own, amassing metadata on most, if not all, telephone calls, e-mails and Internet activity coming in and out of France. Mr. Hollande and other officials have been notably less vocal regarding the claims advanced by Le Monde, which authorities in France have neither confirmed nor denied. Given their bad experiences with domestic spying, first under the Nazis and then the former the East German secret police, Germans are touchy when it comes to issues of personal privacy and protection of their personal data. Guarantees ensuring the privacy of mail and all forms of long-distance communications are enshrined in Article 10 of their Constitution. When the extent of the American spying in Germany came to light the chancellor’s spokesman, Steffen Seibert, decried such behavior as “unacceptable,” insisting that, “We are no longer in the cold war.” But experts say ties between the intelligence services remain rooted in agreements stemming from that era, when West Germany depended on the United States to protect it from the former Soviet Union and its allies in the East. “Of course the German government is very deeply entwined with the American intelligence services,” said Josef Foschepoth, a German historian from Freiburg University. Mr. Foschepoth spent several years combing through Germany’s federal archives, including formerly classified documents from the 1950s and 1960s, in an effort to uncover the roots of the trans-Atlantic cooperation. In 1965, Germany’s foreign intelligence service, known by the initials BND, was created. Three years later, the West Germans signed a cooperation agreement effectively binding the Germans to an intensive exchange of information that continues up to the present day, despite changes to the agreements. The attacks on Sept. 11, 2001, in the United States saw a fresh commitment by the Germans to cooperate with the Americans in the global war against terror. Using technology developed by the Americans and used by the N.S.A., the BND monitors networks from the Middle East, filtering the information before sending it to Washington, said Erich Schmidt-Eenboom, an expert on secret services who runs the Research Institute for Peace Politics in Bavaria. In exchange, Washington shares intelligence with Germany that authorities here say has been essential to preventing terror attacks similar to those in Madrid or London. It is a matter of pride among German authorities that they have been able to swoop in and detain suspects, preventing several plots from being carried out. By focusing the current public debate in Germany on the issue of personal data, experts say Chancellor Angela Merkel is able to steer clear of the stickier questions about Germany’s own surveillance programs and a long history of intelligence sharing with the United States, which still makes many Germans deeply uncomfortable, more than two decades after the end of the cold war. “Every postwar German government, at some point, has been confronted with this problem,” Mr. Foschepoth said of the surveillance scandal. “The way that the chancellor is handling it shows that she knows very well, she is very well informed and she wants the issue to fade away.”

#### The UK is staying silent on intelligence sharing

Global Research News 2013 (July 1, “Anglo-American “Intelligence Sharing” Britain’s “Signal Intelligence” (SIGINT) supports CIA Drone Strikes” <http://www.globalresearch.ca/anglo-american-intelligence-sharing-britains-signal-intelligence-sigint-supports-cia-drone-strikes/5341222>)

Speaking in Los Angeles yesterday, UK Foreign Secretary William Hague said about the UK’s policy on intelligence-sharing with the United States: “We operate under the rule of law and are accountable for it. In some countries secret intelligence is used to control their people. In ours, it only exists to protect their freedoms.” His comments come as the UK government is locked in a battle to avoid revealing what GCHQs policy is on providing intelligence to support CIA drone strikes. Commenting on Mr Hague’s speech, Cori Crider, Reprieve’s Strategic Director and attorney, said: “Mr Hague says secret intelligence protects the freedoms of Britons – but is apparently happy for UK intelligence to strip the freedoms (and lives) of Pakistani and Yemeni victims of secret wars. Reprieve’s client Noor Khan, who lost his father and over 40 others in a botched drone strike, would find this claim laughable. He has tried to get the UK to explain how sharing GCHQ spy data with the US to drone Pakistani villages is not illegal – so far in vain. The UK government has fought tooth and nail in his case to keep judges from considering their role in supporting US drone strikes. Is this what you call transparency?” Drone from beneath Although there have been reports that GCHQ supports the CIA’s covert drone programme in Pakistan, the Government has refused to either confirm or deny what its policy is. A judicial review of British Government policy has been brought by Noor Khan, from North Waziristan, whose father was killed in a 2011 strike on a civilian meeting. However, ministers continue to fight the case, although it seeks only to clarify what the Government’s policy is on supporting drone strikes, and whether that policy is legal.

### Credibility

#### US-EU intel legal confrontation now

Henry Farrell, WaPo, 10/23/13, The Merkel phone tap scandal paves the way toward E.U.-U.S. confrontation, www.washingtonpost.com/blogs/monkey-cage/wp/2013/10/23/the-merkel-phone-tap-scandal-paves-the-way-toward-e-u-u-s-confrontation/?wprss=rss\_politics&clsrd

According to German news magazine, Spiegel, there is some evidence that the United States has tried to tap German Chancellor Angela Merkel’s cellphone. The evidence seems strong enough to have caused Merkel to make an angry phone call to Obama to complain. The administration, in response, has said that the United States “is not monitoring and will not monitor the communications of Chancellor Merkel.” It has declined to comment on whether it has monitored her phone communications in the past.

It’s likely that Germany is being hypocritical in complaining about the phone tap. The transcripts of the Wikileaks diplomatic cables reveal that Merkel has been privately very sympathetic to U.S. surveillance in the past. Almost certainly, Merkel would not be making angry and well publicized phone calls if the scandal hadn’t already become public. Now that it is public, she has to. The scandal is equivalent to the scandal that would erupt in the United States, if it was discovered that France had been tapping into President Obama’s blackberry.

Yet as Martha Finnemore and my arguments about hypocrisy suggest, the interesting question isn’t whether the German government is entirely sincere. It’s whether these revelations are making it tougher for the United States to have its cake and eat it too. And there is good reason to believe that they will make direct confrontation between Europe and the United States more likely.

On Monday, the European Parliament agreed on new privacy legislation, which included a provision that forbade businesses from giving personal information to U.S. authorities without informing European authorities, and the European citizen affected. The United States had previously successfully lobbied to get this provision deleted; it was reinstated as a result of the Snowden scandal. The European Parliament doesn’t get sole final say on this legislation — it now has to negotiate with Europe’s member states. U.S. politicians and lobbyists have been hoping that they can persuade enough member states to quietly delete the provision yet again.

This has suddenly become a lot harder. Merkel would probably personally like to see the provision deleted. Yet it is going to be very hard for her to push that argument, without looking like a sellout to the German public. The French wiretapping scandal is similarly going to harden public opposition in France. Disagreements over spying are usually handled discreetly through back channels. Not this time.

Thus — even if Merkel doesn’t want it (and she has done her best in her public statement to limit the controversy by only demanding that U.S. spying stops) — this latest scandal is plausibly going to lead to a major confrontation between the European Union and the United States over NSA spying, in which the two sides make incompatible legal demands. If this happens, Google, Facebook, and other companies that operate across both jurisdictions will be caught in the crossfire. It’s possible that Europe and the United States will find some way to fudge this and avoid confrontation, but it’s hard for me to see how.

#### Dispute is escalating—it collapses relations and overwhelms any increased trust from the plan

EuroNews, staff writer, 10/26/13, Europe-US trust, shattered by NSA spying, could take decades to rebuild, www.euronews.com/2013/10/26/europe-us-trust-shattered-by-nsa-spying-could-take-decades-to-rebuild/

The document, from 2006, does not give names but says the NSA encourages senior officials of the administration and government to share their contact details with the agency. One unnamed official alone is said to have passed on 200 numbers. It has set another cat among the pigeons, sparking a fresh escalation in the simmering diplomatic crisis between Washington and its allies. It is becoming increasingly difficult for Barack Obama to limit the consequences of this incessant flow of revelations and counter the lingering Cold War atmosphere it has created. The bugging of Chancellor Angela Merkel’s mobile phone is particularly embarrassing. Friends don’t do this sort of thing, Berlin says, while the US has been desperately emphasising the importance of its friendship with Germany, insisting that a few lines in the press are not going to undermine that. Our Washington correspondent Stefan Grobe asked the head of one of Germany’s largest private non-profit organisations, the Bertelsmann Foundation, to help gauge the potential for worsening relations between that country and the United States. Legal specialist and political analyst Annette Heuser responded on the transatlantic NSA spying scandal. The foundation’s executive director in the US capital, Heuser said: “The question is not only whether the Chancellor’s cell phone has been bugged or whether the German government has been bugged. The general question is whether friends can put up with operations like these. The answer is: definitely not. The Obama administration is not doing itself any favours by downplaying the whole affair and saying: ‘We won’t do it any more’ and that is it. We are witnessing the beginning of a foreign policy tsunami that is going to bother American and European transatlantic policy for quite some time.” And this is the president whom many in Europe wanted for the US; so their feelings were hurt when, swiftly following his 2008 election victory, Obama immediately showed the Europeans that he just was not that into them. He was more attentive to Asia – perhaps taking Europe’s good nature for granted. Our Bertelsmann expert said: “I believe that there is a tendency here in the US and in this administration not to take relations with Europeans seriously, and to believe that scandals and problems can easily be brushed away. This is a fundamental mistake. We have also noticed that the Obama administration, like no other US administration in post-war history, has lost the ability to understand the Europeans and to read them accurately. This is a huge problem for transatlantic relations. Until now, there has been a deep-rooted trust between Europeans and Americans – especially between Germans and Americans – but this scandal now contributes to a situation in which this trust is being eroded and is no longer an essential part of these relations.” In 2011, Chancellor Merkel was the first European leader Obama invited to dinner at the White House. It served a double function, to honour her and to somewhat wash away the bitterness in many people’s mouths that the Bush administration had left. According to Annette Heuser: “This scandal will have very important consequences for the future of transatlantic relations. Until now, we have always said that the lowest point in these relations, especially between Germany and the US, was the struggle over the Iraq war in 2003. It was the question of whether to intervene militarily in Iraq. The German government at the time, under Gerhard Schroeder, clearly opted against it. But that was merely a question of military strategy. What we are seeing right now is much more fundamental; we are dealing with trust. This trust is disappearing from transatlantic relations and will take decades to rebuild.”

#### Restricting detention causes shift to targeted killing which is net worse --- even intelligent liberals acknowledge the tradeoff

Feldman, 10/23 --- professor of constitutional and international law at Harvard

(10/23/2013, Noah, “Blame Liberals for Obama’s Illegal Drone War,” [http://www.bloomberg.com/news/2013-10-23/blame-liberals-for-obama-s-illegal-drone-war.html)](http://www.bloomberg.com/news/2013-10-23/blame-liberals-for-obama-s-illegal-drone-war.html%29))

The advocacy groups Amnesty International and Human Rights Watch are accusing the administration of U.S. President Barack Obama of possible war crimes for drone strike campaigns in Pakistan and Yemen. These charges won’t have much weight within the U.S. -- after all, even Hollywood now portrays the way we tortured detainees, and no one has been held to account. But the reports presage what will probably become history’s verdict on drone strikes taking place off the battlefield in weak states: bad for human rights, bad for the rule of law -- and bad for U.S. interests in the fight against terrorism. There will be plenty of blame to go around, yet I can’t escape the gnawing feeling that people like me -- legal critics of the George W. Bush administration’s detention policy -- bear some moral responsibility for creating incentives for the Obama administration to kill rather than capture. True, we didn’t realize that condemning interrogation practices and quasi-lawless detention at Guantanamo Bay, Cuba, would lead a Democratic president to break new ground in unfettered presidential authority. But that’s just the point: We should have seen it coming. And we didn’t. To be clear, I’m not saying that lawyer-critics caused the turn to drone strikes. We’re not that important as a class. Consequences Ignored Most of the blame for the adoption of drones as systematic policy will land, rightly, on policy makers. Largely civilian, but partly military, these officials considered drones a convenient and clean way of killing the enemy without endangering U.S. troops. Enamored of technology and of war from a distance, they failed to consider the consequences. The deaths of innocent civilians mistakenly targeted are horrible, of course. But innocent civilians can also be mistakenly killed by manned aircraft, not to mention ground troops. The strategic error was failing to realize that drone strikes away from the battlefield would systematically alienate the populations in whose midst they occurred. Far from strengthening the governments of Pakistan and Yemen by killing terrorists, the strikes undercut the sovereignty of those already weak governments. Even when strikes successfully targeted al-Qaeda members or other terrorist groups, they reminded the local public that their governments weren’t actually sovereign in their own territory. A 2011 poll in Pakistan’s Waziristan region, financed by the British government, found 63 percent of respondents saying the strikes were never justified. This trend went directly contrary to the basic doctrine of counterinsurgency developed in the later Bush years, according to which the overarching goal is to strengthen the local government and win support from the population to defeat the insurgents. Although the tactical appeal of drone strikes is significant, it doesn’t fully explain the Obama administration’s preference for them. Part of the policy choice resulted from the practical impossibility for the president of doing anything with al-Qaeda-linked terrorists if they should be captured. Having pledged to close the prison at Guantanamo during the 2008 presidential campaign, Obama could hardly add detainees there. But why had Obama come out against Guantanamo in the first place? The answer had everything to do with legally inflected criticisms of detention as practiced by the Bush administration. You remember the tune: There was no clear legal authority to hold detainees. Harsh interrogation tactics violated domestic and international law. Guantanamo itself was a legal black hole, chosen because it wasn’t inside the U.S., but also (according to the U.S.) wasn’t under Cuban sovereignty because of a disputed 100-year-old treaty. Reasonable Criticisms When people including myself made these criticisms to reasonable people in the Bush administration -- yes, there were reasonable people there, such as Matthew Waxman, who worked in both the State and Defense departments, and Jack Goldsmith, of the Office of Legal Counsel (and now my colleague at Harvard Law School) -- we got a pretty consistent answer. Look, they said, detention is problematic, but it is better than just killing people!These Bush administration moderates pointed out that in choosing military targets, mistakes were sometimes made -- collateral damage was even accepted under international law. Detention, too, might involve errors, but it was necessary as an alternative to shooting first and asking questions later.I found these arguments unconvincing at the time. The rule of law, I believed, was being fundamentally distorted by intentional acts of detention and interrogation that were not authorized and that deviated from legal norms. The detainees were being subjected to human rights violations, which was bad enough; but executive power was also being drastically expanded in the attempt to provide some doubtful justification for what was going on. I stand by those criticisms. But in retrospect, perhaps I and others should have been more attuned to the likely consequences of making them. Democrats focused on Guantanamo and the anonymous black detention sites as symbols of all that was wrong with the Bush administration’s detention policy. That in turn obligated Obama to do the same, leaving him with almost no room to maneuver on detention. Then came the drones -- and with them a series of legal justifications that arguably went much further than the Bush administration had gone in expanding executive power. One Justice Department memorandum, which has still outrageously not been released to the public, apparently justified the killing of U.S. citizens by drone strikes in part through the argument that due process had been satisfied by internal deliberations within the executive branch. If the reports are accurate, this amounts to the first time I know of in our tradition since the Magna Carta in 1215 that due process has been deemed satisfied without giving the victim of a government deprivation of life and liberty the opportunity to be heard by a neutral decision-maker. The costs to the rule of law under this system match those of the Bush administration. And though the Amnesty International and Human Rights Watch reports aren’t likely to go anywhere, it seems clear that the targeting and killing of civilians based on loose “signatures” without detailed intelligence almost certainly violates the law of war.

#### Cuts in member militaries render NATO ineffective

-budget cuts will undermine NATO

Croft 13

[Adrian, “Defense cuts jeopardize NATO's effectiveness, Panetta warns”, Reuters, Feb 22:

<http://www.reuters.com/article/2013/02/22/us-usa-fiscal-panetta-idUSBRE91L10320130222>]

(Reuters) - European Defense cuts and U.S. budget gridlock are jeopardizing NATO's effectiveness, outgoing U.S. Defense Secretary Leon Panetta warned on Friday. Leaving his last NATO ministerial meeting in Brussels, Panetta joined those warning of the effects of deep Defense cuts in many Western countries and said it would be an "irresponsible act of political dysfunction" if the U.S. Congress permitted sweeping across-the-board Defense cuts to take place. Many NATO governments have responded to economic crisis and budget pressures by slashing Defense spending, creating a growing gulf between U.S. and European military capabilities. Some $46 billion in U.S. budget cuts are scheduled to take effect from March 1 that would slash nearly every U.S. military program or activity unless Congress acts to avert them. Panetta formally notified Congress on Wednesday that the Pentagon plans to put civilian Defense employees on unpaid leave this year if the cuts take effect. President Barack Obama's administration is pushing Congress to avert the cuts, known as sequestration. Panetta said that if the budget cuts happened, "it could impact not only our readiness but frankly the role that we would play with regards to the readiness of NATO as well." "There's no question that in the current budget environment, with deep cuts in European Defense spending and the kind of political gridlock that we are seeing in the United States right now with regards to our own budget, (it) is putting at risk our ability to effectively act together," he told a news conference. "As I prepare to step down as secretary of defense, I do fear that the alliance will soon be - if it is not already - stretched too thin," he said. POLITICAL DYSFUNCTION Panetta said he hoped Congress would not allow the across-the-board budget cuts to take place. "I think it would be frankly a very shameful and irresponsible act of political dysfunction if in fact that were to occur. The American people would be justly outraged to have people, who they elect to office to protect them, harm them by allowing sequester to take place," he said. Obama signed the Budget Control Act in 2011 requiring $487 billion in Defense spending cuts over a decade. The law also put in place another $500 billion in mandatory, across-the-board Pentagon cuts. The cuts were never meant to go into effect, but were intended to coerce Congress and the White House into agreeing on more selective budget reductions. That deal never happened. Panetta's comments were reminiscent of the warning given by another departing U.S. defense secretary, Robert Gates, who said in Brussels in June 2011 that NATO risked "collective military irrelevance" unless alliance members took action to reverse declining capabilities. Obama nominated former Republican Senator Chuck Hagel to succeed Panetta, but Republican lawmakers succeeded last week in delaying a Senate vote on confirming Hagel as defense secretary.

### Solvency

#### Obama will circumvent the plan with creative lawyering

Hafetz, 11/5 --- law professor at Seton Hall

(11/5/2013, Jonathan, “Outrage Fatigue: The Danger of Getting Used to Gitmo,” http://www.worldpoliticsreview.com/articles/13311/outrage-fatigue-the-danger-of-getting-used-to-gitmo))

The Obama administration has shown no shortage of creative lawyering in justifying U.S. military involvement in Libya and Syria as well as in expanding America’s use of targeted drone strikes. In those instances, the administration has interpreted presidential authority robustly, while narrowly construing congressional attempts to cabin that authority, as in the War Powers Resolution. Yet, when it comes to releasing Guantanamo detainees, the administration remains sheepish. It has failed to apply the same interpretive approach to congressional transfer restrictions despite what the president has described as the clear national security interests in closing the prison. Only external events, such as the hunger strike, now seem to prompt any action. And even there, the urgency tends to dissipate once the public pressure and media attention fades.

#### Obama will redefine the law to circumvent the plan

Pollack, 13 --- professor of history emeritus at Michigan State

(2/5/2013, Norman, “For the Glory of What? Drones, Israel, and the Eclipse of Democracy,” <http://www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/>)

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to remake the laws of war by consciously violating them and then creating new legal concepts to provide juridical cover for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (Obama is hardly a novice at this game of stretching the law to suit the convenience of, shall we say, the national interest? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama redefined the meaning of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

# 2NC

### Warfighting

#### Courts are massively deferring to executive war powers now

Entin 12 – Prof of Law & Poli Sci @ Case Western Reserve University

(Jonathan, War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations, Case Western Reserve Journal of International Law, Vol 45)

Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive’s position, it generally has done so on relatively narrow grounds. Consider the Espionage Act cases that arose during World War I. Schenck v. United States,63 which is best known for Justice Holmes’s announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant’s having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that “the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out.”64 The circumstances in which the speech took place affected the scope of First Amendment protection: “When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.”65 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort66 and of Eugene Debs for a speech denouncing the war.67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States,68 but only Justice Brandeis agreed with his position.69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes’s opinions for the Court in the earlier cases.70 Similarly, the Supreme Court rejected challenges to the government’s war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs.71 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts.72 In addition, the Court upheld the validity of the Japanese internment program.73 Of course, the Court did limit the scope of the program by holding that it did not apply to “concededly loyal” citizens.74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated.75 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees.76 The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region.77 The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy,78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone.79 The few lower courts that addressed the merits of challenges to the legality of the Vietnam War consistently rejected those challenges.80 The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch’s position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld81 held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O’Connor’s plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force82 and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. citizens.83 Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute,84 which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi’s detention was unlawful and that he should be released on habeas corpus,85 whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief.86 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government’s detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality’s remand order.87 Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld,88 the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees.89 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case.90 Congress responded to that suggestion by enacting the Military Commissions Act of 2006,91 which sought to endorse the executive’s detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush,92 the Supreme Court again rejected the government’s position. First, the statute did not suspend the writ of habeas corpus.93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate.94 At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism95 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit.96 Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought.97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene.98 About a month after this symposium took place, in Hamdan v. United States99 the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld.100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment.101 It remains to be seen how broadly the decision will apply. Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft,102 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States.103 And in Mohamed v. Jeppesen Dataplan, Inc.,104 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen.105 Unlike Arar, in which the defendants were federal officials,106 this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture.107 Although at least four judges on the en banc courts dissented from both rulings,108 the Supreme Court declined to review either case.109

#### The court will continue to defer to avoid backlash

Devins 2010 - Professor of Law and Professor of Government, College of William & Mary (February, Neal, “Symposium: Presidential Power In Historical Perspective: Reflections on Calabresi and Yoo's the Unitary Executive: Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants” 12 U. Pa. J. Const. L. 491, Lexis)

 [\*528] One final comment on the nature of the dialogue that took and is taking place between the three branches on the enemy combatant issue: Throughout the Bush-era, these cases were anything but a constitutional dialogue. The executive persisted in making the same argument, and, as its political fortunes diminished, the Court carved over more and more issue space for itself. For its part, the Bush-era Congress played no meaningful role - it simultaneously backed the executive while signaling to the Court that it would support judicial invalidation of executive initiatives. With a new administration in place, there is reason to think that the inter-branch dynamic will change. The Obama administration has advanced its policies while pursuing a less confrontational course; avoiding absolutist arguments and trying to steer clear of an adverse Supreme Court ruling. In so doing, the administration has yet to launch the type of broadsides that challenge the foundations of judicial authority. Up until now, the Court has responded in kind, leaving the administration breathing room to pursue its policies without a Supreme Court pronouncement on the scope of presidential power. It is a matter of pure speculation whether this pattern will continue. At the same time, there is good reason to think that the Court will follow the path it has laid down in Bush-era cases, taking social and political forces into account so as to protect its turf without risking national security or elected government backlash.

#### The court has deferred to Obama

Devins 2010 - Professor of Law and Professor of Government, College of William & Mary (February, Neal, “Symposium: Presidential Power In Historical Perspective: Reflections on Calabresi and Yoo's the Unitary Executive: Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants” 12 U. Pa. J. Const. L. 491, Lexis)

What is striking here, is that the Court never took more than it could get - it carved out space for itself without risking the nation's security or political backlash. Its 2004 and 2006 rulings provided ample opportunity for the President to pursue his enemy combatant initiative. Its 2008 ruling in Boumediene, while clearly constraining the political branches, reflected the views of the new Democratic majority in Congress and (to a lesser extent) the views of presidential candidates Obama and McCain. n185 Its decision to steer clear of early Obama-era [\*527] disputes likewise avoids the risks of a costly backlash while creating incentives for the Obama administration to take judicial authority into account (by settling these cases outside of court). n186 Put another way, by taking prevailing social and political forces into account, the Court was able to flex its muscles without meaningfully undermining the policy preferences of the President and Congress.

#### Flexibility – deference gives the president the freedom needed to successfully wage war

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(John, December, George Washington Law Review, “Judicial Review and the War on Terrorism,” 72 Geo. Wash. L. Rev. 427)

Nonetheless, courts continue to play a role in war by hearing cases involving the domestic ramifications of a decision that the United States is in a state of war. Yet, as we have seen with cases involving the surveillance and detention of terrorists, courts have adopted a deferential standard of scrutiny that provides the political branches with the flexibility to conduct war successfully. By doing so, the exercise of judicial review is playing more than its usual role as a check and balance on the actions of the other branches. Rather, judicial review presents the President and Congress with new weapons with which to fight the war on terrorism. In the case of FISA surveillance, for example, deferential judicial review allows the executive branch to intercept terrorist communications under a standard similar to that which applies to military surveillance, all the while preserving the possibility of the use of the evidence in a federal prosecution. With its deferential review toward the detention of enemy combatants, federal courts not only provide the executive with a different way of holding terrorists, but they also present the option, perhaps, of later moving the detainees into the federal court system for prosecution. In both cases, the more deferential standard of scrutiny allows the political branches to undertake immediate wartime actions under the more flexible rules of the laws of war, without forsaking later use of the federal criminal justice system as means of sanctioning and incapacitating members of al Qaeda. By presenting more options to the war fighting branches of government, the courts act not merely as a traditional check on government, but as a potential weapon that can assist the United States’ war on terrorism.

#### Readiness – only deference lets the military successfully prepare for warfighting

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(Judge Advocate General's Corps, United States Army; B.S., United States Military Academy, 1976, Captain John B. McDaniel, Spring 1985, Military Law Review, “The Availability And Scope Of Judicial Review Of Discretionary Military Administrative Decisions,” pg. 89, lexis)

Such judicial deference where military readiness is concerned is altogether proper. Not only is it true that peacetime readiness generally determines the price of wartime victory and, indeed, may be the difference between victory and defeat. Accordingly, in appropriate [\*124] cases, the military imperatives of discipline and combat readiness demand a judicial deference unlike that due other governmental agencies. As the Supreme Court so aptly and recently stated in Chappell: [C]onduct in combat inevitably reflects the training that precedes combat; for that reason, centuries of experience has developed a hierarchical structure of discipline and obedience to command, unique in its application to the military establishment and wholly different from civilian patterns. Civilian courts must, at the very least, hesitate long before entertaining a suit which asks the court to tamper with the established relationship between military personnel and their superior officers; that relationship is at the heart of the necessarily unique structure of the military establishment. 181

#### Morale – lack of deference kills it – makes warfighting impossible

Wilkinson 96 – Chief Judge @ 4th Circuit Court of Appeals

(James, 4/5, Thomasson v. Perry, 80 F.3d 915, p. http://www.ncgala.org/cases/thomasson.htm, p. lexis)

The need for deference also derives from the military's experience with the particular exigencies of military life. Among these is the attainment of unit cohesion--"the subordination of personal preferences and identities in favor of the overall group mission" and "the habit of immediate compliance with military procedures and orders." Goldman, supra. Should the judiciary interfere with the intricate mix of morale and discipline that fosters unit cohesion, it is simply impossible to estimate the damage that a particular change could inflict upon national security--"there is no way to determine and correct the mistake until it has produced the substantial and sometimes irreparable cost of [military] failure." Hirschhorn, supra.

#### Multiple crises in the Middle East and Asia are coming now – Obama needs to be able to respond to these challenges

Indyk 13 – vice president & director of Foreign Policy

(Martin, Brookings, originally published on Foreign Policy, Over the Horizon, http://www.brookings.edu/research/opinions/2013/01/18-five-global-crises-obama-indyk)

U.S. President Barack Obama begins his second term at a critical moment in world affairs -- al Qaeda raising its head in North Africa, President Bashar al-Assad possibly preparing to use chemical weapons in Syria, Iran moving toward the nuclear weapons threshold, and tensions rising in Asia. An unstable world promises to present the president with many challenges in the next four years, and his advisors are already grappling with how to confront them.¶ Some looming challenges -- like the America's debt or China's rise -- have been the focus of a good deal of attention. However, low-probability but high-impact "black-swan" events could also define Obama's second term, diverting the president from his intended foreign-policy agenda. These events would be so catastrophic that he needs to take steps now to minimize the risk that they might occur.¶ Here are some of the black swans that could upend the Obama administration's agenda over the next four years:¶ Confrontation over Korea¶ There is a serious risk of an acute U.S.-China confrontation over -- or even a direct military conflict on -- the Korean Peninsula. The North Korean regime is facing an existential internal crisis. Under such conditions, it is prone to lashing out at neighboring states or engaging in other forms of risky behavior. Although it seems strong, it is also dependent on China's support and vulnerable to quick-onset instability. If Washington and Beijing fail to coordinate and communicate before a collapse begins, we could face the possibility of a U.S.-China confrontation of almost unimaginable consequences.¶ The Obama administration has sought to sharpen Pyongyang's choices, pushing it to recognize that it can't have nuclear weapons and genuine national strength. To reduce the risks of a confrontation with China over the possibility of a North Korean collapse, the administration should pursue four objectives with Beijing. The countries should disclose information on the location, operation, and capabilities of each other's military forces that could soon intervene in North Korea; share intelligence on the known or suspected location of North Korea's weapons-of-mass-destruction assets; initiate planning for the evacuation of foreign citizens in South Korea; and discuss possible measures to avoid an acute humanitarian disaster among North Korean citizens seeking to flee.¶ Chaos in Kabul¶ As the 2014 transition to a radically diminished U.S. presence in Afghanistan approaches, the United States will leave behind a perilous security situation, a political system few Afghans see as legitimate, and a likely severe economic downturn. Obama has not yet specified how many U.S. troops will remain in Afghanistan after the transition, but he has made it very clear -- including during the recent visit by President Hamid Karzai -- that troop levels will be in the low thousands and that their functions will be restricted to very narrow counterterrorism and training missions. He also conditioned any continuing U.S. troop presence in Afghanistan on the signing of a status of forces agreement that grants immunity to U.S. soldiers, a condition that the Afghan government may find difficult to swallow.¶ Although a massive security deterioration, including the possibility of civil war, is far from inevitable, it is a real possibility. Such a meltdown would leave the administration with few policy options, severely compromising America's ability to protect its interests in the region.¶ A major security collapse in Afghanistan would, in all likelihood, initially resemble the early 1990s pattern of infighting between ethnic groups and local power brokers, rather than the late 1990s, when a Taliban line of control moved steadily north. The extent of violence and fragmentation would depend on whether the Afghan army and police force splintered.¶ Even then, the Afghan government may have enough strength to hold Kabul, major cities, and other parts of Afghanistan. The Taliban would easily control parts of the south and east, while fighting could break out elsewhere among members of a resurrected Northern Alliance or among Durrani Pashtun power brokers. But ethnic fighting could eventually explode even on the streets of Kabul, where Pashtuns harbor resentments about the post-2001 influx of Tajiks that changed land distribution in the capital. In the event of massive instability, a military coup is also a possibility, particularly if the 2014 presidential election is seen as illegitimate.¶ An unstable Afghanistan will be like an ulcer bleeding into Pakistan. It will further distract Pakistan's leaders from tackling their country's internal security, economic, energy, and social crises, and stemming the radicalization of Pakistani society. These trends, needless to say, will adversely affect U.S. interests.¶ Even though U.S. leverage in Afghanistan diminishes daily, decisions made in Washington still critically affect Afghanistan's future. The Obama administration can mitigate risks by withdrawing at a judicious pace -- one that doesn't put an unbearable strain on Afghanistan's security capacity. It should also continue to provide security assistance, define negotiations with the Taliban and Afghan government as a broader reconciliation process, and encourage good governance.¶ Camp David Collapse¶ Since the collapse of Hosni Mubarak's regime in Egypt, the United States has been resolutely focused on maintaining the Egypt-Israel peace treaty, which serves as a cornerstone of stability for the region, an anchor for U.S. influence in the Middle East, and a building block for efforts at Arab-Israeli coexistence. Happily, Egyptian President Mohamed Morsy has signaled his willingness to set aside the Muslim Brotherhood's ideological opposition and most Egyptians' hostility to Israel. Several factors, however, could still destabilize the situation, including terrorist attacks in Sinai or from Gaza, the collapse of the Palestinian Authority, and populist demands to break relations with Israel.¶ If Morsy were to ditch this peace treaty, it would represent a profound strategic defeat for the United States in the Middle East and could threaten a regional war. The United States should continue its policy of conditional engagement with Morsy's government and, in particular, deepen its security cooperation and coordination. It should also develop a new modus vivendi with Egyptian and Israeli partners through cooperation over common concerns in Sinai and Gaza that would advance the sustainability of the peace treaty.¶ Revolution in China¶ While China continues on its path of growth and seeming political confidence, a number of problems lie beneath the surface of its apparent success. A sense of political uncertainty -- as well as a fear of sociopolitical instability -- is on the rise. Many in the country worry about environmental degradation, health hazards, and all manner of public safety problems. These pitfalls could trigger any number of major crises: slowed economic growth, widespread social unrest, vicious political infighting among the elite, rampant official corruption, and heightened Chinese nationalism in the wake of territorial disputes. In this rapidly modernizing but still oligarchic one-party state, it is not hard to see how such a crisis could take the form of a domestic revolution or foreign war.¶ Either event would be very disruptive, severely impairing global economic development and regional security in the Asia-Pacific. A combination of the two would constitute one of the most complicated foreign-policy problems of the president's second term. A domestic revolution and a foreign war would certainly be the defining events of our time. The latter could potentially risk leading the United States into military conflict in Asia.

#### Obama is exercising executive power in all topic areas – proven by Syria speech, drones, Libya

Friedersdorf 9/12 – writer @ The Atlantic

(Conor, Obama Acts Like He Doesn't Know He's an Executive-Power Extremist, http://www.theatlantic.com/politics/archive/2013/09/obama-acts-like-he-doesnt-know-hes-an-executive-power-extremist/279583/)

What a fascinating paragraph! Even as Obama implies that he is a circumspect steward of constitutional democracy, he asserts that even absent "a direct or imminent threat," he has absolute power to wage war without congressional support, the Constitution and the opinions of the demos be damned. If the passage ended there it would be staggering in its internal tension. As Jack Goldsmith explained in detail, intervening in Syria without congressional sign-off would "push presidential war unilateralism beyond where it has gone before." Asserting that power without using it is still an extreme position to take.

Obama goes a delusion farther. Ostensibly because he hasn't yet intervened, even though he repeatedly and needlessly asserts his right to do so unilaterally, he casts himself as moving away from unilateralism and toward consulting Congress. The benefits are "especially true after a decade that put more and more war-making power in the hands of the president," he notes, "while sidelining the people’s representatives from the critical decisions about when we use force."

The grammer is priceless. Who "put more and more war-making power in the hands of the president"? In Obama's telling, "a decade" put the executive power there.

The absence of a human subject in the sentence isn't hard to figure out. For all President George W. Bush's faults, he sought and received majority support for the Patriot Act, the September 2001 AUMF, the War in Afghanistan, and the War in Iraq. Obama's expansion of the drone war and his illegal war-making in Libya didn't turn out as bad as Iraq, so it's hard to see him as a worse president, but Obama has done more than Bush to expand the war-making power of the White House. As for "sidelining the people’s representatives from the critical decisions about when we use force," it's Obama who went into Libya despite the fact that a House vote to approve U.S. involvement was brought to the floor and voted down.

Yet Obama complains about these trends as if someone other than Obama is responsible for them, and as if he has been and remains powerless to do more to reverse them. When Obama asked Congress to vote in Syria, no one forced him to insist that he had the power to intervene militarily even if a legislative vote declared otherwise. No one forced him to defend the extreme position that the presidential war power is so sweeping that it includes waging wars of choice rejected by Congress that don't involve any direct or imminent threat to the United States.

He went out of his way to defend that maximal precedent, even as gave us the impression that he was trying to rein in executive power that he claims to find regrettable and worrisome. It's all consistent with Obama's favorite rhetorical tactic: granting the validity of an objection in his rhetoric, then totally ignoring the objection in his actions. In so doing, he confuses public discourse and subverts debate.

We know that Obama is an executive-power extremist in his actions. He believes the president has the power to intervene militarily without Congress in places that do not threaten America; that he can order American citizens killed in secret without due process; that he can secretly collect data on the phone calls of all Americans; that he can invoke the state-secrets privilege to avoid adjudicating constitutional challenges to his policies on their merits; that he can indefinitely detain prisoners without evidence, charges or due process, that he can sit in judgment of anyone on earth, then send a drone anywhere to strike them.

Yes, we know that Obama is an executive-power extremist in his actions, that there are many steps to rein in executive power that he could take but hasn't taken ... and that he worries repeatedly about an excess of executive power in his rhetoric. What we don't know is the reason for this disconnect. After all, this ain't like Gitmo. If he really wanted to do more to shrink executive power, he could do a lot unilaterally, and no one could stop him. Is he trying to fool us? Or is he fooling himself, because he likes to think of himself as more prudent and moderate man than he is? Can he not bear the truth that he's a Cheneyite extremist\*? My best guess is that he's trying to fool us. But it's hard to know for sure.

#### Obama’s Syria move increased Presidential war powers because it maintained ultimate control with the executive

Balkin 9/3, Law Prof at Yale

(Jack, What Congressional Approval Won't Do: Trim Obama's Power or Make War Legal, www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/)

One of the most misleading metaphors in the discussion of President Obama’s Syria policy is that the president has “boxed himself in” or has “painted himself into a corner.” These metaphors treat a president’s available actions as if they were physical spaces and limits on action as if they were physical walls. Such metaphors would make sense only if we also stipulated that Obama has the power to snap his fingers and create a door or window wherever he likes. The Syria crisis has not created a new precedent for limiting presidential power. To the contrary, it has offered multiple opportunities for increasing it. If Congress says no to Obama, it will not significantly restrain future presidents from using military force. At best, it will preserve current understandings about presidential power. If Congress says yes, it may bestow significant new powers on future presidents -- and it will also commit the United States to violating international law. For Obama plans to violate the United Nations Charter, and he wants Congress to give him its blessing. People who believe Obama has painted himself into a corner or boxed himself in might not remember that the president always has the option to ask Congress to authorize any military action he proposes, thus sharing the responsibility for decision if the enterprise goes sour. If Congress refuses, Obama can easily back away from any threats he has made against Syria, pointing to the fact that Congress would not go along. There is no corner. There is no box. Wouldn’t congressional refusal make the United States look weak, as critics including Senator John McCain warn loudly? Hardly. The next dictator who acts rashly will face a different situation and a different calculus. The UN Security Council or NATO may feel differently about the need to act. There may be a new threat to American interests that lets Obama or the next president offer a different justification for acting. It just won’t matter very much what Obama said about red lines in the past. World leaders say provocative things all the time and then ignore them. Their motto is: That was then, and this is now. If Congress turns him down, won’t Obama be undermined at home, as other critics claim? In what sense? It is hard to see how the Republicans could be less cooperative than they already are. And it’s not in the interest of Democrats to fault a president of their own party for acceding to what Congress wants instead of acting unilaterally. Some commentators argue (or hope) that whatever happens, Obama’s request for military authorization will be an important precedent that will begin to restore the constitutional balance between the president and Congress in the area of war powers. Don’t bet on it. By asking for congressional authorization in this case, Obama has not ceded any authority that he ­or any other president ­has previously asserted in war powers. Syria presents a case in which previous precedents did not apply. There is no direct threat to American security, American personnel, or American interests. There is no Security Council resolution to enforce. And there is no claim that America needs to shore up the credibility of NATO or another important security alliance. Nor does Obama have even the feeble justification that the Clinton Administration offered in Kosovo­: that congressional appropriations midway through the operation offered tacit and retroactive approval for the bombings. It is naive to think that the next time a president wants to send forces abroad without congressional approval, he or she will be deterred by the fact that Barack Obama once sought congressional permission to bomb Syria. If a president can plausibly assert that any of the previous justifications apply -- ­including those offered in the Libya intervention -- the case of Syria is easily distinguishable.

#### Eliminating indefinite detention lets dangerous terrorists loose

Jack Goldsmith 09, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” <http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209_detention_goldsmith.pdf>

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that

#### Military commissions key to preserve intelligence gathering operations

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[2013, She graduated magna cum laude from Georgetown University in 2010, with a Bachelors of Arts in Government and Spanish, “TRYING TERRORISTS: THE CASE FOR EXPANDING THE JURISDICTION OF MILITARY COMMISSIONS TO U.S. CITIZENS”, GEORGETOWN JOURNAL OF INTERNATIONAL LAW, Vol. 44, 2013, http://www.law.georgetown.edu/academics/law-journals/gjil/recent/upload/zsx00213000783.PDF]

Given the obvious procedural due process deﬁciencies of military commissions convened under the Military Commissions Act, one would anticipate that there would be clear beneﬁts to the use of military commissions and strong justiﬁcations for their application to noncitizens. While there may be good, legitimate reasons to utilize military commissions in the United States, virtually none of those reasons are speciﬁc to noncitizens. Military commissions are designed to address military necessity arising from the exigencies of war.76Under the Military Commissions Act, however, the “deciding factor as to whether an individual in the ‘war on terror’ will be subject to the degraded proceedings of a military commission is alienage,” rather than “the exigencies of war.”77 Military commissions were authorized by Congress “to provide the executive with an additional forum for the prosecution of [offenses against the law of nations].”78 As a result, with respect to noncitizen suspected terrorists, the government can choose from multiple forum options based on the circumstances of the cases. Prosecutorial choice between forums is based on factors such as “the available evidence about a suspect, the suspect’s nationality, the locus of capture,”79 the offenses alleged, and concerns about the reaction of the international community.80 “Jurisdictional redundancy,”81 or the ability to choose between forums, is desirable because it allows the United States to consider the circumstances of each case.82 Military commissions may help to address practical needs arising from the context of war in ways that might be challenging for federal courts. As noted by President Obama, military commissions “allow for the protection of sensitive sources and methods of intelligence-gathering,”83 which may be important in the context of the ongoing War on Terror. Military commission ns are also portable, so the likelihood that a federal courtroom will become a target for terrorism is smaller.84 Military commissions are also claimed to be efﬁcient, which, if true, would be signiﬁcant because most of the Guantanamo detainees have been held for years without charge.85 However, “[b]etween 2006 and 2009, only six individuals were sentenced in the statutory military commissions—four after plea bargains.”86 Given this “less-than-stellar record,” the efﬁciency argument is not particularly persuasive.87 The use of military commissions may resolve some of the other “unique challenges,”—such as the need to address protection of highly classiﬁed evidence and security clearance, for example—posed by the prosecution of Guantanamo detainees.88 As noted by Aziz Huq, however, the text of the Military Commissions Act “forces military prosecutors to provide proof of a defendant’s connections to a terrorist group in every case, a requirement that a civilian prosecutor... would not often have to satisfy,”89 which results in the need to introduce more classiﬁed intelligence information than might otherwise be necessary.90

#### The practices of military commissions are critical for intelligence management

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[August 2008, The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “BEYOND GUANTANAMO, OBSTACLES AND OPTIONS”, Northwestern University Law Review Colloquy, 103 Nw. U. L. Rev. Colloquy 29]

First, military commissions provide a marginal intelligence protection benefit over Article III courts. The language of the MCA related to protecting intelligence is nearly identical to the procedures detailed in the U.C.M.J. n119 Despite these similarities, military commissions provide the intelligence protection benefit of: security cleared counsel for the parties, security cleared panel members (jurors), security cleared administrative staff, and regimented procedures for reviewing all documents offered in pleadings or field with the court. Perhaps most importantly, military commissions do not require as many disclosures as those required in Article III courts and allow for the admission of hearsay. n120 These procedures enable evidence to be admitted in a manner which protects intelligence (such as ex parte affidavits) and are also more likely to secure a conviction. Consider the intelligence protection benefit of these procedures as compared to Article III courts. In the 1993 World Trade Center bombing case, a letter was revealed to the defense during discovery listing "200 names of people who might be alleged as unindicted co-conspirators." n121 Six years later, that letter turned up as evidence in the trial of those who bombed U.S. embassies in Africa. Within days "the letter had found its way to Sudan and was in the hands of bin Laden (who was on the list), having been fetched for him by an al-Qaeda operative who had gotten it from one of his associates." n122 Based on this information, bin Laden was able to determine which of his operatives had been compromised. Disclosures such as this, which are mandated in Article III courts, threaten the protection of intelligence, and also provide defendants with greater rights which may result in an acquittal. Protecting intelligence and securing convictions [\*53] are considerations that weigh heavily on the mind of the Executive, who will seek to maximize both.

#### Terrorists are dangerous and indefinite detention is key to holding them

Jack Goldsmith 06, a law professor at Harvard, and Eric A. Posner, a law professor at the University of Chicago, 8/4/06, “A Better Way on Detainees,” <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/03/AR2006080301257.html>

Everyone involved in the contentious negotiations between the White House and Congress over the proper form for military commissions seems to agree on at least one thing: that al-Qaeda and Taliban terrorists ought to be prosecuted. We think this assumption is wrong: Terrorist trials are both unnecessary and unwise.¶ The United States holds more than 400 terrorism suspects at Guantanamo Bay, and 500 or so more at Bagram air base in Afghanistan. Five years after the Sept. 11 attacks, it has announced plans for military trials for only 10 of these detainees. The 10 do not include the al-Qaeda leaders in U.S. custody or the numerous small fry who served as foot soldiers for al-Qaeda or the Taliban. They are, at best, medium-fry terrorists.¶ Why only 10? Because it is difficult to try terrorists in this war. For most detainees, the government lacks evidence of overt crimes such as murder. It can prosecute these detainees only for the vague and problematic crime of conspiracy to commit a terrorist act based on membership in and training with al-Qaeda or the Taliban. Beyond this problem, witnesses are scattered around the globe, and much of the evidence is in a foreign language, or classified, or hearsay -- in many cases all of these things.¶ Even if these obstacles are overcome, the prosecution of Zacarias Moussaoui shows that trials of political enemies are more difficult, more time-consuming and, in the end, more circuslike than an ordinary criminal trial. The defendant or his lawyers will use a trial not to contest guilt but rather to rally followers and demoralize foes.¶ These are some of the reasons the Bush administration sought to use military commissions with fewer procedural protections than ordinary trials. But commissions have proved politically and legally difficult to implement. Even if they can be made to work, skeptics will still regard them as kangaroo courts.¶ There is a better and easier way to deal with captured terrorists. The Supreme Court has made clear that the conflicts with al-Qaeda and the Taliban are governed by the laws of war, and the laws of war permit detention of enemy soldiers without charge or trial until hostilities end. The purpose of wartime detention is not to punish but to prevent soldiers from returning to the battlefield. A legitimate wartime detainee is dangerous, like a violent mental patient subject to civil confinement, and that is reason enough to hold him. This has been the legal justification for terrorist detentions to date, and it will almost certainly be the basis for future detentions.

#### Secrecy is necessary to secure intel gathering sources and methods – that solves terrorist attack

Danzer 12/23

Member of the Columbia Law Review [Matt, second-year student at Columbia Law School, president of the National Security Law Society, graduated from Cornell University in 2012 with a B.S., with honors, in Industrial and Labor Relations, “December NSA Mini-Trove: Clapper and Fleisch on Secrecy Claims Post-Snowden”, 2013: <http://www.lawfareblog.com/2013/12/december-nsa-mini-trove-clapper-and-fleisch-on-secrecy-claims-post-snowden/>, MW]

At the heart of this month’s NSA Mini-Trove are the government’s most recent explanations of its now narrower claims of secrecy in two long-pending lawsuits—Jewel v. NSA and Shubert v. Obama—the narrowing occasioned by, naturally, Edward Snowden’s disclosures.¶ Such is the gist of two declarations regarding secrecy privileges in the cases filed on December 20, 2013, by Director of National Intelligence (“DNI”) James Clapper and Acting Deputy Director of the NSA Frances Fleisch, respectively. The submissions supplanted all prior privilege assertions in those cases by the government.¶ In light of Snowden’s leaks and the government’s subsequent disclosures, the government is no longer asserting the state secrets privilege or statutory privilege under the National Security Act for the existence of NSA intelligence activities under sections 402, 501, or 702 of FISA. However, the government continues to assert those privileges concerning the scope and operational details of those activities. Unlike the previous declarations, the Clapper and Fleisch declarations are unclassified and indicate that additional classified declarations have been filed for in camera review by the court.¶ The declarations continue to assert privilege over four specific categories of information. The first, only appearing in the Clapper declaration, is information concerning the specific nature of the threat posed by al-Qaida and affiliated organizations. After summarizing in brief the litany of terrorist organizations threatening American interests at home and abroad, DNI Clapper asserts a claim of privilege over this more detailed threat information¶ [B]ecause [the information's release] would disclose to our adversaries what we know of their plan and how we may be obtaining information about them. Such disclosures would lead our adversaries not only to alter their plans, but also to implement greater security for their communications, thereby increasing the risk of non-detection. In addition, disclosure of threat information might reveal human resources for the United States, compromise those sources, and put their or their families’ lives in danger.¶ Second, both statements claim privilege for information that would confirm or deny whether particular individuals have been subject to NSA surveillance. According to the declarants, revealing that a person is the target of surveillance would compromise that collection stream, while admitting that a person is not a target would indicate secure lines by which hostile actors could communicate. There are also obvious problems if the government were to assure non-targets that they have not been subject to surveillance, but later refused to confirm or deny to actual targets whether they have been subject to surveillance activities—the fact of the refusal to confirm or deny would in fact confirm that the individual has been targeted.¶ Third, the Clapper and Fleisch declarations assert privilege over facts concerning the scope and operational details of the NSA’s intelligence activities that would be necessary to rebut plaintiffs’ claim that the NSA is conducting a content “dragnet” program. These details include the selection of targets under the Terrorist Surveillance Program (“TSP”) briefly conducted during the Bush Administration, the specific sources and methods used under the TSP to intercept communications, the nature and identity of targets under the TSP, and details of the metadata and Section 702 collection programs. According to the Fleisch declaration,¶ The disclosure of whether and to what extent the NSA utilizes certain intelligence sources and methods would reveal to foreign adversaries the NSA’s capabilities, or lack thereof, enabling them to either evade particular channels of communications that are being monitored, or exploit channels of communication that are not subject to NSA activities, in either case risking exceptionally grave damage to national security.¶ Finally, both declarations briefly address privilege claims for information that would confirm or deny whether telecommunications carriers AT&T and Verizon assisted the NSA with intelligence activities. Acknowledging that one of the FISA Court orders officially disclosed by the government confirms Verizon’s participation from April 25 to July 19, 2013, the declarations note that no other participating carriers have been confirmed, nor has the government confirmed Verizon’s participation beyond the range of the disclosed order.

### Terror

**Civilian trials cause massive terrorism**

Andrew **McCarthy 09**, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

**3. Terrorism prosecutions create the conditions for more terrorism.** The treatment of a national security problem as a criminal justice issue has consequences that imperil Americans. To begin with, there are the obvious numerical and motivational results. As noted above, **the justice system is simply incapable, given its finite resources, of meaningfully countering the threat posed by international terrorism.** Of equal salience, **prosecution in the justice system actually increases the threat because of what it conveys to our enemies. Nothing galvanizes an opposition, nothing spurs its recruiting, like the combination of successful attacks and a conceit that the adversary will react weakly.** (Hence, bin Laden’s well-known allusion to people’s instinctive attraction to the “strong horse” rather than the “weak horse,” and his frequent citation to the U.S. military pullout from Lebanon after Hezbollah’s 1983 attack on the marine barracks, and from Somalia after the 1993 “Black Hawk Down” incident). For militants willing to immolate themselves in suicide-bombing and hijacking operations, **mere prosecution is a provocatively weak response.** Put succinctly, where they are the sole or principal response to terrorism, **trials in the criminal justice system inevitably cause more terrorism: they leave too many militants in place and they encourage the notion that the nation may be attacked with relative impunity.**

**Also causes information disclosure — that’s a massive security risk**

**Mukaskey Former Attorney General 9**, Michael Mukaskey, Civilian Courts Are No Place to Try Terrorists, <http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html>

Moreover, the rules for conducting criminal trials in federal courts have been fashioned to prosecute conventional crimes by conventional criminals. **Defendants are granted access to information relating to their case that might be useful in meeting the charges and shaping a defense, without regard to the wider impact such information might have. That can provide a cornucopia of valuable information to terrorists,** both those in custody and those **at large**.

Thus, **in** the multidefendant terrorism **prosecution of Sheik Omar Abdel Rahman** and others that I presided over in 1995 in federal district court in Manhattan, **the government was required to disclose, as it is routinely in conspiracy cases, the identity of all known co-conspirators, regardless of whether they are charged as defendants. One of those co-conspirators,** relatively obscure in 1995, **was Osama bin Laden. It was later learned** that **soon after the government's disclosure the list of unindicted co-conspirators had made its way to bin Laden in Khartoum, Sudan, where he** then **resided. He was able to learn not only that the government was aware of him, but also who else the government was aware of.**

**It is not simply** the **disclosure of information under discovery rules** that can be useful to terrorists. **The testimony** in a public trial, **particularly under the probing of appropriately diligent defense counsel, can elicit evidence about means and methods of evidence collection that have nothing to do with the underlying issues in the case, but which can be used to press government witnesses to either disclose information they would prefer to keep confidential** or make it appear that they are concealing facts. The alternative is to lengthen criminal trials beyond what is tolerable by vetting topics in closed sessions before they can be presented in open ones.

#### The plan collapses intelligence gathering --- sources dry up when their intelligence is used in court --- destroys the heart of counter-terror policy

Delery Et.al. ’12 - Principal Deputy, Assistant Attorney General, Civil Division, DOJ

Principal Deputy, Assistant Attorney General, Civil Division, STUART F. DELERY

Defendants' Motion to Dismiss, United States' Statement of Interest, Case 1:12-cv-01192-RMC Document 18 Filed 12/14/12 Page 1 of 58, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, 12/14/2012

Third. Plaintiffs' claims raise the specter of disclosing classified intelligence information in open court. The D.C. Circuit has recognized that "the difficulties associated with subjecting allegations involving CIA operations and covert operatives to judicial and public scrutiny" are pertinent to the special factors analysis. Wilson, 535 F.3d at 710. In such suits, "'even a small chance that some court will order disclosure of a source's identity could well impair intelligence gathering and cause sources to close up like a clam."'1 Id. (quoting Tenet v. Doe, 544 U.S. 1,11 (2005)). And where litigation of a plaintiffs allegations "would inevitably require an inquiry into "classified information that may undermine ongoing covert operations,"\* special factors apply. Wilson, 535 F.3d at 710 (quoting Tenet, 544 U.S. at 11). See also Vance, 2012 WL 5416500 at "8 ("When the state-secrets privilege did not block the claim, a court would find it challenging to prevent the disclosure of secret information.11); Lebron, 670 F.3d at 554 (noting that the "chilling effects on intelligence sources of possible disclosures during civil litigation and the impact of such disclosures on military and diplo matic initiatives at the heart of counterterrorism policy1' are special factors); Arar, 585 F.3d at 576 (holding that the risk of disclosure of classified information is a special factor in the "extraordinary rendition" context).

#### Credible US intelligence security measures are crucial to intelligence sharing

Anna-Katherine McGill 12, School of Graduate and Continuing Studies in Diplomacy, Norwich University, David Gray, Campbell University, Summer 2012, “Challenges to International Counterterrorism Intelligence Sharing,” <http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf>

Great strides have been made but future disagreements on policy, tactics, and strategy for the war on terrorism are inevitable. The best way to prepare for such future issues is to continue to foster a positive collaborative relationship with these nations so that mutual trust will prevent arguments from threatening the survival of the alliance. This means that the US must carefully manage its international position. It cannot exploit legal loopholes like exporting suspects to other nations for questionable interrogations; it cannot bully its friends nor act unilaterally against their wishes; and it must hold itself to high moral standards befitting a liberal democracy.¶ For new and non-traditional allies, Reveron states that “the long-term challenge for policymakers will be to convert these short-term tactical relationships into meaningful alliances while protecting against counterintelligence threats” (467). Traditional alliances have to start somewhere and over time these new relationships can turn in to tried and tested cooperation. In order to further develop these relationships the US should attempt to iron out policy differences in other arenas rather than turn a blind eye to them and continue providing technical and material support to their development of effective intelligence programs. The US should not however hold CT cooperation supreme over other critical issues such as nuclear and conventional arms proliferation and human rights violations. Nations like Iran and Syria may be helpful in the short term and for limited purposes but this does not negate their less desirable practices.¶ Finally, the US will also need to look inward to prevent more classified information leaks. The US needs to be more critical in the issuance of security clearances, employ digital monitoring of who is downloading information and in what amount to prevent mass dumps, and give greater importance to curtailing the “insider threat” of US citizens leaking information overall. Improving intelligence security will help to mitigate the blowback from WikiLeaks and will go a long way to advancing US credibility and trust building.

#### Also turns NATO

Martin J. Ara 11, Lieutenant, United States Navy M.S., London School of Economics, AND Thomas Brand Lieutenant, Colonel, German Army B.S., University of the German Federal Armed Forces Munich, , AND Brage Andreas Larssen, Major, Norwegian Army B.S., Norwegian Military Academy, Oslo, December 2011, “HELP A BROTHER OUT: A CASE STUDY IN MULTINATIONAL INTELLIGENCE SHARING, NATO SOF,” <http://www.dtic.mil/dtic/tr/fulltext/u2/a556078.pdf>

\*Note: SOF = Special Operation Forces

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

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### Solvency

#### It’s all politics --- Obama loves the squo

Yoo 11John, “Antiwar Senator, War-Powers President” [http://online.wsj.com/article/SB10001424052748704050204576218540505216146.html] March 25 //mtc

President Barack **Obama has** again **flip-flopped on national security**—and we can all be grateful. **Having kept** **Guantanamo** Bay **open**, **resumed military commission trials for terrorists**, **and expanded the use of drones**, **the president has** now **ordered the U.S. military into action without Congress's blessing.¶** Imagine the uproar if President Bush had unilaterally launched air attacks against Libya's Moammar Gadhafi. But **since it's** Mr. **Obama's finger on the trigger**, **Democratic leaders in Congress have kept quiet**—**demonstrating that their opposition to presidential power during the Bush years was political, not principled.**

#### Obama will redefine the law to circumvent the plan

Pollack, 13 --- professor of history emeritus at Michigan State

(2/5/2013, Norman, “For the Glory of What? Drones, Israel, and the Eclipse of Democracy,” <http://www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/>)

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to remake the laws of war by consciously violating them and then creating new legal concepts to provide juridical cover for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (Obama is hardly a novice at this game of stretching the law to suit the convenience of, shall we say, the national interest? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama redefined the meaning of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

#### Relaxed evidentiary rules

Vladeck 09, Law Prof at American

(Stephen, THE CASE AGAINST NATIONAL SECURITY COURTS, willamette.edu/wucl/resources/journals/review/pdf/Volume%2045/WLR45-3\_Vladeck.pdf)

A national security court, in contrast, would be marked by relaxed evidentiary rules, including the ability to introduce hearsay testimony and perhaps even evidence that is produced by governmental coercion. As importantly, the government would also be able, under most proposals, to use classified information as evidence without fully disclosing such to the defendant. Otherwise, as McCarthy and Velshi describe in their proposal: [P]eople who commit mass murder, who face the death penalty or life imprisonment, and who are devoted members of a movement whose animating purpose is to damage the United States, are certain to be relatively unconcerned about violating court orders (or, for that matter, about being hauled into court at all). Our congenial rules of access to attorneys, paralegals, investigators and visitors make it a very simple matter for accused terrorists to transmit what they learn in discovery to their confederates—and we know that they do so.

#### Judge selection

Cole 08, Professor of Law at Georgetown

(David, A CRITIQUE OF “NATIONAL SECURITY COURTS, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

In addition, these proposals are alarmingly short on details with respect to the selection of judges for these national security courts. Although there is a history of creating specialized federal courts to handle particular substantive areas of the law (e.g., taxation; patents), unlike tax and patent law, there is simply no highly specialized expertise that would form relevant selection criteria for the judges. Establishing a specialized court solely for prosecutions of alleged terrorists might also create a highly politicized process for nominating and confirming the judges, focusing solely on whether the nominee had sufficient “tough on terrorism” credentials — hardly a criterion that lends itself to the appearance of fairness and impartiality.

#### Evidentiary standards mean trials and habeas hearings will always go against the detainees—means they can’t solve

Ajuha and Tutt 12 [Fall, 2012, Jasmeet K. Ahuja and Andrew Tutt “Evidentiary Rules Governing Guantanamo Habeas Petitions: Their Effects and Consequences”, 31 Yale L. & Pol'y Rev. 185]

Beginning in 2001, the United States began transporting hundreds of persons captured overseas in the "War on Terror" to the U.S. Naval Base at Guantanamo Bay, Cuba. n1 They were kept at Guantanamo specifically to insulate from judicial review the military's decision to detain them. n2 Seven years later, the Supreme Court in Boumediene v. Bush granted Guantanamo detainees the right to petition for the writ of habeas corpus in the Court of Appeals for the D.C. Circuit. n3 The Court held that detainees must have "a meaningful opportunity to demonstrate that [they are] being held pursuant to the erroneous application or interpretation of relevant law." n4 The Court's central concern was with the habeas court's power to admit and consider relevant exculpatory evidence, a power necessary "for the writ of habeas corpus, or its substitute, to function." n5 But while the Court's central preoccupation was with a habeas court's power to independently review the evidence, the Court did not enumerate any specific procedural requirements. The Court - hesitant to place burdens on the military and cognizant of the need to protect classified information - sketched only the broad outlines of what the Constitution requires. n6 In so doing, it left "the extent of the showing required of the Government in these cases ... a matter to be determined" n7 and charged the district courts with the task of balancing the government's legitimate interests against each detainee's right to have a court assess the lawfulness of his detention. n8 [\*187] Since Boumediene, the courts within the D.C. Circuit have heard over sixty habeas petitions from detainees at Guantanamo Bay. n9 At first, many writs were granted. The lower courts applied a functional framework for determining the admissibility, credibility, and probity of evidence, holding the government to the ordinary burden of preponderance of the evidence. n10 However, as the government and detainees began to appeal habeas decisions on the basis of adverse evidentiary rulings, the Court of Appeals announced binding evidentiary rules limiting the district courts' discretion to admit, exclude, weigh, and consider evidence as the district courts saw fit. n11 This Note argues that these evidentiary rules deny detainees a "meaningful opportunity" to contest the factual basis of their detention. n12 The D.C. Circuit maintains that it holds the government to a preponderance standard n13 and has cast its reversals of the District Court's grants of habeas corpus as mere corrections in judging evidentiary probity. n14 However, in substance, the Court of Appeals' evidentiary rules have quietly but significantly eroded the evidentiary burden. [\*188] The way in which the evidentiary standard and the evidentiary rules interact to weaken Boumediene has, for the most part, escaped scrutiny. n15 Many have praised the D.C. Circuit for striking an appropriate balance between the needs of national security and the rights of those wrongfully detained. n16 But this underestimates the combined significance of the D.C. Circuit's evidentiary rulings. Boumediene's central purpose was to withhold from the executive branch the unchecked power to detain whomever it deems a threat. n17 Yet the D.C. Circuit's evidentiary rules have empowered the government to detain upon so little evidence that the habeas hearing no longer serves the checking role the Boumediene Court intended. n18 The D.C. Circuit has tacitly reduced the amount and quality of evidence necessary to establish the lawfulness of detention through three powerful mechanisms: (1) all but eliminating corroboration requirements and restrictions on the admissibility of hearsay evidence, no matter how unreliable; n19 (2) establishing that courts consider the evidence in the "whole record" when determining whether a petitioner meets the requirements for detention - a determination that often reduces to the Court of Appeals' deciding that the District Court [\*189] wrongly refused to credit sufficient government evidence; n20 and (3) developing irrefutable presumptions of detainability in which a single fact once established - such as a stay at an al-Qaeda affiliated guesthouse - is dispositive on the question of detention, even when other facts in the record point strongly in the opposite direction. n21

#### Al Maqaleh leaves massive detention authority independent of the aff—Obama will just ship detainees to Afghanistan

Vladeck 12 [10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>)]

The short chapter that follows aims to take Judge Brown’s suggestion seriously. As I explain, although Judge Brown is clearly correct that judicial review has affected the size of the detainee populations within the territorial United States and at Guantanamo, it does not even remotely follow that the jurisprudence of the past decade has precipitated a shift away from detention and toward targeted killings. To the contrary, the jurisprudence of Judge Brown’s own court has simultaneously (1) left the government with far greater detention authority than might otherwise be apparent where noncitizens outside the United States are concerned; and (2) for better or worse, added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless. And in cases where judicial review prompted the government to release those against whom it had insufficient evidence, the effects of such review can only be seen as salutary. Thus, at the end of a decade where not a single U.S. military detainee was freed by order of a federal judge, it is more than a little ironic for Judge Brown to identify “take no prisoners” as Boumediene’s true legacy. The role of judicial review in the three post-9/11 military detention cases in which the detainees were held within the territorial United States is impossible to overstate. Despite the Bush administration’s initial position that the detention of “enemy combatants” posed a nonjusticiable political question, the federal courts (and the Supreme Court, in particular) were emphatic in suggesting that such detentions were subject to judicial review, even as they divided over the merits in each of the three cases. Thus, in the case of Yasser Esam Hamdi, the federal government argued to the Supreme Court that “some evidence” was sufficient to justify the long-term detention of U.S. citizens captured on the battlefield. Although the court agreed that the government had the authority to detain individuals like Hamdi, it disagreed as to the evidentiary burden, with a 6-1 majority concluding that a more rigorous evidentiary burden was necessary. Rather than attempting to provide such evidence on remand, the government quickly entered into an agreement with Hamdi wherein he agreed to relinquish his citizenship in exchange for his release and transfer to Saudi Arabia. In the case of Jose Padilla, although the Supreme Court initially threw out Padilla’s habeas petition in 2004 on the ground that he had filed in the wrong district court, the opinions in the contemporaneous Padilla and Hamdi decisions left the distinct impression that, on the merits, five justices would have rejected the argument that the 2001 Authorization for the Use of Military Force authorized the detention of U.S. citizens arrested within the territorial United States. Padilla refiled in the proper venue, only to have the government moot the case on the eve of Supreme Court review by indicting him on criminal charges and transferring him to civilian custody. As Fourth Circuit Judge J. Michael Luttig observed, the timing of the government’s conduct gave rise “to at least an appearance that the purpose of these actions may be to avoid consideration of our decision [upholding Padilla’s detention] by the Supreme Court.” Nevertheless, and over three dissents, the court denied certiorari. That pattern repeated itself in the case of Ali al-Marri (the one noncitizen subjected to military detention within the territorial United States), with the Obama administration mooting the merits of his detention after the Supreme Court granted certiorari by indicting him on criminal charges and transferring him to civilian custody. Thus, in all three cases, the specter of future judicial review—in the district court in Hamdi and in the Supreme Court in Padilla and al-Marri—directly led to a change in policy, and there have been no additional stateside military detention cases since. At least based on the public record, one can only make an inferential case that this pattern was repeated with regard to Guantanamo, but the circumstantial evidence is fairly compelling. Although 779 noncitizens were at one time detained as “enemy combatants” at Guantanamo, the detainee population dropped from 597 at the time of the Supreme Court’s Rasul decision in 2004 to 269 at the time Boumediene was decided, and from that number to the 171 men detained there today. And although none of the 600 detainees who have been released from Guantanamo were directly freed by a judicial order, it stands to reason that the sharp uptick in the rate of transfers out of Guantanamo (along with the virtual cessation of transfers in) after June 2004 was a direct reaction to, and result of, the court’s decision in Rasul v. Bush, which held that the federal habeas statute extended to Guantanamo. Moreover, in the four years since Boumediene, there have been at least 11 distinct district court decisions granting habeas relief that the government declined to appeal on the merits. Not all of the detainees at issue in those cases have been released, but those that were certainly weren’t hurt by the judicial proceedings on their behalf. Inasmuch as the detainee litigation appears to have exerted hydraulic pressure on the executive branch to reduce the detainee population at Guantanamo, it has arguably also invested the detentions in the cases that remain with at least a modicum of legitimacy—at least for those detainees who have not been cleared for release. After all, the government now is able to argue that the detainees still at Guantanamo have received the exact judicial review called for by the Constitution; the fact that the courts have denied relief in many of those cases only underscores the validity of that aspect of the U.S. detention regime in the short term (and perhaps in the long term as well). Far less data exists to evaluate the relationship between judicial review and the number of detainees held by the United States in Afghanistan. Here, though, the data is less important than the case law. Notwithstanding Boumediene, the D.C. Circuit held in al-Maqaleh v. Gates that noncitizens detained in Afghanistan, even if they are not citizens of or arrested in Afghanistan, are not entitled to pursue habeas relief in the U.S. federal courts. In so holding, the appeals court specifically rejected the detainees’ argument that judicial review must be available lest the government deliberately choose to send new detainees to Afghanistan to escape judicial oversight: “The notion that the United States deliberately confined the detainees in the theater of war rather than at, for example, Guantanamo, is not only unsupported by the evidence, it is not supported by reason. To have made such a deliberate decision to ‘turn off the Constitution’ would have required the military commanders or other executive officials making the situs determination to … predict the Boumediene decision long before it came down. Because Maqaleh means that judicial review will not extend to Afghanistan absent a showing of deliberate manipulation on the government’s part (and perhaps not even then), the conclusion appears manifest that Boumediene’s holding is limited to Guantanamo, and that the government in fact does not face the prospect of judicial review in future cases involving the detention of noncitizens elsewhere outside the territorial United States. As such, Judge Brown’s suggestion in Latif that Boumediene has chilled (and will chill) future military detentions of terrorism suspects necessarily fails to persuade. At least for noncitizens picked up outside the territorial United States, Maqaleh preserves substantial flexibility on the government’s part and leaves judicial review as an unlikely proposition, at best. But there’s another aspect to the jurisprudence of the past decade that also poses a stark contrast with Judge Brown’s reasoning: thanks to the work of Brown and her colleagues on the D.C. Circuit, even in cases in which judicial review does apply, the relevant substantive and procedural standards governing such review leave the government with sweeping authority. With regard to noncitizens outside the territorial United States, current case law requires the government to show merely by a preponderance of the evidence (i.e., that it is more likely than not) that the detainee was “part of” or “substantially supported” al-Qaida. And thanks to Latif (the very decision in which Judge Brown objected to Boumediene), intelligence reports are treated with a presumption of regularity—making it incredibly difficult as a practical matter for detainees to overcome the government’s evidence. In point of fact, there has not been a single case to date in which the D.C. Circuit either affirmed a district court’s grant of habeas relief or reversed the denial thereof. Given the government’s successful track record before Judge Brown and her colleagues, it’s that much harder to understand her claim that “the systemic cost of defending detention decisions” has dissuaded the government from doing so. If the litigation of the last few years has suggested anything with regard to the future of U.S. detainee policy, it is that the cost to the government of defending detention decisions in the D.C. Circuit is not particularly high, especially compared to the benefit that such review has provided.

### Credibility

**Drones turn every advantage --- detention restrictions increase use**

Dan **Roberts 13**, The Guardian, http://www.businessinsider.com/bush-administration-lawyer-drone-strikes-being-used-as-alternative-to-guantnamo-2013-5

**Drone Strikes Are Worse Than Indefinite Detention The lawyer** who first drew up White House policy on lethal drone strikes **has accused** the **Obama** administration **of overusing them because of its reluctance to capture prisoners that would otherwise have to be sent to Guantánamo Bay**. John Bellinger, who was responsible for drafting the legal framework for targeted drone killings while working for George W Bush after 9/11, said he believed **their use had increased since because President Obama was unwilling to deal with the consequences of jailing suspected al-Qaida members.** "**This government has decided that instead of detaining** members of **al-Qaida** [at Guantánamo] **they are going to kill them**," he told a conference at the Bipartisan Policy Center. **Obama this week pledged to renew efforts to shut down the jail but has previously struggled to overcome congressional opposition**, in part due to US disagreements over how to handle suspected terrorists and insurgents captured abroad. An estimated 4,700 people have now been killed by some 300 US drone attacks in four countries, and the question of the programme's status under international and domestic law remains highly controversial. Bellinger, a former legal adviser to the State Department and the National Security Council, insisted that the current administration was justified under international law in pursuing its targeted killing strategy in countries such as Pakistan and Yemen because the US remained at war. "We are about the only country in the world that thinks we are in a conflict with al-Qaida, but countries under attack are the ones that get to decide whether they are at war or not," he said. "**These drone strikes are causing us great damage in the world**, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem." Nevertheless, **the legal justification for drone strikes has become so stretched that critics fear it could now encourage other countries to claim they were acting within international law if they deployed similar technology**. A senior lawyer now advising Barack Obama on the use of drone strikes conceded that **the administration's definition of legality could even apply in the hypothetical case of an al-Qaida drone attack against military targets on US soil**. Philip Zelikow, a member of the White House Intelligence Advisory Board, said the government was relying on two arguments to justify its drone policy under international law: that the US remained in a state of war with al-Qaida and its affiliates, or that those individuals targeted in countries such as Pakistan were planning imminent attacks against US interests. When asked by the Guardian whether such arguments would apply in reverse in the unlikely event that al-Qaida deployed drone technology against military targets in the US, Zelikow accepted they would. "Yes. But it would be an act of war, and they would suffer the consequences," he said during the debate at the Bipartisan Policy Center in Washington. Hina Shamsi, a director at the American Civil Liberties Union, warned that the issue of legal reciprocity was not just a hypothetical concern: "The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programmes." "**Few thing are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties**," she added. Zelikow, a former diplomat who also works as a professor of history at the University of Virginia, said he believed the US was in a stronger position when it focused on using drones only against those directly in the process of planning or carrying out attacks. "Bush badly mangled the definition of enemy combatant to expand to anyone who might be giving support, which was very pernicious," he said.

**Drone strikes devastate US credibility globally – best data confirms.**

**GJC et al 13**,Global Justice Clinic (GJC) at NYU School of Law and Stanford International Human Rights and Conflict Resolution Clinic (IHRCRC), http://www.livingunderdrones.org/report/

**The significant global opposition to drone strikes also erodes US credibility in the international community.** **In 17 of the 20 countries polled by** the **Pew** Global Attitudes Project, **the majority** of those surveyed **disapproved of US drone attacks** in countries like Pakistan, Somalia, and Yemen.[768] **Widespread opposition spans the globe**, from traditional European allies such as France (63% disapproval) and Germany (59% disapproval) to key Middle East states such as Egypt (89% disapproval) and Turkey (81% disapproval).[769] As with other unpopular American foreign policy engagements, including the invasion of Iraq and the practice of torture at Abu Ghraib and elsewhere, **drone strikes weaken the standing of the US in the world, straining its relationships with allies, and making it more difficult for it to build multilateral alliances to tackle pressing global challenges**.

#### NATO intrusion into non-military activities hampers solvency – takes out internals to extinction

Hunter 9

[Robert E., “NATO's Strategic Focus: Satisfying All of the Allies”, American Foreign Policy Interests. Mar/Apr2009, Vol. 31 Issue 2, p78-89. 12p., EBSCO]

There has been debate about the degree to which NATO itself should undertake nonmilitary tasks or whether it should enlist the cooperation of other institutions or of individual nations—a question that also arises when NATO considers an appropriate role in regard to nonmilitary but ‘‘security related’’ issues like energy. The better part of wisdom is for the nations of the transatlantic world to look to those institutions that are best able to undertake the task at hand, a form of ‘‘comparative advantage.’’ In terms of most nonmilitary tasks that need to be performed in places like Afghanistan, the United Nations, the European Union, the World Bank, and nongovernmental institutions (NGOs) are usually far better suited than NATO. Of course, creating the cooperation needed for such relationships to be effective begs a host of questions, including the need for agreement among the engaged parties on what is to be done (interests and goals), what steps should be taken, how activities should be conducted, who should take decisions—and how that function should be shared—and the like. This can pose serious difficulties. But there is benefit in passing critical responsibilities in nonmilitary areas to institutions that are essentially ‘‘nonmilitary’’ for reasons that include not only the virtues of achieving goals that can be agreed in common at least cost and with the greatest degree of comity but also the potential for bridging the gaps between the interests and approaches of different countries. Thus in Afghanistan many European countries from their individual national perspectives may not see the stakes involved as worth putting forces at risk in areas of active combat (as opposed to deployments in other parts of the ‘‘target’’ country) to serve other, noncombat purposes; but they may be willing to undertake nonmilitary tasks—such as promoting the critical requirements of better governance, reconstruction, and development— that are essential to the achievement of overall results. That is the comprehensive approach in practice.