# 1ac

#### plan: The United States federal government should prohibit public law 107-40's authorization to use force, effective December 31st, 2014.

### adv 1 heg

#### the AUMF war paradigm makes failed state interventions inevitable—undermines US foreign policy and causes overstretch

Cronin 13, Professor of Public Policy

[11/29/13, Professor Audrey Kurth Cronin has had a combination of academic positions and practical U.S. government service throughout her career. She joined George Mason University’s School of Public Policy in Arlington, Virginia (USA) as a tenured senior faculty member in September 2011. Prior to that, she was a faculty member and director of the core course on military strategy at the U.S. National War College (2007-2011). She came to the war college from Oxford University (Nuffield College), where she was Director of Studies for the Oxford/Leverhulme Programme on the Changing Character of War from 2005 to 2007, “The ‘War on Terrorism’: What Does it Mean to Win?”, Journal of Strategic Studies, http://www.tandfonline.com/doi/abs/10.1080/01402390.2013.850423#tabModule]

The war on al-Qaeda appears endless, but every war must end. The US and its allies have made dramatic progress against a once formidable terrorist organization known for its meticulous planning, coordinated attacks, and popular support. Popular support has dropped off, its leader is dead, and developments in the Arab world have shifted its focus back to fighting local enemies and hijacking local insurgencies. Compared to a decade ago, the threat to the United States, the United Kingdom, and Western allies is much reduced. Although it can still inspire small attacks, the organization that attacked the United States in 2001 is marginalized. Research about how terrorism ends has influenced counterterrorism policy decisions.1 But what about the other side of that coin – the war against al-Qaeda. Recently published books on war termination have ignored it.2 How exactly will it end? For Americans, the response to al-Qaeda’s 2001 attacks has always been a ‘war.’ Against the misgivings of experts and allies, Congress resolved the US debate over ‘war’ or ‘crime’ three days after the 9/11 attacks.3 With nearly 3000 dead Americans lying under hot debris, the situation seemed clear: another attack was imminent. Only preventive military force could protect the country from further carnage, delivered either conventionally or with weapons of mass destruction. The 2001 Authorization for the Use of Military Force (AUMF), as robust as any formal war declaration preceding it, bound the bureaucracy to frame the conflict as a ‘war’ rather than a law enforcement problem – and it was a war with no specified end.4 Even the 1941 war declarations upon Imperial Japan and Nazi Germany had directed the President ‘to bring the conflict(s) to a successful termination.’5 The boundless 2001 authorization was followed by a series of continuing resolutions providing open-ended funding, 94 per cent of which went to the Defense Department.6 For US policymakers, calling the struggle a ‘war on terrorism’ and then a ‘war against al-Qaeda and its affiliates’ was not just semantics. Winding down in Afghanistan and Iraq is straightforward compared to ending the war against al-Qaeda.7 For the United States both of those ‘overseas contingency operations’ conclude when US combat troops are withdrawn and a Status of Forces Agreement enacted to cover post-conflict arrangements. Yet planners often forget that both were launched as an integral part of the global response to deadly attacks against the World Trade Centre, the Pentagon, and ultimately a field in Pennsylvania. The end of combat operations in Iraq and Afghanistan is not the end of the war begun in 2001. With smaller ongoing US operations from the Philippines to the Horn of Africa, a sustainable strategy must also weigh means and ends in the ongoing war against al-Qaeda. The alternative is to jerk willy-nilly from overspending to underspending, paranoia to complacency, short-term reaction to long-term decline. The war on terrorism has remained open-ended in time, geography, and resources – including money, talent, and preemptive lethal force. Ill-defined ends and means are placing US actions outside of familiar strategic, legal, and moral frameworks for evaluating their pros and cons. Military operations and tactics have prevailed, from two massive counterinsurgencies to high-tempo special operations to drone attacks, with a sustainable longer-term approach neglected.8 Efforts to create a balanced grand strategy across all aspects of US power (military, diplomatic, law enforcement, aid) have failed, unsupported by either the legal or the financial scaffolding of the post-9/11 campaign. Without envisioning an end, policymakers do not calibrate day-to-day plans so that ends and means are aligned. Through its unmatched operational, intelligence, and special operations capabilities, the United States government has made enormous progress, killing bin Laden and crushing the leadership. Yet, even as al-Qaeda is losing, the United States does not seem to be winning. In this war, no one seems to know what ‘winning’ means. Crime is endless, but wars end. Contrary to popular myth, wars do not all reach closure with surrender ceremonies on battleships, treaty negotiations in French palaces, or even helicopter evacuations from embassy rooftops.9 Nor do they necessarily return the status quo ante bellum: Going to war irrevocably alters the strategic landscape. The American people will never recapture their pre-9/11 sense of safety, just as the intrusive security procedures and intelligence collection will never disappear. And this is not the first authorization for the use of force against a nonstate actor: Native Americans, pirates, and slave traders have all been named in earlier authorizations.10 But while terrorism itself never ends, wars by their nature demand a distinction between ‘war’ and ‘peace.’ So far, the United States government has no idea how to characterize ‘peace.’ This is a serious oversight. All the great strategists agree that war cannot be fought successfully without clear notions of an end state to guide, modulate, and focus operations. More than 2500 years ago in ancient China, Sun Zi wrote of the chaotic Warring States period that ‘there has never been a protracted war from which a country has benefited’ and ‘hence what is essential in war is victory, not prolonged operations.’11 Reflecting on the Peloponnesian War, Thucydides wrote in fifth-century BCE, ‘[i]t is a common mistake in going to war to begin at the wrong end, to act first, and wait for disaster to discuss the matter.’12 In the second book of On War, von Clausewitz observes, ‘[y]et insofar as that aim is not the one that will lead directly to peace, it remains subsidiary and is also to be thought of as means …. What remains in the way of ends, then, are only those objects that lead directly to peace.’13 Fresh out of World War I, Col. J.F.C. Fuller observed, ‘[p]reparation for war or against war, from the grand strategical aspect, is the main problem of peace, just as the accomplishment of peaceful prosperity is the main problem of war.’14 And, following World War II, British strategist Basil Liddell Hart argued, ‘while the horizon of strategy is bounded by the war, grand strategy looks beyond the war to the subsequent peace. It should not only combine the various instruments, but so regulate their use as to avoid damage to the future state of peace – for its security and prosperity.’15 In the twentieth century, the advent of nuclear weapons meant that American strategic thinking came to be dominated more by economics and engineering than history. But even there the imperative of war termination was brought home in books such as Fred Iklé’s 1971 classic, Every War Must End, published during the Vietnam War.16 No country has ever benefited from an endless war, and the United States is no exception. American policymakers must envision the end of this war or it will further exhaust US forces, distort their strategic planning, and blind them to other threats. Thinking about how this war will end is crucial to prosecuting it successfully. Yet, the more the United States fights, the longer the war’s trajectory seems to grow. Twelve years after 9/11, senior US Defense official Michael Sheehan told Congress that the war with al-Qaeda would continue ‘for 10 or 20 years’ more.17 How could that be? Clearly Al-Qaeda is not the same organization it was a decade ago. What does ‘success’ mean?18 The following first evaluates the ongoing US response in historical context, and then suggests how to bring the war against al-Qaeda to an end. Through the post-9/11 years, the United States evolved in its answer to al-Qaeda, from major combat operations, counterinsurgency and nation-building in Iraq and Afghanistan, toward juxtaposing the decline of al-Qaeda with the rise of aggressive US special operations and paramilitary intelligence activity globally. Lacking a strong framework for strategy and war termination, the United States replaced the actual threat of al-Qaeda with the possibility of al-Qaeda (or ‘associates’) in a widening range of places. An unforeseen legacy of defining al-Qaeda as a ‘global insurgency’ in 2005 was the impulse for US action against ‘transnational violent extremism’ universally in 2012.19 Muslim insurgencies around the world became core US concerns. This was a crucial shifting of American ends, from the protection of the American homeland and the prevention of another attack, to the defense of all parts of the world from the potential for an Islamist extremist entity to hold any piece of territory, anywhere. Former NSC official Mary Habeck put it this way: [W]inning against al Qaeda does not depend on body counts, but rather would look very much like victories against other insurgents: the spreading of security for populations in Somalia, Yemen, the Sahel, and elsewhere; the prevention of a return of al-Qaeda to those cleared areas; and the empowerment of legitimate governments that can control and police their own territories. By these standards, we have not yet defeated al Qaeda; in fact, beyond Iraq, Afghanistan, and Somalia, we have hardly engaged the enemy at all.20 This implies that the United States should engage in a war on violent extremism anywhere, and thus fight an open-ended global campaign everywhere – a classic recipe for imperial overstretch. A worldwide perspective also emerged from the unfortunate US tendency to equate failed states with an al-Qaeda threat (or potential al-Qaeda threat), thus pulling many ungoverned corners of the globe into the US sphere of interest.21 Along with the demand for zero risk at home, such narrow thinking yielded reactionary, expeditionary responses instead of prioritization according to enduring US interests in deciding where to deploy. A light military footprint was not so light when it lacked a strategic framework and global boundaries. In the absence of long-term strategic planning, the United States began to suffer four symptoms common to all prolonged wars: means became ends, tactics became strategy, boundaries were blurred, and the search for a perfect peace replaced reality.22

#### kills US global engagement—trades off with effective uses of US leadership—aff solves

Mazarr 14, Adjunct Professor for National Security Studies

[January-February 2014, MICHAEL J. MAZARR is Legislative Assistant and Chief Writer in the office of Rep. Dave McCurdy (D-OK). Dr. Mazarr holds A.B. and M.A. degrees from Georgetown University and a Ph.D. from the University of Maryland School of Public Affairs. He is an Adjunct Professor in the Georgetown University National Security Studies Program, and he served in the U.S. Naval Reserve for seven years as an intelligence officer. Before coming into the House, Dr. Mazarr was a Senior Fellow in International Studies, where he directed a number of major projects. He has authored five books, edited five anthologies, and published a number of scholarly articles, “The Rise and Fall of the Failed-State Paradigm”, Foreign Affairs, <http://www.foreignaffairs.com/articles/140347/michael-j-mazarr/the-rise-and-fall-of-the-failed-state-paradigm>]

A fourth problem with the state-building obsession was that it distorted the United States’ sense of its central purpose and role in global politics. Ever since World War II, the United States has labored mightily to underwrite the stability of the international system. It has done this by assembling military alliances to protect its friends and deter its enemies, by helping construct a global architecture of trade and finance, and by policing the global commons. These actions have helped buttress an interdependent system of states that see their dominant interests in stability rather than conquest. Playing this role well demands sustained attention at all levels of government, in part to nurture the relationships essential to crisis management, diplomacy, and multilateral cooperation of all kinds. Indeed, the leading danger in the international system today is the peril that, assaulted by a dozen causes of rivalry and mistrust, the system will fragment into geopolitical chaos. The U.S. experience since the 1990s, and growing evidence from Northeast Asia, suggests that if the relatively stable post–Cold War era devolves into interstate rivalry, it will be not the result of weak states but that of the escalating regional ambitions, bitter historical memories, and flourishing nationalisms of increasingly competitive states. The U.S. role in counteracting the broader trends of systemic disintegration is therefore critical. The United States is the linchpin of a number of key alliances and networks; it provides the leadership and attractive force for many global diplomatic endeavors, and its dominant military position helps rule out thoughts of aggression in many quarters. The weak-state obsession has drawn attention away from such pursuits and made a resurgence of traditional threats more likely. Focusing on two seemingly endless wars and half a dozen other potential “stability operations” has eroded U.S. global engagement, diminished U.S. diplomatic creativity, and distracted U.S. officials from responding appropriately to changes in the global landscape. When one reads the memoirs of Bush administration officials, the dozen or more leading global issues beyond Afghanistan, Iraq, and the “war on terror” begin to sound like background noise. Top U.S. officials appear to have spent far more time between 2003 and 2011, for example, managing the fractious mess of Iraqi politics than tending to relationships with key global powers. As a consequence, senior U.S. officials have had less time to cultivate the leaders of rising regional powers, from Brazil to India to Turkey. Sometimes, U.S. actions or demands in state-building adventures have directly undermined other important relationships or diplomatic initiatives, as when Washington faced the global political reaction to the Iraq war. Such tradeoffs reflect a hallmark of the era of state building: secondary issues became dominant ones. To be fair, this was partly the fault of globalization; around-the-clock media coverage now constantly shoves problems a world away onto the daily agendas of national leaders. Combined with the United States’ self-image as the indispensable nation, this intrusive awareness created political pressure to act on issues of limited significance to core U.S. interests. Yet this is precisely the problem: U.S. perceptions of global threats and of the country’s responsibility to address them have become badly and perhaps permanently skewed. A great power’s reservoir of strategic attention is not infinite. And the United States has become geopolitically hobbled, seemingly uninterested in grand strategic initiatives or transformative diplomacy, as its attention constantly dances from one crisis to another. A fifth problem flowed directly from the fourth. To perform its global stabilizing role, the United States needs appropriately designed, trained, and equipped armed forces -- forces that can provide a global presence, prevail in high-end conflict contingencies, enable quick long-range strike and interdiction capabilities, and build and support local partners’ capacities. The state-building mission has skewed the operations, training, equipping, and self-conception of the U.S. military in ways that detract from these responsibilities. Much of the U.S. military has spent a decade focusing on state building and counterinsurgency (COIN), especially in its training and doctrine, to the partial neglect of more traditional tasks. Massive investments have gone into COIN-related equipment, such as the MRAP (mine-resistant, ambush-protected) vehicles built to protect U.S. troops from improvised explosive devices, draining billions of dollars from other national security resources. The result of these choices has been to weaken the U.S. military’s ability to play more geostrategic and, ultimately, more important roles. Between a demanding operational tempo, the requirements of refitting between deployments, and a shift in training to emphasize COIN, the U.S. military, especially its ground forces, lost much of its proficiency in full-spectrum combat operations. Simply put, the U.S. military would be far better positioned today -- better aligned with the most important roles for U.S. power, better trained for its traditional missions, better equipped for an emerging period of austerity -- had the state-building diversion never occurred. AN ALTERNATIVE MODEL None of this is meant to suggest that a concern for the problems posed by weak or failing states can or should disappear entirely from the U.S. foreign policy and national security agendas. Counterterrorism and its associated tasks will surely remain important, and across the greater Middle East -- including Afghanistan after 2014 -- internal turmoil may well have external consequences requiring some response from Washington. Effective local institutions do contribute to stability and growth, and the United States should do what it can to nurture them where possible. The difference is likely to be in the priority Washington accords such efforts. The January 2012 Defense Strategic Guidance, for example, reflected the judgment that “U.S. forces will no longer be sized to conduct large-scale, prolonged stability operations” and announced an intention to pursue “innovative, low-cost, and small-footprint approaches” to achieving objectives. Recently, the vice chairman of the Joint Chiefs of Staff, Admiral James “Sandy” Winnefeld, went even further: “I simply don’t know where the security interests of our nation are threatened enough to cause us to lead a future major, extended COIN campaign.” In the future, the United States is likely to rely less on power projection and more on domestic preparedness, replacing an urgent civilizing zeal with defensive self-protection. This makes sense, because the most appropriate answer to the dangers inherent in an era of interdependence and turbulence is domestic resilience: hardened and redundant networks of information and energy, an emphasis on local or regional self-sufficiency to reduce the cascading effects of systemic shocks, improved domestic emergency-response and cybersecurity capacities, sufficient investments in pandemic response, and so forth. Equally important is a resilient mindset, one that treats perturbations as inevitable rather than calamitous and resists the urge to overreact. In this sense, the global reaction to the recent surge in piracy -- partly a product of poor governance in African states -- should be taken as a model: no state-building missions, but arming and protecting the ships at risk. When it does reach out into the world to deal with weak states, the United States should rely on gradual progress through patient, long-term advisory and aid relationships, based on such activities as direct economic assistance tailored to local needs; training, exchanges, and other human-capacity-development programs; military-to-military ties; trade and investment policies; and more. The watchwords should be patience, gradualism, and tailored responses: enhancing effective governance through a variety of models attuned to local patterns and needs, in advisory and supportive ways. As weak states continue to generate specific threats, such as terrorism, the United States has a range of more limited tools available to mitigate them. It can, for example, return terrorism to its proper place as a law enforcement task and continue to work closely with foreign law enforcement agencies. It can help train and develop such agencies, as well as local militaries, to lead in the fight. When necessary, it can employ targeted coercive instruments -- classic intelligence work and clandestine operations, raids by special operations forces, and, with far greater selectivity than today, remote strikes -- to deal with particular threats, ideally in concert with the militaries of local allies. Some will contend that U.S. officials can never rule out expeditionary state building because events may force it back onto the agenda. If al Qaeda were to launch an attack that was planned in restored Taliban strongholds in a post-2014 Afghanistan, or if a fragmentation and radicalization of Pakistani society were to place nuclear control at risk, some would recommend a return to interventionist state building. Yet after the United States’ recent experiences, it is doubtful that such a call would resonate. The idea of a neo-imperial mission to strengthen weak states and stabilize chaotic societies always flew in the face of more important U.S. global roles and real mechanisms of social change. There is still work to be done in such contexts, but in more prudent and discriminate ways. Moving on from the civilizing mission will, in turn, make possible a more sustainable and effective national security strategy, allowing the United States to return its full attention to the roles and missions that mean far more to long-term peace and security. One of the benefits of this change, ironically, will be to allow local institutional development to proceed more organically and authentically, in its own ways and at its own pace. Most of all, the new mindset will reflect a simple facing up to reality after a decade of distraction.

#### Leadership solves extinction through cooperation on global threats – decline means nuclear war

Brooks, Ikenberry, and Wolforth 13, Professors of Government and international Politics

[January/February 2013, Stephen G. Brooks, G. John Ikenberry, and William C. Wohlforth STEPHEN G. BROOKS is Associate Professor of Government at Dartmouth College. G. JOHN IKENBERRY is Albert G. Milbank Professor of Politics and International Af airs at Princeton University and Global Eminence Scholar at Kyung Hee University in Seoul. WILLIAM C. WOHLFORTH is Daniel Webster Professor of Government at Dartmouth College. This article is adapted from their essay "Don't Come Home, America: The Case Against Retrenchment," International Security, Winter 2012-13., “Lean Forward”, Foreign Affairs, http://www.twc.edu/sites/default/files/assets/academicCourseDocs/22.%20Brooks,%20Lean%20Forward.pdf]

Of course, even if it is true that the costs of deep engagement fall far below what advocates of retrenchment claim, they would not be worth bearing unless they yielded greater benefits. In fact, they do. The most obvious benefit of the current strategy is that it reduces the risk of a dangerous conflict. The United States' security commitments deter states with aspirations to regional hegemony from contemplating expansion and dissuade U.S. partners from trying to solve security problems on their own in ways that would end up threatening other states. Skeptics discount this benefit by arguing that U.S. security guarantees aren't necessary to prevent dangerous rivalries from erupting. They maintain that the high costs of territorial conquest and the many tools countries can use to signal their benign intentions are enough to prevent conflict. In other words, major powers could peacefully manage regional multipolarity without the American pacifier. But that outlook is too sanguine. If Washington got out of East Asia, Japan and South Korea would likely expand their military capabilities and go nuclear, which could provoke a destabilizing reaction from China. It's worth noting that during the Cold War, both South Korea and Taiwan tried to obtain nuclear weapons; the only thing that stopped them was the United States, which used its security commitments to restrain their nuclear temptations. Similarly, were the United States to leave the Middle East, the countries currently backed by Washington -- notably, Israel, Egypt, and Saudi Arabia -- might act in ways that would intensify the region's security dilemmas. There would even be reason to worry about Europe. Although it's hard to imagine the return of great-power military competition in a post-American Europe, it's not difficult to foresee governments there refusing to pay the budgetary costs of higher military outlays and the political costs of increasing EU defense cooperation. The result might be a continent incapable of securing itself from threats on its periphery, unable to join foreign interventions on which U.S. leaders might want European help, and vulnerable to the influence of outside rising powers. Given how easily a U.S. withdrawal from key regions could lead to dangerous competition, advocates of retrenchment tend to put forth another argument: that such rivalries wouldn't actually hurt the United States. To be sure, few doubt that the United States could survive the return of conflict among powers in Asia or the Middle East -- but at what cost? Were states in one or both of these regions to start competing against one another, they would likely boost their military budgets, arm client states, and perhaps even start regional proxy wars, all of which should concern the United States, in part because its lead in military capabilities would narrow. Greater regional insecurity could also produce cascades of nuclear proliferation as powers such as Egypt, Saudi Arabia, Japan, South Korea, and Taiwan built nuclear forces of their own. Those countries' regional competitors might then also seek nuclear arsenals. Although nuclear deterrence can promote stability between two states with the kinds of nuclear forces that the Soviet Union and the United States possessed, things get shakier when there are multiple nuclear rivals with less robust arsenals. As the number of nuclear powers increases, the probability of illicit transfers, irrational decisions, accidents, and unforeseen crises goes up. The case for abandoning the United States' global role misses the underlying security logic of the current approach. By reassuring allies and actively managing regional relations, Washington dampens competition in the world's key areas, thereby preventing the emergence of a hothouse in which countries would grow new military capabilities. For proof that this strategy is working, one need look no further than the defense budgets of the current great powers: on average, since 1991 they have kept their military expenditures as a percentage of GDP to historic lows, and they have not attempted to match the United States' top-end military capabilities. Moreover, all of the world's most modern militaries are U.S. allies, and the United States' military lead over its potential rivals is by many measures growing. On top of all this, the current grand strategy acts as a hedge against the emergence regional hegemons. Some supporters of retrenchment argue that the U.S. military should keep its forces over the horizon and pass the buck to local powers to do the dangerous work of counterbalancing rising regional powers. Washington, they contend, should deploy forces abroad only when a truly credible contender for regional hegemony arises, as in the cases of Germany and Japan during World War II and the Soviet Union during the Cold War. Yet there is already a potential contender for regional hegemony -- China -- and to balance it, the United States will need to maintain its key alliances in Asia and the military capacity to intervene there. The implication is that the United States should get out of Afghanistan and Iraq, reduce its military presence in Europe, and pivot to Asia. Yet that is exactly what the Obama administration is doing. MILITARY DOMINANCE, ECONOMIC PREEMINENCE Preoccupied with security issues, critics of the current grand strategy miss one of its most important benefits: sustaining an open global economy and a favorable place for the United States within it. To be sure, the sheer size of its output would guarantee the United States a major role in the global economy whatever grand strategy it adopted. Yet the country's military dominance undergirds its economic leadership. In addition to protecting the world economy from instability, its military commitments and naval superiority help secure the sea-lanes and other shipping corridors that allow trade to flow freely and cheaply. Were the United States to pull back from the world, the task of securing the global commons would get much harder. Washington would have less leverage with which it could convince countries to cooperate on economic matters and less access to the military bases throughout the world needed to keep the seas open. A global role also lets the United States structure the world economy in ways that serve its particular economic interests. During the Cold War, Washington used its overseas security commitments to get allies to embrace the economic policies it preferred -- convincing West Germany in the 1960s, for example, to take costly steps to support the U.S. dollar as a reserve currency. U.S. defense agreements work the same way today. For example, when negotiating the 2011 free-trade agreement with South Korea, U.S. officials took advantage of Seoul's desire to use the agreement as a means of tightening its security relations with Washington. As one diplomat explained to us privately, "We asked for changes in labor and environment clauses, in auto clauses, and the Koreans took it all." Why? Because they feared a failed agreement would be "a setback to the political and security relationship." More broadly, the United States wields its security leverage to shape the overall structure of the global economy. Much of what the United States wants from the economic order is more of the same: for instance, it likes the current structure of the World Trade Organization and the International Monetary Fund and prefers that free trade continue. Washington wins when U.S. allies favor this status quo, and one reason they are inclined to support the existing system is because they value their military alliances. Japan, to name one example, has shown interest in the Trans- Pacific Partnership, the Obama administration's most important free-trade initiative in the region, less because its economic interests compel it to do so than because Prime Minister Yoshihiko Noda believes that his support will strengthen Japan's security ties with the United States. The United States' geopolitical dominance also helps keep the U.S. dollar in place as the world's reserve currency, which confers enormous benefits on the country, such as a greater ability to borrow money. This is perhaps clearest with Europe: the EU's dependence on the United States for its security precludes the EU from having the kind of political leverage to support the euro that the United States has with the dollar. As with other aspects of the global economy, the United States does not provide its leadership for free: it extracts disproportionate gains. Shirking that responsibility would place those benefits at risk. CREATING COOPERATION What goes for the global economy goes for other forms of international cooperation. Here, too, American leadership benefits many countries but disproportionately helps the United States. In order to counter transnational threats, such as terrorism, piracy, organized crime, climate change, and pandemics, states have to work together and take collective action. But cooperation does not come about effortlessly, especially when national interests diverge. The United States' military efforts to promote stability and its broader leadership make it easier for Washington to launch joint initiatives and shape them in ways that reflect U.S. interests. After all, cooperation is hard to come by in regions where chaos reigns, and it flourishes where leaders can anticipate lasting stability. U.S. alliances are about security first, but they also provide the political framework and channels of communication for cooperation on nonmilitary issues. NATO, for example, has spawned new institutions, such as the Atlantic Council, a think tank, that make it easier for Americans and Europeans to talk to one another and do business. Likewise, consultations with allies in East Asia spill over into other policy issues; for example, when American diplomats travel to Seoul to manage the military alliance, they also end up discussing the Trans-Pacific Partnership. Thanks to conduits such as this, the United States can use bargaining chips in one issue area to make progress in others. The benefits of these communication channels are especially pronounced when it comes to fighting the kinds of threats that require new forms of cooperation, such as terrorism and pandemics. With its alliance system in place, the United States is in a stronger position than it would otherwise be to advance cooperation and share burdens. For example, the intelligence-sharing network within NATO, which was originally designed to gather information on the Soviet Union, has been adapted to deal with terrorism. Similarly, after a tsunami in the Indian Ocean devastated surrounding countries in 2004, Washington had a much easier time orchestrating a fast humanitarian response with Australia, India, and Japan, since their militaries were already comfortable working with one another. The operation did wonders for the United States' image in the region. The United States' global role also has the more direct effect of facilitating the bargains among governments that get cooperation going in the first place. As the scholar Joseph Nye has written, "The American military role in deterring threats to allies, or of assuring access to a crucial resource such as oil in the Persian Gulf, means that the provision of protective force can be used in bargaining situations. Sometimes the linkage may be direct; more often it is a factor not mentioned openly but present in the back of statesmen's minds."

#### the plan ends the war paradigm, rebalancing US strategy to make it more sustainable

Cronin 13, Professor of Public Policy

[11/29/13, Professor Audrey Kurth Cronin has had a combination of academic positions and practical U.S. government service throughout her career. She joined George Mason University’s School of Public Policy in Arlington, Virginia (USA) as a tenured senior faculty member in September 2011. Prior to that, she was a faculty member and director of the core course on military strategy at the U.S. National War College (2007-2011). She came to the war college from Oxford University (Nuffield College), where she was Director of Studies for the Oxford/Leverhulme Programme on the Changing Character of War from 2005 to 2007, “The ‘War on Terrorism’: What Does it Mean to Win?”, Journal of Strategic Studies, http://www.tandfonline.com/doi/abs/10.1080/01402390.2013.850423#tabModule]

Third, as the United States ends this war, it must also rebalance US counterterrorism policy. Being at war, the United States has naturally overemphasized and overresourced the military response to al-Qaeda at the expense of the nonmilitary means. Decades of international experience with counterterrorism confirm that this emphasis on the use of military force has long-term disadvantages that will not serve American interests or security in the future. As part of its transition toward postwar normality, the United States must focus more energy on diplomacy and building the capacity of partner countries who are dealing with threats that also potentially threaten the US. In particular, enhancing the role of the Department of State in interagency efforts against counterterrorism is extremely important. The formal promotion of the State Department’s Office for Combating Terrorism to a full Bureau of Counterterrorism in January 2012 was a step in the right direction toward enhancing its role in building international cooperation against terrorism through diplomatic channels.64 The Pentagon has vastly overshadowed the State Department’s resources and leverage in developing US counterterrorism policy, and this is the time to readjust toward a more viable long-term national strategy. Modeling balanced counterterrorism policies is the best way forward, including not just direct action when required, but also lower profile, longer-term, more prosaic efforts such as prison monitoring, counter-recruitment, countering document fraud, airport security, Internet monitoring, and jihadist chat-room infiltration. Fourth, and related, the US government must do a better job of bringing its own costs and risks into sharper alignment, synching image and reality in the minds of Americans. Popular resilience is part of a winning strategy against al-Qaeda, and to build it the US government and its people must determine how to go from a state of war to a state of peace, meaning a realistic condition of normality. Ending the state of war against al-Qaeda will have an influence upon the US public psychologically and will shift the American narrative in ways that help the US government better adapt to ongoing global changes. That is not to say that ‘terrorism’ will end. Three weeks after leaving office, outgoing Head of the National Counterterrorism Center Michael Leiter put it this way: The American people do need to understand that at least the smaller-scale terrorist attacks are with us for the foreseeable future …. The way that we fundamentally defeat that threat, which is very difficult to stop in its entirety, is to maintain a culture of resilience. Although this threat of terrorism is real and there will be tragic events that lead to the deaths of innocent people, it is not, in my view, an existential threat to our society.65 The President must openly and repeatedly say the same thing. Continued cooperation on counterterrorism is vital. But lastly, the end of this war should bring with it a reassessment of US security commitments globally, with clear prioritization according to national interests. Why, for example, is the United States beefing up its military presence in Africa while simultaneously arguing that the future lies in a rebalancing to Asia? Such a strategic shift is impossible as long as it is willing to get sucked into local insurgencies by carrying out so-called ‘goodwill’ attacks on behalf of governments in Yemen, Somalia, and Pakistan. US forces are reacting to short-term threats against those governments, rather than building a viable global presence to protect the United States and its longstanding allies. Americans must stop living on adrenaline and build a sustainable future by ending this war and developing some concept of what normality means. The US goal for al-Qaeda must be to transition to where it is a manageable, albeit still dangerous, threat and American policymakers can focus more of their resources and attention on other priorities. Al-Qaeda has not ended. But its ability to launch a major attack against the United States has declined. Critics will argue that the enemy always has a vote. This is true; but does he have a veto? A major coordinated attack from abroad would be catastrophic; however, smaller terrorist attacks on US soil are inevitable and have been the reality for decades. The next time there is a small jihadist attack on American soil – inspired by the legacy of al-Qaeda or even orchestrated by one of its new ‘associates’ – will Americans automatically extend this costly global war for another decade? The United States is not the first great power to meet a serious terrorist threat. Being constantly on the defensive diminishes its global role and stature. While elements of the US government must continue to aggressively counter al-Qaeda, staying on an endless wartime footing is self-defeating.

### adv 2 terror

#### US counterterror efforts are failing now—the war paradigm galvanizes jihadist movements and creates new terrorist hubs

Carpenter 13

[11/5/13, Charli Carpenter is a human security analyst specializing in outside-the-box thinking. She teaches political science at University of Massachusetts-Amherst, is the author of three books on war-affected civilians and has written on human security issues for Foreign Affairs, Foreign Policy and the National Interest. She blogs at Duck of Minerva, “Out of the Shadows: A New Paradigm for Countering Global Terrorism”, http://www.worldpoliticsreview.com/articles/13325/out-of-the-shadows-a-new-paradigm-for-countering-global-terrorism]

The term “shadow wars” aptly describes the U.S. approach to the war on terror. Policymakers perceive they are fighting an enemy composed of shadow and dust, one hidden in and facilitated by the dark underworld of global politics. But to prosecute this campaign, the U.S. has itself, to borrow a term from the writer J.R.R. Tolkien, “fallen into shadow”: Its moral high ground and once-principled politics have been replaced by a recourse to policies such as arbitrary detention, torture and extrajudicial killings that have tarnished its reputation and bolstered its enemies. The blowback from these policies demonstrates that a just war cannot be fought using unjust means—indeed their use erodes the moral authority to fight truly just wars when the need arises. Winding down this “war” both necessitates and provides a window for stepping out of the shadows and adhering to basic standards of international law and human rights. An Ineffective and Counterproductive Paradigm The perpetrators of 9/11 have been brought to a kind of justice: Osama bin Laden has been killed, along with many of his lieutenants; the extremist government that harbored him has been replaced with a more secular regime; and 9/11 mastermind Khalid Sheikh Mohammed is in custody and on trial for his role in the events of that day. Yet this took 12 years, nearly 7,000 U.S. service members dead, tens of thousands of Iraqi and Afghan civilians dead, displaced, injured or bereaved, as well as an unreasonably high cost in both treasure and U.S. credibility. Moreover, success in punishing the architects of 9/11 has not been matched by success in prosecuting the war’s wider aims. It is increasingly clear that the military occupations of Iraq and Afghanistan have achieved neither a reduction in overall global terror levels nor in the ideology of global jihadism. While attacks by al-Qaida-affiliated groups have always constituted only a tiny proportion of the global total of incidents of terrorism—which remains a low security threat relative to others—the Global Terrorism Database at the University of Maryland indicates such incidents have in fact been far more numerous since the onset of the “war on terror” in 2001 than they were in the preceding decade. Jihadism as an ideology also appears to be on the rise worldwide, with increasingly decentralized al-Qaida splinter groups proliferating (.pdf), fueled by images of civilian casualties at the hands of U.S. drones and Western-backed secular Arab regimes. The U.S. has been aware of these trends (.pdf) since at least 2006. But instead of reconsidering the war paradigm to address the risk of terrorism, it has simply changed tactics, replacing military occupations with the use of drones and covert operations. While this has reduced the visibility of the war against terror, it has done nothing to reduce the collateral damage from the war, as well as the blowback that damage causes. Not only has U.S. policy failed to solve the terror problem it set out to fix, the way in which it has been prosecuted has likely had the opposite effect. Reacting to terrorists as if they have the power to declare and prosecute war perversely legitimizes their behavior in the eyes of their constituencies. A common tactic of asymmetric warfare involves baiting a powerful actor into a disproportionate response that produces civilian casualties, providing moral cover for the terrorist’s acts. The U.S. war of high explosives in populated areas against groups that behave this way played precisely into these groups’ hands by creating a massive civilian death toll, now exploited in jihadist propaganda, that has caused fresh jihadist fronts to metastasize in Africa and Yemen. U.S. violations of international rules prohibiting torture, arbitrary detention, extrajudicial killing and disproportionate civilian harm have undermined U.S. claims to the moral high ground not only in the eyes of populations where it is fighting its shadow war but also in the eyes of its allies and constituents.

#### Independent of operations, maintaining the legal framework of war undermines effective counterterrorism efforts

Pillar and Preble 10

[Paul R. Pillar is an academic and 28-year veteran of the Central Intelligence Agency (CIA), serving from 1977 to 2005.[1] He is now a non-resident senior fellow at Georgetown University's Center for Security Studies,[2] as well as a nonresident senior fellow in the Brookings Institution's Center for 21st Century Security and Intelligence.[1] He was a visiting professor at Georgetown University from 2005 to 2012. and Christopher A. Preble is the vice president for defense and foreign policy studies at the Cato Institute, “Terrorizing Ourselves: Why U.S. Counterterrorism Policy Is Failing and How to Fix It. Chapter 4: Don’t You Know There’s a War On? Assessing the Military’s Role in Counterterrorism”, pages 61-82, found on ebrary]

It is in talking about terrorism that the terminology of counterterrorism becomes particularly relevant. Just as the use of the military tool often has counterproductive effects, so too does casting the fight against al Qaeda and other terrorist groups of global reach as a ‘‘war’’ often undermine long-term counterterrorism objectives. When policymakers refer to a ‘‘war on terror,’’ the term incorrectly implies that the military is the leading instrument of our counterterrorism efforts, and it further suggests that the challenge has a definite beginning and an equally definitive conclusion. 20 There is also the illogicality of declaring war on a tactic. It makes no more sense than the British and French declaring war on blitzkrieg in 1939, or the Americans declaring war on kamikazes in the Pacific in 1944. In both cases, strategy was appropriately directed toward an adversary— the Germans and Japanese, respectively— and not to the means they employed. Other interrelated problems flow from the imprecise evocation of a ‘‘war on terror.’’ The phrase has the effect of conflating many different entities into a supposedly monolithic threat; it complicates allied cooperation, and it gives legitimacy to terrorists as combatants. Accordingly, the Department of Homeland Security in 2008 advised policymakers to ‘‘accurately identify the nature of the challenges that face our generation.’’ ‘‘If senior government officials carefully select strategic terminology,’’ the paper published by the Office for Civil Rights and Civil Liberties averred, ‘‘the government’s public statements will encourage vigilance without unintentionally undermining security objectives.’’ 21 In general, referring to a ‘‘war on terror’’ tends to conflate the disparate threats posed by terrorist organizations, and it likewise has the effect of uniting different groups with very different aims. It also plays into the terrorists’ own rhetoric that the West is engaged in a war against Islam. The problem was certainly exacerbated by President George W. Bush’s ill-considered reference to an American crusade, 22 but the perception of an inevitable clash of civilizations would still be a problem even if senior government officials were more careful in their choice of words. The danger of declaring a ‘‘global war on terror’’ (GWOT), and in conflating many disparate entities into a single monolithic threat, warned Jeffrey Record in a paper for the Strategic Studies Institute at the U.S. Army War College, was that it subordinated strategic clarity to moral clarity. Record cautioned that, by declaring a GWOT, the United States had embarked ‘‘on a course of open-ended and gratuitous conflict with states and nonstate entities that pose no serious threat to the United States.’’ 23 Moral clarity can lead to sloppy policy by uniting our enemies; it can also complicate relations with allies who are instrumental to combating a prototypical transnational threat. A report published by the Pentagon’s Defense Science Board amplified these concerns. Evocative phrases such as ‘‘global war on terror,’’ and ‘‘fighting them there so we don’t fight them here,’’ the DSB conceded, ‘‘may have short-term benefits in motivating support at home.’’ However, this ‘‘polarizing rhetoric,’’ the board went on to say, ‘‘can have adverse long-term consequences that reduce the willingness of potential allies to collaborate, and give unwarranted legitimacy and unity of effort to dispersed adversaries.’’

#### This causes radicalization that outweighs any possible benefits—makes counterterrorism unstrategic in the long run—plan solves

Pillar and Preble 10

[Paul R. Pillar is an academic and 28-year veteran of the Central Intelligence Agency (CIA), serving from 1977 to 2005.[1] He is now a non-resident senior fellow at Georgetown University's Center for Security Studies,[2] as well as a nonresident senior fellow in the Brookings Institution's Center for 21st Century Security and Intelligence.[1] He was a visiting professor at Georgetown University from 2005 to 2012. and Christopher A. Preble is the vice president for defense and foreign policy studies at the Cato Institute, “Terrorizing Ourselves: Why U.S. Counterterrorism Policy Is Failing and How to Fix It. Chapter 4: Don’t You Know There’s a War On? Assessing the Military’s Role in Counterterrorism”, pages 61-82, found on ebrary]

One such consequence is to incur the wrath of civilian populations over the U.S. use of military force and the destruction resulting from it. This unfortunately has been in evidence in Afghanistan, which had been a rare oasis of goodwill toward the United States within a Muslim world in which anti-American sentiment is the norm. That goodwill has been significantly lessened by the collateral damage from U.S. military operations. Afghan President Hamid Karzai’s ‘‘first demand’’ of Barack Obama was for the president-elect ‘‘to put an end to civilian casualties.’’ 14 Similar resentment— amid a population that was already less friendly toward the United States— has been evident in Pakistan in reaction to the missile strikes in the northwest. 15 The pattern repeats that seen after similar strikes in 2005 and 2006 against forces of the Union of Islamic Courts in Somalia, which did kill some militants but also instigated public anger against the United States and a resulting increase in the popularity and extremism of the Islamists. 16 The tradeoff here is not between counterterrorism and popularity. It is between immediate tactical counterterrorist objectives and longer-term strategic ones. Anti-American sentiment impairs counterterrorism. It affects the willingness of a civilian population to cooperate with U.S. counterterrorist efforts, its willingness to support its own government’s efforts, and the inclination of individual civilians to condone, support, or even join the efforts of anti-American terrorist groups. That does not mean the broader and longer-term effects should always take precedence over the immediate tactical ones, but it does mean the former should always be considered even if they are less visible and measurable than the latter. It means taking into account that while the strikes using drones over Pakistan have killed some militants who were targeted, the same strikes have killed far more civilians— leaving that many more friends and family members of the deceased who might be willing to support anti-U.S. causes. And it means resisting the temptation to employ a technologically potent military capability because it is available and because alternative means for dealing with a problem are not. There is evidence that, at times, the United States has fallen to this temptation in its use of the drones; it has tended to see nails because the handiest tool available to it has been this very impressive hammer. Negative consequences extend even more broadly, beyond populations that feel the immediate physical damage of military operations to ones that are nevertheless angered by them. Here, the United States bears the burden of being the world’s sole superpower. Its use of military force is more likely than that of any other country to be resented as contemptible bullying by the big kid on the global block. Here too, the issue is not merely one of being liked or disliked; the potential effects on terrorism, counterterrorism, and the likelihood of future terrorist attacks on U.S. interests are substantial. The use of U.S. military force within the Muslim world has probably done more than anything else to sustain bin Laden’s bogus narrative of a United States that is out to kill and subjugate Muslims and to plunder their resources. Counterterrorism is a global enterprise, requiring the active cooperation and assistance of international actors— both state and nonstate. The most important cooperation is likely to come from the communities in which terrorist organizations attempt to recruit new followers and who are the intended audience for much of the organization’s propaganda. Terrorist attacks are newsworthy and therefore attract the most attention to the organization’s cause. By the same token, the effects of these operations often fall disproportionately on the very population that the organization is attempting to reach. The use of terrorism, therefore, is a double-edged sword. Terrorist organizations attempt to induce a targeted society to lash out, in the hopes that these reactions will cause harm to innocent civilians, engender hostility and hatred of the country carrying out the retaliatory acts, and drive more sympathy to the terrorists. We can prevent falling into the terrorists’ trap by carefully limiting our responses.

#### Formally ending the war solves terror by leveraging US credibility though it doesn’t take any options off the table

**McIntosh 13**, Christopher McIntosh is a Visiting Assistant Professor, Political Studies, at Bard College and has a Ph.D. in political science from the University of Chicago. His research looks at the relationship between sovereignty and war, focusing particularly on the case of the United States war on terrorism, Foreign Policy Research Institute, Ending the War Against Al Qaeda, http://www.sciencedirect.com/science/article/pii/S0030438713000732#

Some might object that a shift in policy would constitute surrender, an admission of defeat, or some other formulation of American weakness—certainly political opponents would characterize it as such. Senator Saxby Chambliss wasted no time in arguing this after Obama’s NDU address, calling the limitations on targeted killing a “victory” for the “terrorists.”28 But **dropping the framework does not eliminate force as an available** option in addressing **Al Qaeda**. As one expert stated to the Senate Armed Services Committee in May 2013, “**With or without the AUMF, no one disputes** [emphasis added] that **the president has the constitutional authority** (and the international law authority) to use military force if necessary to defend the United States from an imminent attack, regardless of whether the threat emanates from al Qaeda or from some as yet unimagined terrorist organization.”29 **Dropping the framework would only return us to the pre-2001 status quo** (legally speaking), **which treated terrorism as an ongoing legal and** intelligence issue, rather than primarily a military one. Shifting away from war as the f**ramework also doesn’t preclude the possibility of moving back to a state of war should events require it**. A s**trategic shift** along these lines **is not a commitment to never use force again; it simply removes it as the presumed appropriate response and baseline for U.S. action**. Certainly it is possible that in the future that the threat could change in such a way that war is the appropriate and necessary response—much as it was in late 2001. Strategically speaking, **dropping the war framework offers a middle ground**. On the one hand, **it removes the blank check offered to the executive to engage U.S. forces abroad whenever the president sees fit**. Currently, **the way the AUMF is interpreted** **provides** little to **no restraint on the U**nited **S**tates’ **use of force abroad**. Dropping the framework is not merely a rhetorical move on the part of the U.S. government to end the war on terror—the legal status has been invoked continually by the past two administrations to silence any opposition to decisions they make in pursuit of al Qaeda. The issue is political and legal, not simply rhetorical. Simultaneously, shifting away from a state of war does not take the use of force off the table as an option; it simply removes it as the baseline or presumed appropriate response. The likely effect on the rate of strikes conducted abroad would certainly be one of restraint, but **it would not end strikes**, nor should it. **There has always been a presumption that the executive can use force to preemptively strike** those who attempt to attack the United States. Dropping the framework would not alter that—we saw this prior to 2001. **It would**, however, **alter the presumption introduced by** the **Bush** Administration’**s first N**ational **S**ecurity **S**trategy **that preventive war—using force against those who have the capacity, but do not pose a specific, credible threat—is acceptable. Shifting policy** away from war and armed conflict to legal enforcement also **opens up** other **alternative strategies for addressing the** AQ **threat**. In particular, **efforts to address the long-term trends that enable terrorism and terrorist campaigns are foreclosed by a strategy of war because the process of fighting is at odds with their mission**. Alternative frameworks and strategies for countering terrorism such as using a metaphor of social epidemic—seeking to eliminate the spread of radicalism utilizing lessons from public health approaches—or prejudice reduction, undermining the viewpoints that enable individuals to view terrorist campaigns as attractive options, offer different ways of framing the threat in a manner that is more comprehensive and long-term.30 **Regardless of the particular approach taken and its potential effectiveness, options attempting to deal with the underlying issues that enable the threat to continue such as ideology, factors enhancing individual susceptibility to radicalism and creating at-risk individuals are de-emphasized in a war. Addressing long-term factors is not particularly important during a conflict— converting the enemy and eliminating the reasons for the dispute in the first place aren’t typical concerns during wartime**. Most importantly, **history demonstrates** that these conflicts rarely end in a state of war. As Audrey Cronin reminds us, “terrorism is like war, it never ends; however, individual terrorist campaigns and the groups that wage them always do.”31 **Military repression alone is rarely the means by which these campaigns end. In most cases there is a shift to an alternate strategy such as law enforcement, political cooption, or even amnesty or there is a larger societal trend such as the loss of popular support**. While debate exists regarding the effectiveness of the particular measures chosen, **non-military measures have seen significant success in places as diverse as Ireland, the Philippines, and Sri Lanka**.32 **There is little reason to imagine that al Qaeda is sufficiently different that we should expect a different outcome relying solely on a military strategy throughout the entirety of this conflict**. The United States has relied upon leadership targeting and military strikes for over 12 years. **Given** the **history of terrorist campaigns—as well as** the **U.S. experience— these soft measures offer the potential of being a successful means of building upon these gains and achieving victory. Ending the strategy of war could have a direct effect on these softer measures by eliminating a crucial means of support for al Qaeda’s ideology. Ending the war**—and the continuing military strikes it requires—**removes a primary means of recruitment and propaganda. While military strikes have eliminated key members, the effect these strikes offer in generating support for terrorists is well- worn territory.** Regardless of whether the actual numbers of civilian casualties are closer to United States estimates, or in the thousands as independent organizations argue, U.S. **attacks inevitably risk** these **civilian casualties and make it incrementally easier for al Qaeda to justify their choice of terrorist tactics**. In addition, **psychological studies of terrorist attackers themselves cite a positive relationship** **between** the **suffering of direct trauma**—such as the loss of a family member at the hands of the perceived enemy—and those willing to engage **in** suicide **attacks**.33 **Al Qaeda** also **benefits from the increasing expansion of U.S. intervention abroad** in the form of drone strikes, bases, and troop deployments as **it provides tangible evidence for** their **claims of** U.S. **imperialism**. And **the longer the war on terrorism continues, the harder it will be in the court of international public opinion to credibly dispute AQ’s vision of the U**nited **S**tates **as a militaristic nation** with an imperialist bent. This is not to say that al Qaeda’s reading of U.S. foreign policy over the last half century is correct—it is not—but as 9/11 recedes further into the past and the length of time without a similar scale attack on the U.S. homeland begins to measure in the decades, the vision of America pushed by al Qaeda may have increasing credibility. **The U**nited **S**tates **could remain at war with al Qaeda for an indefinite period of time winning tactical battles and preventing major attacks, but all that may be seen publicly are continuing U.S. military interventions into foreign countries killing those they deem enemies. The longer this** goes on, the **less credibility the U**nited **S**tates **will enjoy** internationally, and that loss of credibility is directly at odds with some of the longer term, “soft**” measures necessary to end the conflict successfully. Without this credibility, it will be difficult to conduct the efforts to undermine the individual, public, and political support that historically has been crucial to ending terrorist campaigns**. Conclusion

#### A law enforcement approach solves terrorism better

Carpenter 13

[11/5/13, Charli Carpenter is a human security analyst specializing in outside-the-box thinking. She teaches political science at University of Massachusetts-Amherst, is the author of three books on war-affected civilians and has written on human security issues for Foreign Affairs, Foreign Policy and the National Interest. She blogs at Duck of Minerva, “Out of the Shadows: A New Paradigm for Countering Global Terrorism”, http://www.worldpoliticsreview.com/articles/13325/out-of-the-shadows-a-new-paradigm-for-countering-global-terrorism]

If the U.S. were to shift course away from the use of a war paradigm to fight terror networks, reserving its use of military force for situations where it is actually warranted, what might a different approach look like? And how might this process accompany a recovery of the moral authority to wage war as conventionally defined when critically necessary for self and collective defense? There are three more plausible ways to fight “terror”: treating terrorists as criminals to be apprehended; countering the ideology that legitimizes terrorist actions; and countering the psychological effects of terrorist tactics by increasing civilian resilience to occasional attacks. All of these approaches would leave the use of the military for situations where it is actually demanded. First, since militaries have shown themselves to be notoriously ill-suited to fighting networks, the U.S. should instead rely on a network approach to dealing with terrorists. Nonstate actors who engage in mass murder, whatever their political motivations, are little different from, and often overlap with, other forms of transnational organized criminal networks. Transnational law enforcement networks consistently and effectively push back against drug dealers, arms dealers and trafficking networks, and they can succeed against terrorists as well. Indeed the greatest counterterror successes of the past 10 years have occurred through concerted international coordination among intelligence and law enforcement agencies worldwide, not through torture or drone attacks. The capture in Libya of Abu Anas al-Libi, though occurring without the approval of Libyan law enforcement officials, demonstrates that apprehension—rather than aerial execution—of high-value terror suspects can be achieved effectively while minimizing risk to civilians. Stronger global rules could be put into place to strengthen coordination between sovereign countries for extradition and/or capture of terror suspects. Criminal trials of terrorist masterminds, when undertaken through the rule of law, can be a sound basis for delegitimizing violent behavior. Along these lines, rather than pouring dollars into the design of better weapons and interrogation techniques, the U.S. should consider how to identify and assist nonviolent social currents resistant to jihadist ideology, and particularly how to strengthen moderate religious authorities in areas vulnerable to jihadist influence. Such groups are often undermined by violent actions from the West, but can play an important and effective role in shaming and marginalizing violent actors within their own communities. For example, it was an alliance of moderate clerics and political authorities in Baghdad neighborhoods that helped reduce sectarian violence there in 2006. Similarly, the U.S. should consider investing in women’s organizations in zones vulnerable to jihadist influence. Such organizations receive disproportionately fewer funds from international donors, but are often well-situated to contribute to dialogue across sectarian lines. The promotion of women’s and girls’ well-being is often a key correlate of stability in war-torn societies, and mothers play a key role in promoting or opposing violent social norms. Additionally, individual low-level operatives should be captured and rehabilitated rather than summarily killed, tortured or punished. The U.S. could learn from Saudi Arabia’s approach, in which masterminds are punished but individuals roped into jihadism through brainwashing are instead “counter-indoctrinated” in proper Islamic thinking by moderate clerics and then offered a fresh start. Though imperfect, this strategy has seen a reduction in domestic terrorism and a very low recidivism rate, according to official sources, while contributing to a global movement of rehabilitated former jihadist voices challenging jihadist ideology with the gravitas and credibility that can only come from individuals who have once been on the other side. Of course, one of the key problems with terrorism is not the risk of casualties per se but the destabilizing psychological effect it has on civilian populations. De-emphasizing terrorism as a global security threat justifying a war response would probably do more than anything else to minimize that psychological response—partially neutralizing the terrorists’ advantage and potentially deterring the use of terrorist tactics in the future. The U.S. cannot effectively fight terrorism with bombs, but it can fight it quite effectively through propaganda and education. By reducing citizens’ fear of terrorism through the use of statistics and empowerment strategies, and especially by not contributing to a climate of fear, the U.S. can undermine the effects of any ongoing, though relatively minimal, risk of terror attacks. Such an approach would not only be appropriate and effective, but would also be consistent with rather than undermine democratic ideals and human rights norms. This could be done, as suggested by the Department of Defense (.pdf), through public awareness and readiness campaigns and by shifts in urban infrastructure to minimize the vulnerability and maximize the resilience of urban populations to such attacks. Indeed many of these strategies would also help protect populations against the much likelier fallout of natural disasters resulting from climate change, as the Department of Homeland Security’s “ready.gov” initiative already recognizes. Finally, the U.S. should support states that use legitimate means to fight jihadists within the rule of law. It should denounce and refuse support to states that violate human rights or dish out collective punishment under the pretext of fighting terrorism. In rare cases and as a last resort, the U.S. should be prepared to intervene militarily to protect human rights ideals. To do this effectively, however, the U.S. must first look to its own behavior. Only by aligning its practices with these rules, and openly atoning for the mistakes of the past, can the U.S. support or denounce others from a position of moral authority. All these strategies acknowledge that the “war on terror” is a three-pronged fight to, first, prevent and deter criminals from attacking civilians and civilian infrastructure; second, marginalize an ideology that sees these behaviors as justifiable rather than atrocious; and, third, to help domestic publics put the risk of terrorism in perspective as an antidote to its psychological impact. The first struggle must take place through law enforcement, within the bounds of the law. This will help promote, rather than undermine, the second and third fronts—the conflict between lawful and lawless behavior, between protecting rather than preying upon civilians, between promoting freedom and imposing an overprotective tyranny. These battles cannot be won if the means used continue to undermine the message.

#### Nuclear terrorism is feasible, there are no barriers and there’s motivation for an attack now

Bunn et al. 14

[March 2014, Matthew Bunn is a Professor of Practice at the Harvard Kennedy School. His research interests include nuclear theft and terrorism; nuclear proliferation and measures to control it; the future of nuclear energy and its fuel cycle; and innovation in energy technologies. Before coming to Harvard, Bunn served as an adviser to the White House Office of Science and Technology Policy, as a study director at the National Academy of Sciences, and as editor of Arms Control Today. He is the author or co-author of more than 20 books or major technical reports (most recently Transforming U.S. Energy Innovation), and over a hundred articles in publications ranging from Science to The Washington Post. Martin B. Malin is the Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs at Harvard’s Kennedy School of Government. His research focuses on arms control and nonproliferation in the Middle East, US nonproliferation and counter-proliferation strategies, and the security consequences of the growth and spread of nuclear energy. Before coming to Harvard, Malin taught international relations, American foreign policy, and Middle East politics at Columbia University, Barnard College, and Rutgers University. He also served as Director of the Program on Science and Global Security at the American Academy of Arts and Sciences. Nickolas Roth is a research associate at the Project on Managing the Atom. Mr. Roth has a B.A. in History from American University and a Masters of Public Policy from the University of Maryland. While at Maryland, he served as a research assistant for the Center for International and Security Studies’ Nuclear Materials Accounting Project. He has expertise in national security issues related to US nuclear weapons policy. William H. Tobey is a Senior Fellow at the Belfer Center for Science and International Affairs. He was most recently Deputy Administrator for Defense Nuclear Nonproliferation at the National Nuclear Security Administration. There, he managed the US government’s largest program to prevent nuclear proliferation and terrorism by detecting, securing, and disposing of dangerous nuclear material. Mr. Tobey also served on the National Security Council Staff in three administrations, in defense policy, arms control, and counter-proliferation positions. He has participated in international negotiations ranging from the START talks with the Soviet Union to the Six Party Talks with North Korea. He is chair of the board of directors of the World Institute for Nuclear Security. He also has extensive experience in investment banking and venture capital, “Advancing Nuclear Security: Evaluating Progress and Setting New Goals”, http://belfercenter.ksg.harvard.edu/files/advancingnuclearsecurity.pdf]

Unfortunately, nuclear and radiological terrorism remain real and dangerous threats.1 The conclusion the assembled leaders reached at the Washington Nuclear Security Summit and reaffirmed in Seoul remains correct: “Nuclear terrorism continues to be one of the most challenging threats to international security. Defeating this threat requires strong national measures and international cooperation given its potential global political, economic, social, and psychological consequences.”2 There are three types of nuclear or radiological terrorist attack: • Nuclear weapons. Terrorists might be able to get and detonate an assembled nuclear weapon made by a state, or make a crude nuclear bomb from stolen separated plutonium or HEU. This would be the most difficult type of nuclear terrorism for terrorists to accomplish— but the devastation could be absolutely horrifying, with political and economic aftershocks reverberating around the world. • “Dirty bombs.” A far simpler approach would be for terrorists to obtain radiological materials— available in hospitals, industrial sites, and more—and disperse them to contaminate an area with radioactivity, using explosives or any number of other means. In most scenarios of such attacks, few people would die from the radiation—but the attack could spread fear, force the evacuation of many blocks of a major city, and inflict billions of dollars in costs of cleanup and economic disruption. While a dirty bomb attack would be much easier for terrorists to carry out than an attack using a nuclear explosive, the consequences would be far less—an expensive and disruptive mess, but not the heart of a major city going up in smoke. • Nuclear sabotage. Terrorists could potentially cause a Fukushima-like meltdown at a nuclear reactor or sabotage a spent fuel pool or high-level waste store. An unsuccessful sabotage would have little effect, but a successful one could spread radioactive material over a huge area. Both the scale of the consequences and the difficulty of carrying out a successful attack would be intermediate between nuclear weapons and dirty bombs. Overall, while actual terrorist use of a nuclear weapon may be the least likely of these dangers, its consequences would be so overwhelming that we believe it poses the most significant risk. A similar judgment drove the decision to focus the four-year effort on securing nuclear weapons and the materials needed to make them. Most of this report will focus on the threat of terrorist use of nuclear explosives, but the overall global governance framework for nuclear security is relevant to all of these dangers. The danger of nuclear terrorism is driven by three key factors—terrorist intent to escalate to the nuclear level of violence; potential terrorist capability to do so; and the vulnerability of nuclear weapons and the materials needed to enable terrorists to carry out such an attack—the motive, means, and opportunity of a monstrous crime. Terrorist intent. While most terrorist groups are still focused on small-scale violence for local political purposes, we now live in an age that includes some groups intent on inflicting largescale destruction to achieve their objectives. Over the past quarter century, both al Qaeda and the Japanese terror cult Aum Shinrikyo seriously sought nuclear weapons and the nuclear materials and expertise needed to make them. Al Qaeda had a focused program reporting directly to Ayman al-Zawahiri (now head of the group), which progressed as far as carrying out crude but sensible conventional explosive tests for the nuclear program in the desert of Afghanistan. There is some evidence that North Caucusus terrorists also sought nuclear weapons—including incidents in which terrorist teams were caught carrying out reconnaissance on Russian nuclear weapon storage sites, whose locations are secret.3 Despite the death of Osama bin Laden and the severe disruption of the core of al Qaeda, there are no grounds for complacency. There is every reason to believe Zawahiri remains eager to inflict destruction on a nuclear scale. Indeed, despite the large number of al Qaeda leaders who have been killed or captured, nearly all of the key players in al Qaeda’s nuclear program remain alive and at large—including Abdel Aziz al-Masri, an Egyptian explosives expert who was al Qaeda’s “nuclear CEO.” In 2003, when al Qaeda operatives were negotiating to buy three of what they thought were nuclear weapons, senior al Qaeda officials told them to go ahead and make the purchase if a Pakistani expert with equipment confirmed the items were genuine. The US government has never managed to determine who the Pakistani nuclear weapons expert was in whom al Qaeda had such confidence—and what he may have been doing in the intervening decade. More fundamentally, with at least two, and probably three, groups having gone down this path in the past 25 years, there is no reason to expect they will be the last. The danger of nuclear terrorism will remain as long as nuclear weapons, the materials needed to make them, and terrorist groups bent on large-scale destruction co-exist. Potential terrorist capabilities. No one knows what capabilities a secret cell of al Qaeda may have managed to retain or build. Unfortunately, it does not take a Manhattan Project to make a nuclear bomb—indeed, over 90 percent of the Manhattan Project effort was focused on making the nuclear materials, not on designing and building the weapons. Numerous studies by the United States and other governments have concluded that it is plausible that a sophisticated terrorist group could make a crude nuclear bomb if it got enough separated plutonium or HEU.4 A “gun-type” bomb, such as the weapon that obliterated Hiroshima, fundamentally involves slamming two pieces of HEU together at high speed. An “implosion-type” bomb, which is needed to get a sub-stantial explosive yield from plutonium, requires crushing nuclear material to a higher density—a more complex task, but still plausible for terrorists, especially if they got knowledgeable help. Many analysts argue that, since states spend billions of dollars and assign hundreds or thousands of people to building nuclear weapons, it is totally implausible that terrorists could carry out this task. Unfortunately, this argument is wrong, for two reasons. First, as the Manhattan Project statistic suggests, the difficult part of making a nuclear bomb is making the nuclear material. That is what states spend billions seeking to accomplish. Terrorists are highly unlikely to ever be able to make their own bomb material—but if they could get stolen material, that step would be bypassed. Second, it is far easier to make a crude, unsafe, unreliable bomb of uncertain yield, which might be delivered in the back of a truck, than to make the kind of nuclear weapon a state would want in its arsenal—a safe, reliable weapon of known yield that can be delivered by missile or combat aircraft. It is highly unlikely terrorists will ever be able to build that kind of nuclear weapon. Remaining vulnerabilities. While many countries have done a great deal to strengthen nuclear security, serious vulnerabilities remain. Around the world, there are stocks of nuclear weapons or materials whose security systems are not sufficient to protect against the full range of plausible outsider and insider threats they may face. As incidents like the intrusion at Y-12 in the United States in 2012 make clear, many nuclear facilities and transporters still grapple with serious problems of security culture. It is fair to say that every country where nuclear weapons, weaponsusable nuclear materials, major nuclear facilities, or dangerous radiological sources exist has more to do to ensure that these items are sustainably secured and accounted for. At least three lines of evidence confirm that important nuclear security weaknesses continue to exist. First, seizures of stolen HEU and separated plutonium continue to occur, including, mostly recently HEU seizures in 2003, 2006, 2010, and 2011.5 These seizures may result from material stolen long ago, but, at a minimum, they make clear that stocks of HEU and plutonium remain outside of regulatory control. Second, in cases where countries do realistic tests to probe whether security systems can protect against teams of clever adversaries determined to find a weak point, the adversaries sometimes succeed—even when their capabilities are within the set of threats the security system is designed to protect against. This happens with some regularity in the United States (though less often than before the 9/11 attacks); if more countries carried out comparable performance tests, one would likely see similar results. Third, in real non-nuclear thefts and terrorist attacks around the world, adversaries sometimes demonstrate capabilities and tactics well beyond what many nuclear security systems would likely be able to handle (see the discussion of the recent Västberga incident in Sweden). Of course, the initial theft of nuclear material would be only the first step. Adversaries would have to smuggle the material to wherever they wanted to make their bomb, and ultimately to the target. A variety of measures have been put in place in recent years to try to stop nuclear smuggling, from radiation detectors to national teams trained and equipped to deal with nuclear smuggling cases—and more should certainly be done. But once nuclear material has left the facility where it is supposed to be, it could be anywhere, and finding and recovering it poses an enormous challenge. The immense length of national borders, the huge scale of legitimate traffic, the myriad potential pathways across these borders, and the small size and weak radiation signal of the materials needed to make a nuclear bomb make nuclear smuggling extraordinarily difficult to stop. There is also the danger that a state such as North Korea might consciously decide to provide nuclear weapons or the materials needed to make them to terrorists. This possibility cannot be ruled out, but there is strong reason to believe that such conscious state decisions to provide these capabilities are a small part of the overall risk of nuclear terrorism. Dictators determined to maintain their power are highly unlikely to hand over the greatest weapon they have to terrorist groups they cannot control, who might well use it in ways that would provoke retaliation that would remove the dictator from power forever. Although nuclear forensics is by no means perfect, it would be only one of many lines of evidence that could potentially point back to the state that provided the materials; no state could ever be confident they could make such a transfer without being caught.6 And terrorists are unlikely to have enough money to make a substantial difference in either the odds of regime survival or the wealth of a regime’s elites, even in North Korea, one of the poorest countries on earth. On the other hand, serious risks would arise in North Korea, or other nuclear-armed states, in the event of state collapse—and as North Korea’s stockpile grows, one could imagine a general managing some of that stockpile concluding he could sell a piece of it and provide a golden parachute for himself and his family without getting caught. No one knows the real likelihood of nuclear terrorism. But the consequences of a terrorist nuclear blast would be so catastrophic that even a small chance is enough to justify urgent action to reduce the risk. The heart of a major city could be reduced to a smoldering radioactive ruin, leaving tens to hundreds of thousands of people dead. The perpetrators or others might claim to have more weapons already hidden in other major cities and threaten to set them off if their demands were not met—potentially provoking uncontrolled evacuation of many urban centers. Devastating economic consequences would reverberate worldwide. Kofi Annan, while serving as Secretary-General of the United Nations, warned that the global economic effects of a nuclear terrorist attack in a major city would push “tens of millions of people into dire poverty,” creating a “second death toll throughout the developing world.”

#### Extinction---equivalent to full-scale nuclear war

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

### solvency

#### Ending the armed conflict ensures soft constraints that causes the best middle ground of executive powers—ensures restraint without creating constraint

Chesney 13, Professor in Law and Associate Dean at UT Law

[09/27/13, Robert M. Chesney is the Charles I. Francis Professor in Law and Associate Dean for Academic Affairs at the University of Texas School of Law. In addition, he is the Director-Designate of the Robert S. Strauss Center for International Security and Law. In 2009, Professor Chesney served in the Justice Department in connection with the Detention Policy Task Force created by Executive Order 13493. He also previously served the Intelligence Community as an associate member of the Intelligence Science Board and as a member of the Advanced Technology Board. In addition to his current positions at the University of Texas, he is a non-resident Senior Fellow of the Brookings Institution, a member of the American Law Institute, a senior editor for the Journal of National Security Law & Policy, and a past chair of Section on National Security Law of the Association of American Law Schools (as well as of the AALS Section on New Law Teachers), “POSTWAR”,THE UNIVERSITY OF TEXAS SCHOOL OF LAW, Public Law and Legal Theory Research Paper Series Number 544, http://ssrn.com/abstract= 2332228]

Let us assume for the sake of argument that the foregoing analysis is correct, and that the legal consequences of abandoning the armed-conflict model will have little practical effect given the policy constraints already adopted and the native breadth of the continuous-threat model. Is it possible that the move to postwar might nonetheless produce a significant departure from status quo targeting practices thanks to the impact of such a switch on other, non-legal mechanisms of constraint? Possibly so. To be sure, moving to a postwar framework will not directly cause the technological constraints on the projection *of* force to resume their previous degree of constraining effect, nor will it necessarily inhibit the production of actionable intelligence (though the looming withdrawal of all or even most U.S. ground forces from Afghanistan—which might or might not precipitate a decision by the government to embrace a postwar framework—may well inhibit such collection). But there are other non-legal constraints to consider. Three stand out as both particularly important and likely to be impacted by a formal shift to a postwar model. First, consider the domestic political climate. I do not mean partisan politics as such, though this can matter too. Rather, by “domestic politics” I mean to refer simply to the influence of American public opinion on the calculations of legislators and executive branch officials. On that dimension, what impact might follow from a formal proclamation recognizing an end to the armed conflict with al Qaeda? Such a move would be widely publicized and endlessly discussed in the media, and for at least some members of the public it would likely alter baseline assumptions regarding the sorts of activities they might expect to see the government engaging in for counterterrorism purposes going forward. The continued use of military detention would surely seem incongruous to many, for example, or at least it would begin to seem increasingly so as time passed. Likewise, the further use of armed attacks—whether using drones, manned aircraft, or some other weapons platform—would also be surprising to some under the postwar rubric. Such incongruities would not necessarily spark a negative reaction in every quarter. Those who would prefer not to move to a postwar model, after all, might be pleasantly surprised by them. But there is little doubt that incongruous actions would generate a negative reaction in at least some quarters, and it is possible that the negative reaction would in fact be substantial—particularly if the surrounding circumstances contributed to a perception that the government must have been acting hypocritically all along in proclaiming an end to the armed conflict. Of course, insofar as incongruous actions are conducted in secret (a quite-likely state of affairs for a postwar model, given the extensive reliance on the CIA and Joint Special Operations Command to conduct lethal operations on a covert or clandestine basis even while still under the armed-conflict model)48 the constraining impact of public opinion would be substantially muted. Even then, though, the possibility of eventual public disclosure would remain (as the Snowden affair in the summer of 2013 reminds us). Government officials operating in the shadow of these considerations could be expected to take them into account, even if they would not be dispositive. In that sense, domestic political considerations would be more constraining in the postwar context than they are under the status-quo model of armed conflict. Something similar can be said about the constraining impact of diplomatic considerations. By “diplomatic considerations” I mean to refer broadly to the full spectrum of actions other governments might take in order to express displeasure with American policy (whether out of actual disagreement or in response to their own domestic political considerations). There are many possibilities in addition to the easily-belittled example in which a state merely expresses displeasure (privately or publicly). A given country may be in a position to decrease cooperation on security issues (decreased sharing of intelligence, for example, or withdrawal of personnel from a joint deployment), or it might reduce or refuse valuable cooperation on unrelated subjects. At any rate, two points follow from all this. First, proclaiming the end to the armed conflict with al Qaeda unquestionably will be very well-received in most foreign capitals and among most foreign populations. Second, if the U.S. government ended up persisting in the use of military detention or lethal force for counterterrorism purposes despite such a proclamation, it seems likely that the aforementioned diplomatic costs will be higher than is currently the case, for the same reasons of incongruity and surprise mentioned above in the context of domestic politics. This suggests that diplomatic pressure, too, will be more constraining postwar than currently. Finally, consider the constraint embodied in what we might call the “balance of equities” across departments and agencies within the executive branch. Many different agencies and departments (and different organizations within agencies and departments) have a stake in the development and implementation of counterterrorism policy—what insiders usually refer to as “equity”—and of course they do not always agree. As they contend with one another in the interagency process, it may matter a great deal whether the president continues to assert that a state of armed conflict exists or instead that it has ended. The former tends to empower the military around the interagency conference table by directly implicating its equities, while the latter would tend to weaken it for the same reason. In summary, a formal shift from war to postwar would tend to increase the bite of at least three distinct soft-constraint mechanisms, and the collective impact from these changes could be substantial. This in turn could tend to dissuade the executive branch from employing the full potential for using lethal force that follows from the combination of the continuing-threat legal model and the technological and intelligence advances described above. That said, it is unlikely that these soft-constraint mechanisms would dissuade the executive branch altogether from acting on the continuous-threat model. There are powerful offsetting domestic political costs to be born, after all, should a given administration forego an opportunity to use force against a target that later is linked to a successful terrorist attack. The government might resort to lethal force less often in a postwar setting than it would under the status quo model, then, but it nonetheless will likely use force much more often than both critics and supporters of the status quo assume would be the case in that circumstance. And that is the critical point that seems to be missing from the current debate, fixated as it is on the question of whether to persist with the armed-conflict framework.

#### Anything short of clean repeal causes future presidents to reinterpret it and ensures excessive interventions

Eoyang and Preble 13

[06/10/13, Mieke Eoyang is the director of the National Security Program at Third Way and Christopher Preble is the vice president for Defense and Foreign Policy Studies at the Cato Institute, “How to end the war on terrorism properly”, http://globalpublicsquare.blogs.cnn.com/2013/06/10/how-to-end-the-war-on-terrorism-properly/]

In his speech on counterterrorism last month, President Barack Obama said something both profound and overdue – the war underway since 2001 should end, not just factually but also legally. Outlining his views, the president said he wanted to “refine, and ultimately repeal,” the Authorization for Use of Military Force (AUMF), the main legislative vehicle governing U.S. counterterrorism operations around the world. He also pledged not to sign laws designed to expand this mandate further. But to make that goal a concrete reality, the president should have called for legislation repealing the administration’s authority for war – sunsetting the AUMF, which provides the legal authorization for our troops in Afghanistan, once combat operations there conclude at the end of 2014. Future counterterrorism operations can rely on the plentiful authorities the executive branch already has, including some that have been added since 9/11. And if this president – or any other in the future – needs greater war powers to deal with a threat, they can return to Congress and ask for specific, limited authorities tailored to address the future challenge. The fact is that while there are other ways the AUMF could be usefully altered, a clean repeal has significant advantages. From an operational perspective, the AUMF authorizes military force, but we’re winding down our operations in Afghanistan. Our military presence there helped decimate core al Qaeda, leaving them a shadow of their former selves. And this matters, for without the organizational support and training from core al Qaeda’s veteran operational commanders – most of whom are either dead or incarcerated – most self-radicalized terrorists are caught long before their plots are successful. Military operations should be the mechanism of last resort to deal with terrorist plots, especially outside war zones like Afghanistan. The most successful counterterrorism operations involve timely intelligence collection and analysis, and cooperation with local officials, not open-ended military operations involving large deployments of U.S. troops. Law enforcement or intelligence services identified and disrupted multiple other plans over the years. These mechanisms do not rely upon the AUMF, so an eventual clean repeal won’t affect our ability to disrupt plots. Conservatives who revere the Constitution should be most reluctant to hand over unending powers to the president. As James Madison said, granting “such powers [to the President] would have struck, not only at the fabric of our Constitution, but at the foundation of all well organized and well checked governments.” Madison knew that war tended to enhance executive powers and erode liberties. And that has occurred. With Congressional acquiescence, the last two presidents have interpreted the AUMF as a warrant to attack or detain anyone that they say is a leader of al Qaeda or its associated forces, without geographic limit. The secretive and loose definition of those terms has given the president vast and excessive discretion to identify, target and kill suspected terrorists, or to detain indefinitely those who are captured. Sunsetting the law prevents that growth in executive power from becoming permanent. Liberals who might trust this president’s discretion in using these authorities have good reason to be concerned about what future presidents might do with broad and unlimited authority. We have already seen how the passage of time has stretched the AUMF well beyond its original purpose. The list of targets already includes individuals and groups that were not directly involved in the attacks of 9/11. Even President Obama recognizes the risk. “Unless we discipline our thinking and our actions,” the President explained, “we may be drawn into more wars we don’t need to fight.”

# 2ac

### AT Circumvention—Article 2 Shift

#### Article 2 operations will be restrained—imminent threat standard isn’t expansive and causes moderation

Corn 13, Professor of Law

[06/02/13, Professor Geoffrey Corn (South Texas College of Law, “Corn Comments on the Costs of Shifting to a Pure Self-Defense Model”, http://www.lawfareblog.com/2013/06/corn-comments-on-the-prospect-of-a-shift-to-a-pure-self-defense-model/

Professor Chesney’s post in response to the President’s speech at the National War College invited reactions. I want to focus a brief response to the end of the post, where Professor Chesney wrote: Yesterday’s speech reinforces my conclusion, as it clarifies both that the long-term detention option is defunct and that we are using force within boundaries that will be no different postwar thanks to the flexibility of the pre-9/11 self-defense model. Put another way, it seems to me ever clearer that the current shadow war approach to counterterrorism doesn’t really require an armed-conflict predicate–or an AUMF, for that matter. The President’s speech – like prior statements of other administration officials – certainly suggests that the inherent right of self-defense is defining the permissible scope of kinetic attacks against terrorists. I wonder, however, if this is more rhetoric than reality? I think only time will tell whether actual operational practice confirms that “we are using force within boundaries that will be no different postwar”. More significantly, if practice does confirm this de facto abandonment of AUMF targeting authority, I believe it will result in a loss of the type of operational and tactical flexibility that has been, according to the President, decisive in the degradation of al Qaeda to date. The inherent right of self-defense is undoubtedly a critical source of authority to disable imminent threats to the nation, but it simply fails to provide the scope of legal authority to employ military force against the al Qaeda (and associated force) threat that will provide an analogous decisive effect in the future. It strikes me (no pun intended) that arguments – or policy choices – in favor of abandoning the armed conflict model because the inherent right of self-defense will provide sufficient counter-terrorism response authority may not fully consider the operational impact of such a shift. From an operational perspective, the scope of authority to employ military force against the al Qaeda belligerent threat pursuant to the inherent right of self-defense is in no way analogous to the authority to do so within an armed conflict framework. This seems especially significant in relation to counter-terror operations. According to the President, the strategic vision for the “next generation” counter-terror military operations is not a “boundless ‘global war on terror’ – but rather a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.” Relying exclusively on the inherent right of self-defense would, I suggest, potentially undermine implementing this strategic vision. It seems to me that disruption, and not necessarily destruction, is the logical operational “effect” commanders routinely seek to achieve to implement this strategy. Destruction, when feasible, would obviously contribute to this strategy. It is, however, doubtful that a group like al Qaeda and its affiliates can be completely destroyed – at least to the point that they are brought into complete submission – through the use of military power. Instead, military force can effectively be used to disrupt this opponent, thereby seizing and retaining the initiative and keeping the opponent off balance. Indeed, President Obama signaled the benefit of using military force to achieve this effect when he noted that al Qaeda’s “remaining operatives spend more time thinking about their own safety than plotting against us. They did not direct the attacks in Benghazi or Boston. They have not carried out a successful attack on our homeland since 9/11.” A key advantage of the armed conflict framework is that it provides the legal maneuver space to employ military force in a manner that will effectively produce this disruptive and degrading effect. In contrast, under a pure self-defense framework, use of military force directed against such networks would necessarily require a determination of imminent threat of attack against the nation. Unlike the armed conflict model, this would arguably make conducting operations to “disrupt” terrorist networks more difficult to justify. I believe this is borne out by the reference to the pre-9/11 self-defense model. While it is true that military force was periodically employed as an act of self-defense during this era, such use seems to have been quite limited and only in response to attacks that already occurred, or at best were imminent in a restrictive interpretation of that term. In short, the range of legally permissible options to use military power to achieve this disruptive effect is inevitably broader in the context of an existing armed conflict than in isolated self-defense actions. It may, of course, be possible to adopt an interpretation of imminence expansive enough to facilitate the range of operational flexibility needed to achieve this disruptive effect against al Qaeda networks. But this would just shift the legality debate from the legitimacy of continuing an armed conflict model to the legitimacy of the imminence interpretation. Even this would not, however, provide analogous authority to address the al Qaeda belligerent threat. Even if an expanded definition of imminence undergirded a pure self-defense model, it would inevitably result in hesitancy to employ force to disrupt, as opposed to disable, terrorist threats, because of concerns of perceived overreach. It may be that a shift to this use of force framework is not only inevitable, but likely to come sooner than later. It may also be that such a shift might produce positive second and third order effects, such as improving the perception of legitimacy and mitigating the perception of a boundless war. It will not be without cost, and it is not self-evident that the scope of attack authority will be functionally analogous to that provided by the armed conflict model. Policy may in fact routinely limit the exercise of authority under this model today, but once the legal box is constricted, operationally flexibility will inevitably be degraded. It is for this reason that I believe the administration is unlikely to be too quick to abandon reliance on the AUMF.

### 2AC CP

#### Repealing the AUMF key—executive action isn’t trusted and gets reinterpreted by future presidents—restraining the authorization for the war is key—that’s Preble—the CP isn’t binding

#### The CP is hollow rhetoric – it sends mixed international signals and the executive won’t listen

Kriner 10 **–** associate professor of political science and the Director of Undergraduate Studies at Boston University(Douglas, After the Rubicon: Congress, Presidents, and the Conduct of Waging War, p. 155-156)

The models also investigate the effect of legislative actions to curtail presidential discretion in the conduct of military affairs on a venture’s expected duration. However, not all legislative actions to curtail an ongoing operation have equal legal or political weight. To capture some of this variance in the types of actions members introduce, the analysis divides all congressional challenges into two categories based on whether or not the demands they place on the president are legally binding. Concurrent resolutions or provisions expressing the sense of Congress are primarily vehicles for position taking and public posturing, not substantive assertions of congressional influence over the conduct of military affairs. Through these nonbinding actions, the president’s opponents in Congress can criticize the executive’s deployment of troops, call for their return home, or saddle the president with reporting and other requirements while avoiding the costs associated with legally binding actions, such as exposing members to countercharges of failing to support the troops in the field or triggering the interbranch constitutional struggle inevitably touched off by an effort to invoke the War Powers Resolution. These open expressions of congressional criticism may have some effect on raising the political costs to the president. However, because such actions fail to carry any concrete consequences for the president and hence are often seen as hollow rhetoric, their impact should be limited. Nonbinding resolutions do not put new alternatives to the administration’s policy onto the national agenda, and therefore they do not represent serious institutional challenges to the president’s preeminence in military affairs. Similarly, the signals nonbinding actions send to foreign actors are also ambiguous. On the one hand, such actions are publicly visible signs of congressional unease over the administration’s conduct of a use of force; on the other, they demonstrate Congress’s unwillingness to use the formal legislative means at its disposal to rein in presidential conduct of which it does not approve. Consequently, the effects of nonbinding actions to curtail a conflict should be limited, if they have any influence at all.

#### Can’t check the executive

Swaine 10 **-** Associate Professor, George Washington University Law School (Edward, “THE POLITICAL ECONOMY OF YOUNGSTOWN” <http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1017&context=faculty_publications>)

A second, more ambitious approach would be to supplement the Youngstown framework by adding to the congressional toolkit. For example, one might enhance Justice Jackson's solicitude for informal congressional will by embracing legislative soft law. Within the framework itself, reckoning congressional preferences might be improved by distinguishing more carefully among possible indicia: for example, as others have argued, a concurrent resolution may be a better signal of congressional views than even a statute (since in the absence of presentment, there is no need to incorporate the president's preferences), and it is certainly more refined than legislative history. n312 Outside the framework's bounds, courts might also invoke the more reliable species of soft law in interpreting statutes. n313 Such tactics are hardly risk free, of course, even putting aside constitutional and legal process objections. Soft law might just as easily enable presidential unilateralism: if the House or Senate choose to adopt a one-chamber resolution supporting presidential action, that might well count toward Category One, at least if the framework were made more amenable to soft law. Congress might also employ soft law measures as a less taxing alternative to adopting statutes, which might let it off the hook too easily - and, ultimately, diminish congressional constraints on the executive branch. n314

#### Ending the war impossible without repealing the AUMF—only way to make it clear that the war is over

Traub 2/24

[2/24/14, James Traub is a senior fellow of the Global Centre for the Responsibility to Protect, a fellow of the Center on International Cooperation and a member of the Council on Foreign Relations, “Repeal and Restore”, <http://www.foreignpolicy.com/articles/2014/02/28/repeal_and_restore_obama_end_war_on_terror>]

In every supremely lawyered syllable, Obama was saying: It's not a war anymore. If you look very closely at the guidance on the use of lethal force, Obama was agreeing to bind himself to the rules governing behavior in non-battlefield settings, including the requirement of an imminent threat and the high threshold for the avoidance of civilian casualties. The same holds true for Guantánamo, since international law prohibits indefinite detention save during hostilities. If the United States is no longer at war, the president doesn't need extraordinary war powers. Congress granted those powers on Sept. 14, 2001, in the form of the Authorization for Use of Military Force (AUMF), which permits the president to "use all necessary and appropriate force" against the organizations which carried out the attacks of 9/11. The AUMF is the heart of the legal structure of the war on terror. Repealing the statute, more than any single act, would mark the end of that war. In his speech, Obama called on Congress to "refine, and ultimately repeal" the act. Yet he has said virtually nothing on the subject since then. The president has also never identified the moment when he believes he could do without those powers. How about at the end of this year? That's when all combat troops will have withdrawn from Afghanistan, thus ending the actual "war" of the war on terror. What's more, in his most recent State of the Union speech, Obama said that Guantánamo should close by the end of this year (though that will prove much harder to do). Harold Koh, the former State Department legal counsel, told me that he favors a repeal of the AUMF in the near term, preferably by the end of 2014. Last summer, Rep. Adam Schiff offered a resolution to do just that. It lost, but garnered 180 votes. Schiff told me that he will re-introduce the measure this spring. The AUMF has a reciprocal relationship to the measures it authorizes. If you're not at war, you don't need it. And if you don't have it, you can't engage in war-like acts such as the indefinite detention of belligerents. One very good reason to repeal the AUMF is to make it absolutely clear that the United States does not wish to have that authority. There is, for example, no further justification for indefinite detention. No new inmate has arrived at Gitmo since 2008, and when the United States withdraws combats troops from Afghanistan, it will no longer be encountering adversaries to be detained. If Congress repealed the AUMF, the president would still be able to rely on the powers enumerated in Article II of the Constitution to defend America from attack. Both Harold Koh and Matthew Waxman, a former Bush administration legal official, agree that this would include the authority to use drones -- or special forces -- for targeted missions, so long as they abide by the more stringent terms of the president's 2013 guidance on the use of lethal force. (The president would probably still be able under certain circumstances to order the killing of an American citizen, as he is now reportedly considering.) Nevertheless, a president without war powers would probably shy away from the outer limits of his constitutional prerogatives, looking instead to the other instruments at his disposal to deal with terrorism. The AUMF is, in any case, very nearly obsolete. In Yemen, Somalia, and across North Africa, the United States is no longer fighting al Qaeda but its affiliates. The Supreme Court has ruled that the AUMF covers "associates" of al Qaeda, but demarcating this category has become an increasingly Jesuitical exercise. Especially after the war ends in Afghanistan, courts are going to be skeptical about the invocation of war powers against tenuously linked associates of al Qaeda. For this reason, Waxman and three colleagues have argued for updating the AUMF rather than repealing it, setting out clear criteria for the use of force and compiling a list of terrorist adversaries. That's a sensible response if you think the most important objective is to preserve the president's freedom of action against terrorist groups. But I would say the most important objective is to restore America to itself. That doesn't simply mean forswearing war powers Americans were quick to grant after 9/11. It also means ending the reign of fear that inevitably emerged after the terrorist attacks. Americans still live inside their fear -- or at least their elected representatives behave as if they do. Think of the insane overreaction to the prospect of holding the trials of major figures like Khalid Sheikh Mohammed in civilian courts in the United States, or of transferring such figures to American prisons; or of the convulsive police reaction to the Tsarnaev brothers' bombing, which paralyzed metropolitan Boston; or of the pervasive military presence in so many public spaces. This is a national pathology that must be overcome -- especially before some new terrorist slips through the net and launches a successful strike on U.S. territory. Obama will have excellent political reasons for putting off the repeal of the AUMF. The Republicans will rain down demagoguery from the skies -- especially should a new terror attack occur. And sure, Obama could "refine" the law rather than repeal it, even if a new statute would be very hard to design. He could also ask Congress to pass a new AUMF that must be annually renewed, which, as Koh suggests, would have the added virtue of forcing Congress to become a partner in the legal response to terrorism. But Obama can afford to take political risks -- he isn't running for re-election. And, as Schiff points out, thanks to the national war exhaustion, Republicans are far more receptive to dialing down the counter-terror volume than they were only a few years ago. Most fundamentally, however, no half-measure will convey the message that Obama plainly wants to transmit: We are no longer at war with terrorists. It is increasingly clear that this president is pursuing a subtractive foreign policy. He ended torture. He removed American troops from Iraq; he is removing them from Afghanistan. All this is necessary, but it is still not the legacy he imagined for himself, or that his supporters hoped for. It is now within his power to end the war on terror. And that is something the American people will thank him for.

**No Fights over the plan**

**Panda 3/12**, Ankit Panda is Associate Editor of The Diplomat. He was previously a Research Specialist at Princeton University where he worked on international crisis diplomacy, international security, technology policy, and geopolitics , Time to Review the AUMF, http://thediplomat.com/2014/03/time-to-review-the-aumf/

**The AUMF became a point of controversy among libertarians, non-interventionists, and civil rights groups once it became apparent that it offered a legal smokescreen to pursue extra-judicial assassinations** of American citizens affiliated with al-Qaeda, denying them the right to due process. The United States’ widely condemned practice of indefinite detention of “enemy combatants” is also a result of the AUMF. Overall, there seems to be no political consensus about what the AUMF should become. I reckon that Lumpkin’s right that the AUMF needs to be “re-looked” at. The timing is rather impeccable considering that the United States is formally ending its war in Afghanistan this year. President **Obama** himself **noted** in a speech at the National Defense University last year that **he looks forward “to engaging Congress and the** American **people in efforts to** refine, and ultimately **repeal, the AUMF**’s mandate.” Those who disagree with repealing the AUMF note that it would regress the United States’ counter-terrorism readiness to “a law-enforcement model of counterterrorism.” There is some truth in that assertion. However, the United States’ national security apparatus has matured significantly since 9/11 and the failures in intelligence and lack of inter-agency communication that allowed that attack to happen have had time to be patched up. The future of the AUMF will have important ramifications for the manner in which the United States pursues non-state national security threats in the future. **Expect this debate to expand as President Obama’s second term carries forward**.

#### Solves the NB

### 2AC Delay CP

#### Perm: do the CP—conceiving of the plan as immediate is bad—the CP encourages a creative interpretation of fiat—debate is valuable insofar as centered on the questions the resolution poses

#### Destroys affirmative ground—the verb of restricting is key basis for affirmative ground and 2AC offense—the CP skews that and tests artificial questions like delay

#### Leads to illogical stale debates—the topic provides process questions about restrictions and agents—their interp shifts away from that to artificially introduced process questions like delay

#### Their conception of immediacy is illogical and destroys the politics DA and perception DAs which assume buildup to the plan—only our interpretation involves a realistic discussion of process

#### The CP can’t compete off the date effective—it’s not a mandate, but a limitation and qualification on the restriction—it’s functionally plan plus because it adds the element of time and only removes a limitation

#### Immediate action key

Daskal and Vladeck 14

[2014, Jennifer Daskal is a fellow at Georgetown’s Center on National Security and the Law and an adjunct professor at Georgetown Law Center. Stephen I. Vladeck is a professor of law and the Associate Dean for Scholarship at American University Washington College of Law. This paper was sponsored in part by the Open Society Foundations, “AFTER THE AUMF”, Harvard National Security Journal / Vol. 5, http://www.lawfareblog.com/wp-content/uploads/2013/05/After-the-AUMF-Final.pdf]

An alternative option would be for Congress to write a sunset provision into the AUMF—one that is tied to the withdrawal of forces from Afghanistan, currently scheduled for the end of 2014. This approach has intuitive appeal, given the range of concerns about an open-ended and ever-expanding armed conflict without an identifiable battleground or core center of operations. The long lag time before the authorities actually sunset would provide the Executive ample opportunity to determine what, if any, additional authorities are needed to deal with the threat, and would leave Congress ample time to respond. One issue that arises with the approach, however, is the question of the Guantánamo detainees. With the formal cessation of hostilities comes the end of the authority to detain under the laws of war—and, therefore, under the AUMF. While this will be a cause for celebration for many, it is likely to be a cause of concern for some members of Congress and the Executive. A 2009 review conducted by the Obama Administration concluded that of the 166 detainees still at Guantánamo, some four dozen were deemed “too dangerous to release” but ineligible for prosecution. While conditions may have changed since that assessment was made, and some reasonable “wind-down” authority will almost certainly be permitted,55 at some point that authority will cease. That said, the government’s interest in continued detention pursuant to the laws of war ought not be the reason for the war—this would be a perverse example of the tail wagging the dog. We note that it would probably be feasible to negotiate deals to keep these detainees under surveillance, particularly with the use of sophisticated intelligence and law enforcement tools, so long as we could find a nation to take them. It is worth noting, however, that this issue may soon arise whether or not Congress formally sunsets the AUMF. In Hamdi v. Rumsfeld,56 the Supreme Court concluded that the authorization to use force includes the authority to detain, a plurality of the court also warned that “[i]f the practical circumstances of a given conflict [meaning boots on the ground] are entirely unlike those of the conflicts that informed the development of the law of war, that understanding may unravel.”57 With the withdrawal of troops from Afghanistan, the relevant practical circumstances will have in fact changed, and may yield a turning point with respect to the Guantánamo detainees (especially those whose detention is based upon ties to the Taliban rather than al Qaeda), regardless of whether the AUMF sunsets. A sunset provision has the obvious benefit of making clear to our allies and to the pool of would-be terrorist recruits that, twelve years on, the United States is not engaged in, or seeking to engage in, a state of perpetual war. More significantly, it also drives home the larger point—that at some point, perhaps soon, the conflict Congress authorized in September 2001 will effectively have run its course. The Executive could, of course, treat the AUMF as lapsed, even without such legislation.

#### The CP skews the transition

### 2AC Michigan

#### Obama losing now --- IMF and other agenda items

Weisman, 3/25 (Jonathan, 3/25/2014, “Senate Democrats Drop I.M.F. Reforms From Ukraine Aid,” <http://www.nytimes.com/2014/03/26/world/europe/senate-democrats-drop-imf-reforms-from-ukraine-aid-package.html?_r=0)>)

WASHINGTON — Senate Democrats, bowing to united House Republican opposition, dropped reforms of International Monetary Fund governance from a Ukraine aid package on Tuesday, handing President Obama an embarrassing defeat as he huddled in Europe with allies who have already ratified the changes. The monetary fund language would have enlarged the Ukraine loan package while finally ratifying changes dating to 2010 that only the United States has opposed. Mr. Obama himself negotiated those changes, and European allies conferring with him on Ukraine have been pressing for American action.But the need for speed on loans and direct assistance to Ukraine overcame the White House’s willingness for a fight. Senator Harry Reid of Nevada, the majority leader, said he was taking his lead from Secretary of State John Kerry, who had signaled that the administration would push for the monetary fund language separately. Mr. Reid said the package should pass the Senate by Thursday. “Obviously, politics don’t stop at the water’s edge on this issue,” said Senator Robert Menendez, Democrat of New Jersey and chairman of the Foreign Relations Committee, denouncing the Republican stance. The governance changes would raise the borrowing limit of countries like Ukraine at the multilateral lending institution, while giving more authority to emerging economic heavyweights like China, Brazil — and Russia. The Obama administration painted them as vital to a Ukraine aid package, but Republicans were never convinced. Some conservatives oppose the changes as a lessening of American authority at the fund, although Washington would retain veto power. But Republican leaders saw them more as a bargaining chip and were pressing to swap the changes for an agreement from the administration to delay final Internal Revenue Service regulations on political groups that conceal the name of their donors by incorporating as tax-exempt “social welfare” organizations. The White House position was undercut this week by two New York Democrats, Representatives Eliot L. Engel, the ranking member of the House Foreign Affairs Committee, and Nita M. Lowey, the ranking member of the House Appropriations Committee, both of whom said the Senate should drop the matter and pass the other parts of the package. “I would hope that we would find a common ground, pass it, so that we can help our friends,” Speaker John A. Boehner said of the Ukraine aid and Russia sanctions measure. The Senate legislation would guarantee $1 billion in loans to the fledgling government in Kiev and offer an additional $100 million in direct aid. Continue reading the main story Ukraine Crisis in Maps It would codify sanctions against Ukrainians and Russians already affected by sanctions ordered by Mr. Obama, but at the same time, it would expand the list of targets who would be denied United States visas and subject to civil or criminal penalties. Similar legislation is expected to pass the House this week. “I feel strongly about I.M.F. reform, and we need to get that done,” Mr. Reid said. “But this bill is important.” The decision was another setback for Mr. Obama; the administration also tried and failed in December to attach the monetary fund language to a trillion-dollar spending measure. In addition to the fund issue, the president’s nominee to lead the Justice Department’s Civil Rights Division was defeated by bipartisan opposition. His choice for surgeon general is stalled in the face of objections from the National Rifle Association. His top domestic initiatives — such as raising the minimum wage and reviving expired unemployment benefits — appear unlikely to get through Congress.Republicans are eager to exploit those Democratic divisions.

#### PC not key

Dickinson, 9 – professor of political science at Middlebury College and taught previously at Harvard University where he worked under the supervision of presidential scholar Richard Neustadt (5/26/09, Matthew, Presidential Power: A NonPartisan Analysis of Presidential Politics, “Sotomayor, Obama and Presidential Power,” http://blogs.middlebury.edu/presidentialpower/2009/05/26/sotamayor-obama-and-presidential-power/, JMP)

What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power—they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence—will the President swing enough votes to get his preferred legislation enacted?—this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors—a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not—we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting—not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee.

#### Congressional reforms backfire on litigation abuse, costs, and small businesses and sideline judicial action which solve better now

Dickinson ’13 Executive Director, American Intellectual Property Law Association

(Todd-, Dec. 17, Testimony before the U. S. Senate Judiciary Committee, Hearing on “Protecting Small Businesses and Promoting Innovation by Limiting Patent Troll Abuse”,

[http://www.patentdocs.org/](http://www.patentdocs.org/%202013/12/senate-judiciary-committee-holds-hearing-on-protecting-small-businesses-and-promoting-innovation-by-.html)

[2013/12/senate-judiciary-committee-holds-hearing-on-protecting-small-businesses-and-promoting-innovation-by-.html](http://www.patentdocs.org/%202013/12/senate-judiciary-committee-holds-hearing-on-protecting-small-businesses-and-promoting-innovation-by-.html))

\*S 1720 = Leahy anti patent troll legislation

Several additional legislative proposals have been introduced in the 113th Congress with a stated goal of targeting litigation abuses. Some of the most concerning proposals would introduce statutorily mandated requirements into the patent litigation process or make premature substantive changes to the reforms implemented by the AIA. AIPLA would ask that this Committee use caution before integrating them into S. 1720. i. Mandating Judicial Rules and Procedures AIPLA fears that congressionally created litigation rules, as proposed, would intrude on the established role of the Judicial Conference, be overly difficult to amend once fixed in a statute, and would overly restrict the traditional discretion of district court judges to manage their cases. While proposed with good intentions, mandating inflexible rules may have unintended consequences, including increasing costs of compliance and impeding access to the courts particularly for small businesses and independent inventors. In addition, patent litigation cases vary in complexity, including technology, number of patents and products involved, type and amount of prior art, and number of defenses. Rules for managing one case may not be appropriate for other cases, i.e., one size does not fit all. AIPLA believes that the Judicial Conference in its own discretion is in a better position to work with the district courts to institute appropriate case management rules. Specifically, AIPLA is concerned about proposals that would remove judicial discretion and mandate specific patent litigation rules, including: • Imposing significantly heightened pleading requirements for patent lawsuits; • Statutorily limiting discovery in patent litigation; • Singling out patent litigation or a particular category of litigation with amendments to the rules of joinder; and • Directing the Judicial Conference to adopt rules and procedures detailed by Congress. As previously noted, the Judicial Conference Advisory Committee on Civil Rules has begun the process for amending the Federal Rules of Civil Procedure to reduce costs and delays in litigation through active case management and proportionality in discovery. Given these developments, legislative action in this area may be premature or even unnecessary. As we learned through the process which led to the AIA, the courts have an effective ability to recalibrate patent law to properly address legitimate concerns, without the challenges of crafting statutorily acceptable language. ii. Fee Shifting Some of the current proposals would make a fee shifting determination mandatory in every case. Having such a provision would add to the cost of litigation, potentially discourage settlement because of the fee shifting incentive, and have the potential to invade the attorney-client privilege in making the determination whether to award fees. While AIPLA supports giving the judiciary more discretion to award fees in exceptional cases, that is far different than advocating for a presumption that fee shifting is warranted. In addition, in some pending proposals, the burden would be on the losing party to show why fees are not warranted rather than on the prevailing party to show why fees are warranted. Moreover, in any proposal that may address fee shifting, the issue of maintaining access to the courts for smaller businesses and innovators, who need to rely on contingent fee arrangements to assert their rights, should be considered. The unintended effect of impeding legitimate rights holders’ access to the courts, disincentivizing patent procurement in the first place, or possibly encouraging further lawsuits down the road (such as malpractice claims where fees are awarded) is something to avoid, if possible. Again, the U.S. Supreme Court and Federal Circuit are currently reviewing the standard for fee shifting in patent cases under the current 35 U.S.C. § 285. As noted above, AIPLA has filed amicus briefs in those cases.

#### AIA reforms solve

Dickinson ’13 Executive Director, American Intellectual Property Law Association

(Todd-, Dec. 17, Testimony before the U. S. Senate Judiciary Committee, Hearing on “Protecting Small Businesses and Promoting Innovation by Limiting Patent Troll Abuse”,

[http://www.patentdocs.org/](http://www.patentdocs.org/%202013/12/senate-judiciary-committee-holds-hearing-on-protecting-small-businesses-and-promoting-innovation-by-.html)

[2013/12/senate-judiciary-committee-holds-hearing-on-protecting-small-businesses-and-promoting-innovation-by-.html](http://www.patentdocs.org/%202013/12/senate-judiciary-committee-holds-hearing-on-protecting-small-businesses-and-promoting-innovation-by-.html))

A recurring theme that can be traced through the patent reforms of the AIA to the current debate ¶ over patent litigation abuse is the issue of patent quality. A key component of the reported ¶ abuses is the assertion of allegedly invalid or overbroad patents, the very abuse for which AIA ¶ post-grant procedures were created, in order to improve paten quality. These matters of patent ¶ quality are being addressed by the changes made to the law by the Judiciary and by Congress in ¶ the AIA, which are only now beginning to be felt.4¶ It may well be premature to conclude that ¶ they are not doing the job. ¶ ¶ Take one major example, as a former Director of the USPTO in particular, I would support, as ¶ former Director Kappos did, giving the post-grant processes in the USPTO a chance to work. ¶ They have only been in place for less than two years, and in the case of PGR, less than one.5¶ Early data suggests that they are performing in many ways as Congress intended, at least at the ¶ macro level, to provide an efficient, less expensive means to address potentially low quality ¶ patents. We believe that the prudent course is to give these reforms the chance to demonstrate ¶ their efficacy to deal with the concerns for which they were created before we consider making ¶ significant additional changes which may have their own unintended consequences. In support ¶ of this proposition to wait and see how they are working, we would simply point out that the ¶ AIA itself requires that USPTO study the reforms implemented by the AIA and report back to ¶ Congress by September 16, 2015. Those reports would serve as an important and more ¶ empirically-driven body of data which would allow for greater clarity and direction in making ¶ any necessary changes. ¶ ¶ c.

#### Bill getting delayed and is mired by controversy and Court will be taking action

Brown, et. al, 3/28 (Alex Brown, Brendan Sasso, Laura Ryan and Dustin Volz, 3/28/2014, National Journal Online, “Patent Action Delayed and the FCC’s Tech is Outdated,” Factiva))

TODAY'S TOP PARAGRAPH: The Senate Judiciary expectedly punted on taking up patent reform on Thursday, but key lawmakers say they are hopeful they can strike a grand bargain in the coming days. In the meantime, the patent reform world turns its eyes to the Supreme Court, which is hearing oral arguments on Monday for what could be a landmark case determining software patent eligibility. Verizon has issues with the new NSA reform proposals, and FCC Chairman Tom Wheeler is embarrassed by his own agency's old technology. TOP NEWS SENATE JUDICIARY DELAYS PATENT MARKUP: The committee Thursday delayed the long-awaited markup of Chairman Patrick Leahy's patent reform legislation until at least April 3, an expected move announced amid chatter that members are earnestly working to forge a grand compromise on how to best slay patent trolls. Leahy promised he is "working closely with other members of this committee to craft a manager's amendment that will bring in additional provisions" and said a compromise could be brokered "in the next few days." Still, onlookers have heard this tune before, and many are again growing worried that April could slip by without anything passed out of committee. And while Leahy gave lip service to Sen. Hatch's bill on fee shifting and a bill from Sen. Cornyn aimed at shell companies, notably absent was any such endorsement of Sen. Schumer's crusade to expand review methods to guard against low-quality patents. Schumer, for his part, said he would continue fighting for the controversial measure.

#### No impact to aging

Robert J **Lieber 9**, Professor of Government and International Affairs at Georgetown University, “Persistent primacy and the future of the American era”, International Politics. The Hague: Mar 2009. Vol. 46, Iss. 2-3; pg. 119, 21 pgs

Demography also works to the advantage of the United States. Most other powerful states, including China and Russia as well as Germany and Japan, face the significant aging of their populations. Although the United States needs to finance the costs of an aging population, this demographic shift is occurring to a lesser extent and more slowly than among its competitors. Mark Haas argues that these factors in global aging 'will be a potent force for the continuation of US power dominance, both economic and military' (Haas, 2007, p. 113). Finally, the United States benefits from two other unique attributes, flexibility and adaptability. Time and again, America has faced daunting challenges and made mistakes, yet it has possessed the inventiveness and societal flexibility to adjust and respond successfully. Despite obvious problems, not least the global financial crisis, there is reason to believe that America's adaptive capacity will allow it to respond to future requirements and threats. None of this assures the maintenance of its world role, but the domestic underpinnings to support this engagement remain relatively robust. Thus for the foreseeable future, US primacy is likely to be sustainable. America's own national interest - and the fortunes of a global liberal democratic order - depend on it.

#### Enviro impacts inev – even if we could get to zero emissions, temperatures rise until the year 3000

Solomon et al, Chairwoman, IPCC, ‘9 (Susan- member of the US National Academy of Sciences, the European Academy of Sciences, and the Academy of Sciences of France, Nobel Peace Prize Winner, Chairman of the IPCC, February 10, “Irreversible climate change due to carbon dioxide emissions” PNAS, Vol 106, http://www.pnas.org/content/early/2009/01/28/0812721106.full.pdf)

Over the 20th century, the atmospheric concentrations of key greenhouse gases increased due to human activities. The stated objective (Article 2) of the United Nations Framework Convention on Climate Change (UNFCCC) is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a low enough level to prevent ‘‘dangerous anthropogenic interference with the climate system.’’ Many studies have focused on projections of possible 21st century dangers (1–3). However, the principles (Article 3) of the UNFCCC specifically emphasize ‘‘threats of serious or irreversible damage,’’ underscoring the importance of the longer term. While some irreversible climate changes such as ice sheet collapse are possible but highly uncertain (1, 4), others can now be identified with greater confidence, and examples among the latter are presented in this paper. It is not generally appreciated that the atmospheric temperature increases caused by rising carbon dioxide concentrations are not expected to decrease significantly even if carbon emissions were to completely cease (5–7) (see Fig. 1). Future carbon dioxide emissions in the 21st century will hence lead to adverse climate changes on both short and long time scales that would be essentially irreversible (where irreversible is defined here as a time scale exceeding the end of the millennium in year 3000; note that we do not consider geo-engineering measures that might be able to remove gases already in the atmosphere or to introduce active cooling to counteract warming). For the same reason, the physical climate changes that are due to anthropogenic carbon dioxide already in the atmosphere today are expected to be largely irreversible. Such climate changes will lead to a range of damaging impacts in different regions and sectors, some of which occur promptly in association with warming, while others build up under sustained warming because of the time lags of the processes involved. Here we illustrate 2 such aspects of the irreversibly altered world that should be expected. These aspects are among reasons for concern but are not comprehensive; other possible climate impacts include Arctic sea ice retreat, increases in heavy rainfall and flooding, permafrost melt, loss of glaciers and snowpack with attendant changes in water supply, increased intensity of hurricanes, etc. A complete climate impacts review is presented elsewhere (8) and is beyond the scope of this paper. We focus on illustrative adverse and irreversible climate impacts for which 3 criteria are met: (i) observed changes are already occurring and there is evidence for anthropogenic contributions to these changes, (ii) the phenomenon is based upon physical principles thought to be well understood, and (iii) projections are available and are broadly robust across models. Advances in modeling have led not only to improvements in complex Atmosphere–Ocean General Circulation Models (AOGCMs) for projecting 21st century climate, but also to the implementation of Earth System Models of Intermediate Complexity (EMICs) for millennial time scales. These 2 types of models are used in this paper to show how different peak carbon dioxide concentrations that could be attained in the 21st century are expected to lead to substantial and irreversible decreases in dry-season rainfall in a number of already-dry subtropical areas and lower limits to eventual sea level rise of the order of meters, implying unavoidable inundation of many small islands and low-lying coastal areas. Results Longevity of an Atmospheric CO2 Perturbation. As has long been known, the removal of carbon dioxide from the atmosphere involves multiple processes including rapid exchange with the land biosphere and the surface layer of the ocean through air–sea exchange and much slower penetration to the ocean interior that is dependent upon the buffering effect of ocean chemistry along with vertical transport (9–12). On the time scale of a millennium addressed here, the CO2 equilibrates largely between the atmosphere and the ocean and, depending on associated increases in acidity and in ocean warming (i.e., an increase in the Revelle or ‘‘buffer’’ factor, see below), typically 20% of the added tonnes of CO2 remain in the atmosphere while 80% are mixed into the ocean. Carbon isotope studies provide important observational constraints on these processes and time constants. On multimil- lenium and longer time scales, geochemical and geological processes could restore atmospheric carbon dioxide to its pre- industrial values (10, 11), but are not included here. Fig. 1 illustrates how the concentrations of carbon dioxide would be expected to fall off through the coming millennium if manmade emissions were to cease immediately following an illustrative future rate of emission increase of 2% per year [comparable to observations over the past decade (ref. 13)] up to peak concentrations of 450, 550, 650, 750, 850, or 1,200 ppmv; similar results were obtained across a range of EMICs that were assessed in the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report (5, 7). This is not intended to be a realistic scenario but rather to represent a test case whose purpose is to probe physical climate system changes. A more gradual reduction of carbon dioxide emission (as is more likely), or a faster or slower adopted rate of emissions in the growth period, would lead to long-term behavior qualitatively similar to that illustrated in Fig. 1 (see also Fig. S1). The example of a sudden cessation of emissions provides an upper bound to how much reversibility is possible, if, for example, unexpectedly damaging climate changes were to be observed. Carbon dioxide is the only greenhouse gas whose falloff displays multiple rather than single time constants (see Fig. S2). Current emissions of major non-CO2 greenhouse gases such as methane or nitrous oxide are significant for climate change in the next few decades or century, but these gases do not persist over time in the same way as carbon dioxide (14). Fig. 1 shows that a quasi-equilibrium amount of CO2 is expected to be retained in the atmosphere by the end of the millennium that is surprisingly large: typically 40% of the peak concentration enhancement over preindustrial values ( 280 ppmv). This can be easily understood on the basis of the observed instantaneous airborne fraction (AFpeak) of 50% of anthropogenic carbon emissions retained during their buildup in the atmosphere, together with well-established ocean chemistry and physics that require 20% of the emitted carbon to remain in the atmosphere on thousand-year timescales [quasi- equilibrium airborne fraction (AFequi), determined largely by the Revelle factor governing the long-term partitioning of carbon between the ocean and atmosphere/biosphere system] (9–11). Assuming given cumulative emissions, EMI, the peak concen- tration, CO2peak (increase over the preindustrial value CO20), and the resulting 1,000-year quasi-equilibrium concentration, CO2equi can be expressed as COpeak 2 = CO02 + AFpeak EMI [1] COequi 2 = CO02 + AFequi EMI [2] so that COequi2 – CO0 2 = AFequi/AFpeak (COpeak 2 – CO02) [3] Given an instantaneous airborne fraction (AFpeak) of 50% during the period of rising CO2, and a quasi-equilbrium airborne factor (AFequi) of 20%, it follows that the quasi-equilibrium enhancement of CO2 concentration above its preindustrial value is 40% of the peak enhancement. For example, if the CO2 concentration were to peak at 800 ppmv followed by zero emissions, the quasi-equilibrium CO2 concentration would still be far above the preindustrial value at 500 ppmv. Additional carbon cycle feedbacks could reduce the efficiency of the ocean and biosphere to remove the anthropogenic CO2 and thereby increase these CO2 values (15, 16). Further, a longer decay time and increased CO2 concentrations at year 1000 are expected for large total carbon emissions (17). Irreversible Climate Change: Atmospheric Warming. Global average temperatures increase while CO2 is increasing and then remain approximately constant (within 0.5 °C) until the end of the millennium despite zero further emissions in all of the test cases shown in Fig. 1. This important result is due to a near balance between the long-term decrease of radiative forcing due to CO2 concentration decay and reduced cooling through heat loss to the oceans. It arises because long-term carbon dioxide removal and ocean heat uptake are both dependent on the same physics of deep-ocean mixing. Sea level rise due to thermal expansion accompanies mixing of heat into the ocean long after carbon dioxide emissions have stopped. For larger carbon dioxide concentrations, warming and thermal sea level rise show greater increases and display transient changes that can be very rapid (i.e., the rapid changes in Fig. 1 Middle), mainly because of changes in ocean circulation (18). Paleoclimatic evidence suggests that additional contributions from melting of glaciers and ice sheets may be comparable to or greater than thermal expansion (discussed further below), but these are not included in Fig. 1. Fig. 2 explores how close the modeled temperature changes are to thermal equilibrium with respect to the changing carbon dioxide concentration over time, sometimes called the realized warming fraction (19) (shown for the different peak CO2 cases). Fig. 2 Left shows how the calculated warmings compare to those expected if temperatures were in equilibrium with the carbon dioxide concentrations vs. time, while Fig. 2 Right shows the ratio of these calculated time-dependent and equilibrium tempera- tures. During the period when carbon dioxide is increasing, the realized global warming fraction is 50–60% of the equilibrium warming, close to values obtained in other models (5, 19). After emissions cease, the temperature change approaches equilib- rium with respect to the slowly decreasing carbon dioxide concentrations (cyan lines in Fig. 2 Right). The continuing warming through year 3000 is maintained at 40–60% of the equilibrium warming corresponding to the peak CO2 concentration (magenta lines in Fig. 2 Right). Related changes in fast-responding atmospheric climate variables such as precipitation, water vapor, heat waves, cloudiness, etc., are expected to occur largely simultaneously with the temperature changes. Irreversible Climate Change: Precipitation Changes. Warming is expected to be linked to changes in rainfall (20), which can adversely affect the supply of water for humans, agriculture, and ecosystems. Precipitation is highly variable but long-term rainfall decreases have been observed in some large regions including, e.g., the Mediterranean, southern Africa, and parts of south- western North America (21–25). Confident projection of future changes remains elusive over many parts of the globe and at small scales. However, well-known physics (the Clausius–Clapeyron law) implies that increased temperature causes increased atmospheric water vapor concentrations, and changes in water vapor transport and the hydrologic cycle can hence be expected (26–28). Further, advances in modeling show that a robust characteristic of anthropogenic climate change is poleward expansion of the Hadley cell and shifting of the pattern of precipitation minus evaporation (P–E) and the storm tracks (22, 26), and hence a pattern of drying over much of the already-dry subtropics in a warmer world ( 15°-40° latitude in each hemi- sphere) (5, 26). Attribution studies suggest that such a drying pattern is already occurring in a manner consistent with models including anthropogenic forcing (23), particularly in the south- western United States (22) and Mediterranean basin (24, 25). We use a suite of 22 available AOGCM projections based upon the evaluation in the IPCC 2007 report (5, 29) to characterize precipitation changes. Changes in precipitation are expected (5, 20, 30) to scale approximately linearly with increasing warming (see Fig. S3). The equilibrium relationship between precipitation and temperature may be slightly smaller (by 15%) than the transient values, due to changes in the land/ ocean thermal contrast (31). On the other hand, the observed 20th century changes follow a similar latitudinal pattern but presently exceed those calculated by AOGCMs (23). Models that include more complex representations of the land surface, soil, and vegetation interactively are likely to display additional feedbacks so that larger precipitation responses are possible. Here we evaluate the relationship between temperature and precipitation averaged for each month and over a decade at each grid point. One ensemble member is used for each model so that all AOGCMs are equally weighted in the multimodel ensemble; results are nearly identical if all available model ensemble members are used. Fig. 3 presents a map of the expected dry-season (3 driest consecutive months at each grid point) precipitation trends per degree of global warming. Fig. 3 shows that large uncertainties remain in the projections for many regions (white areas). How- ever, it also shows that there are some subtropical locations on every inhabited continent where dry seasons are expected to become drier in the decadal average by up to 10% per degree of warming. Some of these grid points occur in desert regions that are already very dry, but many occur in currently more temperate and semiarid locations. We find that model results are more robust over land across the available models over wider areas for drying of the dry season than for the annual mean or wet season (see Fig. S4). The Insets in Fig. 3 show the monthly mean projected precipitation changes averaged over several large regions as delineated on the map. Increased drying of respective dry seasons is projected by 90% of the models averaged over the indicated regions of southern Europe, northern Africa, southern Africa, and southwestern North America and by 80% of the models for eastern South America and western Australia (see Fig. S3). Although given particular years would show exceptions, the long-term irreversible warming and mean rainfall changes as suggested by Figs. 1 and 3 would have important consequences in many regions. While some relief can be expected in the wet season for some regions (Fig. S4), changes in dry-season precipitation in northern Africa, southern Europe, and western Australia are expected to be near 20% for 2 °C warming, and those of southwestern North America, eastern South America, and southern Africa would be 10% for 2 °C of global mean warming. For comparison, the American ‘‘dust bowl’’ was associated with averaged rainfall decreases of 10% over 10–20 years, similar to major droughts in Europe and western Australia in the 1940s and 1950s (22, 32). The spatial changes in precipitation as shown in Fig. 3 imply greater challenges in the distribution of food and water supplies than those with which the world has had difficulty coping in the past. Such changes occurring not just for a few decades but over centuries are expected to have a range of impacts that differ by region. These include, e.g., human water supplies (25), effects on dry-season wheat and maize agriculture in certain regions of rain-fed farming such as Africa (33, 34), increased fire frequency, ecosystem change, and desertification (24, 35–38). Fig. 4 Upper relates the expected irreversible changes in regional dry-season precipitation shown in Fig. 3 to best estimates of the corresponding peak and long-term CO2 concentrations. We use 3 °C as the best estimate of climate sensitivity across the suite of AOGCMs for a doubling of carbon dioxide from preindustrial values (5) along with the regional drying values depicted in Fig. 3 and assuming that 40% of the carbon dioxide peak concentration is retained after 1000 years. Fig. 4 shows that if carbon dioxide were to peak at levels of 450 ppmv, irreversible decreases of 8–10% in dry-season precipitation would be expected on average over each of the indicated large regions of southern Europe, western Australia, and northern Africa, while a carbon dioxide peak value near 600 ppmv would be expected to lead to sustained rainfall decreases of 13–16% in the dry seasons in these areas; smaller but statistically significant irreversible changes would also be expected for southwestern North America, eastern South America, and Southern Africa. Irreversible Climate Change: Sea Level Rise. Anthropogenic carbon dioxide will cause irrevocable sea level rise. There are 2 relatively well-understood processes that contribute to this and a third that may be much more important but is also very uncertain. Warm- ing causes the ocean to expand and sea levels to rise as shown in Fig. 1; this has been the dominant source of sea level rise in the past decade at least (39). Loss of land ice also makes important contributions to sea level rise as the world warms. Mountain glaciers in many locations are observed to be retreating due to warming, and this contribution to sea level rise is also relatively well understood. Warming may also lead to large losses of the Greenland and/or Antarctic ice sheets. Additional rapid ice losses from particular parts of the ice sheets of Greenland and Antarctica have recently been observed (40–42). One recent study uses current ice discharge data to suggest ice sheet contributions of up to 1–2 m to sea level rise by 2100 (42), but other studies suggest that changes in winds rather than warming may account for currently observed rapid ice sheet flow (43), rendering quantitative extrapolation into the future uncertain. In addition to rapid ice flow, slow ice sheet mass balance processes are another mechanism for potential large sea level rise. Paleoclimatic data demonstrate large contributions of ice sheet loss to sea level rise (1, 4) but provide limited constraints on the rate of such processes. Some recent studies suggest that ice sheet surface mass balance loss for peak CO2 concentrations of 400–800 ppmv may be even slower than the removal of manmade carbon dioxide following cessation of emis- sions, so that this loss could contribute less than a meter to irreversible sea level rise even after many thousands of years (44, 45). It is evident that the contribution from the ice sheets could be large in the future, but the dependence upon carbon dioxide levels is extremely uncertain not only over the coming century but also in the millennial time scale. An assessed range of models suggests that the eventual contribution to sea level rise from thermal expansion of the ocean is expected to be 0.2–0.6 m per degree of global warming (5). Fig. 4 uses this range together with a best estimate for climate sensitivity of 3 °C (5) to estimate lower limits to eventual sea level rise due to thermal expansion alone. Fig. 4 shows that even with zero emissions after reaching a peak concentration, irreversible global average sea level rise of at least 0.4–1.0 m is expected if 21st century CO2 concentrations exceed 600 ppmv and as much as 1.9 m for a peak CO2 concentration exceeding 1,000 ppmv. Loss of glaciers and small ice caps is relatively well understood and is expected to be largely complete under sustained warming of, for example, 4 °C within 500 years (46). For lower values of warming, partial remnants of glaciers might be retained, but this has not been examined in detail for realistic representations of glacier shrinkage and is not quantified here. Complete losses of glaciers and small ice caps have the potential to raise future sea level by 0.2–0.7 m (46, 47) in addition to thermal expansion. Further contributions due to partial loss of the great ice sheets of Antarctica and/or Greenland could add several meters or more to these values but for what warming levels and on what time scales are still poorly characterized. Sea level rise can be expected to affect many coastal regions (48). While sea walls and other adaptation measures might combat some of this sea level rise, Fig. 4 shows that carbon dioxide peak concentrations that could be reached in the future for the conservative lower limit defined by thermal expansion alone can be expected to be associated with substantial irreversible commitments to future changes in the geography of the Earth because many coastal and island features would ultimately become submerged. Discussion: Some Policy Implications It is sometimes imagined **that** slow processes such as climate changes pose small risks, on the basis of the assumption that a choice can always be made to quickly reduce emissions and thereby reverse any harm within a few years or decades. We have shown that this assumption is incorrect for carbon dioxide emissions, because of the longevity of the atmospheric CO2 perturbation and ocean warming. Irreversible climate changes due to carbon dioxide emissions have already taken place, and future carbon dioxide emissions would imply further irreversible effects on the planet, with attendant long legacies for choices made by contemporary society. Discount rates used in some estimates of economic trade-offs assume that more efficient climate mitigation can occur in a future richer world, but neglect the irreversibility shown here. Similarly, understanding of irreversibility reveals limitations in trading of greenhouse gases on the basis of 100-year estimated climate changes (global warming potentials, GWPs), because this metric neglects carbon dioxide’s unique long-term effects. In this paper we have quantified how societal decisions regarding carbon dioxide concentrations that have already occurred or could occur in the coming century imply irreversible dangers relating to climate change for some illustrative populations and regions. These and other dangers pose substantial challenges to humanity and nature, with a magnitude that is directly linked to the peak level of carbon dioxide reached.

### 2AC K

#### Framework—the neg must connect their alternative to policy concerns and institutional practices—absent these questions shifts in knowledge production are useless – governments’ obey institutional logics that exist independently of individuals and constrain decisionmaking

Wight – Professor of IR @ University of Sydney – 6

(Colin, Agents, Structures and International Relations: Politics as Ontology, pgs. 48-50

One important aspect of this relational ontology is that these relations constitute our identity as social actors. According to this relational model of societies, one is what one is, by virtue of the relations within which one is embedded. A worker is only a worker by virtue of his/her relationship to his/her employer and vice versa. ‘Our social being is constituted by relations and our social acts presuppose them.’ At any particular moment in time an individual may be implicated in all manner of relations, each exerting its own peculiar causal effects. This ‘lattice-work’ of relations constitutes the structure of particular societies and endures despite changes in the individuals occupying them. Thus, the relations, the structures, are ontologically distinct from the individuals who enter into them. At a minimum, the social sciences are concerned with two distinct, although mutually interdependent, strata. There is an ontological difference between people and structures: ‘people are not relations, societies are not conscious agents’. Any attempt to explain one in terms of the other should be rejected. If there is an ontological difference between society and people, however, we need to elaborate on the relationship between them. Bhaskar argues that we need a system of mediating concepts, encompassing both aspects of the duality of praxis into which active subjects must fit in order to reproduce it: that is, a system of concepts designating the ‘point of contact’ between human agency and social structures. This is known as a ‘positioned practice’ system. In many respects, the idea of ‘positioned practice’ is very similar to Pierre Bourdieu’s notion of habitus. Bourdieu is primarily concerned with what individuals do in their daily lives. He is keen to refute the idea that social activity can be understood solely in terms of individual decision-making, or as determined by surpa-individual objective structures. Bourdieu’s notion of the habitus can be viewed as a bridge-building exercise across the explanatory gap between two extremes. Importantly, the notion of a habitus can only be understood in relation to the concept of a ‘social field’. According to Bourdieu, a social field is ‘a network, or a configuration, of objective relations between positions objectively defined’. A social field, then, refers to a structured system of social positions occupied by individuals and/or institutions – the nature of which defines the situation for their occupants. This is a social field whose form is constituted in terms of the relations which define it as a field of a certain type. A habitus (positioned practices) is a mediating link between individuals’ subjective worlds and the socio-cultural world into which they are born and which they share with others. The power of the habitus derives from the thoughtlessness of habit and habituation, rather than consciously learned rules. The habitus is imprinted and encoded in a socializing process that commences during early childhood. It is inculcated more by experience than by explicit teaching. Socially competent performances are produced as a matter of routine, without explicit reference to a body of codified knowledge, and without the actors necessarily knowing what they are doing (in the sense of being able adequately to explain what they are doing). As such, the habitus can be seen as the site of ‘internalization of reality and the externalization of internality.’ Thus social practices are produced in, and by, the encounter between: (1) the habitus and its dispositions; (2) the constraints and demands of the socio-cultural field to which the habitus is appropriate or within; and (3) the dispositions of the individual agents located within both the socio-cultural field and the habitus. When placed within Bhaskar’s stratified complex social ontology the model we have is as depicted in Figure 1. The explanation of practices will require all three levels. Society, as field of relations, exists prior to, and is independent of, individual and collective understandings at any particular moment in time; that is, social action requires the conditions for action. Likewise, given that behavior is seemingly recurrent, patterned, ordered, institutionalised, and displays a degree of stability over time, there must be sets of relations and rules that govern it. Contrary to individualist theory, these relations, rules and roles are not dependent upon either knowledge of them by particular individuals, or the existence of actions by particular individuals; that is, their explanation cannot be reduced to consciousness or to the attributes of individuals. These emergent social forms must possess emergent powers. This leads on to arguments for the reality of society based on a causal criterion. Society, as opposed to the individuals that constitute it, is, as Foucault has put it, ‘a complex and independent reality that has its own laws and mechanisms of reaction, its regulations as well as its possibility of disturbance. This new reality is society…It becomes necessary to reflect upon it, upon its specific characteristics, its constants and its variables’.

#### Neoliberalism doesn’t cause extinction

Gleditsch, Research Professor at the Peace Research Institute, 02

(GLOBALIZATION AND INTERNAL CONFLICT, Available online)

While neomalthusian thought is very widespread, it is not unopposed. Cornucopians, or technological optimists, argue that a resource crisis can easily be averted by technological innovation, the substitution of resources, and market pricing. Attitudes change and environmental values start taking precedence over unrestricted economic growth once basic needs have been satisfied. So, as the former Saudi Arabian Minister of Oil Sheik Yamani is reported to have said ‘‘...the stone age came to an end not for a lack of stones, and the oil age will end, but not for the lack of oil’’ (Greider 2000). Of course, if the economic system is flexible enough to adjust gradually to the threat of resource scarcity, there is no need to fight over the scarcities. Therefore, ‘‘water wars’’ and other major violence resulting from resource scarcity tend to be in the future. There is very little evidence for a general relationship between resource scarcity and civil war (Theisen 2008). Paradoxically, empirical studies show that the higher our ecological footprint, the more peace (Binningsbø, de Soysa, and Gleditsch 2007). While a ‘‘water war’’ rhetoric was very common 15 years ago, it has now largely been replaced by an emphasis on the need for cooperation in order to solve the very real problems of lack of clean fresh water in many areas of the world (UNDP 2006). As Riley (2001, 146) argues, Malthus may have been better at summing up the past than predicting the future.

#### Transition from neolib causes massive violence – counter-revolutionary interventions

Anderson ‘84

professor of sociology – UCLA,

(Perry, In the tracks of historical materialism, p. 102-103)

That background also indicates, however, what is essentially missing from his work. How are we to get from where we are today to where he point us to tomorrow? There is no answer to this question in Nove. His halting discussion of “transition” tails away into apprehensive admonitions to moderation to the British Labor Party, and pleas for proper compensation to capitalist owners of major industries, if these are to be nationalized. Nowhere is there any sense of what a titanic political change would have to occur, with what fierceness of social struggle, for the economic model of socialism he advocates ever to materialize. Between the radicalism of the future end-state he envisages, and the conservatism of the present measures he is prepared to countenance, there is an unbridgeable abyss. How could private ownership of the means of production ever be abolished by policies less disrespectful of capital than those of Allende or a Benn, which he reproves? What has disappeared from the pages of The Economics of Feasible Socialism is virtually all attention to the historical dynamics of any serious conflict over the control of the means of production, as the record of the 20th century demonstrates them. If capital could visit such destruction on even so poor and small an outlying province of its empire in Vietnam, to prevent its loss, is it likely that it would suffer its extinction meekly in its own homeland? The lessons of the past sixty-five years or so are in this respect without ambiguity or exception, there is no case, from Russia to China, from Vietnam to Cuba, from Chile to Nicaragua, where the existence of capitalism has been challenged, and the furies of intervention, blockade and civil strife have not descended in response. Any viable transition to socialism in the West must seek to curtail that pattern: but to shrink from or to ignore it is to depart from the world of the possible altogether. In the same way, to construct an economic model of socialism in one advanced country is a legitimate exercise: but to extract it from any computable relationship with a surrounding, and necessarily opposing, capitalist environment—as this work does—is to locate it in thin air.

**Legal norms don’t cause wars and the alt can’t effect liberalism**

David **Luban 10**, law prof at Georgetown, Beyond Traditional Concepts of Lawfare: Carl Schmitt and the Critique of Lawfare, 43 Case W. Res. J. Int'l L. 457

Among these associations is the positive, constructive side of politics, the very foundation of Aristotle's conception of politics, which Schmitt completely ignores. Politics, we often say, is the art of the possible. It is the medium for organizing all human cooperation. Peaceable civilization, civil institutions, and elemental tasks such as collecting the garbage and delivering food to hungry mouths all depend on politics. Of course, peering into the sausage factory of even such mundane municipal institutions as the town mayor's office will reveal plenty of nasty politicking, jockeying for position and patronage, and downright corruption. Schmitt sneers at these as "banal forms of politics, . . . all sorts of tactics and practices, competitions and intrigues" and dismisses them contemptuously as "parasite- and caricature-like formations." n55 The fact is that **Schmitt has nothing** whatever **to say about the constructive side of politics**, and his entire theory focuses on enemies, not friends. In my small community, political meetings debate issues as trivial as whether to close a street and divert the traffic to another street. It is hard to see mortal combat as even a remote possibility in such disputes, and so, in Schmitt's view, they would not count as politics, but merely administration. Yet issues like these are the stuff of peaceable human politics. Schmitt, I have said, uses the word "political" polemically--in his sense, politically. I have suggested that his very choice of the word "political" to describe mortal enmity is tendentious, attaching to mortal enmity Aristotelian and republican associations quite foreign to it. But the more basic point is that Schmitt's critique of humanitarianism as political and polemical is itself political and polemical. In a word, the critique of lawfare is itself lawfare. It is self-undermining because to the extent that it succeeds in showing that lawfare is illegitimate, it de-legitimizes itself. What about the merits of Schmitt's critique of humanitarianism? His argument is straightforward: either humanitarianism is toothless and [\*471] apolitical, in which case ruthless political actors will destroy the humanitarians; or else humanitarianism is a fighting faith, in which case it has succumbed to the political but made matters worse, because wars on behalf of humanity are the most inhuman wars of all. Liberal humanitarianism is either too weak or too savage. The argument has obvious merit. When Schmitt wrote in 1932 that wars against "outlaws of humanity" would be the most horrible of all, it is hard not to salute him as a prophet of Hiroshima. The same is true when Schmitt writes about the League of Nations' resolution to use "economic sanctions and severance of the food supply," n56 which he calls "imperialism based on pure economic power." n57 Schmitt is no warmonger--he calls the killing of human beings for any reason other than warding off an existential threat "sinister and crazy" n58 --nor is he indifferent to human suffering. But **international** humanitarian law **and criminal law are not the same thing as wars to end all war or humanitarian military interventions, so Schmitt's** important moral **warning** against ultimate military self-righteousness **does not** really **apply**. n59 Nor does "bracketing" war by humanitarian constraints on war-fighting presuppose a vanished order of European public law. The fact is that in nine years of conventional war, the United States has significantly bracketed war-fighting, even against enemies who do not recognize duties of reciprocity. n60 This may frustrate current lawfare critics who complain that American soldiers in Afghanistan are being forced to put down their guns. Bracketing warfare is a decision--Schmitt might call it an existential decision--that rests in part on values that transcend the friend-enemy distinction. **Liberal values are not alien extrusions into politics** or evasions of politics; **they are part of politics, and**, as Stephen Holmes argued against Schmitt, **liberalism has proven remarkably strong, not weak**. n61 We could choose to abandon liberal humanitarianism, and that would be a political decision. It would simply be a bad one.

# 1ar

### 1AR AT Sustainability

#### All environmental factors getting better

Lomberg 10—Ph.D in pol science (4/21, Bjorn Earth Day: Smile, don't shudder; Ignore doomsday environmentalists. Things aren't so bad. And if rich countries would worry about the right things, all the better, USA Today, LexisNexis)

Given all the talk of impending catastrophe, this may come as a surprise, but as we approach the 40th anniversary of the first Earth Day, people who care about the environment actually have a lot to celebrate. Of course, that's not how the organizers of Earth Day 2010 see it. In their view (to quote a recent online call to arms), "The world is in greater peril than ever." But consider this: In virtually every developed country, the air is more breathable and the water is more drinkable than it was in 1970. In most of the First World, deforestation has turned to reforestation. Moreover, the percentage of malnutrition has been reduced, and ever-more people have access to clean water and sanitation. Apocalyptic predictions from concerned environmental activists are nothing new. Until about 10 years ago, I took it for granted that these predictions were sound. Like many of us, I believed that the world was in a terrible state that was only getting worse with each passing day. My thinking changed only when, as a university lecturer, I set out with my students to disprove what I regarded at the time as the far-fetched notion that global environmental conditions were actually improving. To our surprise, the data showed us that many key environmental measures were indeed getting better. ,

War turns structural violence

Goldstein 1—Prof PoliSci @ American University, Joshua, War and Gender , P. 412

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, "if you want peace, work for justice". Then if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influences wars' outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices. So, "if you want peace, work for peace." Indeed, if you want justice (gener and others), work for peace. Causality does not run just upward through the levels of analysis from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes toward war and the military may be the most important way to "reverse women's oppression/" The dilemma is that peace work focused on justice brings to the peace movement energy, allies and moral grounding, yet, in light of this book's evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.