## 1NC

### T – CONSULTATION / REPORTING REQUIREMENTS

#### **T- NOT SUBSTANTIALLY INCREASE RESTRUCTION**

#### **A. interpretation – the topic requires a prohibition on the exercise of authority.**

#### **1. restriction is prohibition**

Sinha 6 <http://www.indiankanoon.org/doc/437310/> Supreme Court of India Union Of India & Ors vs M/S. Asian Food Industries on 7 November, 2006 Author: S.B. Sinha Bench: S Sinha, Mark, E Katju CASE NO.: Writ Petition (civil) 4695 of 2006 PETITIONER: Union of India & Ors. RESPONDENT: M/s. Asian Food Industries DATE OF JUDGMENT: 07/11/2006 BENCH: S.B. Sinha & Markandey Katju JUDGMENT: J U D G M E N T [Arising out of S.L.P. (Civil) No. 17008 of 2006] WITH CIVIL APPEAL NO. 4696 OF 2006 [Arising out of S.L.P. (Civil) No. 17558 of 2006] S.B. SINHA, J :

We may, however, notice that this Court in State of U.P. and Others v. M/s. Hindustan Aluminium Corpn. and others [AIR 1979 SC 1459] stated the law thus:

"It appears that a distinction between regulation and restriction or prohibition has always been drawn, ever since Municipal Corporation of the City of Toronto v. Virgo. Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas prohibition obstructs or shuts off, or denies it to those to whom it is applied. The Oxford English Dictionary does not define regulate to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contented itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect."

#### **2. procedural change is not substantially**

Words and Phrases 64 vol 40 p 816 full photocopied card is on p 18 of substantially defs PDF

The word "substantially" meaning in the matter of substance rather than mere form

#### Aff is only a procedural restriction, not a substantive restriction - doesn’t prohibit detention

#### C. the affirmative interpretation is bad for debate

#### Limits are necessary for negative preparation and clash. The aff makes the topic too big. There are an infinite number of procedural requirements and conditions that could be placed on the president. We could never be ready to debate all of them

#### D. T is a voter because it is necessary for debate.

### Terrorism

#### **Releasing detainees causes more terrorism and undermines Yemen stability**

McConnell 9 Mitch, Senate Minority Leader; “Don’t Close It” *Washington Post*; March 15, 2009; http://articles.washingtonpost.com/2009-03-15/opinions/36843891\_1\_detainees-guantanamo-bay-dangerous-terrorists

According to Pentagon reports, detainees who have been released from Guantanamo appear to be reengaging in terrorism at higher rates, with the current rate of those either suspected or confirmed of reengaging in terrorism at about 12 percent. There's a reason for this: Among the roughly 250 inmates who remain at Guantanamo are the worst of the worst, including dozens of proud and self-proclaimed members of al-Qaeda. Many have been directly involved in some of the worst terrorist attacks in history, including some who had direct knowledge of the Sept. 11 attacks. Others have trained or funded terrorists, made bombs or presented themselves as potential suicide bombers. As the pool of inmates has shrunk, those who remain are simply more dangerous, not less. ¶ These people are among the least likely to be controlled if and when they return home. More than a third of the detainees who have already been released were from Saudi Arabia, which has its own detention and rehabilitation system. But our confidence in that system has been shaken by recent reports that at least one former Saudi detainee has returned to fighting. More worrisome is the prospect of releasing Yemeni detainees, about half the remaining population at Guantanamo, since Yemen has shown little ability to control even the most dangerous terrorists we release.

#### Yemen instability causes WMD terror, Iran-Israel war, and Iran-Saudi war.

Berger et al 2012(May, Lars Berger, Lecturer in politics and contemporary history of the middle east at the university of salford/Manchester, Maurice Doring, MA in political science, international law and philosophy from the University of Bonn, Sven-Eric Fikenscher, research fellow at Geothe University, Ahmed Salf, Exeutive Director of the Sheba Center for Strategic Studies, Ahmed Al-Wahishi, Executive Secretary of the Yemeni International Affairs Center, “Yemen and the Middle East Conference The Challenge of Failing States and Transnational Terrorism”, <http://usir.salford.ac.uk/22952/1/Yemen_and_the_Middle_East_Conference.pdf>)

 While in a geographical and political sense Yemen is far from being a central actor in the envisioned MEC, its political future could easily shape the gathering on several levels. First, the Middle East Conference aims at establishing a WMD/DVs Free Zone. On the one hand, Yemen is a party to all three legal documents banning weapons of mass destruction: the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention (BTWC), and the Chemical Weapons Convention (CWC). In addition, Sana’a has embraced the Gulf Cooperation Council’s (GCC) call for a Gulf WMD Free Zone, independent of Israeli nuclear policy. On the other hand, when it comes to the problématique of WMD and proliferation, Yemen might store chemical weapons, depending on whether rumors about the use of nerve gas against anti- government protesters in early 2011 turn out to be true. In addition, Yemen imported various WMD-capable aircraft and missiles and probably still operates most of them (see Table No. 1). In the aircraft realm, Yemeni decision-makers from the North, the South, and the unifi ed country alike have mostly received Soviet/Russian fighter jets and bombers. 1 The current level of instability and the threat of further deterioration could thus spoil any serious arms control effort in Yemen. This is particularly troublesome since the country, given its history and affiliation with the Arab League, will have to be part of far- reaching regional disarmament initiatives. The prospect of an Arab state with an uncontrolled chemical arsenal is likely to affect Israeli and Iranian calculations with regard to the MEC. Both states are suspicious of the Arab League and tensions between Iran and Saudi Arabia, which is particularly influential in Yemen, have recently worsened. Second, with a long history as one of the region’s eminent weapons markets, Yemen has the potential to serve as a major gateway for illicit weapons, both conventional and unconventional, entering the Arab peninsula and other parts of the Arab East. If the situation escalates, states with an interest in such technology might, for instance, try to obtain missiles and their spare parts or attempt to gain access to sensitive material from the country’s suspected chemical warheads. This could contribute to the prolif- eration of delivery systems as well as WMD thereby undermining the MEC. In 2011, protesters seized an army base in Sana’a, while Al-Qaeda in the Arab Peninsula (AQAP) has, on a frequent basis, been able to temporarily control several cities and launch deadly assaults on military bases in the southern province of Abyan. Such developments could offer AQAP the chance to use existing dual-use laboratories or even to build their own facilities capable of producing biological and chemical material in remote areas under their control. Third, Yemen has the potential to play a more prominent role in the ongoing tensions between Saudi Arabia and Iran. Riyadh has a long history of attempts to shape the course of political events in Yemen with which it shares a 1,800 km-long border. Saudi Arabia’s different reactions to domestic calls for change in Bahrain and Syria have made clear that it is viewing the ‘Arab Spring’ primarily through the lens of its long-running conflict with Iran. From a Saudi point of view, instability in Yemen opens up the specter of increased Iranian influence at a time when Tehran’s foothold in the Arab world’s northern tier comes under strain in the context of the popular uprising against the Assad regime in Syria. a number of narrowly foiled terrorist attacks on U.S. targets and the 2009 Fort Hood shooting in Texas have shifted global attention towards Yemen’s status as the home to Al-Qaeda in the Arab Peninsula. Continuing instability in Yemen allows AQAP to regroup and pose a direct threat to the security of Saudi Arabia and other countries on the Arab peninsula. It also puts AQAP into a position to intensify its support for the ‘home-grown’ attempted terrorist attacks the United States has witnessed over the last couple of years. In short, Yemen’s instability has the potential to allow transnational actors to undermine the security arrangements which the region’s state actors might contemplate as part of the envisioned MEC.

### Counterplan

The United States federal government should pass all legislation necessary to fully abide by its obligations under the Montreal Protocol including an amendment to phase out the use of HFCs

### Kritik

#### Apocalyptic representations of climate change are an ineffective rhetorical strategy that produces a self-fulfilling prophecy

Hulme (Professor of Environmental Sciences at the University of East Anglia, and Director of the Tyndall Centre for Climate Change Research) 6

(Mike, Chaotic world of climate truth, 4 November, http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/science/nature/6115644.stm)

The language of catastrophe is not the language of science. It will not be visible in next year's global assessment from the world authority of the Intergovernmental Panel on Climate Change (IPCC). To state that climate change will be "catastrophic" hides a cascade of value-laden assumptions which do not emerge from empirical or theoretical science. Is any amount of climate change catastrophic? Catastrophic for whom, for where, and by when? What index is being used to measure the catastrophe? The language of fear and terror operates as an ever-weakening vehicle for effective communication or inducement for behavioural change. This has been seen in other areas of public health risk. Empirical work in relation to climate change communication and public perception shows that it operates here too. Framing climate change as an issue which evokes fear and personal stress **becomes a self-fulfilling prophecy**. By "sexing it up" we exacerbate, through psychological amplifiers, the very risks we are trying to ward off. The careless (or conspiratorial?) translation of concern about Saddam Hussein's putative military threat into the case for WMD has had major geopolitical repercussions. We need to make sure the agents and agencies in our society which would seek to amplify climate change risks do not lead us down a similar counter-productive pathway. The IPCC scenarios of future climate change - warming somewhere between 1.4 and 5.8 Celsius by 2100 - are significant enough without invoking catastrophe and chaos as unguided weapons with which forlornly to threaten society into behavioural change. I believe climate change is real, must be faced and action taken. But **the discourse of catastrophe is in danger of tipping society onto a negative, depressive and reactionary trajectory.**

#### And, if successful, apocalyptic representations of climate change lead to great power war – regional interventions and arms races

Brzoska (Inst. for Peace Research and Security Policy @ Hamburg) 8

(Micahel, “The Securitization of climate change and the power of conceptions of security” ISA Convention Paper)

In the literature on securitization it is implied that when a problem is securitized it is difficult to limit this to an increase in attention and resources devoted to mitigating the problem (Brock 1997, Waever 1995). Securitization regularly leads to all-round ‘exceptionalism’ in dealing with the issue as well as to a shift in institutional localization towards ‘security experts’ (Bigot 2006), such as the military and police. Methods and instruments associated with these security organizations – such as more use of arms, force and violence – will gain in importance in the discourse on ‘what to do’. A good example of securitization was the period leading to the Cold War (Guzzini 2004 ). Originally a political conflict over the organization of societies, in the late 1940s, the East-West confrontation became an existential conflict that was overwhelmingly addressed with military means, including the potential annihilation of humankind. Efforts to alleviate the political conflict were, throughout most of the Cold War, secondary to improving military capabilities. Climate change could meet a similar fate. An essentially political problem concerning the distribution of the costs of prevention and adaptation and the losses and gains in income arising from change in the human environment might be perceived as intractable, thus necessitating the build-up of military and police forces to prevent it from becoming a major security problem. The portrayal of climate change as a security problem could, in particular, cause the richer countries in the global North, which are less affected by it, to strengthen measures aimed at protecting them from the spillover of violent conflict from the poorer countries in the global South that will be most affected by climate change. It could also be used by major powers as a justification for improving their military preparedness against the other major powers, thus **leading to arms races**. This kind of reaction to climate change would be counterproductive in various ways. Firstly, since more border protection, as well as more soldiers and arms, is expensive, the financial means compensate for the negative economic effects of reducing greenhouse gas emission and adapting to climate change will be reduced. Global military expenditure is again at the level of the height of the Cold War in real terms, reaching more than US $1,200 billion in 2006 or 3.5 percent of global income. While any estimate of the costs of mitigation (e.g. of restricting global warming to 2°C by 2050) and adaptation are speculative at the moment,1 they are likely to be substantial. While there is no necessary link between higher military expenditures and a lower willingness to spend on preventing and preparing for climate change, both policy areas are in competition for scarce resources.

#### Alternative – Reject The Affirmative’s Security Logic – This Allows for *Actual Political Thought* – Accepting Their Descriptions and Responses Colonizes the Debate.

Mark Neocleous, Prof. of Government @ Brunel, 2008 [*Critique of Security*, 185-6]

The only way out of such a dilemma, to escape the fetish, is perhaps to eschew the logic of security altogether - to reject it as so ideologically loaded in favour of the state that any real political thought other than the authoritarian and reactionary should be pressed to give it up. That is clearly something that can not be achieved within the limits of bourgeois thought and thus could never even begin to be imagined by the security intellectual. It is also something that the constant iteration of the refrain 'this is an insecure world' and reiteration of one fear, anxiety and insecurity after another will also make it hard to do. But it is something that the critique of security suggests we may have to consider if we want a political way out of the impasse of security. This impasse exists because security has now become so all-encompassing that it marginalises all else, most notably the constructive conflicts, debates and discussions that animate political life. The constant prioritising of a mythical security as a political end - as the political end constitutes a rejection of politics in any meaningful sense of the term. That is, as a mode of action in which differences can be articulated, in which the conflicts and struggles that arise from such differences can be fought for and negotiated, in which people might come to believe that another world is possible - that they might transform the world and in turn be transformed. Security politics simply removes this; worse, it remoeves it while purportedly addressing it. In so doing it suppresses all issues of power and turns political questions into debates about the most efficient way to achieve 'security', despite the fact that we are never quite told - never could be told - what might count as having achieved it. Security politics is, in this sense, an anti-politics,"' dominating political discourse in much the same manner as the security state tries to dominate human beings, reinforcing security fetishism and the monopolistic character of security on the political imagination. We therefore need to get beyond security politics, not add yet more 'sectors' to it in a way that simply expands the scope of the state and legitimises state intervention in yet more and more areas of our lives. Simon Dalby reports a personal communication with Michael Williams, co-editor of the important text Critical Security Studies, in which the latter asks: if you take away security, what do you put in the hole that's left behind? But I'm inclined to agree with Dalby: maybe there is no hole."' The mistake has been to think that there is a hole and that this hole needs to be filled with a new vision or revision of security in which it is re-mapped or civilised or gendered or humanised or expanded or whatever. All of these ultimately remain within the statist political imaginary, and consequently end up reaffirming the state as the terrain of modern politics, the grounds of security. The real task is not to fill the supposed hole with yet another vision of security, but to fight for an alternative political language which takes us beyond the narrow horizon of bourgeois security and which therefore does not constantly throw us into the arms of the state. That's the point of critical politics: to develop a new political language more adequate to the kind of society we want. Thus while much of what I have said here has been of a negative order, part of the tradition of critical theory is that the negative may be as significant as the positive in setting thought on new paths. For if security really is the supreme concept of bourgeois society and the fundamental thematic of liberalism, then to keep harping on about insecurity and to keep demanding 'more security' (while meekly hoping that this increased security doesn't damage our liberty) is to blind ourselves to the possibility of building real alternatives to the authoritarian tendencies in contemporary politics. To situate ourselves against security politics would allow us to circumvent the debilitating effect achieved through the constant securitising of social and political issues, debilitating in the sense that 'security' helps consolidate the power of the existing forms of social domination and justifies the short-circuiting of even the most democratic forms. It would also allow us to forge another kind of politics centred on a different conception of the good. We need a new way of thinking and talking about social being and politics that moves us beyond security. This would perhaps be emancipatory in the true sense of the word. What this might mean, precisely, must be open to debate. But it certainly requires recognising that security is an illusion that has forgotten it is an illusion; it requires recognising that security is not the same as solidarity; it requires accepting that insecurity is part of the human condition, and thus giving up the search for the certainty of security and instead learning to tolerate the uncertainties, ambiguities and 'insecurities' that come with being human; it requires accepting that 'securitizing' an issue does not mean dealing with it politically, but bracketing it out and handing it to the state; it requires us to be brave enough to return the gift."'

### Stripping

#### Detention change uniquely causes court stripping – In other areas Congress seldom does anything; with detention, even procedural protections have been nullified by court stripping. Backlash to the plan would be massive

Alexander 7 Janet Cooper Alexander, Frederick I. Richman Professor of Law, Stanford Law School. California Law Review Fall, 2007 95 Calif. L. Rev. 1193 ARTICLE: Jurisdiction-Stripping in a Time of Terror

Although the question of congressional power to limit the jurisdiction of the federal courts is a centerpiece of the federal courts canon, there are few decided cases that grapple squarely with the constitutional issues involved in juris-diction-stripping. n1 For the past fifty years or so, jurisdiction-stripping bills have been introduced on a host of politically controversial issues n2 including racial discrimination, free speech and association, the rights of criminal defendants, state legislative apportionment, abortion, school prayer, gay marriage, n3 and environmental preservation. n4 In the end, however, Congress usually backs off; very few such bills have been enacted. n5 And while the Supreme Court has re-peatedly [\*1194] said that "substantial constitutional questions" would be raised if judicial review of constitutional claims were unavailable, n6 the Court has almost always managed to resolve challenges to jurisdiction-stripping statutes on non-constitutional grounds-most recently in June 2006. n7 Both Congress and the Court have avoided confrontation. n8

But now the Executive Branch seems determined to force the constitutional issue. After the Supreme Court rendered decisions requiring procedural safeguards for detainees in the war on terrorism, n9 and with more cases pending that raised additional claims, n10 the Administration elected to press its vision of exclusive and unfettered presidential power and its effort to make Guantanamo Bay a law-free zone where the Constitution does not operate. When the Supreme Court held in Rasul v. Bush that the Guantanamo detainees had a right to file habeas petitions challenging their detention and stated in a footnote that their petitions "unquestionably" described violations of the Constitution, n11 Congress passed the Detainee Treatment Act of 2005 (DTA) n12 withdrawing federal jurisdiction over habeas petitions by Guantanamo detainees. n13 Senators who opposed [\*1195] eliminating habeas jurisdiction noted that Hamdan v. Rumsfeld, a habeas petition challenging the constitutionality of military commission trials of detainees, was then pend-ing before the Supreme Court, n14 and explicitly likened the situation to that of Ex parte McCardle. n15

The Administration's handling of the detainees received another blow when the Court held in Hamdan that the DTA's jurisdiction-stripping provisions were inapplicable to pending cases and invalidated the military commissions because they violated the Uniform Code of Military Justice (UCMJ) and the Geneva Conventions. n16 Rather than complying with the decision, or seeking Congressional authorization of appropriate procedures as the Court strongly hinted, however, the Administration secured the passage of the Military Commissions Act of 2006 (MCA). n17 Although the MCA was presented as a compromise bill it in fact was a virtually complete victory for the President, a congressional endorsement (albeit over strong opposition in the Senate) of his broad claims of presidential power in the war on terrorism.

The statute expands the definition of enemy combatant far beyond the Supreme Court's narrow definition in Hamdi. Whereas Hamdi defined "enemy combatant" as one who was "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who engaged in [\*1196] an armed conflict against the United States there," n18 the MCA expands the definition to include those who have "purposefully and materially supported hostilities" against the United States or its allies. n19

Hamdi did not authorize detention of anyone who did not actually engage in armed conflict against U.S. or allied troops in Afghanistan. The MCA, however, permits the President to treat persons captured far from any battlefield, who have not participated in any violent activity, as enemy combatants. Indeed, the Government's lawyers have taken the position in court that a "little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan but ... really is a front to finance al-Qaeda activities" can be classified as an enemy combatant. n20

The MCA also makes all noncitizens who are declared to be enemy combatants subject to trial by military commission rather than the courts, n21 including even lawful permanent residents located within the United States. The provisions denying habeas review apply to all proceedings "relating to" such military commission prosecutions. n22 Additionally, the MCA authorizes the use of military commission procedures that fall short of the requirements of the Geneva Conventions, contrary to the holding of Hamdan; purports to give the President the power to interpret the meaning and application of the Conventions; n23 attempts to legislatively define the commissions and the MCA's amendments to the War Crimes Act into compliance with the Conventions; n24 declares that the Conventions may not [\*1197] be judicially enforced by any individual, including citizens, n25 despite Hamdan's holding to the contrary; and prohibits the courts from using foreign sources of law in cases interpreting the War Crimes Act. n26 In addition to its express provisions, the MCA strengthens the President's assertion of legal authority in his actions toward the detainees by placing them into the highest category of deference under Youngstown, n27 when the President exercises his Article II powers with the express authorization of Congress exercising its Article I powers.

The MCA attempts to insulate all of these innovations from constitutional scrutiny by eliminating the possibility of judicial review. While the DTA denied habeas only for noncitizens detained at Guantanamo by the Department of Defense, the MCA purports to deny habeas (and "any other action" seeking judicial review) for any alien, regardless of geographical location, who has been "determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination." n28 The MCA thus strips habeas protection from lawful resident aliens detained within the United States as well as detainees at Guantanamo and other locations outside the United States.

#### B. The Ukraine judiciary, including its independence is based off the American court system. Ukraine adjusts its system each year to mirror that of the US

The Supreme Court of Ohio ‘8 (The Supreme court of Ohio and the Ohio judicial system Nov. 14, 2008 [www.sconet.state.oh.us/PIO/news/2008/ukraine\_111408.asp](http://www.sconet.state.oh.us/PIO/news/2008/ukraine_111408.asp))

The Supreme Court of Ohio will welcome six members of the Ukrainian judiciary on Monday as they begin a week-long visit to study the American judicial system. “The Supreme Court of Ohio, the Supreme Court of Ukraine and the Supreme Rada of Ukraine have been partners for 16 years to exchange ideas and further the ideals of democracy in both countries,” said Chief Justice Thomas J. Moyer. “We are honored to host this Ukrainian delegation and again provide a forum on the rule of law and the democratic electoral processes.” Four Ukrainian judges, one court administrator and one facilitator are at the Court for a five-day visit with judges, attorneys, court personnel and university professors. Their visit is marked by several highlights, including discussions with Chief Justice Moyer and a visit to the Montgomery County Courthouse to observe court proceedings. Their visit will begin with the traditional Ukrainian welcoming Bread and Salt Ceremony at 8:30 a.m., Monday, Nov. 17, at the Ohio Judicial Center. The delegation also will participate in a panel discussion about the role of the courts in a maturing democracy at the John Glenn School of Public Affairs at The Ohio State University and numerous sessions focusing on trial procedures and court policies. During the Bread and Salt Ceremony, the visitors will be presented with bread, which represents hospitality, and salt, which symbolizes eternal friendship, in a custom dating to the Middle Ages. While in Dayton, the delegates will meet with Judge Michael T. Hall, Administrative Judge for the Montgomery County Court of Common Pleas, and other judges. In addition to an overview of the Ohio judicial system by the Chief Justice, the group will learn about the differences and similarities between the United States and Ukraine systems of justice from Elena V. Helmer, a visiting assistant professor of law at the Ohio Northern University Pettit College of Law, who has taught in law schools in Russia, Kazakhstan and the United States. Another aspect of their learning will center on the Ohio judicial branch budgeting process. Leaders from all three branches of government will explain their roles in proposing, developing or considering the budget including Steven C. Hollon, Supreme Court administrative director; David Ellis, assistant director of the Ohio Office of Budget and Management; and State Rep. Scott Oelslager. Several other topics round out the delegation’s lesson plan including a comparison of administrative justice in the United States and the Ukraine, Ohio criminal justice, public accountability cases, dispute resolution assistance and overviews of Ohio’s Criminal Sentencing Commission and the Court’s Domestic Violence Program. The visit to the Supreme Court of Ohio is part of a 10-day visit to the United States organized through the congressionally sponsored Open World Program and the Russian American Rule of Law Consortium (RAROLC). Prior to their arrival in Columbus, the Ukrainian delegation is in Washington, D.C., for orientation meetings with federal officials. Ohio is represented at the Washington meetings by Licking County Common Pleas Court Judge Jon R. Spahr. Managed by the Open World Leadership Center, Open World is the only exchange program in the U.S. legislative branch. Participants get an inside look at the U.S. judicial system and develop ties with the U.S. judges who host them. They also gain insight into how the U.S. political system promotes and protects **judicial independence** and the rule of law. The Open World Program is a nonpartisan initiative of the U.S. Congress that builds mutual understanding between the emerging political and civic leaders of participating countries and their U.S. counterparts. The Open World Leadership Center has awarded a grant to the Russian American Rule of Law Consortium of Colchester, Vermont to administer this and similar exchanges in 2008. Chief Justice Moyer worked with judicial leaders of Ukraine to develop an independent judiciary after the fall of the Soviet Union. The Ohio Ukraine Rule of Law Project involved numerous exchange trips by Ohio judges and lawyers to introduce Ukraine to concepts related to the rule of law. The Chief Justice also has worked with the U.S. Department of State in conducting education programs for judges and lawyers in Argentina and Chile.

#### Ukrainian Judicial independence is key to political and economic stability

Ukrainian Rule of law project ‘9 (Ukrainian Rule of Law project in cooperation with the United States Agency for International development and the millennium challenge corporation “An expert conference ''Judicial Reform in Ukraine: Finding Solutions in Line with European Standards” March 23 March 2009 http://www.ukrainerol.org.ua/index.php?option=com\_content&task=view&id=128&Itemid=1&lang=en )

The Council of Europe in the framework of the Joint Programme between the European Union and the Council of Europe Transparency and Efficiency of the Judicial System of Ukraine together with USAID Ukraine Rule of Law Project, in cooperation with the Council of Judges of Ukraine, the Supreme Court of Ukraine, and with participation of the Committees of the Verkhovna Rada of Ukraine and the National Commission on Strengthening Democracy and the Rule of Law supported the expert discussion on judicial reform in Ukraine in line with European and International standards. The objective of the conference was to open an expert dialogue and to start building a consensus among a variety of stakeholders on a number of issues related to the judicial reform in Ukraine. The issues of the structure of the court system, the functioning of judicial institutions, and judicial self-governance, as well as judicial selection, training and discipline of judges were discussed. Representatives of top judicial institutions, courts, judicial self-governmental bodies, Verkhovna Rada, national governmental officials, European and International experts, academicians, media, and the public exchanged views on the challenges faced by the Ukrainian judiciary today. The participants expressed different approaches to judicial reform in Ukraine. However, they all stressed on the importance of implementation of the Council of Europe standards in organisation of judiciary and principles of its functioning while conducting judicial reform. When becoming the Council of Europe member, Ukraine took obligation to ensure real independence of judiciary and judges. In the opinions of the participants the Constitution of Ukraine should be amended in several positions to ensure enforcement of and compatibility of the judicial system with European standards. Vasyl Onopenko, the Chief Justice of the Supreme Court of Ukraine, stated that there are several systemic issues in Ukrainian judiciary, including state authorities’ attitudes toward courts, judiciary not acting as one holistic system, absence of socially oriented laws. Chief Justice also referred to the need to rapidly elaborate a substantiated strategy for the wider reform of the legal system and professions including advanced institutional and procedural solutions. Speaking about the current issues in Ukrainian judicial system Mykola Onishchuk, the Minister of Justice mentioned that Ukraine has been successful in reforming its judicial system from the Soviet type system to the democratic one, based on European standards instance based judicial system. The Minister of Justice especially emphasized that all reforms of legal professions and legal system in general have to be well prepared and financed. He also mentioned that in some cases the changes to the Constitution are necessary to fulfill European standards. The Minister mentioned in his opening speech that following steps should be taken in order to improve judicial system in Ukraine: adoption of the institutional approach to the judiciary, specialization of courts, improvement of the system of selection and accountability of judges and judicial control over pre-trial investigation. **U.S. Ambassador William Taylor pointed out that a** fair, **independent**, transparent, and efficient **judicial system** **is the cornerstone of a democratic society that also promotes investment and economic growth**. It is therefore essential that the structure and organization of judicial institutions be clearly and carefully articulated in the law. Head of Operations Section of the European Commission Delegation to Ukraine, Mr. Schieder stressed that in all European countries the cooperation between different actors in solving issues related to the judiciary is highly appreciated. EU also provides help to a number of countries and helps to build up administrative and professional capacity of judiciary. He emphasized that in cooperation, the EC approach is moving from project based cooperation to the sector-wide approach and for successful cooperation the clear and consolidated vision of Ukrainian authorities and political actors must be elaborated. This vision should be based on common European values and respective standards. As it was stressed in the presentation of David Vaughn, Chief of Party of the Ukrainian Rule of Law Project “Public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society. That is why the UROL Project together with our partners contributes to a consensus on judicial reform in Ukraine”.Stephan Gass, Vice-President of the International Association of Judges, Judge of the Court of Appeal of Basel (Switzerland), emphasized that judicial independence is not the privilege but the tool for achieving and supporting the rule of law and democracy in the widest terms. He also underlined that the Venice Commission in his opinion noted too high complexity of judicial self-government system proposed in the draft laws and proposed to simplify it. Carsten Mahnke, team leader and resident expert of the Council of Europe and European Commission joint project in Moldova stressed that it is important that first the European standards are introduced into the legislation and then implemented in practice. In his summary report Daimar Liiv, resident expert of the Joint Programme between the European Union and the Council of Europe “Transparency and Efficiency of the Judicial System of Ukraine” expressed his satisfaction of high level of discussions. He underlined that clear opinion of experts-participants was formed that there is a real need for high level expert discussion over the next steps in the reform of judiciary and legal professions in Ukraine and that experts clearly supported the idea of introducing relevant European standards into laws. He also mentioned that the need for changes of the Constitution of Ukraine to achieve the reform ultimate goals - better judiciary **and higher level of protection of rights of Ukrainian people**, was expressed by the vast majority of the participants.

#### Ukrainian economic collapse draws in Russia and the west leading to a nuclear world war three

Kingston, Loveridge, Steritt ‘9

(Brian Kingston, Peter Loveridge, Joe Sterritt masters paper @ The Norman Paterson School of International Affairs – CIFP “UKRAINE: A RISK ASSESSMENT REPORT February 2009 www.carleton.ca/cifp/app/serve.php/1214.pdf)

Worst Case Scenario: WWIII Economics: Ukraine suffers catastrophic economic collapse during the global recession; Ukrainians are plunged into deep economic hardship and revolt against the government. Domestic Politics: The 2010 Presidential elections worsen domestic political stability (i.e. the President and PM can still not work together); economic collapse fractures the domestic political situation; the threat of internal violence increases. Russia: Russia seeks to influence the weakened Ukraine, inflaming ethnic-Russian separatism; Crimea declares independence; Ukraine resists, perhaps seeing an external war as a distraction from internal strife; Russia comes to the aid of Crimea/ethnic-Russians resulting in open warfare between Russia and Ukraine. The West: **The West** also suffers from the global recession, but (perhaps following a period of inward looking protectionism) realizes **that it cannot allow Russian success** in Ukraine; open **hostilities** **erupt** **between** **Russian** **and** **NATO** forces **triggering** **World** **War** **III** **and the strong possibility of** **nuclear** **war**, or at least the drawing in of many other countries.

### Case

### Advantage 1

#### The IL rejection in Al-Bihani was only dicta – it had no precendent value. The Circuit rejection of en banc rehearing made this clear. THERE ARE 3 CARDS HERE – JUST READ THE FIRST

Bellinger 11 B. Bellinger III, Partner at Arnold & Porter LLP and an Adjunct Senior Fellow in International and National Security Law at the Council on Foreign Relations, served as the Legal Adviser for the U.S. Department of State from 2005 to 2009. Vijay M. Padmanabhan,Visiting Assistant Professor at the Benjamin N. Cardozo School of Law and was an attorney adviser at the U.S. Department of State from 2003 to 2008. American Journal of International Law April, 2011 105 A.J.I.L. 201 ARTICLE: DETENTION OPERATIONS IN CONTEMPORARY CONFLICTS: FOUR CHALLENGES FOR THE GENEVA CONVENTIONS AND OTHER EXISTING LAW

n90 Al-Bihani v. Obama, 590 F.3d at 871 (describing as "mistaken" the contention that AUMF detention authority must be read in light of international law). Seven judges of the D.C. Circuit subsequently indicated their view that this statement was dictum. Al-Bihani v. Obama, 619 F.3d 1, 1 (2010) (Sentelle, J., concurring in denial of reh'g en banc). The conclusion also appears to be at odds with the Supreme Court decision in *Hamdi*, where the Court looked to international law to interpret the AUMF. *See* Hamdi v. Rumsfeld, 542 U.S. at 518 (plurality opinion) (relying on international law to conclude that AUMF grants authority to the executive to detain members of the Taliban); *see also* Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 HARV. L. REV. 2047, 2092 (2005) (arguing law of war is limiting principle on detention authorized by AUMF).

#### Dicta means no precedent is set

Nolo 13 Nolo's Plain-English Law Dictionary 2013 <http://www.nolo.com/dictionary/dictum-term.html>

Dictum

A remark, statement, or observation of a judge that is not a necessary part of the legal reasoning needed to reach the decision in a case. Although dictum may be cited in a legal argument, it is not binding as legal precedent, meaning that other courts are not required to accept it. Dictum is an abbreviation of the Latin phrase "obiter dictum," which means a remark by the way, or an aside.

#### IL (international law) limits detention ONLY IF it has been incorporated in statutes or treaties. The Al-Bihani court was correct since it has not been incorporated.

Benson 11 J. Taylor Benson, Creighton Law Review June, 2011 44 Creighton L. Rev. 1277 SYMPOSIUM ON MORAL AND ETHICAL PERSPECTIVES IN WAR, TERRORISM, AND MILITARY LAW: NOTE: INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN AL-BIHANI V. OBAMA CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS lexis

In the case of Al-Bihani v. Obama n214 (Al-Bihani I), the United States Court of Appeals for the District of Columbia declared that those international laws-of-war that have not been domestically incorporated into United States law do not limit the President's authority to detain Ghaleb Nassar Al-Bihani ("Al-Bihani"), an enemy combatant captured in Afghanistan and held at Guantanamo Bay. n215 The case began when Al-Bihani petitioned for a writ of habeas corpus after United States coalition forces captured and detained him. n216 The United States District Court for the District of Columbia denied the petition. n217

On appeal, the United States Court of Appeals for the District of Columbia affirmed the decision of the district court. n218 In affirming the district court decision, the District of Columbia Circuit addressed the issue of whether the international laws-of-war limited the President's authority to detain Al-Bihani. n219 The District of Columbia Circuit decided by a unanimous vote that the Authorization for Use of Military Force n220 ("AUMF") authorized Al-Bihani's deten-tion, and [\*1298] that those international laws-of-war that have not been implemented domestically by treaty or statute had no binding authority to limit that power. n221

This Analysis will argue that the District of Columbia Circuit correctly concluded that the international laws-of-war as a whole have not been implemented into United States law and therefore cannot limit the President's authority to detain Al-Bihani. n222 This Analysis will begin by explaining that early precedent established by the Supreme Court of the United States stating that international law is automatically part of United States law is distinguishable from Al-Bihani I. n223 This Analysis will then explain how the District of Columbia Circuit failed to clarify the confusion left by the Supreme Court's decision in Erie Railroad Co. v. Tompkins n224 regarding international common law norms as a source of authority for United States courts. n225 This Analysis will then explain that the District of Columbia Circuit correctly adhered to decisions of the Supreme Court of the United States rendered after September 11, 2001 ("September 11th"), which indicated that the international laws-of-war lack authority in federal courts to limit the President's wartime powers. n226 Consequently, this Analysis will demonstrate that Al-Bihani has been lawfully detained under the AUMF and that the international laws-of-war cited in his defense are of no authority in federal courts. n227

#### Laws of war are NON-self executing – the treaties apply only if incorporated in statutes. The plan would violate this Supreme court doctrine.

Dore 11 Philip Dore, J.D./D.C.L., 2012, Paul M. Hebert Law Center, Louisiana State University. Louisiana Law Review Fall, 2011 Louisiana Law Review 72 La. L. Rev. 255 COMMENT: Greenlighting American Citizens: Proceed with Caution

A. Are International Law Norms Automatically a Part of U.S. Domestic Law?

This section discusses the domestic status of treaties in the United States. The contemporary approach presumes that treaties are not self-executing absent evidence to the contrary. n83 The Supreme Court adopted this position in Medellin v. Texas and, in so, doing provided an authoritative framework for interpreting the effect of treaties in domestic law. n84 Under the treaty interpretation principles established in Medellin, the laws of war that the Obama Administration must invoke to justify violating the foreign-murder statute lack binding domestic force. n85

1. Pre-Medellin Treaty Status in U.S. Domestic Law

The U.S. Constitution mentions "treaties" several times. One important reference is found in Article II, Section 2, which gives the President the power to negotiate treaties by and with the advice and consent of the Senate. n86 Perhaps the most significant reference is found in Article VI, Section 2 (the Supremacy Clause), which states that "[a]ll Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." n87 The text of the Constitution thus suggests that all treaties negotiated by the President and ratified by the Senate are domestic law.

U.S. courts, however, have drawn a distinction between treaties that are self-executing and those that are non-self-executing. n88 The [\*268] precise nature of this distinction, and indeed its very existence, has been a subject of intense debate. n89 Because this distinction is entrenched in U.S. law, any consideration of the domestic status of a treaty must address this issue.

The Supreme Court has defined self-executing treaties as "treaties that automatically have effect as domestic law" and non-self-executing treaties as treaties that "do not by themselves function as binding federal law." n90 The origin of the self-execution doctrine is often traced to Chief Justice Marshall's opinion in Foster v. Neilson, an 1829 Supreme Court case involving land rights under a treaty between Spain and the United States. n91 Courts frequently cite the fol-lowing language in Foster: "[The U.S. Constitution] declares a treaty to be the law of the land. [A treaty] is, conse-quently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself with-out the aid of any legislative provision." n92 As one commentator notes, "The Foster holding is easier to describe than to apply." n93 In particular, scholars and courts differ as to whether Foster merits a broad or narrow interpretation. A narrow interpretation of Foster supports a presumption in favor of treaties as self-executing: n94 A treaty should only be declared non-self-executing when there is affirmative evidence that the treaty was not intended to have domestic effect. n95

#### The court rejected the IL issues because the laws of war have not been incorporated into US domestic law – it has not been implemented by Congress

Benson 11 J. Taylor Benson, Creighton Law Review June, 2011 44 Creighton L. Rev. 1277 SYMPOSIUM ON MORAL AND ETHICAL PERSPECTIVES IN WAR, TERRORISM, AND MILITARY LAW: NOTE: INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN AL-BIHANI V. OBAMA CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS lexis

Before examining each argument in detail, the District of Columbia Circuit noted that each relied on the premise that the international laws-of-war may limit the wartime powers granted to the President by the AUMF and other related statutes. n61 The District of Columbia Circuit declared that this premise was mistaken because Congress had not domestically implemented the international laws-of-war as a whole. n62 Consequently, United States courts could not use [\*1283] unincorporated principles of international law as a source of authority. n63 Dismissing the influence of international law, the court explained that the sources of authority for deciding Al-Bihani's case were controlling domestic case law and the text of relevant domestic statutes. n64 The circuit court relied on those sources in determining that Al-Bihani's detainment was lawful. n65

#### IL is used only for interpretation of statutes, not for substantive application like Al-Bihani wanted

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Addressing what she believed to be a countervailing motivation behind the en banc panel's short concurrence, Judge Brown refuted the scholarly intuition that domestic statutes are not supported by their own authority, but must rely on international common law norms. n80 Judge Brown reasoned that the idea that courts should incorporate international legal norms into domestic statutes, without a clear statement to the contrary, was alien to United States case law. n81 Conversely, Judge Brown stated that nothing in the Constitution compelled Congress to clearly enunciate the inapplicability of international common law principles. n82 Citing Murray v. Schooner Charming Betsy n83 ("Charming Betsy"), Judge Brown admitted that the only role international law played in statutory interpretation was that of construing ambiguous statutes so they do not contradict international law. n84 Stating that the AUMF was not ambiguous, Judge Brown concluded that Charming Betsy did not apply. n85

[\*1285] Circuit Judge Brett M. Kavanaugh also wrote a concurring statement in the denial of rehearing en banc, wherein he stated that the norms of international law, unless incorporated into United States domestic law, are not judicially enforceable restrictions on the President's detention authority under the AUMF. n86 Judge Kavanaugh explained that international common law principles may be incorporated into domestic United States law via the enactment of a statute, an executive order, or a self-executing treaty, whereas principles that are part of non-self-executing treaties or international common law are not so incorporated. n87

Regarding international common law norms, Judge Kavanaugh cited the Supreme Court of the United States' decision in Erie Railroad Co. v. Tompkins, n88 which ruled against the existence of a federal common law. n89 Judge Kavanaugh reasoned that international law principles are not enforceable in federal courts absent a political act incorporating said principles into domestic United States law. n90 Applying this reasoning, Judge Kavanaugh determined that none of the international common laws-of-war relied upon by Al-Bihani had been incorporated into domestic law and thus could not limit the President's detention power under the AUMF. n91

Judge Kavanaugh then addressed the Supreme Court of the United States' plurality decision in Hamdi v. Rumsfeld, n92 which stated that its understanding of Congress's grant of detention authority was based on long standing law-of-war principles. n93 Regarding Hamdi, Judge Kavanaugh conceded that international law may inform judicial interpretation of the AUMF, in that Congress must have intended to authorize at least what is permitted by the international laws-of-war. n94 Judge Kavanaugh maintained, however, that the President may follow international law principles and act according to international law, so long as the Constitution and federal statutes permit such activity. n95

Circuit Judge Stephen F. Williams also issued a concurring statement, in which he agreed with most of Judge Kavanaugh's analysis of [\*1286] the role of international law, taking exception to some points. n96 Judge Williams opined that international law principles should be allowed to shape a court's statutory interpretation. n97 In reaching this conclusion, Judge Williams held up international law principles on equal footing with dictionaries, legislative history, and usage in other laws, as an interpretive tool for the courts. n98 Judge Williams further reasoned that the role of international law as a controlling interpretive tool is consistent with the holdings in Erie and Hamdi. n99 Relying on the Obama administration's interpretation of the AUMF as authorizing the President's wartime powers, Judge Williams agreed that international law does clarify the outer bounds of the President's detention authority. n100

#### The claim of violating precedent is wrong

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This Note will first review the facts and holding of Al-Bihani I, the reasoning employed by the three panel judges in reaching their unanimous decision, and the rationale for denying the rehearing en banc. n13 Second, this Note will summarize relevant Supreme Court precedent pertaining to the relationship between international common law and United States domestic-law during (1) the early years of United States; (2) the modern era; and (3) the post-September 11th era. n14 Third, this Note will demonstrate that the District of Columbia Circuit correctly determined that international laws-of-war do not limit the President's wartime authority granted by the AUMF. n15 Specifically, this Note will establish that early Supreme Court decisions which considered international law to be part of United States law are distinguishable from Al-Bihani I. n16 Then, this Note will demonstrate that the Court's decision in Erie Railroad Co. v. Tompkins n17 changed **[\*1279]** the interpretation of early Supreme Court decisions in precluding international common law from automatically becoming incorporated into United States law. n18 Finally, this Note will explain how post-September 11th case law further rejected the idea that international laws-of-war can be a source of authority in federal courts to limit the President's wartime powers, absent incorporation into domestic law by statute or treaty. n19 Therefore, this Note will conclude that the District of Columbia Circuit correctly held that international laws-of-war as a whole are not a source of authority for United States courts unless they have been incorporated into United States domestic law by statute or self-executing treaty. n20

#### CONTINUE ON ADVANTAGE 1 ONLY IF TIME; OTHERWISE THIS STUFF CAN BE USED TO EXTEND THE ANBOVE, VIOLATE PRECEDENT WRONG

#### The aff support for application of international law is based on really old cases

Benson 11 J. Taylor Benson, Creighton Law Review June, 2011 44 Creighton L. Rev. 1277 SYMPOSIUM ON MORAL AND ETHICAL PERSPECTIVES IN WAR, TERRORISM, AND MILITARY LAW: NOTE: INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN **AL-BIHANI V. OBAMA** CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS lexis

In The Paquete Habana, n101 the Supreme Court of the United States declared that international law is part of United States law, and that courts of justice must establish and administer such law whenever questions of right that rely upon international law come before them. n102 In Paquete, a United States steamship stopped and seized two fishing boats, The Paquete Habana and the Lola, outside of Havana, Cuba during the Spanish-American War. n103 The United States brought the two vessels to Key West, Florida, whereupon the District Court for the Southern District of Florida, sitting in admiralty, entered a decree of condemnation and sale for each vessel and its cargo, deeming them prizes of war. n104 The owner of each vessel [\*1287] appealed, citing the international custom of exempting fishing vessels from being captured as prizes of war. n105 The Supreme Court reversed the finding of the district court, noting that where no judicial decision, treaty, or controlling legislative or executive act existed, courts must look to the usages and customs of civi-lized nations. n106 Without an applicable statutory declaration, the Court, acting as the highest prize court in the United States, relied on the law of nations in declaring the seizure of the vessels unlawful. n107

The Supreme Court issued other statements similar to that in Paquete prior to 1900. n108 In Talbot v. Janson, n109 the Court, sitting in admiralty, deemed the capture of a Dutch vessel by American ships to be a violation of United States law, which included international common law. n110 In another admiralty case, The Nereide, n111 Chief Justice John Mar-shall held that the law of nations is part of the law of the United States, and is binding on the Court until Congress changes the existing law. n112 In Thirty Hogsheads of Sugar v. Boyle, n113 the Court deemed the condemnation of a British ship's cargo by an American ship unlawful, noting that the Court derived its rules regarding belligerent and neutral rights from the law of nations. n114 The preceding statements by the Supreme Court have been relied upon by Al-Bihani and amici, as well as other scholars, in arguing that international law is binding upon United States courts. n115

#### Charming Betsy was about using IL for interpretation, not substantive limits

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3. The Charming Betsy Canon: The Supreme Court of the United States Commanded that Statutes Should be Interpreted Where Possible so as to Not Violate International Common Law Norms

In Murray v. Schooner Charming Betsy n122 ("Charming Betsy"), the Supreme Court of the United States declared that an act of Congress should never be construed in violation of the law of nations where any other possible construction exists. n123 In Charming Betsy, a French privateer captured the cargo schooner Charming Betsy on its trade route to the French island of Guadaloupe. n124 The United States later charged the Charming Betsy's owner, Jared Shattuck ("Shat-tuck"), [\*1289] with violating the Non-Intercourse Act of 1800 n125 for trading with a French colony. n126 The Non-Intercourse Act prohibited any person either residing within the United States or enjoying its protection, from en-gaging in commercial intercourse with France, or any dependent thereof. n127 Shattuck, a native of the United States but holding Danish citizenship, did not fit specifically under the Act. n128

Reasoning that Shattuck enjoyed no protection under United States law, the Court determined that applying the Act to Shattuck would violate principles of neutral commerce under customary international law. n129 In order to avoid a possible conflict between the statute and neutral common law, the Court interpreted the statute in favor of Shattuck. n130

#### Sosa decision rejected that IL is independently enforceable in US courts

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2. Sosa v. Alvarez-Machain: The Supreme Court of the United States Clarified the Confusion Surrounding Erie Regarding the Role of International Common Law in Federal Court Decisions

In Sosa v. Alvarez-Machain, n153 the Supreme Court of the United States rejected the notion that all international common law norms are independently enforceable in federal court. n154 In Sosa, the United States Drug Enforcement Agency ("DEA") authorized the abduction of Humberto Alvarez-Machain ("Alvarez-Machain") in Mexico by defend-ant-petitioner Jose Francisco Sosa ("Sosa") and other Mexican nationals. n155 The DEA wanted Alvarez-Machain to stand trial in the United States for his alleged complicity in the torture and death of a DEA agent. n156

After his acquittal, Alvarez-Machain filed a civil suit against the United States government under the Federal Tort Claims Act n157 ("FTCA"), claiming false arrest, and against Sosa under the Alien Tort Statute n158 ("ATS"), for violating the law of nations. n159 The United States District Court for the Central District of California granted the government's motion to dismiss on the FTCA claim, but granted summary judgment for the plaintiff and $ 25,000 in damages on the ATS claim. n160 The United States Court of Appeals for the Ninth Circuit affirmed the district court's ruling on the ATS claim, but reversed the district court's dismissal of the FTCA claim. n161

The Supreme Court of the United States reversed both of the Ninth Circuit's conclusions. n162 The Court specifically explained that the ATS, passed in 1789, provided that the federal district courts shall have cognizance, concurrent with the several state courts or circuit courts, of all cases where an alien's tort claim is based solely upon violation of the law of nations or a treaty of the United States. n163 The Court rejected the idea that the ATS authorized the creation of a new [\*1293] cause of action for torts that violate international law, and opined that the statute merely addressed the power of the courts to consider cases pertaining to a certain subject. n164

The Court identified five reasons why courts should use caution when basing decisions on international common law. n165 First, the Court noted that the prevailing view of the common law had changed since 1789. n166 The common law was no longer a transcendental body of law separate from the state but binding within it until and unless changed by statute. n167 The Court reasoned that the more modern understanding was that the law is not found or discovered, but is made or created. n168

Second, the Court explained that an equally important rethinking of the role of federal courts in creating common law had emerged. n169 The Court acknowledged that its pronouncement of the death of general federal common law in Erie left room for the argument that federal courts may fashion federal common law rules in interstitial areas of particular interest. n170 However, the Court reverted to the general practice of looking for legislative guidance before exercising pioneering authority over substantive law. n171

Third, the Court had previously and repeatedly said that the creation of private rights of action is better left to legislative determination in the vast majority of cases. n172 Judicial restraint is necessary because the absence of congres-sional declaration addressing private rights of action under an international law norm is more vague than a failure to address such a right already dictated by statute. n173

Fourth, the Court reasoned that making international rules privately actionable would produce collateral consequences. n174 The Court warned of possible impingement upon the political branches in [\*1294] their management of foreign affairs. n175 The Court likewise expressed concern over potential implications for United States foreign relations. n176

The fifth and final reason offered by the Court was the lack of a congressional command to search out and define new violations of the law of nations. n177 In fact, the Court noted that the Senate expressly denied federal courts the power of interpreting and applying international human rights law, illustrated by its ratification of the International Covenant on Civil and Political Rights, n178 which declared that the substantive provisions of that document were not self-executing. n179

#### Erie Railroad rejected IL as independently enforceable

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The Supreme Court of the United States' decision in Erie Railroad Co. v. Tompkins n254 further demonstrated that the international laws-of-war, unless incorporated into domestic law by Congress, are not binding authority for United States courts. n255 In Erie, the Court declared that there is no general common law enforceable by federal courts. n256 The Court stated that law, as the courts currently speak of it, does not exist unless backed by some definite authority. n257 In Erie, the Court stated that federal courts shall not implement a law that lacks a domestic source. n258 Erie, then, demands that federal courts identify the sovereign source for each rule of decision. n259 Accordingly, early Supreme Court cases n260 stating that international law is part of United States law are no longer controlling after Erie, unless the international law at issue has been incorporated into domestic law by a definite sovereign authority. n261

In spite of the holding in Erie, one scholarly theory maintains that federal courts may still incorporate international common law principles [\*1302] into federal common law. n262 Al-Bihani adhered to this theory by basing his argu-ment on violations of international law-of-war principles. n263 The court in Al-Bihani I determined, uncontested by Al-Bihani, that those principles had not been incorporated into United States domestic-law by the AUMF or any other statute or treaty. n264 Therefore, in order for the court to find the international laws-of-war applicable and binding, it could adopt them as federal common law. n265 However, that theory is difficult to square with the ruling in Erie without further clarification by the Supreme Court of the United States. n266

Al-Bihani I follows a conflicting scholarly opinion that the incorporation of international common law as federal common law offends the constitutional rules of separation of powers and federalism, because such incorporation would allow courts to recognize federal norms that are not derived from any of the congressional procedures specified by the Constitution. n267 Based on the preceding analysis and without further clarification from the Supreme Court, it seems the [\*1303] District of Columbia Circuit merely took a strong stand amidst the confusion and uncertainty Erie left in its wake. n268

#### Hamdi referenced IL for statutory interpretation, not substantive limits

Bellinger 11 B. Bellinger III, Partner at Arnold & Porter LLP and an Adjunct Senior Fellow in International and National Security Law at the Council on Foreign Relations, served as the Legal Adviser for the U.S. Department of State from 2005 to 2009. Vijay M. Padmanabhan,Visiting Assistant Professor at the Benjamin N. Cardozo School of Law and was an attorney adviser at the U.S. Department of State from 2003 to 2008. American Journal of International Law April, 2011 105 A.J.I.L. 201 ARTICLE: DETENTION OPERATIONS IN CONTEMPORARY CONFLICTS: FOUR CHALLENGES FOR THE GENEVA CONVENTIONS AND OTHER EXISTING LAW

n90 Al-Bihani v. Obama, 590 F.3d at 871 (describing as "mistaken" the contention that AUMF detention authority must be read in light of international law). Seven judges of the D.C. Circuit subsequently indicated their view that this statement was dictum. Al-Bihani v. Obama, 619 F.3d 1, 1 (2010) (Sentelle, J., concurring in denial of reh'g en banc). The conclusion also appears to be at odds with the Supreme Court decision in Hamdi, where the Court looked to international law to interpret the AUMF. *See* Hamdi v. Rumsfeld, 542 U.S. at 518 (plurality opinion) (relying on international law to conclude that AUMF grants authority to the executive to detain members of the Taliban); *see also* Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 HARV. L. REV. 2047, 2092 (2005) (arguing law of war is limiting principle on detention authorized by AUMF).

#### Al-Bihani is distinguishable from the claimed precedents

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A. Early Supreme Court Precedent Establishing International Law as Part of United States Law is Distinguishable From the Holding in Al-Bihani I

Early statements by the Supreme Court of the United States indicating that international common law is part of United States domestic-law are distinguishable from the United States Court of Appeals for the District of Columbia decision in Al-Bihani v. Obama n228 (Al-Bihani I), which concluded that the international laws-of-war have not been implemented domestically and are therefore not binding on United States courts. n229

[\*1299] In 1900, the Supreme Court of the United States in The Paquete Habana n230 stated that customary international law was "part of our law." n231 Al-Bihani I is similar to Paquete in that both rulings affected entities that were captured outside the borders of the United States. n232 However, later courts strictly limited the precedential value of the holding in Paquete to admiralty cases. n233 Al-Bihani I, in contrast, related to the detention of a suspected war criminal. n234 Therefore, because Paquete's holding was limited to admiralty, the Paquete Court's use of customary international law has no binding effect on the present case. n235 The issue of whether the Court had authority to rely on international law in a cause of action based exclusively on the laws of the United States was not posed in Paquete. n236 Accordingly, Paquete should not be seen as addressing the role of customary international law in United States legal causes of action. n237

Under a similar analysis, other Supreme Court statements n238 from the early era regarding the relationship between international law and domestic United States law are likewise distinguishable from [\*1300] Al-Bihani I. n239 For ex-ample, in Talbot v. Janson, n240 the Court indicated that the law of nations is part of United States common law. n241 Furthermore, in The Nereide, n242 the Court declared that the law of nations was part of United States law, and was thereby binding upon the Supreme Court. n243 Again, as in Paquete, the Court in both Talbot and The Nereide was sitting in admiralty. n244 Conversely, the court in Al-Bihani I was not sitting in admiralty, but was hearing a habeas corpus appeal regarding the detention of an enemy combatant. n245 Therefore, like Paquete, Talbot and The Nereide should not be seen as addressing the role of international common law in causes of action based purely upon the laws of the United States. n246

Finally, in Thirty Hogsheads of Sugar v. Boyle, n247 the Court cited the law of nations as the source from which it derived its rules regarding belligerent and neutral rights. n248 The Court in Boyle sat in admiralty as it determined appli-cable prize law. n249 Furthermore, the Court acknowledged that international common law was rendered stable by the judicial decisions of other countries, and would be received by United States courts not as authority, but as a matter of comity. n250 The court in Al-Bihani I adhered to the view expressed in Boyle that the international laws-of-war are more of a resource than an authority in federal courts. n251 However, because Boyle was an admiralty case, it is distinguishable from Al-Bihani I. n252

[\*1301] A comparison of these early cases reveals that the District of Columbia Circuit correctly determined that the international laws-of-war that have not been implemented domestically are not an authoritative source for United States courts. n253

#### I-law’s a joke.

Hiken 12 [Marti Hiken, former Associate Director of the Institute for Public Accuracy and former chair of the National Lawyers Guild Military Law Task Force, is the director of Progressive Avenues. Luke Hiken is an attorney who has engaged in the practice of criminal, military, immigration, and appellate law. The Impotence of International Law July 17, 2012 Cross-posted from Progressive Avenues. http://www.fpif.org/blog/the\_impotence\_of\_international\_law?utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+FPIF+%28Foreign+Policy+In+Focus+%28All+News%29%29&utm\_content=Google+Reader]

Whenever a lawyer or historian describes how a particular action “violates international law” many people stop listening or reading further. It is a bit alienating to hear the words “this action constitutes a violation of international law” time and time again – and especially at the end of a debate when a speaker has no other arguments available. The statement is inevitably followed by: “…and it is a war crime and it denies people their human rights.” **A plethora of international law violations are perpetrated by every major power in the world each day**, and thus, the empty invocation of international law does nothing but reinforce our own sense of impotence and helplessness in the face of international lawlessness. The United States, alone, and on a daily basis violates **every principle of international law ever envisioned**: unprovoked wars of aggression; unmanned drone attacks; tortures and renditions; assassinations of our alleged “enemies”; sales of nuclear weapons; destabilization of unfriendly governments; creating the largest prison population in the world – the list is virtually endless. Obviously one would wish that there existed a body of international law that could put an end to these abuses, but such laws exist in theory, not in practice. Each time a legal scholar points out the particular treaties being ignored by the superpowers (and everyone else) the only appropriate response is “so what!” or “they always say that.” If there is no enforcement mechanism to prevent the violations, and no military force with the power to intervene on behalf of those victimized by the violations, what possible good does it do to invoke principles of “truth and justice” that border on fantasy?

### Advantage 2:

#### Implementation in law takes out their treaty link. A climate treaty could not be self-executing. It would have to be written into US law. To implement a climate treaty the US would have to write regulations for emissions, etc. The Al-Bihani decision, was based on international law that has not been written into US law. (previous card and next card also say this)

Benson 11 J. Taylor Benson, Creighton Law Review June, 2011 44 Creighton L. Rev. 1277 SYMPOSIUM ON MORAL AND ETHICAL PERSPECTIVES IN WAR, TERRORISM, AND MILITARY LAW: NOTE: INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN **AL-BIHANI V. OBAMA** CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS lexis

In Al-Bihani v. Obama n314 ("Al-Bihani I"), Ghaleb Nassar Al-Bihani ("Al-Bihani"), who fought with the Taliban in Afghanistan, petitioned the United States District Court for the District of Columbia for a writ of habeas corpus after United States military authorities detained him. n315 Although Al-Bihani claimed that he merely served as a cook for the 55th Arab Brigade, the district court denied Al-Bihani's habeas petition after concluding that he had been lawfully de-tained as an enemy combatant. n316

On appeal, the United States Court of Appeals for the District of Columbia rejected Al-Bihani's claim that the basis for his detention violated international laws which had been incorporated into the Authorization for Use of Military Force n317 ("AUMF"), thus limiting the President's authority to detain him. n318 The District of Columbia Circuit declared that Al-Bihani's arguments were mistaken because the international laws-of-war held no authority in United States courts because they had not been incorporated into domestic law by the political branches. n319 The District of Columbia Circuit panel relied on controlling domestic case law and statutes to determine that Al-Bihani's detainment by the United States was lawful. n320 Al-Bihani's petition for rehearing en banc was unanimously denied by the circuit court. n321

#### Montreoal protocols already have supporting implementing legislation.

EPA 07 (The 20th Anniversary of the Montreal Protocol on Substances that Deplete the Ozone Layer. http://www.epa.gov/ozone/downloads/MP20\_QandA.pdf)

3) What has EPA done about ozone layer depletion? ¶ As part of the United States’ commitment to implementing the Montreal Protocol, the U.S. Congress ¶ amended the Clean Air Act (CAA) in 1990 and 1998, adding provisions under Title VI for the ¶ protection of the ozone layer. Most importantly, the Act required the gradual end to the production ¶ of ozone-depleting chemicals. Under the CAA, EPA has created several regulatory programs to ¶ address numerous issues, including: ¶ • Ending the production of ODS; ¶ • Ensuring that refrigerants and fire extinguishing agents are recycled properly; ¶ • Identifying safe and effective alternatives through the Significant New Alternatives Policy ¶ (SNAP) program; ¶ • Banning the release of ozone-depleting refrigerants during the service, maintenance, and ¶ disposal of air conditioners and other refrigeration equipment; ¶ • Requiring that manufacturers label the products either containing or made with the most ¶ harmful ODS; and ¶ • Creating exemptions to the phase-out in sectors where the transition to alternatives is ¶ ongoing.

#### Worst climate impacts take decades to arrive and don’t assume adaptation

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from numerous warnings from scientists and others that give the impression that human- induced climate change is an immediate threat to society (IPCC 2007a, 2007c; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007a), crop production might fall in the low latitudes (IPCC 2007a), water supplies might dwindle (IPCC 2007a), precipitation might fall in arid regions (IPCC 2007a), extreme events will grow exponentially (Stern 2006), and between 20 and 30 percent of species will risk extinction (IPCC 2007a). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets, causing severe sea-level rise, which would inundate hundreds of millions of people (Dasgupta and others 2009). Proponents argue that there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well-being may be at risk (Stern 2006). These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic conse- quences. The science and economics of climate change are quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two, accord- ing to Stern 2006) of no mitigation. Many of the predicted impacts assume that there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold, and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long-range climate risks. What is needed are long-run balanced responses.

#### Technological adaptation is coming now and solves

Moore ’08 Senior Fellow at the Hoover Institution at Stanford University, Stanford, (Thomas Gale 7/9/12 “Global warming; the good, the bad and the ugly and the efficient” EMBO reports http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3317379/?tool=pmcentrez)KG

Even if the pessimists are correct and future climate change reduces food production, wicked storms lash much of the planet, summers are plagued by terrible heat waves, and floods and droughts inundate large areas of the world and reduce the availability of clean water, human beings will be better able to handle such terrible conditions than they are now because technology will advance and people will become richer over the next century. Evidence of an increasing rate of technological advancement comes from patents; the number of patents issued for inventions has continued to rise at an increasing rate since 1790 ([Fig 2](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3317379/figure/f2/)). Although patented inventions are only a crude measure of technological growth, they do indicate that technology will continue to change the world in which we live. Consider the world 200 years ago when the fastest means of communication was by horseback, or just 100 years ago when telephones were only slowly spreading and radio, much less TV or the internet, were almost undreamed of. Thus progress will allow our descendants to deal with almost any difficulties that climate change brings.

#### We're past the tipping point – scientific consensus

Solomon et al 10

Susan Solomon et. Al, Chemical Sciences Division, Earth System Research Laboratory, National Oceanic and Atmospheric Administration, Ph.D. in Climotology University of California, Berkeley, Nobel Peace Prize Winner, Chairman of the IPCC, Gian-Kasper Plattner, Deputy Head, Director of Science, Technical Support Unit Working Group I, Intergovernmental Panel on Climate Change Affiliated Scientist, Climate and Environmental Physics, Physics Institute, University of Bern, Switzerland, John S. Daniel, research scientist at the National Oceanic and Atmospheric Administration (NOAA), Ph.D. in physics from the University of Michigan, Ann Arbor, Todd J. Sanford, Cooperative Institute for Research in Environmental Science, University of Colorado Daniel M. Murphy, Chemical Sciences Division, Earth System Research Laboratory, National Oceanic and Atmospheric Administration, Boulder Gian-Kasper Plattner, Deputy Head, Director of Science, Technical Support Unit Working Group I, Intergovernmental Panel on Climate Change, Affiliated Scientist, Climate and Environmental Physics, Physics Institute, University of Bern, Switzerland Reto Knutti, Institute for Atmospheric and Climate Science, Eidgenössiche Technische Hochschule Zurich and Pierre Friedlingstein, Chair, Mathematical Modelling of Climate Systems, member of the Science Steering Committee of the Analysis Integration and Modeling of the Earth System (AIMES) programme of IGBP and of the Global Carbon Project (GCP) of the Earth System Science Partnership (ESSP), 8/31/2010, “Persistence of climate changes due to a range of greenhouse gases,” PNAS vol. 107, no. 43, http://www.pnas.org/content/107/43/18354.full.pdf+html //vkoneru

Carbon dioxide, methane, nitrous oxide, and other greenhouse gases increased over the course of the 20th century due to human activities. The human-caused increases in these gases are the primary forcing that accounts for much of the global warming of the past fifty years, with carbon dioxide being the most important single radiative forcing agent (1). Recent studies have shown that the human-caused warming linked to carbon dioxide is nearly irreversible for more than 1,000 y, even if emissions of the gas were to cease entirely (2–5). The importance of the ocean in taking up heat and slowing the response of the climate system to radiative forcing changes has been noted in many studies (e.g., refs. 6 and 7). The key role of the ocean’s thermal lag has also been highlighted by recent approaches to proposed metrics for comparing the warming of different greenhouse gases (8, 9). Among the observations attesting to the importance of these effects are those showing that climate changes caused by transient volcanic aerosol loading persist for more than 5 y (7, 10), and a portion can be expected to last more than a century in the ocean (11–13); clearly these signals persist far longer than the radiative forcing decay timescale of about 12–18 mo for the volcanic aerosol (14, 15). Thus the observed climate response to volcanic events suggests that some persistence of climate change should be expected even for quite short-lived radiative forcing perturbations. It follows that the climate changes induced by short-lived anthropogenic greenhouse gases such as methane or hydrofluorocarbons (HFCs) may not decrease in concert with decreases in concentration if the anthropogenic emissions of those gases were to be eliminated. In this paper, our primary goal is to show how different processes and timescales contribute to determining how long the climate changes due to various greenhouse gases could be expected to remain if anthropogenic emissions were to cease. Advances in modeling have led to improved AtmosphereOcean General Circulation Models (AOGCMs) as well as to Earth Models of Intermediate Complexity (EMICs). Although a detailed representation of the climate system changes on regional scales can only be provided by AOGCMs, the simpler EMICs have been shown to be useful, particularly to examine phenomena on a global average basis. In this work, we use the Bern 2.5CC EMIC (see Materials and Methods and SI Text), which has been extensively intercompared to other EMICs and to complex AOGCMs (3, 4). It should be noted that, although the Bern 2.5CC EMIC includes a representation of the surface and deep ocean, it does not include processes such as ice sheet losses or changes in the Earth’s albedo linked to evolution of vegetation. However, it is noteworthy that this EMIC, although parameterized and simplified, includes 14 levels in the ocean; further, its global ocean heat uptake and climate sensitivity are near the mean of available complex models, and its computed timescales for uptake of tracers into the ocean have been shown to compare well to observations (16). A recent study (17) explored the response of one AOGCM to a sudden stop of all forcing, and the Bern 2.5CC EMIC shows broad similarities in computed warming to that study (see Fig. S1), although there are also differences in detail. The climate sensitivity (which characterizes the long-term absolute warming response to a doubling of atmospheric carbon dioxide concentrations) is 3 °C for the model used here. Our results should be considered illustrative and exploratory rather than fully quantitative given the limitations of the EMIC and the uncertainties in climate sensitivity. Results One Illustrative Scenario to 2050. In the absence of mitigation policy, concentrations of the three major greenhouse gases, carbon dioxide, methane, and nitrous oxide can be expected to increase in this century. If emissions were to cease, anthropogenic CO2 would be removed from the atmosphere by a series of processes operating at different timescales (18). Over timescales of decades, both the land and upper ocean are important sinks. Over centuries to millennia, deep oceanic processes become dominant and are controlled by relatively well-understood physics and chemistry that provide broad consistency across models (see, for example, Fig. S2 showing how the removal of a pulse of carbon compares across a range of models). About 20% of the emitted anthropogenic carbon remains in the atmosphere for many thousands of years (with a range across models including the Bern 2.5CC model being about 19 4% at year 1000 after a pulse emission; see ref. 19), until much slower weathering processes affect the carbonate balance in the ocean (e.g., ref. 18). Models with stronger carbon/climate feedbacks than the one considered here could display larger and more persistent warmings due to both CO2 and non-CO2 greenhouse gases, through reduced land and ocean uptake of carbon in a warmer world. Here our focus is not on the strength of carbon/climate feedbacks that can lead to differences in the carbon concentration decay, but rather on the factors that control the climate response to a given decay. The removal processes of other anthropogenic gases including methane and nitrous oxide are much more simply described by exponential decay constants of about 10 and 114 y, respectively (1), due mainly to known chemical reactions in the atmosphere. In this illustrative study, we do not include the feedback of changes in methane upon its own lifetime (20). We also do not account for potential interactions between CO2 and other gases, such as the production of carbon dioxide from methane oxidation (21), or changes to the carbon cycle through, e.g., methane/ozone chemistry (22). Fig. 1 shows the computed future global warming contributions for carbon dioxide, methane, and nitrous oxide for a midrange scenario (23) of projected future anthropogenic emissions of these gases to 2050. Radiative forcings for all three of these gases, and their spectral overlaps, are represented in this work using the expressions assessed in ref. 24. In 2050, the anthropogenic emissions are stopped entirely for illustration purposes. The figure shows nearly irreversible warming for at least 1,000 y due to the imposed carbon dioxide increases, as in previous work. All published studies to date, which use multiple EMICs and one AOGCM, show largely irreversible warming due to future carbon dioxide increases (to within about 0.5 °C) on a timescale of at least 1,000 y (3–5, 25, 26). Fig. 1 shows that the calculated future warmings due to anthropogenic CH4 and N2O also persist notably longer than the lifetimes of these gases. The figure illustrates that emissions of key non-CO2 greenhouse gases such as CH4 or N2O could lead to warming that both temporarily exceeds a given stabilization target (e.g., 2 °C as proposed by the G8 group of nations and in the Copenhagen goals) and remains present longer than the gas lifetimes even if emissions were to cease. A number of recent studies have underscored the important point that reductions of non-CO2 greenhouse gas emissions are an approach that can indeed reverse some past climate changes (e.g., ref. 27). Understanding how quickly such reversal could happen and why is an important policy and science question. Fig. 1 implies that the use of policy measures to reduce emissions of short-lived gases will be less effective as a rapid climate mitigation strategy than would be thought if based only upon the gas lifetime. Fig. 2 illustrates the factors influencing the warming contributions of each gas for the test case in Fig. 1 in more detail, by showing normalized values (relative to one at their peaks) of the warming along with the radiative forcings and concentrations of CO2, N2O, and CH4. For example, about two-thirds of the calculated warming due to N2O is still present 114 y (one atmospheric lifetime) after emissions are halted, despite the fact that its excess concentration and associated radiative forcing at that time has dropped to about one-third of the peak value. Two factors contribute to the differences between decreases in concentrations of greenhouse gases and persistence of the resulting warming, discussed further below: (i) Radiative forcing may not simply follow concentration because of optical depth effects (for CO2 and CH4), and (ii) warming may not match decreases in radiative forcing because of climate inertia, particularly due to the ocean. Climate Change Persistence: (I) Optical Depth Effects. The physics of absorption spectroscopy dictate that radiative forcing will be linearly related to concentration changes for those gases whose atmospheric optical depth is thin, whereas nonlinear forcing occurs for thicker optical depths (24). Because CO2 absorption is not optically thin, the fractional increase in radiative forcing per parts per million by volume of CO2 increase becomes smaller for larger CO2 concentrations. Fig. 2 shows how this factor acts in the reverse sense during relaxation from a peak, enhancing the CO2 radiative forcing relative to the calculated concentration decrease. For example, for a 535 ppmv peak (as in the calculation in Fig. 1), the excess CO2 concentration above the preindustrial value of 278 ppmv remaining in the year 2200 is about 55% of the peak value, whereas the fractional radiative forcing remaining in that year is about 63% of the peak value (i.e., the relative change in forcing is greater than the relative change in concentration by about 14%). Nonlinear optical effects grow as the concentration change grows. For example, for a peak of CO2 of 1,200 ppmv in the 21st century followed by a stop of emissions, the relative change in forcing compared to the relative change in concentration in the year 3000 is about 30%. Thus nonlinear spectroscopy, although not the dominant factor, contributes to rendering the warming from CO2 nearly irreversible, especially for larger values of peak concentration. Methane also displays significant nonlinearities in its radiative absorption, whereas these effects are very small for N2O (Fig. 2). HFCs and perfluorocarbons absorb in the atmospheric window and are optically thin over the full range of plausible future concentrations; therefore, these gases display no nonlinear optical absorption. We find that nonlinear spectral effects exceed 10% contributions to the persistence of warming only for carbon dioxide and methane, and not for any of the other anthropogenic greenhouse gases. Climate Change Persistence: (II) Physical Processes. Climate change is linked to a range of phenomena displaying varying timescales (see, e.g., ref. 28). The atmosphere, clouds, and water vapor respond within a few months following a change in radiative forcing (29). The transfer of heat from the atmosphere to the ocean’s mixed layer (top 100 m or so) is thought to occur on timescales on the order of a decade or less (30), whereas multiple centuries are required to warm or cool the deep ocean (31), and changes in the great ice sheets and vegetation coverage may occur over many thousands of years (4). Much of the energy that has been added to the Earth’s climate system in the 20th century through net radiative forcing has been taken up by the ocean (32). However, a large fraction of the energy that could be trapped due to the impact of radiative forcing has not been added to the climate system at all but rather has been lost to space, because the Earth has already warmed and therefore must radiate more energy. Observations and models both suggest that about two-thirds of the net radiative forcing (warming by anthropogenic greenhouse gases less cooling by stratospheric and tropospheric aerosols) of the past half century has been radiated to space, while about one-third has been absorbed by the ocean (33–35). If anthropogenic radiative forcing were to be stabilized, atmospheric warming would continue for many centuries as the components of the climate system reach a balance. On the other hand, if such forcing were to abruptly cease, some energy would be expected to be lost rapidly through radiation to space, while some would be lost more slowly as the coupled ocean mixed layer/atmosphere system adjusts. Some of the energy loss would occur over centuries depending mainly upon the amount of heat that has been stored in the deep ocean. These processes are linked both to transient climate response and ocean heat uptake, and the uncertainties in these parameters are of order 50% between current state-of-the-art AOGCMs (4, 35). Ocean heat uptake and changes in ocean circulation are not well characterized by observations and contribute to the differences in future climate responses between models (3, 4, 31). Carbon cycle processes that may slowly release carbon back to the atmosphere in a warming world (e.g., through changes in forest cover and soil carbon dynamics) also affect the long-term behavior of warming and differ from model to model (3, 36). Understanding the warming persistence from various forcing agents with different lifetimes and radiative forcing histories is aided by considering energy balance for a time horizon long enough for the Earth to return to its original temperature. The energy balance equation can be written as N ¼ F − λΔTsurface; [1] where F is the added energy due to anthropogenic radiative forcing, N is the net heat flux, and λΔTsurface is the energy radiated to space by a warmer Earth. Earth loses energy via a surface and atmosphere that are warmer than their equilibrium values. The quantity λ expresses how much energy is lost per unit rise in temperature. In the long term, it is the inverse of the climate sensitivity because, at a new steady state, N becomes zero and ΔTsurface ¼ F∕λ. If emissions are stopped and treturn is a time in the future when the Earth has returned to its initial temperature (including the average temperature of the oceans), then <equation1.jpg> Integrating both sides of Eq. 1 for this time interval and making the additional assumption that the radiative response is independent of time and the rate of warming over this timescale (i.e., λ is approximately constant, or uncorrelated with the forcing), then <equation2.jpg> The left-hand integral is just the energy trapped by the radiative forcing. Eq. 3 states that the time-integrated warming is approximately proportional to the integrated forcing, because the only way the Earth can get rid of trapped energy is to radiate it to outer space. Ocean heat uptake delays and spreads the warming out in time, and also defines the warming that must continue after emissions cease, i.e., the amount of time-integrated warming that must eventually occur before the Earth returns to its original temperature. Consequences for climate change, ecosystems, and people can depend on the time history: A long, modest increase in temperature is likely to be less harmful than a short pulse of extreme warming. In practice, Eq. 3 is less useful for gases such as CO2 and SF6 that have such long lifetimes that the time horizon for their forcing to decay to zero and the Earth to return to an equilibrium temperature is many millennia. In those cases, a simplified way to view future warming persistence is that emissions of CO2 and a handful of other extremely long-lived gases imply warming that is essentially irreversible on human timescales without geoengineering or active sequestration. All shorter-lived gases and aerosols imply a transient warming whose time integral is approximately determined simply by the time integral of the forcing and the equilibrium climate sensitivity. Fig. 3 shows how the energy budget of the earth–atmosphere system in the Bern 2.5CC EMIC would behave in response to increases in radiative forcing over 100 y followed by a stop of emissions for a greenhouse gas with a 10 or 100 y lifetime. The peak forcing in both cases is 1 W∕m2. A linear increase is assumed for the first 10 y followed by a 2%per year increase from that time until year 100. After the peak, the forcing decays with the assumed lifetime. Of particular interest is the behavior of ocean heat uptake (Fig. 3, Left) as well as the atmospheric temperature and sea level rise (Fig. 3, Right). In the case of a gas with a 10-y lifetime, for example, energy is slowly stored in the ocean during the period when concentrations are elevated, and this energy is returned to the atmosphere from the ocean after emissions cease and radiative forcing decays, keeping atmospheric temperatures somewhat elevated for several decades. Elevated temperatures last longer for a gas with a 100-y lifetime because, in this case, radiative forcing and accompanying further ocean heat uptake continue long after emissions cease. As radiative forcing decays further, the energy is ultimately restored from the ocean to the atmosphere. Fig. 3 shows that the slow timescale of ocean heat uptake has two important effects. It limits the transfer of energy to the ocean if emissions and radiative forcing occur only for a few decades or a century. However, it also implies that any energy that is added to the ocean remains available to be transferred back to the atmosphere for centuries after cessation of emissions. Fig. 4 further illustrates how the computed warmings due to a broader range of specific different greenhouse gases would evolve assuming an idealized 21st century ramp of emissions to 1 W∕m2 in 100 y (as in Fig. 3), followed by cessation of emissions in the Bern 2.5CC model. If the rate of radiative forcing were to increase at 2% per year (about the average value observed over the past several decades for CO2), the computed warming or “realized” warming (33) in the Bern 2.5CC model is about 60% of the quasi-equilibrium value, similar to that of the range of models recently assessed (4). Put differently, the climate system response under increasing radiative forcing (even on the timescale of a century) will be smaller than the response would be if the forcing were maintained at a constant level and the system were to largely equilibrate. The smaller response is related to the transient climate response and to the considerations indicated above regarding the partitioning of energy flow between the ocean and loss to space under increasing forcing. The simulations presented in Fig. 4 illustrate the importance of realized warming versus quasi-equilibrium warming. For a gas such as CF4 with a very long lifetime of about 50,000 y, concentrations and forcing remain essentially constant for more than 1,000 y following cessation of emissions (Fig. 4, Upper). But the warming due to CF4 ’s radiative forcing continues to increase slowly as the ocean and atmosphere adjust over centuries, reaching a quasi-equilibrium atmospheric warming that is about 60% larger than the transient value obtained when emissions stopped in this model for the test case considered here (and this value is approximately the inverse of the realized warming noted above). The same behavior would be expected if, for example, atmospheric concentrations of any gas were to be stabilized but, for shorter-lived gases, stabilization requires continued emission (in contrast to CF4). Carbon dioxide concentrations display an initial fast decay for several decades in carbon cycle models after cessation of emissions, followed by a much slower subsequent decline (see Fig. S2), but temperatures remain nearly constant throughout as shown in Fig. 4. The above discussion of CF4 illuminates a key reason for this behavior. The near-irreversibility of the CO2-induced warming after emissions cease and concentrations peak is linked mainly to a near balance between concentration changes (which slowly decrease to a value that is about 40% of the peak of excess concentration above preindustrial, see Fig. 4) and the fact that the ratio of quasi-equilibrium to transient warming is about 1.6 in this model (compare the range of about 1.3–2.3 across models in ref. 4). Thus the decrease in CO2 concentration is roughly compensated by the way that the transient warming evolves to a near equilibrium warming (i.e., the warming is realized over time), together with a significant but lesser contribution due to the nonlinear dependence of radiative forcing on CO2 concentration. These long-term changes in both CO2 concentration and warming are robust across a broad range of coupled carbon/ climate models (3, 4) and are both linked to the slow timescales of transport in the ocean. For forcing agents shown in Fig. 4 with lifetimes of years to centuries, some forcing due to these gases will continue even as concentrations decay, leading to some persistence of the induced warming. Fig. 4 illustrates the persistence for HFC152a, CH4, and N2O, and Fig. S3 shows the behavior calculated in the Bern 2.5CC model for a range of halocarbons with lifetimes ranging from years to centuries. An important qualitative conclusion of Fig. 4 is that the warming induced by even a very shortlived gas such as HFC-152a can persist longer than the gas itself and its associated forcing (see also Figs. 3 and 4). The extent to which warming is prolonged is linked to the competition between decay of the radiative forcing and ocean heat uptake and will also depend on the carbon cycle feedback; the carbon cycle feedback and ocean heat uptake will differ somewhat among models. Persistence of the induced climate change should be expected to be larger for gases with lifetimes long enough to transfer more heat to the ocean, i.e., several decades to centuries or more, and much smaller for gases with short lifetimes of a year to a decade. Similarly, the persistence of the warming will be greater if radiative forcing is maintained over longer periods through sustained anthropogenic emissions (17, 27); i.e., the longer humans continue to emit greenhouse gases, the longer the climate memory of that emission will become, even for very short-lived substances, due to ocean thermal inertia (9). This paper focuses on emissions over a century.

#### Alt causes –

#### A. Deforestation.

Nordhaus 8 [Ted Nordhaus and Michael Shellenberger, Founders-Break Through Institute, Break Through, p. 64]

None of this is to deny the ecological reality. The burning of forests, the loss of their role as net absorbers and storage banks of carbon, and the reality of global warming make the increasingly rapid destruction of the Amazon even more alarming than it was back in the mid-1980s, when the Amazon first became appreciated for its biodiversity. **Even if we reduced greenhouse gases by 70 percent worldwide overnight**, the continued destruction of the Amazon would **still leave the global climate system in jeopardy.**

#### B. Agriculture

Mead 11 [January 30, 2011 Mad Meat Making Scientist Proves Climate Doomsayers Wrong Walter Russell Mead Via Meadia http://blogs.the-american-interest.com/wrm/2011/01/30/mad-meat-making-scientist-proves-climate-doomsayers-wrong/]

According to a United Nations report (which must as we all know be completely and unquestionably true when referring to matters of climate science having nothing to do with glacier melt), “**Cattle-rearing generates more global warming greenhouse gases**, as measured in CO2 equivalent, **than transportation.”** Ronald Reagan was widely and no doubt justly mocked for saying that trees cause more pollution than cars do; had he said cows instead of trees he could have appealed to the UN for support. In any case, the report (from the Food and Agricultural Organization) goes on: When emissions from land use and land use change are included, the livestock sector accounts for 9 per cent of CO2 deriving from human-related activities, but produces a much larger share of even more harmful greenhouse gases. It generates 65 per cent of human-related nitrous oxide, which has 296 times the Global Warming Potential (GWP) of CO2. Most of this comes from manure. And it accounts for respectively 37 per cent of all human-induced methane (23 times as warming as CO2), which is largely produced by the digestive system of ruminants, and 64 per cent of ammonia, which contributes significantly to acid rain. With increased prosperity, people are consuming more meat and dairy products every year, the report notes. Global meat production is projected to more than double from 229 million tonnes in 1999/2001 to 465 million tonnes in 2050, while milk output is set to climb from 580 to 1043 million tonnes.

#### ------C. Cosmic rays and CFCs.

University of Waterloo 9 [From the University of Waterloo press release. Study shows CFCs, cosmic rays major culprits for global warming 22 12 2009, http://wattsupwiththat.com/2009/12/22/study-shows-cfcs-cosmic-rays-major-culprits-for-global-warming/]

Cosmic rays and chlorofluorocarbons (CFCs), both already implicated in depleting the Earth’s ozone layer, are also responsible for changes in the global climate, a University of Waterloo [Lu, a professor of physics and astronomy] scientist reports in a new peer-reviewed paper. In his paper, Qing-Bin Lu, a professor of physics and astronomy, shows how CFCs – compounds once widely used as refrigerants – and cosmic rays – energy particles originating in outer space – are mostly to blame for climate change, rather than carbon dioxide (CO2) emissions. His paper, derived from observations of satellite, ground-based and balloon measurements as well as an innovative use of an established mechanism, was published online in the prestigious journal Physics Reports. “My findings do not agree with the climate models that conventionally thought that greenhouse gases, mainly CO2, are the major culprits for the global warming seen in the late 20th century,” Lu said. “Instead, the observed data show that CFCs conspiring with cosmic rays most likely caused both the Antarctic ozone hole and global warming. These findings are totally unexpected and striking, as I was focused on studying the mechanism for the formation of the ozone hole, rather than global warming.” His conclusions are based on observations that from 1950 up to now, the climate in the Arctic and Antarctic atmospheres has been completely controlled by CFCs and cosmic rays, with no CO2 impact. “Most remarkably, the total amount of CFCs, ozone-depleting molecules that are well-known greenhouse gases, has decreased around 2000,” Lu said. “Correspondingly, the global surface temperature has also dropped. In striking contrast, the CO2 level has kept rising since 1850 and now is at its largest growth rate.” In his research, Lu discovers that while there was global warming from 1950 to 2000, there has been global cooling since 2002. The cooling trend will continue for the next 50 years, according to his new research observations. As well, there is no solid evidence that the global warming from 1950 to 2000 was due to CO2. Instead, Lu notes, it was probably due to CFCs conspiring with cosmic rays. And from 1850 to 1950, the recorded CO2 level increased significantly because of the industrial revolution, while the global temperature kept nearly constant or only rose by about 0.1 C.

#### No global tech transfer – trade barriers prevent adoption

Hall and Helmers 10 [Bronwyn H. Hall, Professor of the Graduate School – UC Berkeley, Christian Helmers, University of Oxford - Department of Economics, The role of patent protection in (clean/green) technology transfer 24 October 2010 http://www.voxeu.org/index.php?q=node/5706]

There are a number of other issues apart from intellectual property rights that are of first-order importance in setting incentives for the development and transfer of technologies. Developing countries themselves may generate **powerful distortions inhibiting** the production and transfer of green technologies. A report by Copenhagen Economics (2009) suggests that subsidies for the consumption of fossil fuels in some developing countries, such as Venezuela, Iran and Indonesia, may represent a **significant barrier** to the development and transfer of green technologies in these countries. Barton (2007) suggests that import tariffs on photo-voltaic and wind technology in place in India and China may also act as a barrier to technology development and transfer. In contrast, import tariffs and subsidies for biofuels in place in industrialised countries, above all the EU and US, are viewed as hampering the development of this industry in developing countries, such as Brazil (World Bank 2010). Such import barriers on green technologies represent a complex issue. Due to the environmental externality, it is desirable to have policy interventions in place in developed countries dedicated to market creation, such as subsidies, to promote demand for green technologies (Taylor 2008). From a political economy perspective, however, it is unclear to what extent developed economies are willing to subsidise demand for green technology produced abroad, in particular in large emerging economies

## 2NC

#### Oceans buffer the heat – impact takes decades

Walker and King 8—Director of the School of Environment @Oxford

Gabrielle, PhD in Chemistry, Sir David, Director of the Smith School of Enterprise and the Environment at the University of Oxford, and a senior scientific adviser to UBS, The Hot Topic, pg. 47

Most people have now realized that climate change is upon us. If pushed, most would probably say that if we don’t do something to change the way we live, things are more likely to get worse. But few seem to have noticed one of the most important points to emerge from the last few years of scientific projections. All the evidence suggests that the world will experience significant and potentially highly dangerous changes in climate over the next few decades no matter what we do now. That’s because the ocean has a built in lag. It takes time to heat up, which is why the nicest time to swim is often the end of the summer rather than the middle. The same principle holds for global warming, but on a longer timescale: Because the oceans gradually soak up heat generated by the extra greenhouse gases, the full effect won’t be felt for decades to centuries. This means that whatever we do now to change our carbon habits will take several decades to have any effect. In other words, according to our most sophisticated models, the next twenty to thirty years will be more or less the same whether we quickly kick the carbon habit or continue burning as many fossil fuels as we can. Whatever we do today to reduce emissions will matter for our children’s generation and beyond, but not for our own. The problem of climate change is one of legacy.

#### Slow warming is empirically survivable

Michaels in ‘7

(Patrick, Senior Fellow in Environmental Studies @ Cato and Prof. Environmental Sciences @ UVA, Atlanta Journal-Constitution, “Global Warming: No Urgent Danger; No Quick Fix”, 8-21, http://cato.org/pub\_display.php?pub\_id=8651)

We certainly adapted to 0.8 C temperature change quite well in the 20th century, as life expectancy doubled and some crop yields quintupled. And who knows what new and miraculously efficient power sources will develop in the next hundred years. The stories about the ocean rising 20 feet as massive amounts of ice slide off of Greenland by 2100 are also fiction. For the entire half century from 1915 through 1965, Greenland was significantly warmer than it has been for the last decade. There was no disaster. More important, there's a large body of evidence that for much of the period from 3,000 to 9,000 years ago, at least the Eurasian Arctic was 2.5 C to 7 C warmer than now in the summer, when ice melts. Greenland's ice didn't disappear then, either. Then there is the topic of interest this time of year — hurricanes. Will hurricanes become stronger or more frequent because of warming? My own work suggests that late in the 21st century there might be an increase in strong storms, but that it will be very hard to detect because of year-to-year variability. Right now, after accounting for increasing coastal population and property values, there is no increase in damages caused by these killers. The biggest of them all was the Great Miami Hurricane of 1926. If it occurred today, it would easily cause twice as much damage as 2005's vaunted Hurricane Katrina. So let's get real and give the politically incorrect answers to global warming's inconvenient questions. Global warming is real, but it does not portend immediate disaster, and there's currently no suite of technologies that can do much about it. The obvious solution is to forgo costs today on ineffective attempts to stop it, and to save our money for investment in future technologies and inevitable adaptation.

#### ------No runaway warming – even if CO2 growth is exponential temperature rises slowly

de Freitas in ‘2

(C. R., Associate Prof. in Geography and Enivonmental Science @ U. Aukland, Bulletin of Canadian Petroleum Geology, “Are observed changes in the concentration of carbon dioxide in the atmosphere really dangerous?” 50:2, GeoScienceWorld)

In any analysis of CO2 it is important to differentiate between three quantities: 1) CO2 emissions, 2) atmospheric CO2 concentrations, and 3) greenhouse gas radiative forcing due to atmospheric CO2. As for the first, between 1980 and 2000 global CO2 emissions increased from 5.5 Gt C to about 6.5 Gt C, which amounts to an average annual increase of just over 1%. As regards the second, between 1980 and 2000 atmospheric CO2 concentrations increased by about 0.4 per cent per year. Concerning the third, between 1980 and 2000 greenhouse gas forcing increase due to CO2 has been about 0.25 W m–2 per decade (Hansen, 2000). Because of the logarithmic relationship between CO2 concentration and greenhouse gas forcing, even an exponential increase of atmospheric CO2 concentration translates into linear forcing and temperature increase; or, as CO2 gets higher, a constant annual increase of say 1.5 ppm has less and less effect on radiative forcing, as shown in Figure 3. Leaving aside for the moment the satellite temperature data and using the surface data set, between 1980 and 2000 there has been this linear increase of both CO2 greenhouse gas forcing and temperature. If one extrapolates the rate of observed atmospheric CO2 increase into the future, the observed atmospheric CO2 increase would only lead to a concentration of about 560 ppm in 2100, about double the concentration of the late 1800’s. That assumes a continuing increase in the CO2 emission rate of about 1% per year, and a carbon cycle leading to atmospheric concentrations observed in the past. If one assumes, in addition, that the increase of surface temperatures in the last 20 years (about 0.3 °C) is entirely due to the increase in greenhouse gas forcing of all greenhouse gas, not just CO2, that would translate into a temperature increase of about 1.5 °C (or approximately 0.15 °C per decade). Using the satellite data, the temperature increase is correspondingly lower. Based on this, the temperature increase over the next 100 years might be less than 1.5 °C, as proposed in Figure 19

#### Multiple negative feedbacks check

#### A. Water vapor

Owen McShane, Cites Roy Spencer, principal research scientist for U of Alabama in Huntsville and recipient of NASA's Medal for Exceptional Scientific Achievement, , chairman of the policy panel of the New Zealand Climate Science Coalition and director of the Centre for Resource Management Studies, April 4, 08, [“Climate change confirmed but global warming is cancelled”, The National Business Review (New Zealand), Lexis]

Atmospheric scientists generally agree that as carbon dioxide levels increase there is a law of "diminishing returns" - or more properly "diminishing effects" - and that ongoing increases in CO2 concentration do not generate proportional increases in temperature. The common analogy is painting over window glass. The first layers of paint cut out lots of light but subsequent layers have diminishing impact. So, you might be asking, why the panic? Why does Al Gore talk about temperatures spiraling out of control, causing mass extinctions and catastrophic rises in sea-level, and all his other disastrous outcomes when there is no evidence to support it? The alarmists argue that increased CO2 leads to more water vapour - the main greenhouse gas - and this provides positive feedback and hence makes the overall climate highly sensitive to small increases in the concentration of CO2. Consequently, the IPCC argues that while carbon dioxide may well "run out of puff" the consequent evaporation of water vapour provides the positive feedback loop that will make anthropogenic global warming reach dangerous levels. This assumption that water vapour provides positive feedback lies behind the famous "tipping point," which nourishes Al Gore's dreams of destruction, and indeed all those calls for action now - "before it is too late!" But no climate models predict such a tipping point. However, while the absence of hot spots has refuted one important aspect of the IPCC models we lack a mechanism that fully explains these supposed outcomes. Hence the IPCC, and its supporters, have been able to ignore this "refutation." So by the end of last year, we were in a similar situation to the 19th century astronomers, who had figured out that the sun could not be "burning" its fuel - or it would have turned to ashes long ago - but could not explain where the energy was coming from. Then along came Einstein and E=mc2. Hard to explain Similarly, the climate sceptics have had to explain why the hotspots are not where they should be - not just challenge the theory with their observations. This is why I felt so lucky to be in the right place at the right time when I heard Roy Spencer speak at the New York conference on climate change in March. At first I thought this was just another paper setting out observations against the forecasts, further confirming Evans' earlier work. But as the argument unfolded I realised Spencer was drawing on observations and measurements from the new Aqua satellites to explain the mechanism behind this anomaly between model forecasts and observation. You may have heard that the IPCC models cannot predict clouds and rain with any accuracy. Their models assume water vapour goes up to the troposphere and hangs around to cook us all in a greenhouse future. However, there is a mechanism at work that "washes out" the water vapour and returns it to the oceans along with the extra CO2 and thus turns the added water vapour into a NEGATIVE feedback mechanism. The newly discovered mechanism is a combination of clouds and rain (Spencer's mechanism adds to the mechanism earlier identified by Professor Richard Lindzen called the Iris effect). The IPCC models assumed water vapour formed clouds at high altitudes that lead to further warming. The Aqua satellite observations and Spencer's analysis show water vapour actually forms clouds at low altitudes that lead to cooling. Furthermore, Spencer shows the extra rain that falls from these clouds cools the underlying oceans, providing a second negative feedback to negate the CO2 warming. Alarmists' quandary This has struck the alarmists like a thunderbolt, especially as the lead author of the IPCC chapter on feedback has written to Spencer agreeing that he is right! There goes the alarmist neighbourhood! The climate is not highly sensitive to CO2 warming because water vapour is a damper against the warming effect of CO2. That is why history is full of Ice Ages - where other effects, such as increased reflection from the ice cover, do provide positive feedback - while we do not hear about Heat Ages. The Medieval Warm Period, for example, is known for being benignly warm - not dangerously hot. We live on a benign planet - except when it occasionally gets damned cold. While I have done my best to simplify these developments they remain highly technical and many people distrust their own ability to assess competing scientific claims. However, in this case the tipping point theories are based on models that do not include the effects of rain and clouds. The new Nasa Aqua satellite is the first to measure the effects of clouds and rainfall. Spencer's interpretation of the new data means all previous models and forecasts are obsolete. Would anyone trust long-term forecasts of farm production that were hopeless at forecasting rainfall? The implications of these breakthroughs in measurement and understanding are dramatic to say the least. The responses will be fun to watch.

#### B. Dimethyl Sulfide

Rowland, Noble Prize Winner in Chemistry, et al in ‘7

(F. Sherwood and Donald R. Blake, Prof’s Chemistry @ UC Irvine, Oliver Wingenter, Karl B. Haase, and Maz Zeigler, Geophysical Resaerch Center and Dept. Chemistry @ New Mexico Institute of Mining and Technology, Barkley C. Sive, Climate Change Research Center @ U. New Hampshire, Ana Paulino, Runar, Runar Thyrhaug, Institute for Biology @ U. Bergen, Kai Schulz, Michael Meyerhofer and Ulf Riebesell, Leibniz Institute for Marine Sciences @ U. Kiel, Geophysical Research Letters, “Unexpected consequences of increasing CO2 and ocean acidity on marine production of DMS and CH2ClI: Potential climate impacts”, doi:10.1029/2006GL028139)

[1] Increasing atmospheric mixing ratios of CO2 have already lowered surface ocean pH by 0.1 units compared to preindustrial values and pH is expected to decrease an additional 0.3 units by the end of this century. Pronounced physiological changes in some phytoplankton have been observed during previous CO2 perturbation experiments. Marine microorganisms are known to consume and produce climate-relevant organic gases. Concentrations of (CH3)2S (DMS) and CH2ClI were quantified during the Third Pelagic Ecosystem CO2 Enrichment Study. Positive feedbacks were observed between control mesocosms and those simulating future CO2. Dimethyl sulfide was 26% (±10%) greater than the controls in the 2x ambient CO2 treatments, and 18% (±10%) higher in the 3xCO2 mesocosms. For CH2ClI the 2xCO2 treatments were 46% (±4%) greater than the controls and the 3xCO2 mesocosms were 131% (±11%) higher. These processes may help contribute to the homeostasis of the planet.

#### C. Biosols

Idso, Idso and Idso in ‘3

(Sherwood, Research Physicist @ US Water Conservation laboratory, Craig, President of Center for the Study of Carbon Dioxide and Global change and PhD in Geography, and Keith, VP of the Center and PhD in Batony @ ASU, CO2 Science, “Diffuse Light: A Powerful Promoter of Photosynthesis”, 6:32, -86, <http://www.co2science.org/articles/V6/N32/EDIT.php>)

In our Editorial of 10 October 2001 -- [Yet Another Biophysical Feedback Mechanism That May Help to Protect the Planet Against Deleterious CO2-Induced Global Warming](http://www.co2science.org/articles/V4/N41/EDIT.php) -- we suggested that an increase in the air's CO2 concentration would (1) enhance the photosynthetic rates of earth's plants (thereby enabling them to withdraw more CO2 from the air) and (2) enhance the water use efficiencies of earth's plants (thereby enabling them to grow where it was previously too dry for them and, therefore, enabling them to remove still more CO2 from the air), which would thus complete a "double-barreled" negative feedback loop that would slow the rate of rise of the air's CO2 content and help reduce both the rate and ultimate magnitude of global warming.  None of these ideas, of course, was new, the rising-CO2-induced reverse-desertification concept having been suggested nearly two decades earlier by Idso and Quinn (1983) and the rising-CO2-induced increase in carbon sequestration having been described and roughly quantified by Idso (1991a, b). Next, we suggested that a largely-ignored biological phenomenon could well serve as a significant amplifier of this negative feedback cycle.  Specifically, we proposed that the increased amount of vegetation in a CO2-enriched world, together with its greater robustness or enhanced activity, would (1) boost the atmosphere's concentration of biosols, i.e., aerosols that owe their existence to the biological activities of earth's vegetation, which would (2) lead to the creation of more cloud condensation nuclei, which would (3) act to ultimately cool the planet by creating more clouds of a more highly reflective nature, as originally proposed by Charlson et al. (1987) within the context of their "oceanic phytoplankton, atmospheric sulfur, cloud albedo and climate" scenario. Although this idea was modestly original, we added a new dimension that made it even more so, proposing that in addition to reducing the amount of total (direct plus diffuse) solar radiation reaching the surface of the earth, more biosols in the atmosphere, together with the extra cloud particles they created, would actually (1) enhance the amount of surface-available diffuse solar radiation, which would (2) reduce the volume of shade within plant canopies, which would (3) increase whole-canopy photosynthesis, which would (4) lead to even more CO2 being removed from the atmosphere.  Again, however, none of these individual linkages was original with us.  In fact, Roderick et al. (2001) had actually suggested all of the linkages described in this paragraph, with the slight difference that in the place of biosols they used the more inclusive term aerosols. But Roderick et al. did much more than merely suggest this latter set of linkages.  Noting that the volcanic eruption of Mount Pinatubo in June of 1991 had ejected enough sulfur gases and fine particulate matter into the atmosphere to produce sufficient aerosol particles to greatly increase the diffuse component of solar radiation reaching the surface of the earth, they carried out a set of lengthy calculations, which indicated that the Mount Pinatubo eruption may have led to the removal of an extra 2.5 Gt of carbon from the atmosphere due to its aerosol-enhanced diffuse-light stimulation of terrestrial photosynthesis in the year following the eruption, which would have reduced the magnitude of the long-term rise in the air's CO2 concentration that year by about 1.2 ppm, which is about the size of the real-world perturbation that was actually observed (Sarmiento, 1993). So why this lengthy recap of our Editorial of 10 October 2001?  What's new? Actually, something pretty important: a real-world experimental observation of the significant ability of enhanced diffuse light to increase the photosynthetic prowess of earth's plants and their capacity to withdraw greater amounts of CO2 from the atmosphere, as recently described by Gu et al. (2003) and discussed by Farquhar and Roderick (2003). Specifically, Gu et al. report that they "used two independent and direct methods to examine the photosynthetic response of a northern hardwood forest (Harvard Forest, 42.5°N, 72.2°W) to changes in diffuse radiation caused by Mount Pinatubo's volcanic aerosols [our italics]," finding that "around noontime in the midgrowing season, the gross photosynthetic rate under the perturbed cloudless [our italics] solar radiation regime was 23, 8, and 4% higher than that under the normal cloudless [our italics] solar radiation regime in 1992, 1993, and 1994, respectively," and that "integrated over a day, the enhancement for canopy gross photosynthesis by the volcanic aerosols [our italics] was 21% in 1992, 6% in 1993 and 3% in 1994."  Commenting on the significance of these observations, Gu et al. note that "because of substantial increases in diffuse radiation world-wide after the eruption and strong positive effects of diffuse radiation for a variety of vegetation types, it is likely that our findings at Harvard Forest represent a global phenomenon [our italics]." In the preceding paragraph, we have highlighted the fact that the diffuse-light-induced photosynthetic enhancement observed by Gu et al., in addition to likely being global in scope, was caused by volcanic aerosols under acting under cloudless conditions.  Our reason for calling attention to these two italicized words is to clearly distinguish this phenomenon from a closely related one that is also described by Gu et al. (2003), i.e., the propensity for the extra diffuse light created by increased cloud cover to further enhance photosynthesis, even though the total flux of solar radiation received at the earth's surface may be reduced under such conditions ([Stanhill and Cohen, 2001](http://www.co2science.org/articles/V4/N49/C2.php)).  Based on still more real-world data, for example, Gu et al. note that "Harvard Forest photosynthesis also increases with cloud cover, with a peak at about 50% cloud cover," citing as evidence their Supporting Online Material. In light of these several observations, it should be painfully obvious, as we originally suggested in our Editorial of 10 October 2001, that the historical and still-ongoing CO2-induced increase in atmospheric biosols should have had, and should be continuing to have, a significant cooling effect on the planet that exerts itself by both slowing the rate of rise of the air's CO2 content and reducing the receipt of solar radiation at the earth's surface, neither of which effects is included in any general circulation model of the atmosphere of which we are aware.  Hence, it should be equally obvious that climate-alarmist predictions of catastrophic CO2-induced global warming are simply catastrophic exaggerations.

#### No tech transfer – trade barriers prevent adoption

Hall and Helmers 10 [Bronwyn H. Hall, Professor of the Graduate School – UC Berkeley, Christian Helmers, University of Oxford - Department of Economics, The role of patent protection in (clean/green) technology transfer 24 October 2010 http://www.voxeu.org/index.php?q=node/5706]

There are a number of other issues apart from intellectual property rights that are of first-order importance in setting incentives for the development and transfer of technologies. Developing countries themselves may generate **powerful distortions inhibiting** the production and transfer of green technologies. A report by Copenhagen Economics (2009) suggests that subsidies for the consumption of fossil fuels in some developing countries, such as Venezuela, Iran and Indonesia, may represent a **significant barrier** to the development and transfer of green technologies in these countries. Barton (2007) suggests that import tariffs on photo-voltaic and wind technology in place in India and China may also act as a barrier to technology development and transfer. In contrast, import tariffs and subsidies for biofuels in place in industrialised countries, above all the EU and US, are viewed as hampering the development of this industry in developing countries, such as Brazil (World Bank 2010). Such import barriers on green technologies represent a complex issue. Due to the environmental externality, it is desirable to have policy interventions in place in developed countries dedicated to market creation, such as subsidies, to promote demand for green technologies (Taylor 2008). From a political economy perspective, however, it is unclear to what extent developed economies are willing to subsidise demand for green technology produced abroad, in particular in large emerging economies.

#### International red tape prevents coordination

Mead 10 [Walter Russell Mead, Senior Fellow, US Foreign Policy, Council on Foreign Relations, http://blogs.the-american-interest.com/wrm/2010/05/14/global-green-meltdown-gains-momentum/]

No matter what the commission does, the world will continue to walk away from the corpse of the global climate change movement of the past decade. The structure of the international system, the different agendas and timetables of the different countries involved in negotiations, and the clumsy architecture of the UN’s cumbersome treaty-making procedures ensure that any global treaty will be an anti-climax: too weak to work, too poorly designed to be cheap or efficient, too vague to be effectively enforced, too inflexible and too clumsy to serve as a policy guide as knowledge and circumstances change, and, it it achieves anything substantive at all, it will be too unpalatable to win the two thirds majority needed for ratification in the United States Senate.

### Court Stripping

#### A Ukrainian economic collapse would result in the proliferation of nuclear weapons

New York Times ‘94

(The New York Times, staff writer Jane Perlez, “Economic Collapse Leaves Ukraine With Little to Trade but Its Weapons

January 13, 1994http://www.nytimes.com/1994/01/13/world/economic-collapse-leaves-ukraine-with-little-to-trade-but-its-weapons.html?pagewanted=1)

As the second largest of the former Soviet republics, a country endowed with natural resources and a well-educated work force, Ukraine was once viewed by Western economists as having an excellent shot at becoming a prosperous market economy. But two years after gaining independence, the earlier hopeful assessments have turned sour as Ukraine sinks deeper into economic crisis. Its energy production has collapsed, its inflation is 70 to 100 percent a month, its currency reserves are perilously low and many large factories are idle or operating at less than 30 percent capacity. It is **the** virtual **bankruptcy of Ukraine**, a country the size of France with a population of 52 million, that aides to President Clinton apparently felt could **persuade the Ukrainian President**, Leonid Kravchuk, **to give up the nuclear weapons he inherited from Russia**. More than anything else, Ukraine needs a quick infusion of economic assistance and the only thing it had to bargain with was its nuclear arsenal. Difficult Prospect for Pact Mr. Clinton arrived in Kiev today, saying again that he felt confident that Ukraine would carry out the accord announced on Monday in Brussels eliminating its nuclear arsenal over the next seven years, even though members of Ukraine's Parliament say ratification of the deal will be difficult. Under the accord, many details of which remain to be worked out, Ukraine would gain billions of dollars in proceeds from uranium sales and from American assistance for dismantling the world's third largest nuclear arsenal. Mr. Clinton's visit here, the first by an American President to independent Ukraine, was seen by many as dramatizing the country's economic collapse. While less attention has been paid to Ukraine than Russia by the West, its shattered economy almost makes Russia's look like an International Monetary Fund model. Little Privatization Mr. Kravchuk, who used to head the Communist Party's ideology department, has clung to the old ways, shunning the sale of state-run enterprises to private owners even on the modest scale carried out in Moscow. Russia's monthly inflation rate fell to 12 percent in December. Ukraine's was close to 100 percent. While Russians enjoy warm apartments, many Ukrainian cities are suffering from brownouts this winter and electricity is strictly rationed in many places. Although it was the bread basket of the former Soviet Union, Ukraine now imports grain. Even though the Government ordered a 50 percent cut in industrial energy use to save what was left for domestic consumption, heating in apartment buildings in cities outside the capital, Kiev, is tightly rationed. Amid this chaos, daily existence for Ukrainians is a grind of making ends meet, coping with a system in which poorly paid doctors seek bribes, indigent factory workers steal the products they help make for barter, and oil workers siphon off precious fuel to sell at the roadside. Few Customers in Shops Earlier this month, on the day before the Orthodox Christmas, there were few customers in the major shops. "Business is horrible," said Sergei Reznik, grimacing as he stood at his butcher's counter in the central market yesterday with slabs of meat hanging at his back but no takers on Christmas Eve. A few potential customers ventured forward, asked the price and then turned away. The chaos in the economy is particularly worrisome, reform-minded Ukrainians and Western officials say, because of the size of the country **and its possession of nuclear weapons**. Fanning the nuclear issue is the fierce nationalism of Ukraine's Parliament, where many members see the weapons as vital to Ukrainian security. Fear of Russian Power The economic and nuclear issues are intricately tied up with Ukraine's relations with Russia. Russia, as much as the United States, would like the nuclear warheads dismantled since some Ukrainian legislators talk of using the missiles as a deterrent against Russia. Ukraine's economy was facing difficulties well before independence. About 30 percent of the gross domestic product came from the military industry, the country was dependent on Russian energy and one of its most reliable exports, coal, was becoming less desirable on world markets. Almost the entire industrial base was dependent on raw materials or components from other parts of the Soviet Union.

#### NUCLEAR PROLIFERATION CAUSES EXTINCTION

Victor Utgoff, Deputy Director of the Strategy, Forces, and Resources Division of the Institute for Defense Analysis, Survival, Fall,2002, p. 87-90

In sum, widespread proliferation is likely to lead to an occasional shoot-out with nuclear weapons, and that such shoot-outs will have a substantial probability of **escalating** to the **maximum** **destruction** possible with the weapons at hand. Unless nuclear proliferation is stopped, we are headed toward a world that will mirror the American Wild West of the late 1800s. With most, if not all, nations wearing nuclear 'six-shooters' on their hips, the world may even be a more polite place than it is today, but every once in a while we will all gather on a hill to bury the bodies of dead cities or even **whole** **nations**.

#### Ukrainian economic and political stability is needed for Russian energy transportation

The Independent ‘8

(Anne Penketh, diplomatic editor of The Independent “Russia will keep one eye on Ukraine and the other on relations with West” 10-21-2008 http://www.independent.co.uk/ opinion/commentators/anne- penketh-russia-will-keep-one- eye-on-ukraine-and-the-other- on-relations-with-west-967687. Html)

No disrespect to the people of Iceland (pop 302,000), but if Ukraine and its population of 46 million on the borders of Europe goes belly up as a result of financial and political turmoil it would be a most serious matter for all of us. Any instability in Ukraine would have implications for our **energy supplies**, because Russian gas transits through the former Soviet state on its way to western Europe. But the most pressing question concerns the intentions of Russia, the giant power on Ukraine's border. Russia has already turned off the gas tap once to Ukraine back in January 2006. The trigger that time around was a pricing dispute, and prices are set to rise steeply again. The risk now is that the Kremlin might be tempted to exploit Ukrainian instability in order to punish President Viktor Yushchenko for supporting Tbilisi during last August's six-day war. But President Putin said after the conflict that Russia did not have territorial ambitions over Ukraine, where Russia's lease on the Crimean port of Sebastopol for its Black Sea fleet expires in 2017. There had been fears in the West that after recognising the breakaway territories in Georgia after the August war, Moscow would move to protect the ethnic Russian minority in Crimea. Last weekend, though, a Russian deputy prime minister and former defence minister, Sergei Ivanov, told the BBC that the fleet would leave if the lease was not renewed. "It's Ukraine's problem, not Russia's," he said. President Yushchenko has riled Moscow by ruling out an extension of the lease. But "the Russians have been indicating that they are playing within certain limits," said the Russia expert Philip Hanson of the think-tank Chatham House. He said given that the financial crisis was also affecting Russia severely, "the Russians have got a lot of interest in not worsening relations with the West".

#### Russian economic decline causes nuclear war

Oliker and Charlick-Paley 02

Olga Oliker, senior international policy analyst at the RAND Corporation. Before coming to RAND in 1999, Oliker worked as an independent consultant and held positions in the U.S. Departments of Defense and Energy and Tanya Charlick-Paley, 02,

Assessing Russia's Decline: Trends and Implications for the United States and the U.S. Air Force, www.rand.org/content/dam/rand/pubs/monograph\_reports/2007/MR1442.pdf

What challenges does today’s Russia pose for the U.S. Air Force and the U.S. military as a whole? Certainly Russia cannot present even a fraction of the threat the Soviet monolith posed and for which the United States prepared for decades. Yet, if certain negative trends continue, they may create a new set of dangers that can in some ways prove even more real, and therefore more frightening, than the far-off specter of Russian attack ever was. As a weak state, Russia shares some attributes with “failed” or “failing” states, which the academic literature agrees increase the likelihood of internal and interstate conflict and upheaval. Tracing through the specifics of these processes in Russia reveals a great many additional dangers, both humanitarian and strategic. Moscow’s efforts to reassert central control show that much control is already lost, perhaps irretrievably. This is manifested both in center-periphery relations and in the increasing failure of law and order throughout the country, most clearly seen in the increasing institutionalization of corruption and crime. Although Russia’s weakened armed forces are unlikely, by temperament and history, to carry out a coup, real concerns exist that the forces may grow less inclined to go along with aspects of government policy, particularly if they are increasingly used as instruments of internal control as in Chechnya. Moreover, the fact that the Russian military is unlikely to attempt to take power does not mean that it will not seek to increase its influence over policymaking and policy-makers. The uncertainties of military command and control threaten the possibility of accidental (or intentional) nuclear weapon use, while deterioration in the civilian nuclear sector increases the risk of a tragic accident. Russia’s demographic trajectory of ill health and male mortality bodes ill for the nation’s ability to resolve its economic troubles (given an increasingly graying population) and creates concerns about its continued capacity to maintain a fighting force even at current levels of effectiveness. Finally, the fact that economic, political, and demographic declines affect parts of Russia very differently, combined with increased regional political autonomy over the course of Russian independence and continuing concerns about interethnic and interregional tension, creates a danger that locality and/or ethnicity could become rallying cries for internal conflict. While some might argue that Russia’s weakness, or even the potential for its eventual collapse, has little to do with the United States, the truth is that a range of U.S. interests is directly affected by Russia’s deterioration and the threats that it embodies. The dangers of proliferation or use of nuclear or other weapons of mass destruction (WMD), heightened by Russian weakness, quite directly threaten the United States and its vital interests. Organized crime in Russia is linked to a large and growing multinational network of criminal groups that threatens the United States and its economy both directly and through links with (and support of) global and local terrorist organizations. Russia is also a major energy producer and a transit state for oil and gas from the Caspian at a time when the U.S. government has identified that region, and energy interests in general, as key to its national security. Washington’s allies, closer to Russia physically, are not only the customers for much of this energy but are also the likely victims of any refugee flows, environmental crises, or potential flare-ups of violence that Russian decline may spur. Finally, recent history suggests a strong possibility that the Untied States would play a role in seeking to alleviate a humanitarian crisis on or near Russian soil, whether it was caused by epidemic, war, or a nuclear/industrial catastrophe.

#### As communication scholars we have an obligation to determine effective rhetorical strategies for our policy proposals – apocalyptic reps of climate change must be rejected as an utter failure

Foust and Murphy (Assistant Professor in the Department of Human Communication Studies at the University of Denver; doctoral student in the Department of Human Communication Studies at the University of Denver) 9

(Christina R. Foust & William O'Shannon Murphy, Revealing and Reframing Apocalyptic Tragedy in Global Warming Discourse, Environmental Communication: A Journal of Nature and Culture, pages 151-167,Volume 3, Issue 2, 2009)

In conclusion, an apocalyptic structure permeates the global warming narrative in the American elite and popular press, with the potential to force the predicted tragedy into being, due to its limitations on human agency. We echo the call for communication scholars of all methodological commitments to join environmental advocates, climate scientists, and others, in their efforts to build a collective will to reduce greenhouse gas emissions (Moser & Dilling, [2007](http://www.tandfonline.com/doi/full/10.1080/17524030902916624#CIT0042)). A great part of this effort is in reframing the way the press constitutes climate change discourse (Boykoff, [2007b](http://www.tandfonline.com/doi/full/10.1080/17524030902916624#CIT0008)). These efforts also must extend beyond the media to include other arenas in which an active public is aroused, from kitchen tables and water coolers, to board rooms and classrooms. By providing the public, agenda-setting professionals (e.g., public relations practitioners and journalists), and community leaders with ways to structure communication that promote agency, rhetoricians might advance widespread public action on climate change.The apocalyptic frame, particularly in its tragic version, is not an effective rhetorical strategy for this situation. It has been developed over at least the last decade of press coverage, a time in which the US has refused all but the most paltry political action on greenhouse gas reductions. Tragic apocalyptic discourse encourages belief in prophesy at the expense of practicing persuasion, even as it provokes resignation in the face of a human-induced dilemma. Given the tragic apocalyptic frame's ineffectiveness at inspiring action-or, at least its persistent evacuation of agency-we must promote more action-oriented rhetorical strategies. Together, we may advance the climate change narrative from an apocalyptic tragedy to a more comic telos for humanity.

#### The only two court rulings on Guantanamo were immediately stripped by Congress –

That s Alexander 7

#### Using IL as binding law would mobilize opposition to the Court and cause stripping efforts.

David T. Hutt, J.D., Ph.D., legal trainer in Washington, and former Adjunct Assistant Professor at Le Moyne College, and Lisa K. Parshall, Ph.D., Assistant Professor in the Department of History and Gov’t at Daemen College, 2007. (33 Ohio N.U.L. Rev. 113, Divergent Views on the Use of International and Foreign Law: Congress and the Executive versus the Court)

In its last few terms, the United States Supreme Court has utilized foreign and international law to justify decisions in three high-profile cases involving matters of constitutional interpretation. In these decisions, the High Court explicitly referenced international and foreign decisions in striking down the death penalty for the mentally retarded,' invalidating statutes prohibiting same- sex sodomy, and declaring the juvenile death penalty unconstitutional. Although these rulings avoided any claim that foreign and international legal decisions are dispositive to domestic constitutional interpretation, the Court's use of foreign and international legal material set in motion expressions of outrage by Congress, including the introduction of legislation designed to reign in such practice.

This article addresses the apparent divergence of views between the legal and political branches of the U.S. government regarding the role of foreign and international law in domestic constitutional interpretation and the formulation of U.S. law and policies. This basic thesis of a conflict emerging between the Court, and the Congress and the Executive in the appropriateness of internationalizing American law was recently articulated by Hadar Harris. Like Harris, we argue that executive policy decisions and congressional legislative action reveals much less receptivity to international and foreign law than exemplified in the recent trend in Supreme Court decision-making. From restrictions placed on U.S. cooperation with the International Criminal Court, to the Bush Administration's unilateral withdrawal from the Optional Protocol on the Vienna Convention for Counselor Relations, the political branches have taken a more restrictive, if not hostile, approach towards the importation of foreign legal jurisprudence than the Court. While we accept Harris' argument, we expand on his approach, providing more justification for the existence of the divergence, and considering possible reactions by the U.S. Supreme Court to the mounting political pressure over the continued use of "comparative constitutional analysis." In addition, we assert that the divergence ultimately impacts American law in different ways with disparate implications for the international and domestic arenas. In fact in several respects, the divergence highlights a contrast between the international and the domestic spheres of the three branches. The Supreme Court's decisions utilizing foreign law have primarily domestic consequences, whereas congressional and executive action have greater ramifications for U.S. relations with other nations and international organizations

#### No solvency

Alexander 7 Janet Cooper Alexander, Frederick I. Richman Professor of Law, Stanford Law School. California Law Review Fall, 2007 95 Calif. L. Rev. 1193 ARTICLE: Jurisdiction-Stripping in a Time of Terror

The further effect of the jurisdiction-stripping provisions of the DTA and the MCA is to eliminate any means of enforcing Rasul and Hamdan - which is to say, to render those decisions nullities if the government does not wish to comply with them. Nothing in the DTA or MCA requires a speedy determination of enemy combatant status, or any determination at all, and no review is possible within the military or court systems until a [\*1198] final decision is made by a Combatant Status Review Tribunal (CSRT) or a military commission. It would now be possible for the ad-ministration simply not to conduct status determinations, and the affected detainees would have no way to obtain any relief. In fact, the statutes attempt to make the provisions of the Geneva Conventions, the War Crimes Act, and the substantive restrictions of the Detainee Treatment Act unenforceable as well by expressly eliminating jurisdiction for any judicial review of the conditions of confinement, including interrogation through torture or cruel, inhumane and degrading treatment n29 and forced transfer of detainees to other countries for interrogation and imprisonment. n30 Unlike the DTA, which explicitly applied only to noncitizens in the custody of the Defense Department at Guantanamo Bay, the MCA's jurisdiction-stripping provisions apply to all noncitizens who are determined to be enemy combatants. n31 The provision barring claims based on the Geneva Conventions applies to all persons, including citizens and persons who are not in custody. n32

As one supporter of the legislation put it:

Congress and the president ... told the courts, in effect, to get out of the war on terror ... It is the first time since the New Deal that Congress had so completely divested the courts of power over a category of cases. It is also the first time since the Civil War that Congress saw fit to narrow the court's habeas powers in wartime because it disagreed with its decisions. The law ... directly reverses Hamdan ... n33

The DTA and the MCA not only strip jurisdiction over constitutional questions concerning the treatment of noncitizen detainees in the war on terror, but do so by purporting to eliminate jurisdiction to hear petitions for writs of habeas cor-pus. In the conventional account of broad congressional power to limit federal jurisdiction, habeas is the reassuring backstop that assures that even if Congress goes to the nuclear option and strips the courts of jurisdiction to hear a particular category of cases, there will, in the end, be judicial review through habeas if the constitutional question [\*1199] involves deprivation of life or liberty. n34 Thus the question of the constitutionality of the DTA and MCA seems, to a federal courts teacher, to be a very existential question indeed.

#### The past isn’t comparable—the Court’s never cited i-law, let alone to challenge the executive.

Hutt 7 David T. Hutt, J.D., Ph.D., legal trainer in Washington, and former Adjunct Assistant Professor at Le Moyne College, and Lisa K. Parshall, Ph.D., Assistant Professor in the Department of History and Gov’t at Daemen College, 2007. [33 Ohio N.U.L. Rev. 113, Divergent Views on the Use of International and Foreign Law: Congress and the Executive versus the Court, p. ln]

At first it is important to note that the debate over comparative constitutional analysis has centered on implications to domestic U.S. law. In none of the recent cases with which Congress has expressed such strong concern did the Supreme Court address issues of U.S. foreign policy. Indeed, since United States v. Curtiss-Wright Export Co., n158 the Supreme Court has deferred to the Executive in foreign policy decisions, and there appears **no recent attempt** by the judiciary to change this long standing deference to the Executive.

#### Psychological Studies – they’ve shown that dire descriptions of climate change reduce people’s willingness to act in combating global warming. And we control uniqueness – apocalyptic reps are dominant now but belief and action against global warming is actually declining

Feinberg and Willer (Psychology Dept and Sociology Dept, UC Berkeley) 11

(Matthew and Robb, Apocalypse Soon? Dire Messages Reduce Belief in Global Warming by Contradicting Just-World Beliefs, Psychological Science January 2011 vol. 22 no. 1 34-38)

Though scientific evidence for the existence of global warming continues to mount, in the United States and other countries belief in global warming has stagnated or even decreased in recent years. One possible explanation for this pattern is that information about the potentially dire consequences of global warming threatens deeply held beliefs that the world is just, orderly, and stable. Individuals overcome this threat by denying or discounting the existence of global warming, and this process ultimately results in decreased willingness to counteract climate change. Two experiments provide support for this explanation of the dynamics of belief in global warming, suggesting that less dire messaging could be more effective for promoting public understanding of climate-change research. Although scientific evidence attests to the existence and severity of global warming, high percentages of people in the United States and elsewhere increasingly see global warming as nonexistent, exaggerated, or unrelated to human activity ([BBC Climate Change Poll, 2010](http://pss.sagepub.com/content/22/1/34.full#ref-1); [Gallup Poll, 2009](http://pss.sagepub.com/content/22/1/34.full#ref-9), [2010](http://pss.sagepub.com/content/22/1/34.full#ref-10); [Pew Research Center for the People and the Press, 2009](http://pss.sagepub.com/content/22/1/34.full#ref-20)). Because scientists agree that large-scale action will be necessary to counteract the effects of global warming, environmental advocates often engage in public appeals designed to increase rates of proenvironmental behaviors and promote support for initiatives aimed at counteracting climate change. These appeals often emphasize the severity of potential consequences, relying on messages that highlight the dire risks associated with unchecked global warming ([Kerr, 2007](http://pss.sagepub.com/content/22/1/34.full#ref-15)). But what if these appeals are in fact counterproductive? We contend that one cause of skepticism concerning global warming may be that such dire messages threaten individuals’ need to believe that the world is just, orderly, and stable, a motive that is widely held and deeply ingrained in many people ([Lerner, 1980](http://pss.sagepub.com/content/22/1/34.full#ref-16); [Lerner & Miller, 1978](http://pss.sagepub.com/content/22/1/34.full#ref-17)). Research shows that many individuals have a strong need to perceive the world as just, believing that rewards will be bestowed on individuals who judiciously strive for them and punishments will be meted out to those who deserve them ([Dalbert, 2001](http://pss.sagepub.com/content/22/1/34.full" \l "ref-3); [Furnham, 2003](http://pss.sagepub.com/content/22/1/34.full#ref-8)). Research on just-world theory has demonstrated that when individuals’ need to believe in a just world is threatened, they commonly employ defensive responses, such as dismissal or rationalization of the information that threatened their just-world beliefs (for reviews, see [Furnham, 2003](http://pss.sagepub.com/content/22/1/34.full#ref-8); [Hafer & Bégue, 2005](http://pss.sagepub.com/content/22/1/34.full#ref-11)). Information regarding the potentially severe and arbitrary effects of global warming should constitute a significant threat to belief in a just world, and discrediting or denying global warming’s existence could serve as a means of resolving the resulting threat. Many dire messages aimed at stopping global warming make salient the impending chaos and unpredictable catastrophe that global warming will bring with it. Moreover, these messages often emphasize the harm that will be done to children and future generations who have done nothing themselves to cause global warming. Such messages contradict the belief that the world is predictable and fair by suggesting that good people will suffer and that the innocent will be the primary victims. Because these messages contradict just-world beliefs, individuals who most strongly hold such beliefs should be the most threatened. When such people are exposed to dire messages concerning global warming, they are thus likely to discount the evidence. By increasing skepticism about global warming, these dire messages should, in turn, also reduce people’s willingness to engage in behaviors aimed at combating global warming. We conducted two experiments testing these claims. In the first, we measured participants’ tendencies to hold just-world beliefs, varied the type of global-warming message participants were exposed to, and then measured their levels of skepticism regarding global warming. In the second study, we investigated the role of just-world beliefs more directly, manipulating the salience of these beliefs before exposing participants to a dire global-warming message. We then measured both levels of skepticism and participants’ willingness to curb their daily carbon emissions.

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### Case

#### More recent evidence.

Alexander 13 Janet Cooper Alexander, Frederick I. Richman Professor of Law, Stanford Law School.

University of Illinois Law Review 2013 2013 U. Ill. L. Rev. 551 ARTICLE: THE LAW-FREE ZONE AND BACK AGAIN

The D.C. Circuit as a whole drew the line at this extreme position. The court denied rehearing en banc but seven of the nine active judges signed a "statement ... concurring in the denial of rehearing en banc" that said, "We decline to en banc this case to determine the role of international law-of-war principles in interpreting the AUMF because ... the panel's discussion of that question is not necessary to the disposition of the merits." n331 The position that international law does not apply to the treatment of detainees thus has been labeled dictum, but it remains to be seen how a future three-judge panel may decide the issue. After all, despite the 113 pages of opinions on the petition for en banc hearing, the court pointedly did not actually take the case en banc. n332 Judges Brown and Kavanaugh (as well as Randolph, Silberman, and all the other judges of the court) are free to write exactly the same opinion in a later case.

#### A climate treaty to be written into US law. To implement a climate treaty the US would have to write regulations for emissions, etc. The Al-Bihani decision, was based on international law that has not been written into US law. (previous card and next card also say this)

Benson 11 J. Taylor Benson, Creighton Law Review June, 2011 44 Creighton L. Rev. 1277 SYMPOSIUM ON MORAL AND ETHICAL PERSPECTIVES IN WAR, TERRORISM, AND MILITARY LAW: NOTE: INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN **AL-BIHANI V. OBAMA** CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS lexis

In Al-Bihani v. Obama n314 ("Al-Bihani I"), Ghaleb Nassar Al-Bihani ("Al-Bihani"), who fought with the Taliban in Afghanistan, petitioned the United States District Court for the District of Columbia for a writ of habeas corpus after United States military authorities detained him. n315 Although Al-Bihani claimed that he merely served as a cook for the 55th Arab Brigade, the district court denied Al-Bihani's habeas petition after concluding that he had been lawfully de-tained as an enemy combatant. n316

On appeal, the United States Court of Appeals for the District of Columbia rejected Al-Bihani's claim that the basis for his detention violated international laws which had been incorporated into the Authorization for Use of Military Force n317 ("AUMF"), thus limiting the President's authority to detain him. n318 The District of Columbia Circuit declared that Al-Bihani's arguments were mistaken because the international laws-of-war held no authority in United States courts because they had not been incorporated into domestic law by the political branches. n319 The District of Columbia Circuit panel relied on controlling domestic case law and statutes to determine that Al-Bihani's detainment by the United States was lawful. n320 Al-Bihani's petition for rehearing en banc was unanimously denied by the circuit court. n321

#### The aff support for application of international law is based on really old cases

Benson 11 J. Taylor Benson, Creighton Law Review June, 2011 44 Creighton L. Rev. 1277 SYMPOSIUM ON MORAL AND ETHICAL PERSPECTIVES IN WAR, TERRORISM, AND MILITARY LAW: NOTE: INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN **AL-BIHANI V. OBAMA** CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS lexis

In The Paquete Habana, n101 the Supreme Court of the United States declared that international law is part of United States law, and that courts of justice must establish and administer such law whenever questions of right that rely upon international law come before them. n102 In Paquete, a United States steamship stopped and seized two fishing boats, The Paquete Habana and the Lola, outside of Havana, Cuba during the Spanish-American War. n103 The United States brought the two vessels to Key West, Florida, whereupon the District Court for the Southern District of Florida, sitting in admiralty, entered a decree of condemnation and sale for each vessel and its cargo, deeming them prizes of war. n104 The owner of each vessel [\*1287] appealed, citing the international custom of exempting fishing vessels from being captured as prizes of war. n105 The Supreme Court reversed the finding of the district court, noting that where no judicial decision, treaty, or controlling legislative or executive act existed, courts must look to the usages and customs of civi-lized nations. n106 Without an applicable statutory declaration, the Court, acting as the highest prize court in the United States, relied on the law of nations in declaring the seizure of the vessels unlawful. n107

The Supreme Court issued other statements similar to that in Paquete prior to 1900. n108 In Talbot v. Janson, n109 the Court, sitting in admiralty, deemed the capture of a Dutch vessel by American ships to be a violation of United States law, which included international common law. n110 In another admiralty case, The Nereide, n111 Chief Justice John Mar-shall held that the law of nations is part of the law of the United States, and is binding on the Court until Congress changes the existing law. n112 In Thirty Hogsheads of Sugar v. Boyle, n113 the Court deemed the condemnation of a British ship's cargo by an American ship unlawful, noting that the Court derived its rules regarding belligerent and neutral rights from the law of nations. n114 The preceding statements by the Supreme Court have been relied upon by Al-Bihani and amici, as well as other scholars, in arguing that international law is binding upon United States courts. n115

#### Charming Betsy was about using IL for interpretation, not substantive limits

Benson 11 J. Taylor Benson, Creighton Law Review June, 2011 44 Creighton L. Rev. 1277 SYMPOSIUM ON MORAL AND ETHICAL PERSPECTIVES IN WAR, TERRORISM, AND MILITARY LAW: NOTE: INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN **AL-BIHANI V. OBAMA** CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS lexis

3. The Charming Betsy Canon: The Supreme Court of the United States Commanded that Statutes Should be Interpreted Where Possible so as to Not Violate International Common Law Norms

In Murray v. Schooner Charming Betsy n122 ("Charming Betsy"), the Supreme Court of the United States declared that an act of Congress should never be construed in violation of the law of nations where any other possible construction exists. n123 In Charming Betsy, a French privateer captured the cargo schooner Charming Betsy on its trade route to the French island of Guadaloupe. n124 The United States later charged the Charming Betsy's owner, Jared Shattuck ("Shat-tuck"), [\*1289] with violating the Non-Intercourse Act of 1800 n125 for trading with a French colony. n126 The Non-Intercourse Act prohibited any person either residing within the United States or enjoying its protection, from en-gaging in commercial intercourse with France, or any dependent thereof. n127 Shattuck, a native of the United States but holding Danish citizenship, did not fit specifically under the Act. n128

Reasoning that Shattuck enjoyed no protection under United States law, the Court determined that applying the Act to Shattuck would violate principles of neutral commerce under customary international law. n129 In order to avoid a possible conflict between the statute and neutral common law, the Court interpreted the statute in favor of Shattuck. n130

#### Sosa decision rejected that IL is independently enforceable in US courts

Benson 11 J. Taylor Benson, Creighton Law Review June, 2011 44 Creighton L. Rev. 1277 SYMPOSIUM ON MORAL AND ETHICAL PERSPECTIVES IN WAR, TERRORISM, AND MILITARY LAW: NOTE: INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN **AL-BIHANI V. OBAMA** CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS lexis

2. Sosa v. Alvarez-Machain: The Supreme Court of the United States Clarified the Confusion Surrounding Erie Regarding the Role of International Common Law in Federal Court Decisions

In Sosa v. Alvarez-Machain, n153 the Supreme Court of the United States rejected the notion that all international common law norms are independently enforceable in federal court. n154 In Sosa, the United States Drug Enforcement Agency ("DEA") authorized the abduction of Humberto Alvarez-Machain ("Alvarez-Machain") in Mexico by defend-ant-petitioner Jose Francisco Sosa ("Sosa") and other Mexican nationals. n155 The DEA wanted Alvarez-Machain to stand trial in the United States for his alleged complicity in the torture and death of a DEA agent. n156

After his acquittal, Alvarez-Machain filed a civil suit against the United States government under the Federal Tort Claims Act n157 ("FTCA"), claiming false arrest, and against Sosa under the Alien Tort Statute n158 ("ATS"), for violating the law of nations. n159 The United States District Court for the Central District of California granted the government's motion to dismiss on the FTCA claim, but granted summary judgment for the plaintiff and $ 25,000 in damages on the ATS claim. n160 The United States Court of Appeals for the Ninth Circuit affirmed the district court's ruling on the ATS claim, but reversed the district court's dismissal of the FTCA claim. n161

The Supreme Court of the United States reversed both of the Ninth Circuit's conclusions. n162 The Court specifically explained that the ATS, passed in 1789, provided that the federal district courts shall have cognizance, concurrent with the several state courts or circuit courts, of all cases where an alien's tort claim is based solely upon violation of the law of nations or a treaty of the United States. n163 The Court rejected the idea that the ATS authorized the creation of a new [\*1293] cause of action for torts that violate international law, and opined that the statute merely addressed the power of the courts to consider cases pertaining to a certain subject. n164

The Court identified five reasons why courts should use caution when basing decisions on international common law. n165 First, the Court noted that the prevailing view of the common law had changed since 1789. n166 The common law was no longer a transcendental body of law separate from the state but binding within it until and unless changed by statute. n167 The Court reasoned that the more modern understanding was that the law is not found or discovered, but is made or created. n168

Second, the Court explained that an equally important rethinking of the role of federal courts in creating common law had emerged. n169 The Court acknowledged that its pronouncement of the death of general federal common law in Erie left room for the argument that federal courts may fashion federal common law rules in interstitial areas of particular interest. n170 However, the Court reverted to the general practice of looking for legislative guidance before exercising pioneering authority over substantive law. n171

Third, the Court had previously and repeatedly said that the creation of private rights of action is better left to legislative determination in the vast majority of cases. n172 Judicial restraint is necessary because the absence of congres-sional declaration addressing private rights of action under an international law norm is more vague than a failure to address such a right already dictated by statute. n173

Fourth, the Court reasoned that making international rules privately actionable would produce collateral consequences. n174 The Court warned of possible impingement upon the political branches in [\*1294] their management of foreign affairs. n175 The Court likewise expressed concern over potential implications for United States foreign relations. n176

The fifth and final reason offered by the Court was the lack of a congressional command to search out and define new violations of the law of nations. n177 In fact, the Court noted that the Senate expressly denied federal courts the power of interpreting and applying international human rights law, illustrated by its ratification of the International Covenant on Civil and Political Rights, n178 which declared that the substantive provisions of that document were not self-executing. n179