### Environment 1AC

#### Contention 1 is the environment

#### Environmental damage from armed conflict will increase

Parsons 98 (Rymn James – Lieutenant Commander, JAGC, U.S. Navy. Staff Judge Advocate to Commander, “The Fight to Save the Planet: U.S. Armed Forces, "Greenkeeping," and Enforcement of the Law Pertaining to Environmental Protection During Armed Conflict”, 1998, 10 Geo. Int'l Envtl. L. Rev. 441, lexis)

Environmental damage occurs with any adverse, incremental change in the existing status of the environment. n138 What then, is the "environment"? There are many definitions but none is universally accepted. n139 One might define the environment as the sum total of the components and constituents of the atmosphere, [\*460] biosphere, geosphere, hydrosphere, and lithosphere. n140 Another definition is that the environment is anything not made by humans. n141 States have been reluctant to expand the definition of environment to include such things as natural resources, climate modification, biodiversity, and ecosystems for fear of limiting their military options. n142 The U.S. Council on Environmental Quality's definition of the environment is "the natural and physical environment and the relationship of people with that environment." n143 This definition illustrates the problems of breadth, ambiguity, and circularity that plague this most basic concept, viz., exactly what are we attempting to protect. The real controversy lies not in defining "environment" but in identifying the threshold of damage that will give rise to a violation of international law. n144 In the future, armed conflict will continue and the damage from armed conflict, based on current trends, is certain to increase. n145 Modern technology has brought us to the age of new and more powerful precision guided or "smart" weapons, n146 but not every combatant has "smart" weapons in its arsenal and even those powers with "smart" weapons may not use them exclusively. For example, in the Gulf War, the United States mixed laser-guided bomb and missile attacks on Iraqi military installations with "carpet bombing" of the Iraqi Republican Guard. The former were much reported on the nightly television news; the latter was a much greater portion of the total ordnance expended in the air campaign. n147 Despite significant advances, "surgical precision" in the delivery of weapons is not yet [\*461] the norm even among the best of modern armed forces. n148 Significant collateral damage to the environment must therefore be anticipated even when precision guided munitions are used. In some cases, decidedly "low-tech" weapons such as contact naval mines remain militarily useful and plentiful. n149 They also have the advantage of being affordable by poor nations and nations without the capability to employ sophisticated weapons systems. Other powerful "poor man's" weapons of mass destruction include gas-enhanced explosives, biological and chemical weapons. n150 As the level of a weapon's sophistication decreases and as the reach of its effects increases, collateral damage to the environment also increases. In order to protect the environment, legal restraints on the use of all weapons are needed. Moral restraints have been ineffective. Tolerance of environmental damage during war is deep-rooted. n151 Many ethical traditions including Judeo-Christian, Muslim, Greek, and Taoist value nature. But none of these ancient cultural norms have operated in any significant way to limit environmental destruction in wartime. n152 Indeed, tolerance for environmental damage may be growing despite advancing military technologies that promise a lessening of adverse environmental impact. n153

#### Wartime environmental destruction causes extinction – U.S. is key

Nevins 10

[Joey, associate professor of geography at Vassar College, Greenwashing the Pentagon, 6/14/10, <https://www.commondreams.org/view/2010/06/14-1>]

As oil continues to gush into the Gulf of Mexico, just one of many manifestations of perilous ecological degradation across the planet, the need to challenge war and militarism—especially in terms of the United States—becomes ever-more pressing. The U.S. military is the world’s single biggest consumer of fossil fuels, and the single entity most responsible for destabilizing the Earth’s climate. The costs of U.S. militarism and war are high and many. In addition to the growing civilian and military death toll in Iraq and Afghanistan, for example, total monies appropriated by Congress for the two wars surpassed the one-trillion-dollar mark on May 30th. Among other would-be purchases, such an enormous sum could provide 294,734,961 people with health care for one year, according to the Northampton, Massachusetts-based national Priorities Project.(1) Instead, the monies are dedicated to death and destruction—all in the name of “national security”—greatly enriching military contractors in the process. The costs that one rarely hears about—at least here in the United States—are the associated environmental damages that regularly and systematically occur. Indeed, it is far more common to learn of the Pentagon’s efforts to “go green.” In March, the Center for American Progress, for instance, reported on the Pentagon building’s “big green renovation.” When completed in 2011, “the Pentagon’s 25,000 military and civilian personnel will not only work in one of the biggest office buildings in the world,” the article gushed, “but one of the most energy efficient and environmentally sustainable.”(2) Beyond the Pentagon building itself, the U.S. military is “stepping forward to combat climate change,” asserts the subtitle of a 2010 report by the Pew Charitable Trusts.(3) Meanwhile, President Obama recently extolled the military’s endeavors to reduce its fuel consumption via biofuel-using technologies, specifically the Navy’s FA/18 fighter jet, nicknamed the Green Hornet due to its putative eco credentials, and the Marine Corp’s Light Armored Vehicle.(4) Such “greenwashing” helps to mask the fact that the Pentagon devours about 330,000 barrels of oil per day (a barrel has 42 gallons), more than the vast majority of the world’s countries. If the U.S. military were a nation-state, it would be ranked number 37 in terms of oil consumption—ahead of the likes of the Philippines, Portugal, and Nigeria—according to the CIA Factbook. And although much of the military’s technology has become far more fuel-efficient over the last few decades, the amount of oil consumed per soldier per day in war-time has increased by 175 percent since Vietnam, given the Pentagon’s increasing use and number of motorized vehicles. A 2010 study by Deloitte, the financial services company, reports that the Pentagon uses 22 gallons of oil per soldier per day deployed in its wars, a figure that is expected to grow 1.5 percent annually though 2017.(5) The worst offender is the Air Force, which consumes 2.5 billion gallons of aviation fuel a year, and accounts for more than half of the Pentagon’s energy use. Under normal flight conditions, a F-16 fighter jet burns up to 2,000 gallons of fuel per flight hour. The resulting detrimental impact on the Earth’s climate system is much greater per mile traveled than motorized ground transport due to the height at which planes fly combined with the mixture of gases and particles they emit.(6) Among the ironies of all this, given that a central goal of U.S. military strategy is to ensure the smooth flow of oil to the United States, is that the Pentagon’s voracious appetite for energy helps to justify its very existence and seemingly never-ending growth. In a direct sense, war and militarism produce landscapes and ecosystems of violence—and violated bodies. In Laos, unexploded ordnance from Washington’s illegal and covert bombing litters the countryside, and has killed and maimed thousands since the war’s end, and continues to do so at the rate of almost one person per day. In Vietnam, about 500,000 Vietnamese children have been born since the mid-1970s with birth defects believed to be related to the defoliant Agent Orange that the Pentagon dumped on the country. And in war-torn Fallujah, the aftermath of two U.S. sieges of the Iraqi city in 2004 has seen a huge rise in the number of chronic deformities among infants and a spike in early-age cancer.(7) Beyond locations directly targeted by war, the ill effects of military consumption of environmental resources do not respect territorial boundaries. They exacerbate a growing environmental crisis on a global scale. From the degradation of the world’s oceans, to a steep decline in biodiversity and intensifying climate destabilization, war and militarism threaten humanity and life more broadly in unprecedented ways. Such ecological “costs” are certainly not limited to the activities of the U.S. military. But given its engagement in multiple wars, a network of hundreds of military bases around the world and dozens more in the United States, and a budget now roughly the equivalent of all of the rest of the world’s militaries combined, the Pentagon must be the central focus of efforts to protect the biosphere by challenging war and militarism. More than ever, humanity—and Mother Earth—can no long afford them.

#### Warfare techniques cause irreversible environmental destruction that has a ripple effect globally – invisible threshold now

Cohan 3 (John Alan – J.D., Loyola Law School, “MODES OF WARFARE AND EVOLVING STANDARDS OF ENVIRONMENTAL PROTECTION UNDER THE INTERNATIONAL LAW OF WAR”, 2003, 15 Fla. J. Int'l L. 481, lexis)

A further problem is that predictions of the extent of damage to an environment are somewhat tentative. The reverberations from environmental harm are quixotic compared to the reverberations from harm done to conventional targets such as a military air field or radar apparatus. The building can be rebuilt, and the impact on the surrounding infrastructure is somewhat straightforward. But in contrast, environmental damage, whether based on collateral damage or direct attacks on the environment itself, is something that has much more complex reverberations. Moreover, environmental damage is often difficult to contain or control, regardless of the intent of the actor. The environmental harm caused by Iraq's actions during Desert Storm continues to have adverse effects in terms of poisoning of the soil and waters, and will continue to have adverse effects on the local region, if not the world's oceans, for many years to come. On the other hand, "many predictions of what Gulf War damage would do to the environment proved exaggerated." n228 Thus, operations in future wars may well need to undergo scrutiny over a period of time before the degree of environmental risk can be established. Often enough, environmental damage may prove irreversible. Destruction or contamination of an area by chemical or biological agents may require the relocation of people and the migration (or extinction) of local species. An example of this, mentioned above, is the Scottish island of Gruinard which to this day remains contaminated with the causative agent of anthrax. Today military leaders and policymakers often display a growing concern for the environment by considering the foreseeability of environmental damage when they calculate proportionality. This is in contrast to wars of, say, fifty years ago, where concern over war's devastating effects on the environment was somewhat remote by comparison. The future will certainly bring us greater abilities to effectively manipulate the potentially dangerous forces that are pent-up in [\*538] the environment. On humanitarian principles, our efforts to develop environmental modification techniques needs to be dedicated to the benefit of humankind and nature. They must be carried out in good faith, facilitated by international understanding and cooperation and in the spirit of good neighborliness. The global environment is being subjected to ever more serious strains by a growing world population that seeks at least the basic necessities of life as well as some of its amenities. In order to help ensure that the increasingly limited resources of our environment are not further reduced by hostile military activities, it is urged that environmental issues in general and those raised by environmental warfare in particular be widely publicized, through schools, the press and by other means, in order to help develop and strengthen cultural norms in opposition to military activities that cause direct or indirect environmental harm.

#### Biodiversity decline causes extinction

**Mmom 8** (Dr. Prince Chinedu, University of Port Harcourt (Nigeria), “Rapid Decline in Biodiversity: A Threat to Survival of Humankind”, Earthwork Times, 12-8, http://www.environmental-expert.com/resultEachArticle.aspx?ci d=0&codi=51543)

From the foregoing, it becomes obvious that the survival of Humankind depends on the continuous existence and conservation of biodiversity. In other words, a threat to biodiversity is a serious threat to the survival of Human Race. To this end, biological diversity must be treated more seriously as a global resource, to be indexed, used, and above all, preserved. Three circumstances conspire to give this matter an unprecedented urgency. First, exploding human populations are degrading the environment at an accelerating rate, especially in tropical countries. Second, science is discovering new uses for biological diversity in ways that can relieve both human suffering and environmental destruction. Third, much of the diversity is being irreversibly lost through extinction caused by the destruction of natural habitats due to development pressure and oil spillage, especially in the Niger Delta. In fact, Loss of biodiversity is significant in several respects. First, breaking of critical links in the biological chain can disrupt the functioning of an entire ecosystem and its biogeochemical cycles. This disruption may have significant effects on larger scale processes. Second, loss of species can have impacts on the organism pool from which medicines and pharmaceuticals can be derived. Third, loss of species can result in loss of genetic material, which is needed to replenish the genetic diversity of domesticated plants that are the basis of world agriculture (Convention on Biological Diversity). Overall, we are locked into a race. We must hurry to acquire the knowledge on which a wise policy of conservation and development can be based for centuries to come.

#### And rulings during hostilities are key – allows for binding environmental statutes

Dorfman 4 (Bridget – J.D. Candidate, 2004, University of Pennsylvania Law School, “PERMISSION TO POLLUTE: THE UNITED STATES MILITARY, ENVIRONMENTAL DAMAGE, AND CITIZENS' CONSTITUTIONAL CLAIMS”, 2004, 6 U. Pa. J. Const. L. 604, lexis)

The United States military establishment is a significant polluter of the air, land, and water. n1 The Cold War demanded enormous consumption of resources so that weapons could be developed and military dominance could be preserved. n2 The Army, Navy, Air Force, and Marines test weapons, build dams and roads, discharge toxic wastes, create noise, and release pollutants into rivers and oceans and air. The United States military is the most powerful and expensive military force that has ever existed, and this environmental damage is one of the by-products. n3 One strategy employed by the citizens who want to protect the environment and themselves is to sue the government under any one of a number of environmental statutes. In some of these lawsuits, the plaintiffs include claims that the military has violated their federal constitutional rights. Yet the federal courts regularly and summarily dismiss these constitutional claims. The prioritization of military needs over environmental needs may benefit the military in the short term while a particular weapon needs to be tested or personnel need to be trained. In the longer term, however, all Americans are harmed because the environment is itself a source of both health and security. This Comment examines how and why federal constitutional claims fail when asserted by citizens in lawsuits against the United [\*605] States military establishment. This Comment is broad in scope, surveying federal cases in which citizens raise constitutional claims regarding various military actions. While not all of these plaintiffs were motivated by their concern for the environment, environmental damage was the result of military action in all of these cases and environmental statutes provided the legal tools to stop the damage. Some cases reach back thirty years, to the beginning of the modern environmental movement. The scope is limited, however, to cases in American courts over military activities occurring inside the territorial United States. Therefore, the scope excludes the environmental pollution that results from actual warfare. n4 Three factors make the potential conflicts between the military and the environment increasingly relevant today. First, the current Bush administration has been criticized by congressional Democrats, nonprofit organizations, and other commentators not only for failing to enforce our environmental laws, n5 but also for rolling them back. n6 Second, America's war on terrorism and the war with Iraq n7 have created a more militarized world, with more training, troop movement, and weapons testing, all of which increase environmental degradation. Today's weapons are more destructive and more countries have them. National security has been at the forefront of the nation's consciousness since September 11, 2001, and conventional wisdom dictates that national security must clash with environmental protection goals. The memory of past terrorist attacks and the threat of future ones render Americans willing to sacrifice the environment for security, perhaps understandably. Third, this is a time of heightened concern for the environment; environmental ills are worsening n8 and environmental consciousness is increasing. n9 The environmental costs of nearly a half century of Cold [\*606] War preparations have come to light, and the public is less willing to accept environmental costs that would have been accepted without question in an earlier era. n10 Part I of this Comment begins with a brief introduction to the general relationship between the military and the environment, and then takes up the analysis of federal cases in which citizens have sued the military for environmental infractions under the Third and Fifth Amendments in Part II. Part III provides a discussion of some of the reasons why these constitutional claims fail. In Part IV the Comment concludes that the courts commit a disservice to all citizens by disregarding their legitimate claims under the Bill of Rights, by both prioritizing what the military claims it needs above the Constitution and by allowing environmental degradation to continue unnecessarily. I. The Military and the Environment The military establishment is subject to a panoply of environmental statutes, which can be grouped into a handful of categories. n11 One category consists of planning statutes such as the National Environmental Policy Act ("NEPA") n12 and the Endangered Species Act ("ESA"), n13 which require government agencies to consider the environmental consequences of their actions. Another category consists of prospective statutes such as the Clean Water Act ("CWA"), n14 the Clean Air Act ("CAA"), n15 the Resource Conservation and Recovery Act ("RCRA"), n16 and the Toxic Substances Control Act ("TSCA"), n17 which seek to minimize or eliminate pollution before it is created. Finally, there are retrospective statutes such as the Comprehensive [\*607] Environmental Response, Compensation and Liability Act ("CERCLA"), n18 which seek to clean up and restore the environment after the damage has been done. n19 In order to comply with these and other environmental statutes, the Defense of Department ("DoD") has a Deputy Under Secretary for Environmental Security and an entire bureaucratic structure complete with environmental audits, research and development, insertion of environmental performance standards into procurement contracts, training programs to impart environmental awareness to military personnel, and public forums in which to discuss cleanup plans. n20 The DoD issues a "Report on Environmental Compliance" every year, describing the environmental impacts of the various DoD divisions. n21 The DoD also spends between $ 2.5 and $ 3 billion on environmental compliance in the territorial United States alone. n22 Despite the DoD's budgetary commitment to the environment, the relationship between the military and the environment is an inherently tense one. One commentator notes a culture clash: The two subject matter areas are characterized by radically different institutional and structural contexts. Whereas the national security field involves a highly disciplined, largely secret enterprise mobilized behind unitary goal-oriented missions, frequently beyond the reach of judicial supervision, environmental policy has been made in a relatively transparent setting with a high degree of public consultation and input, with the institution of judicial review playing a catalytic role. n23 This tension is most starkly expressed by the military's belief that environmental laws do not even apply in wartime. n24 The military requires victory at nearly any cost; the environment bears the burden of that determination. Yet, according to commentator Stephen Dycus, there is a rising current of environmentalism in the military establishment, a realization that environmental stewardship is part and parcel of national security, not an impediment to it. n25 In 1990, then-Defense Secretary Dick Cheney said that "defense and the environment is not an either/or proposition. To choose between them is impossible in this [\*608] real world of serious defense threats and genuine environmental concerns." n26 Some Pentagon officials have expressed the same view, pledging to repair past environmental wrongs and adhere to a stricter code of environmental protection while protecting the country. n27 Yet the DoD's most recent authorization bill, sent to President Bush on November 12, 2003, for his signature, n28 provided for military exemptions from the ESA and the Marine Mammal Protection Act, and the Pentagon is pushing this year for further exemptions from the RCRA, CERCLA, and CAA. n29

#### The Military is a massive emitter of greenhouse gases – causes climate change

Horton 11

[Laura, Doctor of Jurisprudence Candidate 2012, Golden Gate University School of Law, FUTURE FORCE SUSTAINABILITY: DEPARTMENT OF DEFENSE AND ENERGY EFFICIENCY IN A CHANGING CLIMATE, 2011 Golden Gate University Golden Gate University Environmental Law Journal Spring, 2011, L/N]

The United States military is the single largest consumer of fuel in the world. n39 As a result, it has impaired the atmosphere considerably through GHG emissions, which is possibly the DOD's most significant contribution to the planet's ecological destabilization. n40 In 2007, at the [\*308] height of the Iraq and Afghanistan wars, usage was up to sixteen gallons of fuel a day per soldier, which is about three million dollars worth of fuel per day. n41 Those numbers are a major increase from one gallon of fuel a day per soldier during World War II, or even the four gallons of fuel a day during Desert Storm. n42 The military uses about 100 million barrels of oil per year, which is enough to fuel 1,000 cars to drive around the world 4,620 times. n43 At one point, the Army went through forty million gallons of fuel during just three weeks of combat in Iraq. n44 That is almost two million gallons per day, the total combined amount of gasoline used by the Allied armies during World War I. n45 Ninety-four percent of this energy is used for "mobility energy," or the energy required for training, moving, and sustaining forces, weapons, and equipment for military operations around the world. n46 Even without the Iraq and Afghanistan wars, the DOD would still be the largest oil-consuming governmental entity in the world. n47 Approximately 70% of fuel used by the DOD is jet fuel, making the Air Force the largest fossil-fuel-consuming branch in the military. n48 These estimates do not even include the amount of fuel consumption by military contractors. The military increasingly relies on private contractors in the wars in Iraq and Afghanistan. n49 The DOD spends billions of dollars each year on contractors, which provide services such as base support, construction, security, training local security forces, and transportation. Contractors are estimated to make up 40-60% of the workforce in recent operations. n50 Because of the strong presence of private contractors, there is potential for massive amounts of [\*309] fuel use in that sector of military operations. In 2008, the United States Energy Information Agency (EIA) reported that the total conventional energy use by the military was 889 trillion British thermal units (Btu) for the year. n51 Most of that energy came from the use of petroleum products. n52 Scientists calculated that carbon dioxide emissions from the military's total energy use as reported by the EIA amounted to 85 million metric tons (MMt) plus an additional 87 MMt from "manufacturing of materials, equipment, military infrastructure, vehicles, and munitions." n53 Therefore, total military carbon dioxide emissions are approximately 1.5% of total United States emissions, which was calculated at 5,839 MMt of carbon dioxide emissions in 2008 by the Department of Energy (DOE). n54 Carbon dioxide, along with other GHGs such as nitrous oxide, methane, sulfur hexafluoride, hydro-fluorocarbons, and per-fluorocarbons, causes global climate change. n55 The impacts of such a drastic destabilization of the earth's climate are increasingly visible. n56 Almost all of the world's glaciers are melting, the oceans are becoming warmer and more acidic, and animal ranges are shifting. n57 According to the Intergovernmental Panel on Climate Change, "global average sea level rose at an average rate of 1.8 [1.3 to 2.3] mm per year over 1961 to 2003 and at an average rate of about 3.1 [2.4 to 3.8] mm per year from 1993 to 2003." n58 Climate change has created extreme weather-pattern changes both in frequency and intensity over the last fifty years. n59 Frosts have become less frequent over most land areas, while hot days and hot nights have become more frequent; heat waves have become more frequent over most land areas; the frequency of heavy precipitation events (or [\*310] proportion of total rainfall from heavy falls) has increased over most areas; and the incidence of extreme high sea level has increased at a broad range of sites worldwide since 1975. n60 The military is a significant contributor to climate change, and the effects of climate change will prove to be substantially more difficult to deal with than past visible harms such as hazardous waste sites. This is because, as the DOD has acknowledged, the large-scale physical changes on the earth and in the atmosphere are already being observed on a global level. n61 The debate over balancing national security concerns with environmental protection has never been so important, as international concerns over climate change have reached a feverish pitch. These concerns have been recognized by military leaders who, in 2007, issued the National Security and the Threat of Climate Change report. n62 The report was prepared by the CNA, a nonprofit national security analysis organization, in order to inform United States policymakers and the military about the threat of climate change. n63 CNA convened a "Military Advisory Board" comprising several retired senior military officers and national security experts to assist in compiling and analyzing all of the data. n64 Upon analyzing the climate-change issue, CNA and the Military Advisory Board determined that the "nature and pace of climate change being observed today and the consequences projected by the consensus scientific opinion are grave and pose equally grave implications for our national security." n65 The report was unprecedented, because the idea that an environmental problem is also a national security risk is a novel but important declaration considering the past conflict between environmental concerns and national security. The implications of such a report are vast and could result in the greatest clean-up effort by the military to date in the form of alternative energy development.

#### Wartime exemptions are at the root of the problem – status quo judicial decisions continue this practice

Horton 11

[Laura, Doctor of Jurisprudence Candidate 2012, Golden Gate University School of Law, FUTURE FORCE SUSTAINABILITY: DEPARTMENT OF DEFENSE AND ENERGY EFFICIENCY IN A CHANGING CLIMATE, 2011 Golden Gate University Golden Gate University Environmental Law Journal Spring, 2011, L/N]

The DOD has been shielded from full accountability for its environmental offenses due to numerous military exemptions from federal environmental laws on the basis of national security. n66 In making [\*311] the case for exemptions, the military argues that preparedness does not fall within the kind of recurring agency activities for which the environmental law was intended, and consequently, the law should account for special circumstances such as wartime operations. n67 This sense of urgency and concern over national security has become widespread following the events of September 11 and the invasion of Iraq. n68 Even though independent evaluations by the General Accounting Office (now called the Government Accountability Office, or GAO) found little evidence that environmental laws have impeded the military's ability to train its soldiers, the DOD still pursued broader exemptions beginning in 2003. n69 Exemptions are mostly given on a case-by-case basis where the President grants an exemption for activities in the "paramount interest of the United States." n70 Some exemptions are specifically granted for purposes of national security, and they are usually limited to a specific time frame but can be extended. n71 For example, the exemption provision in the Comprehensive Environmental Response, Compensation, and Liability Act states: The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments and Reauthorization Act of 1986 with respect to the site or facility concerned... . An exemption under this paragraph shall be for a specified period which may not exceed one year... . n72 Other laws that allow for exemptions for national security purposes include the following: Clean Air Act, Clean Water Act, Noise Control Act, Solid Waste Disposal Act, Safe Water Drinking Act, and Endangered Species Act (ESA). n73 Following requests by the DOD in [\*312] 2003, Congress enacted more exemptions from the Migratory Bird Treaty Act, the Marine Mammal Protection Act and even broader exemptions from parts of the ESA. n74 In one example of special treatment for the DOD, Congress enacted legislation in 1986 that allowed the Secretary of Defense to authorize the taking of up to twenty-five marine mammals each year for "national defense purposes" without a permit under the Marine Mammal Protection Act. n75 Support for exemptions can also be found in judicial decisions. For instance, when the Navy violated the Clean Water Act by dropping ordnance into the ocean without the proper permit at a target practice range in Puerto Rico, the Supreme Court allowed the violation to continue while the Navy applied for a permit. n76 The Navy had argued that this was necessary to preserve the general welfare of the country. n77 There are also several energy laws that apply to the DOD but contain exemptions for military fleets. n78 In 2005, the DOD was responsible for using 90% of the federal government's overall petroleum consumption. n79 Ninety-four percent of that petroleum was used by military mobility forces. n80 Mobility energy, as opposed to stationary facility energy, is used to power weapons platforms, tactical equipment, and all other types of vehicles, including ships and aircraft. n81 The Energy Policy Act of 1992 (EPAct 1992) created a comprehensive energy policy that established specific energy goals, including a 25% reduction in facility energy usage by fiscal year 2000. n82 The EPAct 1992 also set minimum federal fleet requirements for the acquisition of alternative-fueled vehicles (sometimes called AFV) by federal agencies. n83 The [\*313] statute specifically exempts "motor vehicles acquired and used for military purposes" for "national security reasons." n84 The same EPAct 1992 exemptions for military fleets carry over to the alternative-fuel-use amendments of the Energy Policy Act of 2005 (EPAct 2005). n85 EPAct 2005 established new energy efficiency standards and mandated doubling biofuel use in the United States, but these standards do not apply to vehicles used for military purposes. n86 Along with the alternative-energy requirements of EPAct 1992 and 2005, Executive Order 13423 (EO 13423), titled "Strengthening Federal Environmental, Energy, and Transportation Management," sets further energy-efficiency standards for the federal government. n87 Issued by President Bush in 2007, EO 13423 requires federal agencies to reduce a fleet's petroleum consumption by 2% annually through the end of 2015. n88 It also mandated an increase in alternative-fuel use by at least 10% compounded annually through the end of 2015. n89 Overall, EO 13423 requires the federal government to reduce GHG emissions by 30% by 2015. n90 Like the other environmental laws, EO 13423 contains an express exemption for military tactical fleets. n91 Similarly, in October 2009, President Obama issued Executive Order 13514 (EO 13514) to further strengthen energy efficiency within the federal government. n92 EO 13514, titled "Federal Leadership in Environmental, Energy, and Economic Performance," requires federal agencies yet again to decrease GHG emissions by reducing federal fleet petroleum consumption by a minimum of 2% annually through the end of fiscal year 2020. n93 It did not revoke any of the provisions of EO 13423 and retains the exemption for military tactical fleets. n94 Furthermore, the order provides exemptions for any agency when it is in the "interest of national security," n95 a term with the potential to be broadly interpreted [\*314] against environmental interests, particularly in times of military conflict. n96 Along with military vehicles, there are also avenues for exempting aircraft emissions from energy standards. The Clean Air Act grants the Environmental Protection Agency (EPA) authority to mandate aircraft emission standards. n97 Military aircraft have traditionally been exempt from the EPA's emission standards, but during the late 1990's the EPA began to consider the possibility of including the military in those standards. n98 However, recent aircraft emissions standards issued by the EPA regulate Federal Aviation Administration (FAA) and FAA-contracted facilities but do not apply to military bases. n99 Further, these emissions standards do not apply to military aircraft, except in a few cases in which the military aircraft use commercial engines subject to the standards. n100 As the largest DOD consumer of fuel, the Air Force uses millions of gallons of fuel every day. n101 Thus, the EPA emission standards are leaving out a major source of GHG emissions. Pursuant to the EPActs of 1992 and 2005 and Executive Orders 13423 and 13514, federal agencies must track their compliance activity by collecting vehicle acquisition, inventory, and fuel-use data from their non-exempt fleets. These agencies must then report this information to the DOE. n102 Each agency is also required to submit an annual report describing its compliance with the EPActs and progress made toward the goals outlined in EO 13423. n103 Although the military is exempt from compliance with vehicle and aircraft emissions standards, there are signs that the DOD is willing to comply with those standards voluntarily. For instance, in September 2010, the DOD announced plans to reduce fossil-fuel consumption in [\*315] compliance with EO 31514. n104 The announcement does not specify whether the focus will be on fleets rather than non-exempt stationary facilities, but it claims an overall GHG emission reduction. This should include mobility forces, since they consume the most fuel within the DOD. n105 Voluntary compliance with environmental regulations offers more flexibility than mandatory compliance. n106 However, as explored in Part III, it is **unlikely that voluntary compliance actually achieves a particular goal like pollution control as efficiently as mandatory regulations.**

#### The status quo shift to renewable energy will fail – self imposed standards results in “greenwashing” which prevents a global shift to renewables

Horton 11

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Immediately following the events of September 11, the political climate was not conducive to preserving environmental health when it would interfere with readiness training for troops during wartime. n130 During this time, the DOD made multiple attempts to escape from the purview of federal environmental regulations. n131 These attempts were explained in 2003 by former Defense Secretary Donald Rumsfeld as simply a way to "clarify environmental statutes which restrict access to, and sustainment of, training and test ranges essential for the readiness of our troops and the effectiveness of our weapons systems in the global war on terror." n132 Many, even the Supreme Court, shared the position that national security trumps environmental protection. n133 However, as the high-profile wars in Iraq and Afghanistan began to fade from mainstream attention, the DOD began contributing more to a public discussion on energy efficiency and various environmental problems such as climate change. Journalists, politicians, and people within the military structure itself, such as the Military Advisory Board in the CNA report, started discussing major changes in the DOD's current energy policies. n134 Mainstream media have started to pick up on the transition, [\*319] particularly in light of insurgent attacks on fuel-supply convoys in Afghanistan, where fuel is the number one DOD import. n135 Companies in the United States are being contracted to supply the troops with solar power equipment, including portable solar panels, solar chargers for electronic equipment, and other renewable technology. n136 Members of the military are hopeful that less dependence on fossil fuels will provide a safer atmosphere for soldiers by reducing the number of truck convoys that haul fuel to bases, thus reducing the number of attacks. n137 Besides providing assistance with alternative-energy projects for troops, the DOD's newfound interest in better funding for energy research and development is evident through solar installations, electric-vehicle purchases, and development of renewable fuel. n138 For example, the Army recently announced plans to develop smart microgrid technology, n139 which "can draw energy interchangeably from solar arrays and other sources to cut costs, improve logistics, and reduce troop safety risks involved in fossil fuel convoys." n140 These microgrids could potentially cut fuel consumption at an Army base by up to sixty percent. n141 The Air Force is also pursuing energy efficiency through the development of jet biofuel and has plans to certify its entire fleet to run on biofuels by 2011. n142 It is already running test flights with 50% biofuel [\*320] mixtures. n143 Since a majority of the fuel used by the DOD goes to military aircraft, n144 this could have an enormous impact on fossil-fuel use and total carbon dioxide emissions. Although there is conflicting evidence on whether biofuel production results in higher or lower total emissions, there are other studies that show the use of biofuels could reduce GHG emissions overall, since they burn cleaner and the amount of energy needed in production is decreasing. n145 Similarly, the Navy, which set a goal to have 50% of its power come from renewable sources by 2020, has been exploring the use of natural biocides to keep the hulls of ships clean. n146 Barnacles, algae and other marine biofilm, which cling to the hulls, can reduce a ship's fuel efficiency by up to 40%; therefore, keeping the hulls clean cuts down on the amount of operational fuel used in the military. n147 Not only does this particular project benefit the Navy in fuel and economic efficiency since other biocides are expensive, but it also protects sensitive marine life from the harmful chemical biocides that are normally used. n148 Small, individualized projects have also proven extremely effective. According to Dan Nolan, author of the DOD Energy Blog, the single most effective program for reducing energy consumption has been spray foam insulation of temporary structures in Iraq and Afghanistan. n149 The spray foam project has proven to be not only energy efficient but financially beneficial as well, saving the military over 100 million dollars per year. n150 In addition to seeking reduction in fossil-fuel use generally, the military is also actively reducing GHG emissions through "contracted landfill disposal, increased teleworking and less air travel." n151 Government contractors have also developed web-based GHG [\*321] inventories for Army installations that can be used to identify, quantify, and report emissions including carbon dioxide, nitrous oxide, methane, sulfur hexafluoride, hydro fluorocarbons, and per fluorocarbons. n152 C. An Ultimate Paradox As the world's largest consumer of energy, the military has a long way to go if it intends to achieve energy efficiency goals set by the government and the DOD itself. However, not everyone is convinced that the military will follow through, considering its past environmental record. n153 This skepticism is valid in light of the growing impact climate change has had on the planet and the extent to which the military has contributed to GHG emissions. n154 In addition, mistrust of the DOD's environmental record is warranted, since environmental damage from military activities still exists all over the United States n155 The suspect attitude toward military greening is akin to an attitude held by many concerning corporate "environmentalism" in the form of "greenwashing." n156 The military is claiming to go "green," and is indeed making strides in energy efficiency, while simultaneously increasing oil use by 1.5% annually through 2017. n157 Also, efficiency programs are limited to base installations and are not applied to tactical fleets, where much of the DOD's fuel consumption occurs. n158 Furthermore, little is said in any of the aforementioned reports about the many exemptions the DOD sought from numerous environmental laws over the past eight years. n159 The military is accustomed to approaching environmental protection on its own terms and is giving mixed signals about how [\*322] important energy efficiency will be in the near future. Consequently, there is a question as to how self-imposed standards such as voluntary compliance with federal energy efficiency standards, from which the DOD is otherwise exempt, will play out. n160 One example of the uncertainty of these programs can be found in a recent article in ClimateWire. n161 According to the article, the aforementioned spray foam insulation program has now been halted in the absence of advocacy for such programs. n162 The difficulty of relocating the foam tents and high disposal costs have led to the demise of spray foam use, and supporters are calling for a mandate to move forward with the project. n163 It is unclear whether the DOD will resume the program at all. The need for advocacy is especially important for the public to understand, because of the potential for new energy technology to transform the civilian marketplace as military technology finds its way into the public domain. n164 The military has begun to take the lead in energy efficiency, drive the civilian sector toward sustainable energy use, and push for "policy change to help make the necessary cultural shifts in how its people think about energy use and the decisions they make in all settings." n165 The more seriously the military takes energy efficiency, **the faster sustainable technology will reach the public**. For that reason, progress on these efforts should be monitored and documented for the public to review. A history of military brush-offs of the importance of environmental protection does not lend itself to a campaign of global stewardship. In order to win the confidence of the public, the military must demonstrate a willingness to follow through with the programs it has set in place to lead alternative-energy development in the United States and the world.

#### Courts are key – solves warming and credibility

Long 8 – Professor of Law @ Florida Coastal School of Law [Andrew Long, “International Consensus and U.S. Climate Change Litigation,” 33 Wm. & Mary Envtl. L. & Pol'y Rev. 177, Volume 33 | Issue 1 Article 4 (2008)

1. Enhancing U.S. International Leadership In a time of unfavorable global opinion toward the United States, explicit judicial involvement with international norms will move the United States **closer to the international community** by acknowledging the relevance of international environmental norms for our legal system. As in other contexts, explicit **judicial internalization of climate change norms would "build**[ ] **U.S. 'soft power,**' [enhance] its moral authority, and strengthen[ ] U.S. capacity for global leadership"2 °3 on climate change, and other global issues. More specifically, domestic judicial consideration of the global climate regime would reaffirm that although the United States has rejected Kyoto, we take the obligation to respect the global commons seriously by recognizing that obligation as a facet of the domestic legal system. U.S. courts' overall failure to interact with the international climate regime, as in other issue areas, has "serious consequences for their roles in international norm creation."2" As judicial understandings of climate change law converge, the early and consistent contributors to the transnational judicial dialogue will likely play the strongest role in shaping the emerging international normative consensus.2"' As Justice L'Heureux- Dube of the Canadian Supreme Court noted in an article describing the decline of the U.S. Supreme Court's global influence, "[decisions which look only inward ... have less relevance to those outside that jurisdiction." °6 Thus, if U.S. courts hope to participate in shaping the normative position on climate change adopted by judiciaries throughout the world, explicit recognition of the relationship between domestic and international law is vital. With climate change in particular, norm development through domestic application should be an important aspect of global learning. The problem requires a global solution beyond the scope of any prior multilateral environmental agreements. This provides a situation in which U.S. judicial reasoning in applying aspects of climate regime thinking to concrete problems will fall into fertile international policy soil. Accordingly, the recognition of international norms in **domestic climate change litigation may play a strengthening role in the perception of U.S. leadership**, encourage U.S. development and exportation of effective domestic climate strategies, and promote international agreements that will enhance consistency with such approaches. In short, explicit judicial discussion of international climate change norms as harmonious with U.S. law can **enhance U.S. ability to regain** a **global leadership** position on the issue and, thereby, more significantly shape the future of the international climate regime. 2. Promoting the Effectiveness of the International Response Along with promoting U.S. interests and standing in the international community, climate change litigation has a direct role to play in developing the international regime if courts directly engage that regime." 7 Just as the United States as an actor may benefit from acknowledging and applying international norms, the regime in which the actions occur will benefit through application and acceptance. Indeed, a case such as Massachusetts v. EPA that directly engages only domestic law can nonetheless be understood to impact international lawmaking by considering its actors."' More important, however, will be cases in which the domestic judiciary gives life to international agreements through direct engagement-a "role [that] is particularly important as a check on the delegitimization of international legal rules that are not enforced."" 9 Assuming, as we must in the arena of climate change, that international law can only effect significant changes in behavior through penetration of the domestic sphere, domestic litigation that employs international law not only provides an instance in which the international appears effective but, more importantly, molds it into a shape that will enable further use in domestic cases or suggest necessary changes internationally. By engaging the international, domestic cases can also provide articulation for the norms that have emerged. The precise meaning of the UNFCCC obligation that nations take measures must be hammered out on the ground. In the United States, if Congress has not acted, it is appropriate for the courts to begin this process by measuring particular actions against the standard. 3. Encouraging Consistency in Domestic Law and Policy In the absence of national climate change law and policy, explicit discussion of international sources and norms in litigation will provide a well-developed baseline for a uniform judicial approach in the domestic realm. This could occur both within and beyond the United States. Within the United States, bringing international environmental law into the mix of judicial reasoning would provide common grounding that unifies the decisions and begins to construct a more systematic preference for development of an effective legal response to international threats. Specifically, if an international climate change norm is found relevant to interpretation of a domestic statute, reference will be appropriate to that norm when future questions of interpretation of the domestic statute arise.210 Thus, to the extent that climate change cases rely upon consensus concerning the scientific evidence of climate change, future cases should use that consensus as a measuring stick for claims of scientific uncertainty.2n The same can occur with norm development. For example, had the Court in Massachusetts tied its jurisdictional or substantive holding to an identifiable norm, the opinion would have greater clarity and value as a precedent in other contexts within the United States. Outside the United States, this approach would provide value to other, more transnationally oriented domestic courts.212 This would serve a norm entrepreneurship function and likely increase agreement among domestic courts on how to approach climate change issues raised under statutes designed for other purposes. 4. Enabling a Check at the Domestic-International Interface Finally, climate change litigation has something to offer for the growth of administrative law at the interface of domestic and international law. At least two points are noteworthy. First, U.S. courts can serve a unique function of providing legal accountability for U.S. failure to honor its UNFCCC commitments.213 Although this might be achieved implicitly, arguably the approach of Massachusetts, doing so explicitly would provide a check of a different magnitude. An explicit check here would serve the purposes identified above, as well as offering the practical benefit of increasing compliance. The dualist tradition, and perhaps concerns of domestic political backlash, weigh against grounding a decision solely in the UNFCC. However, looking to it as a major point in a narrative defining the development of a partly domestic obligation to take national action for the redress of climate change would serve the same beneficial purpose. This approach has the advantage of building a significant bridge over the dualist divide between domestic and international law without ripping the Court's analysis from traditional, dualist moorings. Pg. 212-216

#### U.S. leadership on the broader green tech transition is critical to solve warming and solves great power competition

Klarevas 9 –Louis Klarevas, Professor for Center for Global Affairs @ New York University, 12/15, “Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony,” http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy\_b\_393223.html

As national leaders from around the world are gathering in Copenhagen, Denmark, to attend the United Nations Climate Change Conference, the time is ripe to re-assess America's current energy policies - but within the larger framework of how a new approach on the environment will stave off global warming and shore up American primacy. By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to secure its **global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will save the planet from global warming will allow the U.S. to outmaneuver potential great power rivals seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. ¶ Liberals, on the other hand, have recognized that global warming might very well become the greatest challenge ever faced by (hu)mankind. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a nasty zero-sum contest could be looming on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and global stability. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not undermine international security, global warming will. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a tremendous economic boom, while simultaneously providing it with means of leverage that can be employed to keep potential foes in check. The bottom-line is that the U.S. needs to become green energy dominant as opposed to black energy independent.

#### Great power competition causes war

**Khalilzad** **11**

[Zalmay Khalilzad, United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush and the director of policy planning at the Defense Department from 1990 to 1992. 2/8/11, <http://www.nationalreview.com/articles/259024/economy-and-national-security-zalmay-khalilzad>]

We face this domestic challenge while other major powers are experiencing rapid economic growth. Even though countries such as China, India, and Brazil have profound political, social, demographic, and economic problems, their economies are growing faster than ours, and this could alter the global distribution of power. These trends could in the long term produce a multi-polar world. If U.S. policymakers fail to act and other powers continue to grow, it is not a question of whether but when a new international order will emerge. The closing of the gap between the United States and its rivals could intensify geopolitical competition among major powers, increase incentives for local powers to play major powers against one another, and undercut our will to preclude or respond to international crises because of the higher risk of escalation. The stakes are high. In modern history, the longest period of peace among the great powers has been the era of U.S. leadership. By contrast, multi-polar systems have been unstable, with their competitive dynamics resulting in frequent crises and major wars among the great powers. Failures of multi-polar international systems produced both world wars. American retrenchment could have devastating consequences. Without an American security blanket, regional powers could rearm in an attempt to balance against emerging threats. Under this scenario, there would be a heightened possibility of arms races, miscalculation, or other crises spiraling into all-out conflict. Alternatively, in seeking to accommodate the stronger powers, weaker powers may shift their geopolitical posture away from the United States. Either way, hostile states would be emboldened to make aggressive moves in their regions. As rival powers rise, Asia in particular is likely to emerge as a zone of great-power competition. Beijing’s economic rise has enabled a dramatic military buildup focused on acquisitions of naval, cruise, and ballistic missiles, long-range stealth aircraft, and anti-satellite capabilities. China’s strategic modernization is aimed, ultimately, at denying the United States access to the seas around China. Even as cooperative economic ties in the region have grown, China’s expansive territorial claims — and provocative statements and actions following crises in Korea and incidents at sea — have roiled its relations with South Korea, Japan, India, and Southeast Asian states. Still, the United States is the most significant barrier facing Chinese hegemony and aggression.

#### Soft power solves extinction

Ikenberry 11 (G. John Ikenberry – Professor of Politics and International Affairs at Princeton University , Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order, 2011)

Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics— these and other dangers loom on the horizon. **Any of these** threats **could** endanger Americans' lives and way of life either directly or indirectly by **destabiliz**ing **the global system** upon which American security and prosperity depends. Pandemics and global warming are not threats wielded by human hands, but their consequences could be equally devastating. Highly infectious disease has the potential to kill millions of people. Global warming threatens to trigger waves of environmental migration and food shortages and may further destabilize weak and poor states around the world. The world is also on the cusp of a new round of nuclear proliferation, putting mankinds deadliest weapons in the hands of unstable and hostile states. Terrorist networks offer a new specter of nonstate transnational violence. Yet none of these threats is, in itself, so singularly preeminent that it deserves to be the centerpiece of American grand strategy in the way that antifascism and anticommunism did in an earlier era.15 What is more, these various threats are interconnected—and it is their interactive effects that represent the most acute danger. This point is stressed by Thomas Homer-Dixon: "Its the convergence of stresses that's especially treacherous and makes synchronous failure a possibility as never before. In coming years, our societies won't face one or two major challenges at once, as usually happened in the past. Instead, they will face an alarming variety of problems—likely including oil shortages**, climate change,** economic instability**, and** mega-terrorism—all at the same time." The danger is that several of these threats will materialize at the same time and interact to generate greater violence and instability "What happens, for example, if together or in quick succession the world has to deal with a sudden shift in climate that sharply cuts food production in Europe and Asia, a severe oil price increase that sends economies tumbling around the world, and a string of major terrorist attacks on several Western capital cities?"16 The global order itself would be put at risk, as well as the foundations of American national security. What unites these threats and challenges, as I noted in chapter 7, is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence— stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance. When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States cannot hide or protect itself from threats under conditions of rising security interdependence. It must get out in the world and work with other states to build frameworks of cooperation and leverage capacities for action. If the world of the twenty-first century were a town, the security threats faced by its leading citizens would not be organized crime or a violent assault by a radical mob on city hall. It would be a breakdown of law enforcement and social services in the face of constantly changing and ultimately uncertain vagaries of criminality, nature, and circumstance. The neighborhoods where the leading citizens live can only be made safe if the security and well-being of the beaten-down and troubled neighborhoods were also improved. No neighborhood can be left: behind. At the same time, the town will need to build new capacities for social and economic protection. People and groups will need to cooperate in new and far-reaching ways. But the larger point is that today the United States confronts an unusually diverse and diffuse array of threats and challenges. When we try to imagine what the premier threat to the United States will be in 2020 or 2025, it is impossible to say with any confidence that it will be X, Y, or Z. Moreover, even if we could identify X, Y, or Z as the premier threat around which all others turn, it is likely to be complex and interlinked with lots of other international moving parts. Global pandemics are connected to failed states, homeland security, international public health capacities, et cetera. Terrorism is related to the Middle East peace process, economic and political development, nonproliferation, intelligence cooperation, European social and immigration policy, et cetera. The rise of China is related to alliance cooperation, energy security, democracy promotion, the WTO, management of the world economy, et cetera. So again, we are back to renewing and rebuilding the architecture of global governance and frameworks of cooperation to allow the United States to marshal resources and tackle problems along a wide and shifting spectrum of possibilities. Pg. 350-353

#### Warming causes extinction

Flournoy 12 – Citing Feng Hsu, PhdD NASA Scientist @ the Goddard Space Flight Center, Don Flournoy, PhD and MA from UT, former Dean of the University College @ Ohio University, former Associate Dean at SUNY and Case Institute of Technology, Former Manager for Unviersity/Industry Experiments for the NASA ACTS Satellite, currently Professor of Telecommunications @ Scripps College of Communications, Ohio University, “Solar Power Satellites,” January 2012, Springer Briefs in Space Development, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 )

#### Warming is real

Muller 12 (Richard A., professor of physics at the University of California, Berkeley, and a former MacArthur Foundation fellow, “The Conversion of a Climate-Change Skeptic,” 7-28-12, <http://www.nytimes.com/2012/07/30/opinion/the-conversion-of-a-climate-change-skeptic.html?_r=2&pagewanted=all>)

CALL me a converted skeptic. Three years ago I identified problems in previous climate studies that, in my mind, threw doubt on the very existence of global warming. Last year, following an intensive research effort involving a dozen scientists, I concluded that global warming was real and that the prior estimates of the rate of warming were correct. I’m now going a step further: Humans are almost entirely the cause. My total turnaround, in such a short time, is the result of careful and objective analysis by the Berkeley Earth Surface Temperature project, which I founded with my daughter Elizabeth. Our results show that the average temperature of the earth’s land has risen by two and a half degrees Fahrenheit over the past 250 years, including an increase of one and a half degrees over the most recent 50 years. Moreover, it appears likely that essentially all of this increase results from the human emission of greenhouse gases. These findings are stronger than those of the Intergovernmental Panel on Climate Change, the United Nations group that defines the scientific and diplomatic consensus on global warming. In its 2007 report, the I.P.C.C. concluded only that most of the warming of the prior 50 years could be attributed to humans. It was possible, according to the I.P.C.C. consensus statement, that the warming before 1956 could be because of changes in solar activity, and that even a substantial part of the more recent warming could be natural. Our Berkeley Earth approach used sophisticated statistical methods developed largely by our lead scientist, Robert Rohde, which allowed us to determine earth land temperature much further back in time. We carefully studied issues raised by skeptics: biases from urban heating (we duplicated our results using rural data alone), from data selection (prior groups selected fewer than 20 percent of the available temperature stations; we used virtually 100 percent), from poor station quality (we separately analyzed good stations and poor ones) and from human intervention and data adjustment (our work is completely automated and hands-off). In our papers we demonstrate that none of these potentially troublesome effects unduly biased our conclusions. The historic temperature pattern we observed has abrupt dips that match the emissions of known explosive volcanic eruptions; the particulates from such events reflect sunlight, make for beautiful sunsets and cool the earth’s surface for a few years. There are small, rapid variations attributable to El Niño and other ocean currents such as the Gulf Stream; because of such oscillations, the “flattening” of the recent temperature rise that some people claim is not, in our view, statistically significant. What has caused the gradual but systematic rise of two and a half degrees? We tried fitting the shape to simple math functions (exponentials, polynomials), to solar activity and even to rising functions like world population. By far the best match was to the record of atmospheric carbon dioxide, measured from atmospheric samples and air trapped in polar ice. Just as important, our record is long enough that we could search for the fingerprint of solar variability, based on the historical record of sunspots. That fingerprint is absent. Although the I.P.C.C. allowed for the possibility that variations in sunlight could have ended the “Little Ice Age,” a period of cooling from the 14th century to about 1850, our data argues strongly that the temperature rise of the past 250 years cannot be attributed to solar changes. This conclusion is, in retrospect, not too surprising; we’ve learned from satellite measurements that solar activity changes the brightness of the sun very little.

### Judiciary 1AC

#### Contention 2 is Judicial Exchanges

#### US judicial exchanges with China are healthy and increasing, providing a key forum for precedential replication

Arie 13 (Mira Gur-Arie is director of the International Judicial Relations Office of the Federal Judicial Center, the education and research agency for the U.S. federal courts, “Judges Coming Together: International Exchanges and U.S. Judiciary,” 4-1-13, <http://iipdigital.usembassy.gov/st/english/publication/2013/02/20130215142641.html#axzz2aUE6tKZy>)

The United States courts have experienced the impact of globalization in many ways. With increasing frequency, litigation involves evidence located abroad, foreign law, and international treaties, putting judges in contact with legal issues from around the world. This has, in turn, inspired in U.S. judges a growing interest in the legal world outside their jurisdiction, with many American judges hosting visits from foreign jurists and participating in conferences and technical assistance projects abroad. These international exchanges are much valued and mutually rewarding, enabling judges to exchange insights about the challenges and rewards of a judge’s role in preserving the rule of law. The U.S. judiciary has much to share, with its long history of independence, its developed jurisprudence, and its rich experience with administering a large and diverse court system. Each year the United States hosts well over 2,000 judges and lawyers from abroad. In 2012, the Supreme Court of the United States received more than 800 visitors representing over 95 countries. Among these were justices from the supreme courts of Morocco, Kosovo, and the Philippines. Judicial delegations from other countries do not visit only Washington. Federal courts all over the United States host visiting judges, providing an opportunity to observe trials, learn about courtroom technology and speak with their U.S. counterparts about the role of a judge in the United States. More than 150 judges and court officials visited the Massachusetts District Court in 2012, including judges from Romania, Brazil, and China; California's Northern District Court in San Francisco also hosts judges and court officials from other countries, with more than 15 delegations visiting the court each year; six judges from Jordan were among the visitors to Utah's District Court in 2012. In some cases judges from other countries participate in extended professional exchanges as interns or "guest research judges." The Massachusetts court has hosted judges from South Korea, China, and Turkey for such longer visits; these programs enable the visiting judges to acquire a more in-depth understanding of U.S. judicial practice, observe different phases of court proceedings, and learn about the legal research and judgment drafting process. Despite the diversity of the countries represented, the questions that emerge during these exchanges resonate with a single theme: How can judges and judicial systems work more effectively? Visiting judges want to know about judicial administration, strategies U.S. judges have employed to manage their caseloads efficiently, developing training for judges and court personnel, and the U.S. experience with implementing and enforcing a judicial code of conduct. During visits, foreign judges observe a broad range of proceedings: case conferences, criminal case arraignments and bail hearings, trials, oral arguments, and bankruptcy proceedings. Perhaps most importantly, visiting judges have the opportunity to speak one-on-one with U.S. judges. This judge-to-judge sharing of experience provides visitor and host alike useful insights about judging. Common Bonds Certainly, both visitor and host are impressed with their shared sense of role and mission, despite differences in their countries’ legal traditions, mechanisms of adjudication, and resources. Throughout the world, it is the judge’s responsibility to maintain the dignity of court proceedings and ensure that the rights of litigants are respected. Judges often discover that the great burden of this responsibility, and the often solitary avocation of judging, is a cross-cultural phenomenon — a realization that enables an ease of communication with their colleagues from other countries. This openness enables these conversations to lead to candid exchanges about the benefits and disadvantages of different judicial systems. Judges visiting the United States are keen to learn about the many unique features of the U.S. courts. Judges from countries without jury systems have the opportunity to observe jury selection and the trial process; they immediately note the difference between reality and Hollywood’s depictions, and they often admire the relationship of mutual respect that develops between the jurors and the judge. Similarly, U.S. judges, deeply acculturated to the common law tradition, are often surprised to learn about the duties and powers of an investigative judge in civil law countries. They are also intrigued with the very different orientation of court proceedings that rely more on paper submissions by attorneys than the taking of oral testimony in court. Such conversation and debate among jurists may best be initiated by a discussion of vocabulary, as many of the terms of art that define legal systems (trial, appeal, plea bargain) may have different meanings. Visitors to the U.S. courts often comment on the deep-rooted tradition of judicial independence in the United States and the many practical and physical advantages this confers on a judge’s work. One significant advantage enjoyed by federal judges in the United States is their life tenure — a tenure protected from political caprice and unrest. The U.S. courts are also well resourced, with a number of new courthouses, extensive automation, and administrative agencies and staff that greatly facilitate a judge’s work.

#### Judicial exchanges quickly transmit innovations in environmental law, the plan is replicated and applied

Markowitz 12 (Kenneth J. Markowitz is the President and founder of Earthpace LLC and Managing Director of the INECE Secretariat, Senior Counsel to the United States Environmental Protection Agency, Region III (1989-1994). Ken earned a B.B.A. in finance from Emory University's Goizueta Business School and a J.D. from the Washington College of Law (WCL) at American University, and Jo J. A. Gerardu graduated as a chemical engineer at the Eindhoven University, and worked for the Ministry of Transport as Head of the Department for Road Building Materials, Quality Control and Asphalt from 1970 to 1984, “The Importance of the Judiciary in Environmental Compliance and Enforcement,” Winter, 2012 Pace Environmental Law Review 29 Pace Envtl. L. Rev. 538)

A judiciary well informed of the rapidly expanding boundaries of environmental law and law in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to environmentally friendly development, would play a critical role in the vindication of the public interest in a healthy and secure environment through the interpretation, enhancement and enforcement of environmental law. n9 However, staying abreast of the complex and rapidly changing environmental issues can be difficult for individual judges. Further confounding the work of judicial bodies, most environmental harms involve complex science and - especially those brought about by climate change - do not conform to jurisdictional boundaries. This requires judicial bodies to coordinate and collaborate in ways to which judges may be unaccustomed or uncomfortable. n10 As stated in the United Nations Environment Programme (UNEP) GEO-4 Report, the environmental "issues [brought about by climate change] transcend borders. Protecting the global environment is largely beyond the capacity of individual countries. Only concerted and coordinated international action will be sufficient. The world needs a more coherent system of international environmental governance." n11 [\*545] In 2002, the participants of the Global Judges Symposium on Sustainable Development and the Role of Law in Johannesburg, South Africa, organized by INECE and UNEP, concluded that: The deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to the lack of effective implementation, development and enforcement of environmental law.' ... There is an urgent need to strengthen the capacity of judges, prosecutors, legislators and all persons who play a critical role at national level in the process of implementation, development and enforcement of environmental law ... . n12 Recognizing the importance of the judiciary, INECE works with judicial bodies around the world to help develop a global judiciary, which is well-informed of the rapidly expanding boundaries of environmental law and law in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to an environmentally friendly and secure environment through the interpretation, enhancement, and enforcement of environmental law. INECE also supports jurists in making administrative procedure changes to better support environmental enforcement. INECE will continue to reinforce and advance this message in the Rio + 20 process this summer and beyond. B. Environmental Courts and Tribunals One significant development in recent decades is the emergence of "green courts" - environmental courts and tribunals that specialize in the adjudication of environmental disputes. They allow governments to address environmental and closely related socio-economic issues that require significant specialized knowledge. Qualifications for serving as part of an environmental court and tribunal frequently require training in environmental science and other technical fields. They exist not [\*546] only for the prosecution of environmental crimes, but civil cases as well, and often must balance environmental and economic considerations. In all countries where environmental courts and tribunals are present, their availability is highly dependent on the threshold issue of standing. Local or national laws determine the types of claims that an environmental court and tribunal is authorized to hear and dictate the eligibility criteria for access to these decision-making bodies. A study by the Access Initiative has identified over 350 environmental courts and tribunals in forty-one countries and on every continent, including 117 created in the Philippines in 2008. n13 They take many forms and either consists of formal elements of the judicial branch of governments (courts) or bodies that are not part of the judicial branch, but have authority to issue binding decisions in environmental disputes (tribunals). n14 The Access Initiative study concluded that there is no optimal "one-size-fits-all" model for environmental courts and tribunals but that the most effective form for each country should be driven by factors that include the type of laws, legal institutions, cultural, and socio-economic conditions prevalent in each national jurisdiction. n15 The diversity of environmental courts and tribunals is best illustrated by several examples. The Land and Environment Court in the state of New South Wales, Australia, is a stand-alone court that is part of the judicial branch of government. It has comprehensive authority to address issues that integrate environmental and land-planning concerns and is empowered to issue civil, administrative, and criminal rulings. n16 The court makes extensive use of internally selected independent experts who have scientific or technical credentials. n17 [\*547] In contrast, Brazil's state and federal environmental courts do not have authority to integrate land use planning issues into their decisions on criminal cases (although they have civil and administrative jurisdiction). n18 However, Brazilian judges have significant leeway to fashion creative remedies in environmental cases and are recognized for being relatively insulated from political pressures. n19 A unique fixture in environmental cases in Brazil is the office of public environmental prosecutors (Ministerio Publico), which is largely independent of the three branches of government and has substantial powers to autonomously and aggressively pursue environmental actions, work closely with NGOs, or respond to a claim filed by the public. n20 Some environmental courts and tribunals have only recently been implemented. In India, the National Green Tribunal Act of 2010 authorized the development of institutional capacity for domestic environmental governance, including the implementation of a national green tribunal that is staffed by judicial and expert members for issuing rulings on environmental controversies. n21 The Tribunal, which became operational in summer of 2011, is expected to play a dominant role in leading the development of environmental compliance and enforcement mechanisms, but is likely to require significant capacity enhancements before it can make inroads in improving compliance with India's environmental laws. Efforts to build a green court are advanced in Kenya and in several Asian countries as well. Despite the advantages that environmental courts and tribunals offer over non-specialized civil and criminal courts, their availability only represents a first step towards preventing and providing effective redress for environmental harms. The [\*548] means for enforcement must be available in order to give effect to the decision of an environmental court or tribunal. This may prove difficult in practice where there is insufficient capacity on the part of government agencies, in terms of training, experience, level of staffing, or political will to implement the actions necessary to accomplish this. In many countries, judges and prosecutors will require additional training and resources in order to consistently fashion decisions that can be enforced. The engagement of senior judges, prosecutors, and attorney generals in international networks has proven to be one highly effective tool for enhancing their abilities to shape the ultimate outcome in environmental disputes. IV. THE ROLE OF INTERNATIONAL NETWORKS IN FACILITATING COOPERATION AMONG THE JUDICIARY Cooperation among governmental officials dedicated to strengthening environmental governance has numerous benefits for achieving common goals. Cooperation, whether through formal structures or through informal networks, can help resolve and prevent trans-boundary environmental problems, create efficiencies in the development of tools and programs, and help create a level playing field for regulated industries. n22 In the example of INECE, its work over the past twenty years in fostering collaboration among officials has resulted in informal relationships that have provided a number of advantages. These include the ability to address trans-boundary environmental crime, n23 the increased recognition of the relationship between environmental enforcement and sustainable [\*549] development, n24 and the collaborative development of new tools for strengthening institutions to assure compliance. n25 These same principles apply to collaboration among members of the judiciary, whether at a national or international level, which can aid in the transmission of advances in environmental sciences and provide a forum for members of the judiciary to exchange information on environmental law relevant to their decision making. As the United Nations Environment Programme recognizes, "because environmental violations very often have transboundary aspects, however, judicial proceedings addressing such violations will also have international aspects and will benefit from cooperation between the relevant judges." n26 Global judicial networking can promote the exchange of ideas between court systems, enable informal peer-level oversight, and encourage and empower members of the judiciary who are engaged in environmental decision-making. Anne-Marie [\*550] Slaughter describes the benefits of both horizontal communication (between courts of the same status) and vertical communication (between national and supranational courts), noting that: ... horizontal judicial communication can play a further role in promoting the acceptance and effectiveness of international obligations. In a situation in which a number of states are contemplating acceptance of a particular international legal obligation, references to the activity of fellow courts in other states can act as both a security blanket and a stick. n27 In the two decades since the Rio Earth Summit, members of the judiciary, including judges, prosecutors, attorney generals, and other legal professionals have been central participants in the use of international networks to share knowledge, build consensus on best practices, and develop a basis for broader cooperation in dealing with environmental cases that transcend international boundaries. Moving into the future, INECE and its global networks will continue to play a role in helping to formulate a more systematic approach in addressing the role of the judiciary in promoting environmental compliance and enforcement. INECE through its networks can promote and expand the basis for standing for civil society groups and assist in promoting judicial awareness of the need for strong enforcement of environmental cases. A meeting of the Presidents of Supreme Courts and Chief Justices, convened at the 2002 Johannesburg Summit, provided the impetus for one of the first international networks of judges dedicated to addressing environmental issues. In order to implement the resolutions adopted at that meeting, UNEP organized a series of regional conferences. An important outcome of this process involved a decision by European judges creating a permanent network in February 2004: the European Union Forum of Judges for the Environment. The Forum's mission is to promote better enforcement of national, European, and international environmental law through programs aimed at [\*551] strengthening judges' knowledge of environmental law, encouraging the exchange of judicial decisions, and collaborating to develop effective training in environmental law. The European Union Forum of Judges for the Environment has also taken a leading role in spreading the benefits of networking beyond Western Europe, pioneering initiatives in South Eastern Europe and Central Asia. Although regional networks have established new channels for effective regional cooperation, many of today's environmental challenges are global in scale. On June 20, 2011, the Global Network of Environmental Prosecutors, launched (by a diverse group of prosecutors) in response to the conclusion that internationally organized crime calls for an internationally organized prosecution. n28 This new network is an outcome of a joint work program carried out by INECE and the IUCN. It also builds on the experience of existing networks, such as the Latin American Environmental Prosecutors Network and the European Network of Prosecutors. The network will contribute towards compliance with international and national laws aimed at protecting flora and fauna, marine and terrestrial ecosystems, and habitats. V. FURTHER STEPS Initial groundwork has been laid for a new era of international cooperation between members of the judiciary. The 2011 INECE Conference at Whistler resulted in a call to action to facilitate continued collaboration among key participants, including judges, prosecutors, civil society, and the private sector to work toward strengthening mechanisms for environmental compliance and enforcement. n29 Some of these action items include promoting the importance of green courts in enforcing environmental law, jointly developing methods to stimulate effective cross-border information sharing mechanisms for [\*552] detecting and deterring illegal operations, and better integrating and expanding the role of academia into this work. n30 In June of 2012, the United Nations Conference on Sustainable Development (Rio+20) will offer members of the judiciary from around the world an opportunity to take international judicial cooperation on the environment further. In preparation for Rio+20, UNEP commenced a set of programs designed to strengthen that outcome. These include engaging senior members of the judiciary from around the world in identifying a common vision for using legal systems, the judiciary, and governance to promote sustainable development. n31 In a background document submitted in support of UNEP's effort, Gregory Rose highlighted that: The judiciary has, in recent years, enhanced enforcement efforts by governments to implement environmental laws. It plays a crucial role by interpreting legislation relating to environmental issues, integrating emerging principles of law within the holistic paradigms of sustainable development, providing a coherent and comprehensive strategy for integrating diverse sectoral laws into a cross-sectoral approach and for ensuring effective implementation of legislation. n32 After an initial high-level planning session in Stockholm in July, UNEP held its first preparatory meeting in Kuala Lumpur, Malaysia, on October 12 and 13, 2011. The meeting resulted in the "Kuala Lumpur Statement," n33 which provides a bold list of objectives that must be attained in order to put sustainable development goals into effect. Highlighting the need for representatives of the legal community to "take a more active role [\*553] to further their contribution" n34 toward reaching those goals, the statement's key objectives include strengthening recognition of the connection between social justice and environment, integrating non-governmental sectors (business and environmental NGOs), and taking steps to enhance public participation and access to justice. n35 A second preparatory meeting will take place in Buenos Aires, Argentina, in April of 2012. On the eve of Rio+20, UNEP will convene the World Congress on Justice, Governance and Law for Environmental Sustainability from June 1-3, 2012, in order to build international consensus among key participants which will include attorneys-general, chief prosecutors, auditors-general (cour des comptes), chief justices and senior judges. The World Congress will seek to establish a roadmap for concrete future actions that will be necessary to support the pursuit of sustainable development and to secure commitment for implementing them. VI. CONCLUSIONS Strengthening environmental compliance and enforcement requires the unwavering commitment of individuals and institutions everywhere. Of the many actors in the environmental compliance chain, the judiciary alone has a fundamental contribution to make in upholding the rule of law and ensuring that national and international laws are interpreted and applied fairly, efficiently, and effectively. Perhaps the most profound aspect of judicial leadership in strengthening institutions for environmental compliance enforcement is the judiciary's ability to influence public perception and discourse concerning environmental and social concerns. Courts have a powerful transformative effect on society. Scott Fulton and Justice Antonio Benjamin, prominent environmental judges from separate continents and cultures, [\*554] recently jointly commented that, "what judges treat as important, a society comes to judge as important." n36 Improved global collaboration between judges and prosecutors across an increasingly broad array of formal and informal networking channels has greatly increased opportunities for successful implementation of compliance and enforcement measures. Yet the success of global environmental governance depends on more than an environmentally trained and motivated judiciary. The same level of ambition that has been collectively voiced by senior judges in preparation for Rio+20 must be harnessed to translate generalized goals into concrete institutional changes, laws, and accountability mechanisms in nations around the world.

#### Specifically true for US-China dialogues on environmental law

ABA 7 (American Bar Association, “Rule of Law Initiative Conducts U.S.-China Environmental Law Exchange,” August 2007, <http://www.americanbar.org/advocacy/rule_of_law/where_we_work/asia/china/news/news_china_environmental_law_exchange.html>)

From the moment they stepped off the plane on June 17, 2007, in Washington, DC, Chinese environmental officials and advocates marveled at the clear air and blue skies overhead. “I knew that the U.S. had good environmental protection, but I didn’t realize just how far China still has to go,” said Xi’an Environmental Protection Bureau (EPB) official John Qi. Director Qi and his nine colleagues were in the United States to participate in the Rule of Law Initiative’s Exchange Project to Increase Citizen Participation, Accountability, & Transparency in Environmental Decision-Making in China, co-sponsored by China’s State Environmental Protection Administration (SEPA). The participants included two SEPA officials, five provincial and municipal EPB officials from Xi’an, Shenyang, Wuhan, and Guizhou, one NGO leader from Chongqing, one judge on the Supreme People’s Court, and one environmental lawyer from Beijing. The core of the exchange program consisted of month-long periods of residency during June and July 2007 in American environmental agencies and NGOs. Exchange participants worked alongside their American counterparts in daily planning and implementation of activities to promote civic participation, information transparency, and environmental good governance. Following an orientation in DC where the delegation met with U.S. government agencies, think tanks, and civil society groups, the participants dispersed to organizations around the country, including U.S. EPA Region 5 in Chicago and Madison, U.S. EPA Region 9 in San Francisco, the California EPA, the California Energy Commission, the Sierra Club, and the Natural Resources Defense Council (NRDC) in DC and New York. As part of their periods in residency, two exchange participants, Tang Shaohua of Wuhan EPB and Wu Dengming of Chongqing Green Volunteers, took part in the California Environment Dialogue. “What left a deep impression,” said Director Tang, “was that government officials, NGO leaders, and businesspeople all participated as equals in the dialogue.” He and Mr. Wu both returned to China with plans to create similar dialogues around environmental issues in their cities, which are located along China’s Yangtze River. “If the public respects the law, and the government respects the law, then business will come to respect the law as well,” said Mr. Wu. The expansive and important role of civil society participation in environmental protection in the U.S. left a similarly strong impression on other participants. Peng Bin of Guizhou Provincial EPB, who was in residency at EPA region 5, was particularly struck by the significant role of environmental lawyers, both inside and outside of government. Chinese attorney Xia Jun, who was in residence at NRDC, was impressed by the many facets of American environmental lawyers’ work, including litigation, lobbying and public education. Mr. Xia has already reached an agreement with Mr. Wu on the Chongqing environmental NGO to engage in deeper collaboration between his law firm and the NGO back in China. Participants’ initial impressions that the U.S. environment was already “so well protected that there wasn’t much more environmental protection work to do” was gradually replaced by a nuanced understanding of the nature and focus of current American environmental protection efforts. As Director Qi reflected on discussions with EPA officials about problems like hazardous waste clean-up and the dangers of substances leaching into the groundwater, he realized the extent to which American environmental officials are paying attention to the impacts on citizens’ health. Moreover, the interaction between the EPA and NGOs, which he characterized as, “friendly, but mutually supervising each other; supporting and helping environmental protection” through greater public participation, was also was a novel and motivational experience. “From what we saw at the U.S. EPA,” Mr. Qi concluded, “I can see what China’s environmental protection agencies will need to do in the future.” The participants kept on-line journals and photos of their experiences in the U.S., which are available at<http://www.chinaeol.net/zmhj/default_en.asp> (English translations) and <http://www.chinaeol.net/zmhj/xwdt.htm>(Chinese). They will submit a collective report to China’s SEPA leaders on their observations and recommendations from the exchange, and the next issue of China’s World Environmentmagazine will feature their stories and case studies on public participation in environmental protection in the United States. The next phase of the exchange project will take place in China, as representatives from the American host organizations will spend periods in residence at their counterpart Chinese environmental organizations, and all participants will serve as trainers in a Rule of Law Initative & SEPA-organized national workshop on implementing environmental public participation.

#### Lack of Judicial checks allow for carte blanche military pollution

Nevitt 13

[Mark. He’s a badass and an American Patriot. Don’t take our word for it though, he is a Lieutenant Commander (LCDR), United States Navy. LCDR Mark P. Nevitt is an active duty Navy judge advocate. He obtained his LL.M. with distinction at the Georgetown University Law Center (GULC), his J.D. from Georgetown Law and his B.S.E. from the Wharton School at the University of Pennsylvania, where he was commissioned as a naval officer via the NROTC program. A former naval flight officer who has flown combat mission from aircraft carriers, LCDR Nevitt is currently assigned as the Region Environmental Counsel (REC) for the Mid-Atlantic Region in Norfolk, VA, DEFENDING THE ENVIRONMENT: A MISSION

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The starting point for a discussion of how environmental laws apply to the Chinese military must start with China’s unique structure. The PLA consists of five military subgroups and is under the authority of the powerful Central Military Commission. Under China’s Constitution, most recently amended in 1982, the CMC of the People's Republic of China directs the armed forces of the country. Further, the CMC is composed of the Chairman, the Vice-Chairmen, and Members. The Chairman of the CMC has overall responsibility for the commission and the term of office of the CMC is the same as that of the National People's Congress. The Ministry of National Defense reports to the State Council, but does not exercise any independent control over the PLA. In theory, the National People’s Congress (NPC) exercises considerable control over the CMC, including electing the Chairman. But the reality is different. While the 1982 Chinese Constitution gives the National People’s Congress a prominent role, one commentator has noted that “it is little more than a rubber stamp for party decisions.” The CMC exercises de facto, authoritative policy-making and operational control over the military through the General Political Department of the People's Liberation Army (PLA). The head of the CMC is also the President of China, currently Hu Jintao. It is common for the President of China to continue to serve as head of the CMC for several years after stepping down as President. For example, President Jiang Zemin served as the head of the CMC for two years following his Presidency and it is anticipated that Hu Jintao will serve as the CMC head when Xi Jinping becomes China’s President. This further cements the centralization of power within select Communist Party officials that appear to have minimal practical accountability outside the party apparatus. 2. Chinese Environmental Law Against this backdrop, environmental legislative development in China has proceeded slowly, with the Environmental Protection Law (EPL) of the People’s Republic of China first issued in 1979 and subsequently amended and implemented in 1989. The EPL addresses natural resource protection through the “rational use of natural environment, prevention and elimination of environmental pollution and damage to ecosystems, in order to create a clean and favorable living and working environment, protect the health of the people and promote economic development.” The Chinese Constitution discusses the environment in Article 26: “[t]he State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards. The State organizes and encourages afforestation and the protection of forests.” In all, there are nine major environmental laws and regulations adopted by the NPC Standing Committee and ten laws dealing with the protection of specific resources. Many of the Chinese environmental laws have approximate U.S. counterparts. For example, the “Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste” roughly approximates RCRA and the “Law on Prevention and Control of Water Pollution” roughly approximates the Clean Water Act. These major Chinese environmental laws and regulations – with few exceptions - leave out any reference to the military or governmental agencies. Article 1 of the EPL states that it’s “formulated for the purpose of protecting and improving people's environment and the ecological environment, preventing and controlling pollution and other public hazards, safeguarding human health and facilitating the development of socialist modernization.” The EPL applies “to the territory of the People’s Republic of China and other sea areas under the jurisdiction of the People's Republic of China.” Article 6 contains a provision that could potentially provide for citizen-suit actions by Chinese citizens. It states, “All units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment.” It is unlikely that this will occur in practice, however, as China lacks an accompanying citizen-suit statute or APA-stylized remedy. Article 7 of the EPL effectively allows the armed forces and other administrations to self-regulate (“conduct supervision and management”) via their internal environmental protection departments without a clear independent accountability. It states: The state administrative department of marine affairs, the harbor superintendence administration, the fisheries administration and fishing harbor superintendence agencies, the environmental protection department of the armed forces and the administrative departments of public security, transportation, railways and civil aviation at various levels shall, in accordance with the provisions of relevant laws, conduct supervision and management of the prevention and control of environmental pollution. There are legal liability provisions within the EPL to include criminal prosecution, yet, as discussed below, environmental enforcement has been lax and continues to undermine the overall environmental regime. For the first time in twenty years, the EPL is currently being rewritten. Yet, it appears that the new EPL lacks provisions allowing for lawsuits to protect the environmental public health and safety and does not address the military. Additionally, the Chinese Water Pollution Control Law states, “in the event of a large number of interested parties harmed by water pollution, the interested parties may select a representative to participate in the joint action.” Yet it remains highly unlikely that independent citizen groups (referred to as Civil Society Organization, or “CSOs,” in China) could successfully bring a lawsuit to enforce these provisions. The “Law of the People's Republic of China on the Environmental Impact Assessment” was adopted October 28, 2002, and imposes NEPA-like requirements to provide environmental impact assessments in the promotion of sustainable development. The jurisdiction includes the “territory of the People’s Republic of China or within other seas subject to the jurisdiction of the People's Republic of China.” Military construction projects are specifically mentioned in Art. 201: The measures for conducting environmental impact appraisals to the construction projects of military facilities shall be formulated by the Central Military Committee according to the present Law. This rather general provision reinforces the central role of the CMC in environmental management of the PLA without outside judicial or citizen accountability. China has also adopted a Marine Pollution Law, which, as written, appears to apply broadly to activities that would encompass the Chinese navy as it specifically applies to the internal sea, territorial seas, contiguous zone, continental shelves and other sea areas under the jurisdiction of the PRC. It states, “[a]ll units and individuals engaged in navigation, exploration . . . and other operations in the sea areas under the jurisdiction of the PRC, or engaged in operations in the coastal areas that have impact on the marine environment shall comply with the law.” Yet because Chinese military environmental stewardship is effectively self-governed by its own “environmental protection department,” **Chinese laws lack the ability to provide for third-party oversight of its military activities.** 3. Implementation and Enforcement The likelihood of citizen suits to enforce environmental regulations would not appear to be high if sought to be applied to the Chinese military. No citizen suits under Chinese environmental law have even been attempted against until fairly recently when a CSO named the “All-China Environmental Federation” sued a port container firm for violation of the “laws related to environmental impact assessment, and the prevention and control of air, water and noise pollution for alleged environmental violations.” Not surprisingly, there have been no citizen suit actions against any Chinese military activities. As discussed above, China has passed several environmental laws in the last thirty years, but they have been largely marked by ineffective implementation and enforcement. In China the low status of law as a means of achieving societal goals, the lack of capacity within the country’s bureaucracies and legal institutions, and its delegation of responsibility for environmental protection to local or administrative authorities has made effective overall environmental implementation difficult. To further highlight this, in the 2010 Yale/Columbia Environmental Performance Index ranks countries on environmental and public health performance indicators and serves as a gauge for how countries are matching up to their stated environmental goals. China ranked 116 out of 132 tracked countries. Further, China does not have a cooperative federalism model such as the one seen in the United States, for example, whereby states exercise considerable authority over their environmental enforcement and administration to include military activities in their state. At first blush, it appears that China has a broad environmental legal regime that could apply to military activities. The “People's Liberation Army Environmental Protection Ordinance of China,” issued by the CMC, states in its purpose statement: In order to regulate the environmental protection work of the armed forces, protect and improve the army management and use of the living environment of the region, the ecological environment, safeguarding human health, according to the relevant provisions of the Environmental Protection Law of the People's Republic of China and other environmental protection laws, the enactment of this Ordinance. Yet, it is unclear how the military practically applies the EPL and other Chinese national environmental law to the armed forces. Since 1979, China’s National People’s Congress and Standing Committee have passed 29 pieces of environmental legislation, nearly 10 percent of the total legislation passed in China. Yet despite these legislative gains, there appear to be enormous gaps in environmental law in China and its enforcement. Criminal enforcement is especially difficult because “as long as no major pollution of the environment, no major loss of property and no major injuries result, then there is no crime.” Penalties and enforcement practices are not a sufficient deterrent in itself. This can be attributed, in part to an overall lax enforcement of China environmental laws. Further, in enforcing environmental regulations, the judiciary has shown a reluctance to take on “sensitive or special cases, meaning they can refuse to let someone bring an action and leave them with no other options to pursue.” These generic problems of environmental enforcement are compounded when applied to the Chinese military, which essentially has the status of an independent entity that is accountable only to the CMC. It is not expressly subject to the environmental regulations adopted and amended by the NPC Standing Committee and PLA operates, essentially, as an independent entity that is outside the jurisdiction of Chinese environmental regulations. China has adopted a more sustainable model of environmental regulation, however, and there appear to have been some efforts underway within the CMC to address environmental stewardship in the PLA as a result. For example, the PLA has its own internal environmental regulations, such as the “People's Liberation Army Environmental Protection Ordinance.” Its purpose is to “regulate the environmental protection work of the armed forces, protect and improve the army management and use of the living environment of the region, the ecological environment.” It contains numerous noble environmental goals (e.g. “[e]nvironmental protection work of the armed forces should be integrated into the army building and development plans”). Similar to the nine core environmental laws, it is unclear what legal effect these military guidelines have—they appear to be more of guiding documents without judicially enforceable standards. One report has noted a total of 835 Chinese “National Resources and Environmental Management” (NREM) policies, but only ten that apply to Chinese military installations without any history of outside judicial enforcement. China lacks any provision akin to the APA within U.S. law that allows citizens to bring legal challenges to “agency action” by China or Chinese officials. Absent such administrative protections, **it is unlikely that the military will be fully accountable to any outside group or citizen group for violating its environmental laws.**

#### The plan is a key model for checks on China’s military – prevents destruction and unrest

Nevitt 13

[Mark. He’s a badass and an American Patriot. Don’t take our word for it though; he is a Lieutenant Commander (LCDR), United States Navy. LCDR Mark P. Nevitt is an active duty Navy judge advocate. He obtained his LL.M. with distinction at the Georgetown University Law Center (GULC), his J.D. from Georgetown Law and his B.S.E. from the Wharton School at the University of Pennsylvania, where he was commissioned as a naval officer via the NROTC program. A former naval flight officer who has flown combat mission from aircraft carriers, LCDR Nevitt is currently assigned as the Region Environmental Counsel (REC) for the Mid-Atlantic Region in Norfolk, VA, DEFENDING THE ENVIRONMENT: A MISSION

FOR THE WORLD’S MILITARIES, March 12, 2013, pp. 42-53]

In many developing countries, the military is viewed as a necessary support for the state, and civilian authorities are often reluctant to impose restrictions on military activities. Yet in the long-term, this can be dangerous, and can lead to conflict and unrest. History is beset with numerous military-led coups due to the disproportionate power relationship that exists between the military and its civilian political leaders. Other nations of the world can learn from the American experience—in particular, from the robust judicial enforcement of U.S. environmental laws against the military. For example, while the Chinese military is theoretically accountable to the EPL and other core laws, enforcement appears weak as applied to the military making the PLA effectively outside the umbrella of broader national environmental regulation. Th**ere does not appear to be a practical judicial enforcement mechanism for citizens** or citizen groups to bring lawsuits against a polluting military sector. As the Chinese economy and military sector grow, it is concerning that there is limited accountability while its military activities grow and continue to have a greater impact on the environment. Indeed, Chinese military environmental regulations appear to be entirely self-governing, begging two questions: (1) what practical environmental standards apply to the Chinese military?, and (2) what routes exist for the Chinese populace to hold its military accountable for environmental regulations? Unfortunately, Chinese environmental law today as practically applied to its military appears to share some similarities with the Soviet Union during the Cold War. As discussed above, under “[t]he People’s Liberation Army Environmental Protection Ordnance,” the Chinese military “is accountable to the relevant provisions of the Environmental Protection Law,” but it is unclear how this accountability is implemented in practice given the apparent absence of citizen suits or judicial enforcement from Chinese law. The Soviet Union military was, essentially, exempt from its environmental laws throughout the Cold War. Perhaps not surprisingly, the Soviet military’s legacy of environmental stewardship was poor and this was further exacerbated by a secrecy-driven culture.

#### Chinese military exemptions gut overall environment enforcement

Tang 98 (Shui-Yan Tang, University of Southern California, Vandana Prakash, University of Southern California, Ching-Ping Tang, “Local Enforcement of Pollution Control in Developing Countries: A Comparison of Guangzhou, Delhi, and Taipei,” *Journal of Public Policy*, Vol. 18, No. 3, Sep. - Dec., 1998, pp. 265-282)

The extent to which an environmental agency can effectively enforce environmental regulations frequently depends on the informal power relations among government officials and units. A major obstacle for effective enforcement of environmental regulations, for example, comes from the military and its service units and enterprises. Chan et al. (1993), for example, mentioned the difficulty the Guangzhou Municipal Environmental Protection Bureau encountered when it tried to undertake a site inspection of the Retired Air Force Personnel Recre- ation Club. The EIA system is dominated entirely by government agencies, without any forum and provision for public participation or consultation. All decisions in the process are made solely by bureau officials; no insti- tutional channels exist for the general public and those who are affec- ted by the proposed project to express their opinions and to raise objec- tions. Although laws in China provide for penalties or imprisonment for various environmental crimes, legal channels are seldom used for resolving environmental conflicts. Furthermore, no viable means exist for citizens to challenge government agencies' EIA decisions through legal channels.

**Chinese pollution causes CCP instability**

**Nankivell 06**

[Nathan, Senior Research for the Canadian Department of National Defense, “China's Pollution Poses Security Threat in Asia,” 1/9/06, Japan Focus, News Analysis, <http://news.pacificnews.org/news/view_article.html?article_id=fd2421fbe9b4fe1ac727e145f8719b4e>]

As pollution and environmental degradation in China worsens, the Communist government has been unable or unwilling to prescribe measures needed to address the problem. This inability carries grave consequences for China and Asia, threatening stability not only in China but throughout the region. There is little disagreement that China’s environment is a mounting problem for Beijing. China produces as many sulfur emissions as Tokyo and Los Angeles combined; China is home to 16 of the world’s 20 most polluted cities; water pollution reduces crop returns; air pollution is blamed for the premature death of some 400,000 Chinese annually; and solid waste production is expected to more than double over the next decade, pushing China ahead of the U.S. In spite of greater awareness, pollution and environmental degradation are likely to worsen. Chinese consumers are expected to purchase hundreds of millions of automobiles. Despite pledges to put the environment first, national planners still aim to double per capita GDP by 2010. Cities will grow, leading to the creation of slums and stressing urban sanitation and delivery systems The nation lacks a powerful national body able to coordinate, monitor, and enforce environmental legislation: the State Environmental Protection Agency (SEPA) is under-staffed, has few resources, and must compete with other bureaucracies for attention. To address the problems, it will take an aggressive effort by the central government to eliminate corruption, establish the rule of law and transparency, incentives and investment. As it stands, decision-making falls to local officials who are more concerned with economic growth than the environment. The deficiency of capital and the lack of will to promote massive spending on environmental repair make it difficult to be optimistic. Estimates on the final cost of environmental repair range into the tens of billions of dollars. As the impact of pollution on human health becomes more obvious and widespread, it is leading to greater political mobilization and social unrest of affected citizens. There were more than 74,000 incidents of protest and unrest recorded in China in 2004, up from 58,000 the year before. Pollution issues unite communities. The effects, though not equally felt by each person within a community, affect rich and poor, farmers and businessmen, families and individuals alike. As local communities respond to pollution issues through united opposition, it is leaving Beijing with no easy target upon which to blame unrest, and no simple option for how to quell whole communities with a common grievance. Moreover, protests serve as a venue for the politically disaffected unhappy with the current state of governance and may be open to other forms of political rule. For the Communist Chinese Party (CCP), social unrest has the potential to challenge the CCP’s total political control, thus potentially destabilizing a state with a huge military arsenal and a history of violent, internal conflict that cannot be downplayed or ignored. A further key challenge is trying to contain protests once they begin. The steady introduction of new media like cell phones, email, and text messaging prevent China’s authorities from silencing and hiding unrest. Domestic and international observers will be aware of unrest, making it far more difficult for local authorities to employ state-sanctioned force. While many would treat political change in China, especially the implosion of the Party, as a welcome development, it must be noted that any slippage of the Party’s dominance would most likely be accompanied by a period of transitional violence. Though most violence would be directed toward dissident Chinese, regional security would be affected through immigration, impediments to trade, and an increased military presence along the Chinese border. While unrest presents the most obvious example of a security threat related to pollution, several other key concerns are worth noting. The cost of environmental destruction could, for example, begin to reverse the blistering rate of economic growth in China that is the foundation of CCP legitimacy. Estimates maintain that 7 percent annual growth is required to preserve social stability. Yet the costs of pollution are already taxing the economy between 8 and 12 percent of GDP per year. As environmental problems mount, this percentage will increase, reducing annual growth. As a result, the CCP could be challenged to legitimize its continued control.

**Pollution pushes party instability over the brink – causes extinction**

**Yee and Storey 02**

[Herbert Yee, Professor of Politics and IR, Hong Kong Baptist University --AND-- Ian Storey, Lecturer in Defence Studies at Deakin, 02

“The China Threat: Perceptions, Myths and Reality,” p5]

The fourth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in territorial fragmentation, civil war and waves of refugees pouring into neighbouring countries. Naturally, any or all of these scenarios would have a profoundly negative impact on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialisation and pollution. These problems are putting a strain on the central government's ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China's neighbours. A fragmented China could also result in another nightmare scenario - nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords.2 From this perspective, a disintegrating China would also pose a threat to its neighbours and the world.

#### And they’d use bioweapons

**Rexing 5** (San, Staff – Epoch Times, The CCP’s Last Ditch Gamble: Biological and Nuclear War, 8-5, http://english.epochtimes.com/news/5-8-5/30975.html)

Since the Party’s life is “above all else,” it would not be surprising if the CCP resorts to the use of biological, chemical, and nuclear weapons in its attempt to extend its life. The CCP, which disregards human life, would not hesitate to kill two hundred million Americans, along with seven or eight hundred million Chinese, to achieve its ends. These speeches let the public see the CCP for what it really is. With evil filling its every cell the CCP intends to wage a war against humankind in its desperate attempt to cling to life. That is the main theme of the speeches. This theme is murderous and utterly evil. In China we have seen beggars who coerced people to give them money by threatening to stab themselves with knives or pierce their throats with long nails. But we have never, until now, seen such a gangster who would use biological, chemical, and nuclear weapons to threaten the world, that they will die together with him. This bloody confession has confirmed the CCP’s nature: That of a monstrous murderer who has killed 80 million Chinese people and who now plans to hold one billion people hostage and gamble with their lives.

#### Extinction

Sandberg et al 8—Research Fellow at the Future of Humanity Institute at Oxford University. PhD in computation neuroscience, Stockholm—AND—Jason G. Matheny—PhD candidate in Health Policy and Management at Johns Hopkins. special consultant to the Center for Biosecurity at the University of Pittsburgh—AND—Milan M. Ćirković—senior research associate at the Astronomical Observatory of Belgrade. Assistant professor of physics at the University of Novi Sad. (Anders, How can we reduce the risk of human extinction?, 9 September 2008, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction)

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

#### Specifically – military causes water pollution

China Post 9/22

[China Post News Staff, Watchdog faults military over waste water problem, 9/22/13, <http://www.chinapost.com.tw/taiwan/national/national-news/2013/09/22/389512/Watchdog-faults.htm>]

The Control Yuan recently censured the Defense Ministry over its failure to properly dispose of waste water from barracks. Only about 11 percent of its 743 barracks nationwide, not including idle facilities or buildings in urban areas, are connected to sewage systems or own advanced waste water processing systems. The rest of the military facilities dispose of their waste water after limited treatment or none at all, the watchdog said in its latest report. These barracks house about 270,000 soldiers and the amount of waste water they produce is huge, said Control Yuan member Yang Mei-ling. She said untreated waste water from military facilities is likely polluting nearby water resources. The report noted that the government has been investing huge sums into constructing sewage systems around the country since 1992. The military has also been trying to improve its waste water treatment but has apparently produced limited results, the report said.

#### China Russia War

**Nankivell 9**

[Nathan, Senior Researcher at the Office of the Special Advisor Policy, Canadien Department of National Defence, “China's Pollution and the Threat to Domestic and Regional Stability”, Asia-Pacific Journal, 3-21, http://japanfocus.org/-Nathan-Nankivell/1799]

Moreover, protests serve as a venue for the politically disaffected who are unhappy with the current state of governance, and may be open to considering alternative forms of political rule. Environmental experts like Elizabeth Economy note that protests afford an opportunity for the environmental movement to forge linkages with democracy advocates. She notes in her book, The River Runs Black, that several environmentalists argue that change is only possible through greater democratization and notes that the environmental and democracy movements united in Eastern Europe prior to the end of the Cold War. It is conceivable that in this way, environmentally-motivated protests might help to spread democracy and undermine CCP rule. A further key challenge is trying to contain protests once they begin. The steady introduction of new media like cell phones, email, and text messaging are preventing China’s authorities from silencing and hiding unrest. Moreover, the ability to send and receive information ensures that domestic and international observers will be made aware of unrest, making it far more difficult for local authorities to employ state-sanctioned force. The security ramifications of greater social unrest cannot be overlooked. Linkages between environmental and democracy advocates potentially challenge the Party’s monolithic control of power. In the past, similar challenges by Falun Gong and the Tiananmen protestors have been met by force and detainment. In an extreme situation, such as national water shortages, social unrest could generate widespread, coordinated action and political mobilization that would serve as a midwife to anti-CCP political challenges, create divisions within the Party over how to deal with the environment, or lead to a massive show of force. Any of these outcomes would mark an erosion or alteration to the CCP’s current power dynamic. And while many would treat political change in China, especially the implosion of the Party, as a welcome development, it must be noted that any slippage of the Party’s dominance would most likely be accompanied by a period of transitional violence. Though most violence would be directed toward dissident Chinese, a ripple effect would be felt in neighboring states through immigration, impediments to trade, and an increased military presence along the Chinese border. All of these situations would alter security assumptions in the region. Other Security Concerns While unrest presents the most obvious example of a security threat related to pollution, several other key concerns are worth noting. The cost of environmental destruction could, for example, begin to reverse the blistering rate of economic growth in China that is the foundation of CCP legitimacy. Estimates maintain that 7 percent annual growth is required to preserve social stability. Yet the costs of pollution are already taxing the economy between 8 and 12 percent of GDP per year [1]. As environmental problems mount, this percentage will increase, in turn reducing annual growth. As a result, the CCP could be seriously challenged to legitimize its continued control if economic growth stagnates. Nationalists in surrounding states could use pollution as a rallying point to muster support for anti-Chinese causes. For example, attacks on China’s environmental management for its impact on surrounding states like Japan, could be used to argue against further investment in the country or be highlighted during territorial disputes in the East China Sea to agitate anti-Chinese sentiment. While nationalism does not imply conflict, it could reduce patterns of cooperation in the region and hopes for balanced and effective multilateral institutions and dialogues. Finally, China’s seemingly insatiable appetite for timber and other resources, such as fish, are fuelling illegal exports from nations like Myanmar and Indonesia. As these states continue to deplete key resources, they too will face problems in the years to come and hence the impact on third nations must be considered. Territorial Expansion or Newfound Alliances In addition to the concerns already mentioned, pollution, if linked to a specific issue like water shortage, could have important geopolitical ramifications. China’s northern plains, home to hundreds of millions, face acute water shortages. Growing demand, a decade of drought, inefficient delivery methods, and increasing water pollution have reduced per capita water holdings to critical levels. Although Beijing hopes to relieve some of the pressures via the North-South Water Diversion project, it requires tens of billions of dollars and its completion is, at best, still several years away and, at worst, impossible. Yet just to the north lies one of the most under-populated areas in Asia, the Russian Far East. While there is little agreement among scholars about whether resource shortages lead to greater cooperation or conflict, either scenario encompasses security considerations. Russian politicians already allege possible Chinese territorial designs on the region. They note Russia’s falling population in the Far East, currently estimated at some 6 to 7 million, and argue that the growing Chinese population along the border, more than 80 million, may soon take over. While these concerns smack of inflated nationalism and scare tactics, there could be some truth to them. The method by which China might annex the territory can only be speculated upon, but would **surely result in full-scale war between** two powerful, **nuclear-equipped nations**.

**Extinction**

**Sharavin, 2001** (Alexander, The Third Threat, What the Papers Say, 10/3, Lexis)

Russia may face the "wonderful" prospect of combating the Chinese army, which, if full mobilization is called, is comparable in size with Russia's entire population, which also has nuclear weapons (even tactical weapons become strategic if states have common borders) and would be absolutely insensitive to losses (even a loss of a few million of the servicemen would be acceptable for China). Such a war would be more horrible than the World War II. It would require from our state maximal tension, universal mobilization and complete accumulation of the army military hardware, up to the last tank or a plane, in a single direction (we would have to forget such "trifles" like Talebs and Basaev, but this does not guarantee success either). **Massive nuclear strikes** on basic military forces and cities of China would finally be the only way out, what would exhaust Russia's armament completely. We have not got another set of intercontinental ballistic missiles and submarine-based missiles, whereas the general forces would be extremely exhausted in the border combats. In the long run, even if the aggression would be stopped after the majority of the Chinese are killed, our country would be absolutely unprotected against the "Chechen" and the "Balkan" variants both, and even against the first frost of a possible nuclear winter.

### Plan

#### The United States Federal Judiciary should substantially increase environmental restrictions on the introduction of armed forces into hostilities.

### 1AC – Basic

#### Contention 3 is Solvency

#### Judicial review solves – only courts can enforce regulations

Babcock 7 (Hope – Professor of Law, Georgetown University Law Center, “NATIONAL SECURITY AND ENVIRONMENTAL LAWS: A CLEAR AND PRESENT DANGER?”, 2007, 25 Va. Envtl. L.J. 105, lexis)

V. These Changes to Environmental and Public Disclosure Laws Are Troubling The combination of an unhappy armed forces and a "self-declared," politically compelling "war against terror" has turned out to be lethal, not only for civil liberties but also for the laws and policies that protect the environment and the public's access to critical information about environmental risks. This situation is made worse by the breadth of the new authorizations and by the lack of institutional checks on the armed forces to prevent them from abusing their new authorities or causing serious environmental [\*147] harm. It will not be easy to restore the prior legal regime, and the impact of military activities under the new laws may well be irreversible. There will be no external check on how the military administers the exemptions detailed throughout this article. The courts have traditionally played a limited role in reviewing the military's actions, especially during wartime and when foreign policy and presidential discretion are involved. n215 Since what Kmiec calls the Court's "full-throated judicial endorsement" n216 of military decisionmaking in times of war in Hirabayashi v. United States in 1943 n217 through the recent Fourth Circuit opinion in Hamdi v. Rumsfeld, n218 the courts have been reluctant to curb the armed forces. n219 Kmiec notes that even during "colder periods" of war, the judicial branch has been only slightly more vigorous in preserving certain civil liberties, such as free speech claims made against classified information. n220 While it is still too soon to predict the ability of the USA PATRIOT Act to withstand claims of civil liberties [\*148] violations, Kmiec sees deference to military decisions "in the early judicial response to the war on terrorism." n221 Given the current Supreme Court's general hostility toward environmental laws, n222 it may be easier to predict that the military will get the benefit of the doubt in its implementation of these new environmental exemptions and will be able to justify the removal of critical environmental information from public view. n223 Since courts usually defer to presidential determinations of what is in the "paramount interests of the United States," n224 there is no reason to expect them to react differently to claims under the various amendments to FOIA or the new post 9/11 administrative measures. No other institution is likely to have the power and impetus to curb the military's excesses under the new exemptions. Widespread paranoia about future terrorist attacks, political polarization, and the Bush Administration's recent aggressive use of the "unitary executive theory" make it highly unlikely that Congress will provide any real check on the military. n225 The proposed [\*149] changes to RCRA and CERCLA, if enacted, will prevent state and federal government agencies from auditing military activity or monitoring the impacts of those activities on the environment. n226 The restrictions on the disclosure of information to the public will prevent the press and environmental groups from effectively overseeing the armed forces' use of their newfound powers. And the broader public cannot be expected to check the actions of the military as it has generally acquiesced in the much more visible loss of civil liberties outlined in the early parts of this article, n227 and is mostly unaware of how environmental laws have been, or may be, weakened in the name of national security. The idea of the armed forces being beyond the reach of meaningful judicial review is especially troubling because the military will be granting itself relief from laws that have always vexed it. n228 [\*150] Self-regulation is problematic, even in the best of circumstances, n229 but here it is made worse by the military's long history of non-compliance with environmental laws. The DOD's recent efforts to conserve habitat and protect species on military lands, as well as its environmental research initiatives n230 and attempts to mitigate the effects of toxic contaminants, n231 while commendable, do not begin to offset its record as one of the country's "worst polluters" and the fact that military facilities and lands are among the most contaminated in the nation. n232 For example, 129 of the 177 federal facilities on CERCLA's National Priorities List belong to DOD. n233 Military ranges are contaminated with chemicals that are known or possible [\*151] human carcinogens, neurotoxins, and teratogens. n234 The pending exemptions, if enacted, will enable the military to add to that inventory of abuse.

### External Regs Key

#### External regulations are key – otherwise the environmental regulations are not enforced

Horton 11

[Laura, Doctor of Jurisprudence Candidate 2012, Golden Gate University School of Law, FUTURE FORCE SUSTAINABILITY: DEPARTMENT OF DEFENSE AND ENERGY EFFICIENCY IN A CHANGING CLIMATE, 2011 Golden Gate University Golden Gate University Environmental Law Journal Spring, 2011, L/N]

There are several issues that plague the DOD's effectiveness in [\*323] energy leadership, including lack of incentives, organized management, compliance monitoring, and enforcement. Although the DOD may be willing to comply voluntarily with certain federal energy efficiency standards, the armed forces will not compromise national security with an operational strategy that puts too much emphasis on energy efficiency. n166 For instance, the DOD has no plans to leave their "fuel-guzzling 70-ton Abrams tanks" n167 behind in order to save fuel, a move that would severely diminish its war-fighting capabilities. Also, on an individual level it is difficult for a group of soldiers on a mission in Iraq to concern themselves with making sure their tactical vehicles or structures are energy efficient. This is evident in the failure of the spray foam program. n168 For this reason, the projects should be managed through the authority of commanding officers and should be well-organized. It is also important that management of these programs not rely completely upon voluntary compliance. Voluntary compliance is not a guarantee of the staying power or effectiveness of these energy efficiency programs. In the corporate context, the "long term feasibility of [voluntary programs] as instruments of environmental policy depends on their impact on a firm's profitability." n169 However, the DOD as a federal agency is not a profit-making institution; thus, no incentives exist in that area. Studies have shown that voluntary compliance with environmental regulations can be induced by threat of mandatory environmental regulations, cost-sharing subsidies, and a desire to improve public image. n170 According to one study, mandatory and voluntary compliance should be considered complementary instruments. n171 However, threat of mandatory compliance is unlikely in the context of past military exemptions. The cost of operations is growing because of increased energy consumption and rising prices, n172 which could provide a driving force for compliance. After all, in order to "procure new capabilities for the future," the DOD must reduce costs. n173 However, in the absence of mandatory regulatory schemes and profit motivation, it is questionable whether reducing costs, along with mobility and national security concerns over climate change, [\*324] is sufficient to guarantee future energy efficiency goals will be met. For individual operational energy projects, organizational and cohesiveness problems make it difficult to communicate with other sectors of the military and with other base installation managers. n174 Particularly for base installations, a specific entity may be responsible for construction and then a different entity for management, n175 which can be ineffective and cause confusion over accountability. There is a lack of carrot or stick incentives for military commanders to require participation in these programs, n176 which creates a need for improvement in the leadership structure.

### Ikenberry– 2AC

#### Coop and soft power solve a number of issues – that’s Ikenberry – we’ll impact each –

#### Disease

**Greger 8** (M.D., is Director of Public Health and Animal Agriculture at The Humane Society of the United States (Michael Greger, , Bird Flu: A Virus of Our Own Hatching, <http://birdflubook.com/a.php?id=111>)

Senate Majority Leader Frist describes the recent slew of emerging diseases in almost biblical terms: “All of these [new diseases] were advance patrols of a great army that is preparing way out of sight.”3146 Scientists like Joshua Lederberg don’t think this is mere rhetoric. He should know. Lederberg won the Nobel Prize in medicine at age 33 for his discoveries in bacterial evolution. Lederberg went on to become president of Rockefeller University. “Some people think I am being hysterical,” he said, referring to pandemic influenza, “but there are catastrophes ahead. We live in evolutionary competition with microbes—bacteria and viruses. There is no guarantee that we will be the survivors.”3147 There is a concept in host-parasite evolutionary dynamics called the Red Queen hypothesis, which attempts to describe the unremitting struggle between immune systems and the pathogens against which they fight, each constantly evolving to try to outsmart the other.3148 The name is taken from Lewis Carroll’s Through the Looking Glass in which the Red Queen instructs Alice, “Now, here, you see, it takes all the running you can do to keep in the same place.”3149 Because the pathogens keep evolving, our immune systems have to keep adapting as well just to keep up. According to the theory, animals who “stop running” go extinct. So far our immune systems have largely retained the upper hand, but the fear is that given the current rate of disease emergence, the human race is losing the race.3150 In a Scientific American article titled, “Will We Survive?,” one of the world’s leading immunologists writes: Has the immune system, then, reached its apogee after the few hundred million years it had taken to develop? Can it respond in time to the new evolutionary challenges? These perfectly proper questions lack sure answers because we are in an utterly unprecedented situation [given the number of newly emerging infections].3151 The research team who wrote Beasts of the Earth conclude, “Considering that bacteria, viruses, and protozoa had a more than two-billion-year head start in this war, a victory by recently arrived Homo sapiens would be remarkable.”3152 Lederberg ardently believes that emerging viruses may imperil human society itself. Says NIH medical epidemiologist David Morens, When you look at the relationship between bugs and humans, the more important thing to look at is the bug. When an enterovirus like polio goes through the human gastrointestinal tract in three days, its genome mutates about two percent. That level of mutation—two percent of the genome—has taken the human species eight million years to accomplish. So who’s going to adapt to whom? Pitted against that kind of competition, Lederberg concludes that the human evolutionary capacity to keep up “may be dismissed as almost totally inconsequential.”3153 To help prevent the evolution of viruses as threatening as H5N1, the least we can do is take away a few billion feathered test tubes in which viruses can experiment, a few billion fewer spins at pandemic roulette. The human species has existed in something like our present form for approximately 200,000 years. “Such a long run should itself give us confidence that our species will continue to survive, at least insofar as the microbial world is concerned. Yet such optimism,” wrote the Ehrlich prize-winning former chair of zoology at the University College of London, “might easily transmute into a tune whistled whilst passing a graveyard.”3154

#### **Food shortages**

Cribb 10 (Julian, the principal of Julian Cribb & Associates, specialists in science communication, 1996-2002 he was Director, National Awareness, for Australia’s national science agency, CSIRO, has received 32 awards for journalism including the Order of Australia Association Media Prize, fellow of the Australian Academy of Technological Sciences and Engineering. The Coming Famine: The Global Food Crisis and what we can do to avoid it, University of California Press, 2010, p. 20)

The threat of conflict over food, land, and water is not, however, confined to the marginal world. Increasingly it imperils the economic powerhouses of the global economy in the early twenty-first century. In 2001 the Australian strategic analyst Alan Dupont predicted, “Food is destined to have greater strategic weight and import in an era of environmental scarcity. While optimists maintain that the world is perfectly capable of meeting the anticipated increases in demand for essential foodstuffs, there are enough imponderables to suggest that prudent governments would not want to rely on such a felicitous outcome." Anticipating the food crisis of 2007-8 by several years, he presciently added, "East Asia's rising demand for food and diminishing capacity to feed itself adds an unpredictable new element to the global food equation for several reasons. The gap between production and consumption of key foodstuffs globally is narrowing dangerously and needs to be reversed." Bearing out his words, Singapore president Lee Hsieng Loong told a 2008 international defense conference, "In the longer term, the trends towards tighter supplies and higher prices will likely reassert themselves. This has serious security implications. The impact of a chronic food shortage will be felt especially by the poor countries. The stresses from hunger and famine can easily result in social upheaval and civil strife, exacerbating conditions that lead to failed states. Between countries, competition for food supplies and displacement of people across borders could deepen tensions and provoke conflict and wars."15

#### Oil conflict escalate

**Klare 2002** (Michael – board of directors of the Arms Control Association, the National Council of the Federation of American Scientists, and the advisory board of the Arms Division of Human Rights Watch, Resource Wars: The New Landscape of Global Conflict, p. 27-29)

Of all the resources discussed in this book, none is more likely to provoke conflict between states in the twenty-first century than oil. Petroleum stands out from other materials-water, minerals, timber, and so on-because of its pivotal role in the global economy and its capacity to ignite large-scale combat. No highly industrialized society can survive at present without substantial supplies of oil, and so any significant threat to the continued availability of this resource will prove a cause of crisis and, in extreme cases, provoke the use of military force. Action of this sort could occur in any of the major oil-producing areas, including the Middle East and the Caspian basin. Lesser conflicts over petroleum are also likely, as states fight to gain or retain control over resource-rich border areas and offshore economic zones. Big or small, conflicts over oil will constitute a significant feature of the global security environment in the decades to come. Petroleum has, of course, been a recurring source of conflict in the past. Many of the key battles of World War II, for example, were triggered by the Axis Powers' attempts to gain control over petroleum supplies located in areas controlled by their adversaries. The pursuit of greater oil revenues also prompted Iraq's 1990 invasion of Kuwait, and this, in turn, provoked a massive American military response. But combat over petroleum is not simply a phenomenon of the past; given the world's ever-increasing demand for energy and the continuing possibility of supply interruptions, the outbreak of a conflict over oil is just as likely to occur in the future. The likelihood of future combat over oil is suggested, first of all, by the growing buildup of military forces in the Middle East and other oil-producing areas. Until recently, the greatest concentration of military power was to found along the East-West divide in Europe and at other sites of superpower competition. Since 1990, however, these concentrations have largely disappeared, while troop levels in the major oil zones have been increased. The United States, for example, has established a permanent military infrastructure in the Persian Gulf area and has "prepositioned" sufficient war materiel there to sustain a major campaign. Russia, meanwhile, has shifted more of its forces to the North Caucasus and the Caspian Sea basin, while China has expanded its naval presence in the South China Sea. Other countries have also bolstered their presence in these areas and other sites of possible conflict over oil. Geology and geography also add to the risk of conflict. While relatively abundant at present, natural petroleum does not exist in unlimited quantities; it is a finite, nonrenewable substance. At some point in the future, available supplies will prove inadequate to satisfy soaring demand, and the world will encounter significant shortages. Unless some plentiful new source of energy has been discovered by that point, competition over the remaining supplies of petroleum will prove increasingly fierce. In such circumstances, any prolonged interruption in the global flow of oil will be viewed by import- dependent states as a mortal threat to their security-and thus as a matter that may legitimately be resolved through the use of military force. Growing scarcity will also result in higher prices for oil, producing enormous hardship for those without the means to absorb added costs; in consequence, widespread internal disorder may occur. Geography enters the picture because many of the world's leading sources of oil are located in contested border zones or in areas of recurring crisis and violence. The distribution of petroleum is more concentrated than other raw materials, with the bulk of global sup- plies found in a few key producing areas. Some of these areas-the North Slope of Alaska and the American Southwest, for example- are located within the borders of a single country and are relatively free of disorder; others, however, are spread across several coun- tries-which may or may not agree on their common borders-and/ or are located in areas of perennial unrest. To reach global markets, moreover, petroleum must often travel (by ship or by pipeline) through other areas of instability. Because turmoil in these areas can easily disrupt the global flow of oil, any outbreak of conflict, however minor, will automatically generate a risk of outside intervention.

#### **Terror**

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July)

*A Catalytic Response: Dragging in the Major Nuclear Powers*

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928" \l "EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

#### Economic collapse

Merlini 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons**. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular **rational approach would be sidestepped** by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

### T – Restriction =Prohibit– 2AC

#### 1. We meet – plan prevents the use of armed forces if their use violates environmental statutes – that’s a restriction

Lobel 8 (Jules – Professor of Law, University of Pittsburgh Law School, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, 2008, Ohio State Law Journal, 69 Ohio St. L.J. 391, lexis)

More generally, the Court held that Congress has the power to authorize limited, undeclared war in which the President's power as Commander in Chief would be restricted. In such wars, the Commander in Chief's power would extend no further than Congress had authorized. As President Adams recognized, Congress had as a functional matter "declared war within the meaning of the Constitution" against France, but "under certain restrictions and limitations." n123 Under this generally accepted principle in our early constitutional history, Congress could limit the type of armed forces used, the number of such forces available, the weapons that could be utilized, the theaters of actions, and the rules of combat. In short, it could dramatically restrict the President's power to conduct the war.

#### 2. Judicial restriction means regulation

**Kerrigan** **73** (Frank, Judge @ Court of Appeal of California, Fourth Appellate District, Division Two, 29 Cal. App. 3d 815; 105 Cal. Rptr. 873; 1973 Cal. App. LEXIS 1235, SUN COMPANY OF SAN BERNARDINO, CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. PROGRESS-BULLETIN PUBLISHING COMPANY, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. (Consolidated Cases.), lexis)

While the studies were in progress, the United States Supreme Court found the impact of television cameras and lights in a courtroom setting prejudicial to the conduct of a fair trial. ( Estes v. Texas (1965) 381 U.S. 532 [14 L.Ed.2d 543, 85 S.Ct. 1628].) Shortly thereafter, in Sheppard v. Maxwell (1966) 384 U.S. 333, 358 [16 L.Ed.2d 600, 618, 86 S.Ct. 1507], the defendant's conviction of his wife's murder [\*\*879] was reversed because of "[the] carnival atmosphere at trial" and pervasive publicity affecting the fairness of the hearing. In reversing Dr. Sheppard's conviction, the court stated [\*\*\*15] that: (1) the publicity surrounding a trial may become so extensive and prejudicial in nature that unless neutralized by appropriate judicial procedures, a resultant conviction may not stand; (2) the trial court has the duty of so insulating the trial from publicity as to insure its fairness; (3) a free press plays a vital role in the effective and fair administration of justice. But the court did not set down any fixed rules to guide trial courts, law enforcement officers or media as to what could or could not be printed. Instead, the majority suggested that judicial restrictions on speech might sometimes be appropriate in the following dicta: "The courts [\*823] must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures. [\*\*\*16] " (Ibid., p. 363 [16 L.Ed.2d p. 620].)

#### 3. **Restrictions” means “regulations”**

Davies 30 (Major George, “CLAUSE 1.—(Scheme regulating production, supply and sale of coal.),” February, vol 235 cc2453-558, http://hansard.millbanksystems.com/commons/1930/feb/27/clause-1-scheme-regulating-production)

Major GEORGE DAVIES The hon. Member says he has heard no reason advanced for this Amendment. I am willing to give him one, and I will tell him that the reason why the benches are not full, as they were a short time ago, is that man cannot live by bread alone and, as there is a rule against the introduction of newspapers and foodstuffs, it is necessary for some of us to refresh ourselves after a late Division. I am not going to transgress the ruling of the Chair, as we have been given very great latitude, but I want to confine myself to the point at issue, which is the regulation of sale. I have had experience in the past of efforts to regulate the sale of sugar. Like the coal industry to-day, there has been in the past an over-production of many of the fundamental articles of the life of a nation. I will not dwell on the case of rubber, but the sugar situation was entirely on all fours with this situation, as it was a question of the regulation of sale. Facing a situation very similar in kind and not dissimilar in degree to the problem now before us, those connected with that particular industry in certain countries thought it an advantage to control and regulate the sale. As soon as you use the word "regulation" in this connection it is idle to suggest that it does not mean restriction. Obviously, that is the point—to restrict—and, while 2541 it is true the word "restrict" is not in this particular Clause, and cannot be argued in connection with this Amendment, yet behind the word "regulate" is the word "restrict," in other words, controlling what has been uncontrolled, production thrown on markets not able to receive it.

#### Authority means the power to make discretionary policy judgments

**Spector, 90** (Arthur, US Bankruptcy Judge, In re Premo, UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION, 116 B.R. 515; 1990 Bankr. LEXIS 1471; Bankr. L. Rep. (CCH) P73,555; 90-2 U.S. Tax Cas. (CCH) P50,396;71A A.F.T.R.2d (RIA) 4677, lexis)

The word "authority", on the other hand, is defined as the "power to influence or command thought, opinion, or behavior." Id. These definitions suggest that the terms "duty" and "authority" are not synonymous. The notion of a duty implies an affirmative obligation to perform specific acts, whereas "**authority" is by its nature discretionary**. A high-level corporate officer, for example, may have the authority to "command" that any number of actions be taken, but that does not mean that he or she is obliged or required to do so. Decreasing authority requires reducing the permission to act, not the ability to act.\

### Congress CP – 2AC

#### C) Court has unique symbolic effect --- key to foreign perception of the plan

Fontana 8 (David, Associate Professor of Law – George Washington University Law School, “The Supreme Court: Missing in Action”, Dissent Magazine, Spring, http://www.dissentmagazine.org/article/?article=1165)

*The Results of Inaction*  
What is the problem with this approach? The answer, simply put, is that it legitimates and even catalyzes political activity by Congress and the president, but it does so without including in this political activity the critically influential background voice of the Supreme Court on issues related to individual rights. The Court has two main powers: one has to do with law and compulsion, the other has to do with political debate. The Court can legally compel other branches of government to do something. When it told states and the federal government in Roe v. Wade that they could not criminalize all abortions, for example, the Court’s decision was a binding legal order. But the Supreme Court also plays a role in political debate, even when it does not order anyone to do anything. If the Justices discuss the potential problems for individual rights of a governmental action, even if they don’t contravene the action, their decision still has enormous import. This is because other actors (members of Congress, lawyers, newspaper editorial writers, college teachers, and many others) can now recite the Court’s language in support of their cause. Supreme Court phrases such as “one person, one vote” have enormous symbolic effect and practical influence. If there had been a case about torture, for example, and some of the justices had written in detail about its evils, then Senator Patrick Leahy (senior Democrat on the Judiciary Committee) could have used the Justices’ arguments to criticize attorney general nominee Michael Mukasey during his confirmation hearings. Attorneys for those being detained at Guantánamo could have made appearances on CNN and (even) Fox News reciting the evils of torture as described by the Court. Concerns about rights could have been presented far more effectively than if, as actually happened, the Court refused to speak to these issues. The Supreme Court’s discussion of constitutional questions is particularly important for two reasons. First, the justices view these questions from a distinct standpoint. While members of Congress and the president have to focus more on short-term and tangible goods, members of the Court (regardless of which president appointed them) focus more on the long term and on abstract values. The Court offers a perspective that the other branches simply cannot offer. Second, when the Supreme Court presents this perspective, people listen. It is and has been for some time the most popular branch of American government. Although there is some debate about terminology and measurement, most scholars agree that the Court enjoys “diffuse” rather than “specific” support. Thus, even when Americans don’t like a specific decision, they still support the Court. By contrast, when the president or Congress does something Americans don’t like, their support drops substantially. AMERICANS BECOME more aware of the Court the more it involves itself in controversies. This is because of what political scientists call “positivity bias.” The legitimating symbols of the Court (the robes, the appearance of detachment, the sophisticated legal opinions) help to separate it from other political institutions—and in a good way for the Court. If the Justices had drawn attention to violations of individual rights, most of America would have listened and possibly agreed. As it is, our politics has been devoid of a voice—and an authoritative voice—on individual rights. For most of the time since September 11, few major political figures have been willing to stand up and speak in support of these rights. Recall that the Patriot Act was passed in 2001 by a vote of ninety-eight to one in the Senate, with very little debate. Congress overwhelmingly passed the Detainee Treatment Act (DTA) of 2005, which barred many of those complaining of torture from access to a U.S. court. Congress also overwhelmingly passed the Military Commissions Act (MCA) of 2006, which prevented aliens detained by the government from challenging their detention—and barred them from looking to the Geneva Conventions as a source of a legal claim.

#### D) Certainty – Legal decision key

Pildes 13 (Rick, udler Family Professor of Constitutional Law and Co-Faculty Director for the Program on Law and Security at NYU School of Law, "Does Judicial Review of National-Security Policies Constrain or Enable the Government?," 8/5, <http://www.lawfareblog.com/2013/08/does-judicial-review-of-national-security-policies-constrain-or-enable-the-government/>)

First, government actors have a need for legal clarity, particularly in national-security areas where the legal questions are novel and the stakes of guessing wrong particularly high. In the absence of more definitive court guidance, government lawyers and policymakers have spent a staggering number of hours trying to anticipate what courts might conclude is the valid scope of the government’s power to detain, or to use military trials, and similar questions. In many contexts, a significant element in what government actors need is simply legal clarity; knowledge of where the lines lie between the permitted and the forbidden can help government actors figure out how best to reach their legitimate goals. Surely there is something not fully functional about a system that requires a decade’s worth of guesswork, and all the resources involved, about exactly where the legal boundaries lie.

#### Courts key to legitimacy and cred

Knowles 9 -- Acting assistant Professor, New York University School of Law (Robert, 2009, “American Hegemony and the Foreign Affairs Constitution,” Arizona State Law Journal, 41 Ariz. St. L.J. 87, October)

International relations scholars are still struggling to define the current era. The U.S.-led interna tional order is unipolar, hegemonic, and, in some ways, imperial. In any event, this or der diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And **the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances** crafted by elite statesmen practicing realpolitik . “[W]orld power politics are shaped prim arily not by the stru cture created by interstate anarchy but by the fore ign policy developed in Washington.” 368 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs. One approach would be to adapt an institutional competence model using insights from a major alternative th eory of international relations – liberalism. Liberal IR theory generally holds that internal characteristics of states – in particular, the form of go vernment – dictate st ates behavior, and that democracies do not go to war against one another. 369 Liberalists also regard economic interdependence and in ternational institutions as important for maintaining peace and stability in the world. 370 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states. 371 Because domestic and foreign issues are “more convergent” among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches’ powers. 372 With respect to non-liberal states, the position of the U.S. is more “realist,” and courts should deploy a high level of deference. 373 A strength of Dean Slaughter’s binary approach is that it would tend to reduce the uncertainty in foreign affa irs adjudication. Professor Nzelibe has criticized this approach because it would put courts in the difficult position of determining which countri es are liberal democracies. 374 But even if courts are capable of making these dete rminations, they would still face the same dilemmas adjudicating controve rsies regarding non-liberal states. Where is the appropriate boundary betw een foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountabi lity values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudica tion across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressi ng problems of a particular sort of role effectiveness—which allocation of power among the branches will best achieve general governmental effectiven ess in foreign affairs. In the 21 st Century, America’s global role has changed, and the best means of achieving effectiveness in foreign a ffairs have changed as well. The international realm remains highly politic al—if not as much as in the past— but **it is American politics that matters most.** If the U.S. is truly an empire— and in some respects it is—the prob lems of imperial management will be far different from the problems of ma naging relations with one other great power or many great powers. Similarl y, the management of hegemony or unipolarity requires a di fferent set of competences. Although American predominance is recognized as a sali ent fact, there is no consensus among realists about the precise nature of the current international order. 375 The hegemonic model I offer here adopts **common insights from the three IR frameworks**—unipolar, hegemonic, and imperial—described above. First, the “hybrid” hegemonic mode l assumes that the goal of U.S. foreign affairs should be the **preservation of American hegemony**, which is more stable, more peaceful, and be tter for America’s security and prosperity, than the alternatives. If th e United States were to withdraw from its global leadership role , no other nation would be capable of taking its place. 376 The result would be radical instab ility and a greater risk of major war. 377 In addition, the United States would no longer benefit from the public goods it had form erly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that American hegemony is unusually stable and durable. 378 As noted above, other nations have many incentives to continue to tolerate the current order. 379 And although other nations or groups of nations—China, the European Union, and India are often mentioned—may eventually overt ake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades to come. In 2025, the U.S. economy is projected to be twice the size of China’s. 380 The U.S. accounted for half of the world’s military spending in 2007 and holds enormous advantages in defense technology that far out strip would-be competitors. 381 Predictions of American decline are not new, and th ey have thus far proved premature. 382 Third, the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy. 383 All three IR frameworks for describing predom inant states—although unipolarity less than hegemony or empire—suggest that legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably mainta in their position through the use of force, this is much more likely to ex haust the resources of the predominant state and to lead to counter-bal ancing or the loss of control. 384 Legitimacy as a method of maintaining predominance is far more efficient. The hegemonic model generally values courts’ **institutional competences** more than the anarchic realist model. The courts’ strengths in offering a **stable interpretation of the law**, relative **insulation from political pressure**, and **power to bestow legitimacy** are im portant for realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts’ treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Gi ven the amorphous quality of foreign affairs deference, this “domestication” reduces uncertainty. The increasing boundary problems caused by the pro liferation of treaties and the infiltration of domestic law by fore ign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations—liberty, accountability, and effectivenes s—against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.

**4. Congress will roll back the counterplan during a conflict – kills solvency**

Tisler **11**

[Tiffany, J.D. Candidate, University of Toledo, 2011., FEDERAL ENVIRONMENTAL LAW WAIVERS AND HOMELAND SECURITY: ASSESSING WAIVER APPLICATION IN HOMELAND SECURITY SETTINGS AT THE SOUTHERN BORDER IN COMPARISON TO NATIONAL SECURITY SETTINGS INVOLVING THE MILITARY, Spring, 2011 The University of Toledo Law Review, L/N]

In times of war, the conflict between national-security goals and environmental laws tends to come out in favor of national security, n54 and shortly after 9/11 the United States was at war. As it was, the U.S. military never particularly liked the pre-9/11 waiver system, finding the scope of waivers too narrow and the time limits incompatible with long-term activities. n55 Thus, sensing the time to strike, the military began lobbying for changes to environmental-waiver provisions in the aftermath of 9/11. n56 The military has since actively and successfully sought changes to the waiver system, giving them much broader authority to disregard environmental laws, especially for reasons of "military readiness." n57 First, the military convinced Congress to attach riders to the 2004 and 2005 Defense Appropriations Acts exempting them from provisions of the Marine Mammal Protection Act ("MMPA"), some provisions of the ESA, and the entire Migratory [\*784] Bird Treaty Act. n58 Not only did the military successfully change the application of various sections of statute, it also changed the waiver structure for the MMPA, giving the Secretary of Defense the authority to grant waivers in addition to the President. n59 Though not always successful, military lobbying efforts have removed many external checks on military activities that impact the environment, creating a dim future for the environment. n60

#### 6. Congress lets executive implement it

Sekhon 05

[Vijay-, U. of Connecticut School of Law, June, Boalt Journal of Criminal Law, “More Questions than Answers: The Indeterminacy Surrounding Enemy Combatants Following Hamdi v. Rumsfeld”, Vol. 9, <http://www.boalt.org/bjcl/v9/> v9sekhon.htm //uwyo-kn]

The nature of Executive power and social psychology in times of crisis further limit the practical force of Hamdi in the event of future periods of upheaval in the United States. Historically, presidents have extended their power to the outer boundaries of constitutional authority in times of crisis. 64 President Abraham Lincoln's suspension of the writ of habeas corpus during the Civil War, President Franklin D. Roosevelt's detention of Japanese-Americans during War II, President Harry Truman's seizure of the steel mills during the Korean War, and President Bush's enactment of the Patriot Act during the current War on Terrorism are just a few of the most cited examples. In addition, Congress' swift passage of the Patriot Act 65 demonstrates that Congress typically acquiesces to the executive branch's proposed methods to deal with such crises. 66 The political culture of the United States tends to defer to executive action during wartime, and Congress tends to cave in to executive pressure during such periods. 67 Congressional approval of the National Security Act during the Korean War, [\*14] the Foreign Intelligence Surveillance Act during the Vietnam War, and the Patriot Act during the War on Terrorism are a few examples. 68 Consequently, one cannot expect the legislative branch to provide a significant check on the Executive power to detain American citizens as "enemy combatants."

### Security K – 2AC

#### 2. K doesn’t come first

**Owens 2002** (David – professor of social and political philosophy at the University of Southampton, Re-orienting International Relations: On Pragmatism, Pluralism and Practical Reasoning, Millenium, p. 655-657)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology **over explanatory** and/or interpretive **power** as if the latter two were merely a **simple function** of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), **it is by no means clear that it is**, in contrast, wholly dependent **on these philosophical commitments**. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but **this does not undermine** the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, **it is not the only or even necessarily the** most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a **question for social-scientific inquiry**, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one **theoretical approach which gets things right**, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### 3. Extinction outweighs

Bok 88

(Sissela, Professor of Philosophy at Brandeis, Applied Ethics and Ethical Theory, Rosenthal and Shehadi, Ed.)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through your actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such responsibility seriously – perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish. To avoid self-contradiction, the Categorical Imperative would, therefore, have to rule against the Latin maxim on account of its cavalier attitude toward the survival of mankind. But the ruling would then produce a rift in the application of the Categorical Imperative. Most often the Imperative would ask us to disregard all unintended but foreseeable consequences, such as the death of innocent persons, whenever concern for such consequences conflicts with concern for acting according to duty. But, in the extreme case, we might have to go against even the strictest moral duty precisely because of the consequences. Acknowledging such a rift would post a strong challenge to the unity and simplicity of Kant’s moral theory.

#### 4. Case outweighs- plan is key to solve multiple scenarios for extinction

#### 5. Security is not the root cause.

**Kydd**, Autumn **1997** (Andrew – assistant professor of political science at the University of California, Riverside, Sheep in Sheep’s clothing: Why security seekers do not fight each other, Security Studies, 7:1, p. 154)

The alternative I propose, motivational realism, argues that arms races and wars typically involve at least one genuinely greedy state, that is, states that often sacriﬁce their security in bids for power. In the case of the First World War, the four continental powers all had serious nonsecurity-related quarrels that played an indispensable role in producing the war. France was eager to regain Alsace-Lorraine, Russia sought hegemony over fellow Slavs in the Balkans when it could hardly integrate its own bloated empire, Ger- many dreamed of Weltpolitik and empire in the Levant, while Austria-Hungary was focused on its own imminent ethnic meltdown. All of these powers, had they sought just to be secure against foreign threat, could easily have conveyed that to each other and refrained from arms competition and war. Instead they engaged in competitions for power which eventually led to war. As for the Second World War, few structural realists will make a sustained case that Hitler was genuinely motivated by a rational pursuit of security for Germany and the other German statesmen would have responded in the same way to Germany’s international situation. Even Germen generals opposed Hitler’s military adventurism until 1939; it is difficult to imagine a less forceful civilian leader overruling them and leading Germany in an oath of conquest. In the case of the cold war, it is again difficult to escape the conclusion that the Soviet Union was indeed expansionist before Gorbachev and not solely motivated by security concerns. The increased emphasis within international relations scholarship on explaining the nature and origins of aggressive expansionists states reflects a growing consensus that aggressive states are at the root of conflict, not security concerns.

#### 6. Perm – do both

#### 7. Realism is inevitable- perm solves

**Guzzini 1998** (Stefano – Assistant Professor at Central European Univ., Realism in International Relations and International Political Economy, p. 235)

Third, this last chapter has argued that although the evolution of realism has been mainly a disappointment as a general causal theory, we have to deal with it. On the one hand, realist assumptions and insights are used and merged in nearly all frameworks of analysis offered in International Relations or International Political Economy. One of the book's purposes was to show realism as a varied and variably rich theory, so heterogeneous that it would be better to refer to it only in plural terms. On the other hand, to dispose of realism because some of its versions have been proven empirically wrong, ahistorical, or logically incoherent, does not necessarily touch its role in the shared understandings of observers and practitioners of international affairs. Realist theories have a persisting power for constructing our understanding of the present. Their assumptions, both as theoretical constructs, and as particular lessons of the past translated from one generation of decision‑makers to another, help mobilizing certain understandings and dispositions to action. They also provide them with legitimacy. Despite realism's several deaths as a general causal theory, it can still powerfully enframe action. It exists in the minds, and is hence reflected in the actions, of many practitioners. Whether or not the world realism depicts is out there, realism is**.** Realism is not a causal theory that explains International Relations, but, as long as realism continues to be a powerful mind‑set, we need to understand realism to make sense of International Relations. In other words, realism is a still **necessary** hermeneutical bridge to the understanding of world politics. Getting rid of realism without having a deep understanding of it, not only risks unwarranted dismissal of some valuable theoretical insights that I have tried to gather in this book; it would also be futile. Indeed, it might be **the best way to** tacitly and **uncritically reproduce it**.

#### No impact – security doesn’t result in wars that escalate – Iraq disproves that it would cause extinction – case outweighs any small-scale conflict

#### Securitizing the environment is good – builds public awareness to solve

**Matthew 2**, Richard A, associate professor of international relations and environmental political at the University of California at Irvine, Summer (ECSP Report 8:109-124)

In addition, environmental security's language and findings can benefit conservation and sustainable development."' Much environmental security literature emphasizes the importance of development assistance, sustainable livelihoods, fair and reasonable access to environmental goods, and conservation practices as the vital upstream measures that in the long run will contribute to higher levels of human and state security. The Organization for Economic Cooperation and Development (OECD) and the International Union for the Conservation of Nature (IUCN) are examples of bodies that have been quick to recognize how the language of environmental security can help them. The scarcity/conflict thesis has alerted these groups to prepare for the possibility of working on environmental rescue projects in regions that are likely to exhibit high levels of related violence and conflict. These groups are also aware that an association with security can expand their acceptance and constituencies in some countries in which the military has political control, For the first time in its history; the contemporary environmental movement can regard military and intelligence agencies as potentialallies in the struggle to contain or reverse humangenerated environmental change. (In many situations, of course, the political history of the military--as well as its environmental record-raise serious concerns about the viability of this cooperation.) Similarly, the language of security has provided a basis for some fruitful discussions between environmental groups and representatives of extractive industries. In many parts of the world, mining and petroleum companies have become embroiled in conflict. These companies have been accused of destroying traditional economies, cultures, and environments; of political corruption; and of using private militaries to advance their interests. They have also been targets of violence, Work is now underway through the environmental security arm of the International Institute for Sustainable Development (IISD) to address these issues with the support of multinational corporations. Third, the general conditions outlined in much environmental security research can help organizations such as USAID, the World Bank, and IUCN identify priority cases--areas in which investments are likely to have the greatest ecological and social returns. For all these reasons, IUCN elected to integrate environmental security into its general plan at the Amman Congress in 2001. Many other environmental groups and development agencies are taking this perspective seriously (e.g. Dabelko, Lonergan& Matthew, 1999). However, for the most part these efforts remain preliminary.' Conclusions Efforts to dismiss environment and security research and policy activities on the grounds that they have been unsuccessful are premature and misguided. This negative criticism has all too often been based on an excessively simplified account of the research findings of Homer-Dixon and a few others. Homer-Dixon’s scarcity-conflict thesis has made important and highly visible contributions to the literature, but it is only a small part of a larger and very compelling theory. This broader theory has roots in antiquity and speaks to the pervasive conflicts and security implications of complex nature-society relationships. The theory places incidents of violence in larger structural and historical contexts while also specifying contemporarily significant clusters of variables. From this more generalized and inclusive perspective, violence and conflict are revealed rarely as a society’s endpoint and far more often as parts of complicated adaptation processes. The contemporary research on this classical problematic has helped to revive elements of security discourse and analysis that were marginalized during the Cold War. It has also made valuable contributions to our understanding of the requirements of human security, the diverse impacts of globalization, and the nature of contemporary transnational security threats. Finall,y environmental security research has been valuable in myriad ways to a range of academics, policymakers, and activists, although the full extent of these contributions remains uncertain, rather than look for reasons to abandon this research and policy agenda, now is the time to recognize and to build on the remarkable achievements of the entire environmental security field.

#### 8. Alternative fails – critical theory has no mechanism to translate theory into practice

**Jones 99** (Richard Wyn, Lecturer in the Department of International Politics – University of Wales, Security, Strategy, and Critical Theory, CIAO, http://www.ciaonet.org/book/wynjones/wynjones06.html)

Because emancipatory political practice is central to the claims of critical theory, one might expect that proponents of a critical approach to the study of international relations would be reflexive about the relationship between theory and practice. Yet their thinking on this issue thus far does not seem to have progressed much beyond **grandiose statements of intent**. There have been no systematic considerations of how critical international theory can help generate, support, or sustain emancipatory politics beyond the seminar room or conference hotel. Robert Cox, for example, has described the task of critical theorists as providing “a guide to strategic action for bringing about an alternative order” (R. Cox 1981: 130). Although he has also gone on to identify possible agents for change and has outlined the nature and structure of some feasible alternative orders, he has not explicitly indicated whom he regards as the addressee of critical theory (i.e., who is being guided) and thus how the theory can hope to become a part of the political process (see R. Cox 1981, 1983, 1996). Similarly, Andrew Linklater has argued that “a critical theory of international relations must regard the practical project of extending community beyond the nation–state as its most important problem” (Linklater 1990b: 171). However, he has little to say about the role of theory in the realization of this “practical project.” Indeed, his main point is to suggest that the role of critical theory “is not to offer instructions on how to act but to reveal the existence of unrealised possibilities” (Linklater 1990b: 172). But the question still remains, reveal to whom? Is the audience enlightened politicians? Particular social classes? Particular social movements? Or particular (and presumably particularized) communities? In light of Linklater’s primary concern with emancipation, one might expect more guidance as to whom he believes might do the emancipating and how critical theory can impinge upon the emancipatory process. There is, likewise, little enlightenment to be gleaned from Mark Hoffman’s otherwise important contribution. He argues that critical international theory seeks not simply to reproduce society via description, but to understand society and change it. It is both descriptive and constructive in its theoretical intent: it is both an intellectual and a social act. It is not merely an expression of the concrete realities of the historical situation, but also a force for change within those conditions. (M. Hoffman 1987: 233) Despite this very ambitious declaration, once again, Hoffman gives no suggestion as to how this “force for change” should be operationalized and what concrete role critical theorizing might play in changing society. Thus, although the critical international theorists’ critique of the role that more conventional approaches to the study of world politics play in reproducing the contemporary world order may be persuasive, their account of the relationship between their own work and emancipatory political practice is unconvincing. Given the centrality of practice to the claims of critical theory, this is a very significant weakness. Without some plausible account of the **mechanisms** by which they hope to aid in the achievement of their emancipatory goals, proponents of critical international theory are hardly in a position to justify the assertion that “it represents the next stage in the development of International Relations theory” (M. Hoffman 1987: 244). Indeed, without a more convincing conceptualization of the theory–practice nexus, one can argue that critical international theory, by its own terms, has no way of redeeming some of its central epistemological and methodological claims and thus that it is a **fatally flawed** enterprise.

### 1NC No Econ War

#### No escalation

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

### Navy DA – 2AC

#### 1. Navy decline inevitable- Rising powers and budget cuts

Gibbons-Neff 13

[Thomas, Free Beacon, Expert: U.S. Naval Supremacy Is in Trouble, 8/1/13, <http://freebeacon.com/expert-u-s-naval-supremacy-is-in-trouble/>]

Former U.S. Deputy Undersecretary of the Navy Seth Cropsey told an audience at the Heritage Foundation Thursday afternoon that American sea power and global projection is “in trouble.” Cropsey appeared at Heritage to highlight the release of his new book Mayday: The Decline of American Naval Supremacy. Michaela Dodge, policy analyst of defense and strategic policy at the Heritage Foundation, highlighted the current plight of U.S. naval forces before Cropsey’s speech. Under current sequestration cuts, the Navy will be reduced from approximately 285 ships to 195 in the next thirty years, Dodge said. While Cropsey was quick to criticize sequestration’s effects on U.S. Naval power, his main focus was the looming threat posed by China. Cropsey highlighted the fact that the last Maritime strategic review was conducted over six years ago and did not mention China at all. “The 2007 strategy did not mention China, not once.” Cropsey said. “The Chinese have made it clear that its policy is to **deny the United States access to the Western Pacific**.” “China’s military budget continues to grow … in double percentage points each year,” Cropsey added. With countries in various stages of unrest, Cropsey pointed to the fact that countries **like Iran, China, and Russia have already begun projecting naval power** in various parts of the globe. Cropsey pointed to the fact that Russia is in the process of having a permanent twelve-ship presence in the Mediterranean Sea. With rival countries encroaching on American sea power Cropsey lamented the state of the U.S. 6th fleet—the group of ships responsible for Mediterranean operations. “The Eastern Med has reverted back to instability… and the U.S. 6th Fleet … that once composed of two carrier battle groups, today consists of a command ship based in Italy and three [surface ships],” Cropsey said. Cropsey also stressed the threat of the recently tested DF-21D a Chinese anti-ship ballistic missile designed to destroy large surface ships from over 1,200 miles away.

#### Specifically – takes out their training link

Carroll 13

[Chris, Stars and Stripes, A key to US power threatened by budget woes, Navy secretary says, 9/11/13, http://www.stripes.com/blogs/stripes-central/stripes-central-1.8040/a-key-to-us-power-threatened-by-budget-woes-navy-secretary-says-1.240607]

“Presence is what the Navy and Marine Corps are about,” he said. Toward Syria, “the nation had immediate options because of our immediate presence.” Federal budget problems, however, threaten the future of that presence, he warned. The automatic cuts known as sequestration, which could take $500 billion out of planned defense spending over a decade, are forcing the Navy to put off ship maintenance and may even halt much shipbuilding if elected officials don’t head off the cuts in coming years, Mabus said. Training is also being reduced, he said, and sailors will begin deploying without full training in 12 to 18 months. “Through no fault of their own, they will be less ready to face whatever comes over the horizon,” he said. “We’re rapidly reaching the point where no amount of hard work, no amount of innovation, no anything will allow us to get this training back and maintain the readiness that’s required.”

#### 3. Environmental restrictions don’t hurt the Navy – their impacts are overblown

London 9 -- J.D. Candidate, 2011 @ Denver Univ Law School (Ian K, 2009, "Comment: Winter v. National Resources Defense Council: Enabling the Military's Ongoing Rollback of Environmental Legislation," 87 Denv. U.L. Rev. 197, L/N)

First, the Court deferred to the Navy's claim that no evidence connected the forty years of SOCAL exercises with a single sonar-related injury to a marine mammal. n94 Yet, the Navy itself admitted that the exercises would affect approximately **80,000 marine mammals**, some of which would be severely injured or killed. n95 In fact, in 2000, the Navy and NOAA Fisheries conducted an investigation into a mass marine mammal stranding event in the Bahamas. n96 The report concluded that the seventeen marine mammals were driven onto shore by injuries from underwater acoustic sources. n97 The report connected those injuries to a series of contemporaneous Navy MFA sonar exercises, and the Navy pledged to be more careful in the future. n98 The evidence that the use of MFA sonar causes mass marine mammal strandings and deaths is "overwhelming," and the Navy was well aware of it. n99 It is surprising, then, that the Court deferred to the Navy's assertion that there would be no irremediable damage to the environment. It is difficult to think of an injury less remediable than the death of any number of marine mammals. By contrast, the Navy's probable injuries in the case of a mid-training sonar shutdown are quite remediable. A mid-exercise MFA sonar shutdown would **delay the** completion of the **exercise**, and would undoubtedly raise costs, but **it would not make completion of the exercise impossible**. n100 The Navy mischaracterized this inconvenience as an irremediable injury, and the effect on marine mammals as negligible. The majority accepted this mischaracterization at face value. Second, the Court observed that the injunction's shutdown provision would amount to a hundredfold increase in the surface area of the shutdown zone. n101 However, at the Navy's urging, the Court disregarded the observation that this MFA sonar shutdown zone is roughly the same size as the Navy's existing long-frequency active ("LFA") sonar shutdown zone. n102 The Court, perhaps humbled by the Navy's chastisement [\*207] of the Ninth Circuit, declined to explore the effect on the training exercises of congruent MFA/LFA shutdown zones. n103 By deferring to the Navy's unsubstantiated claim that MFA sonar and LFA sonar are irreconcilably dissimilar in terms of the effect of the technology on marine mammals, n104 the Court failed to consider a range of factors that could have shown the burden to be **smaller than the Navy asserted** it to be. Third, the Court deferred to the Navy regarding the power-down provision. The Court correctly recognized the Navy's important interest in training under surface ducting conditions when they exist. n105 Presumably, however, the conditions that conceal enemy submarines also conceal marine mammals. In other words, when surface ducting conditions exist, the Navy must be just as vigilant in avoiding marine mammals as it is in looking for enemy submarines. As Justice Breyer argued, the Court could have imposed the Ninth Circuit's provisional injunction, requiring the Navy to power down the sonar in proportion to the proximity of marine mammals to the vessel. n106 Justice Breyer's compromise would allow the Navy to continue training, while mitigating the injury to nearby marine mammals. Fourth, the Court deferred to the Navy regarding the connection between the SOCAL training exercises and national security. **The Navy asserted that the injunctions would jeopardize national security**. n107 This conclusion was an exaggeration. **The injunctions issued** by the district court **would not make training exercises impossible**; **they would merely cause delay** and disruption. n108 Also, the injunctions applied to training exercises in SOCAL waters, and not to Navy actions generally. n109 The Navy also argued the injunction would create "an unacceptable risk to the Navy's ability to train for essential overseas operations at a time when the United States is engaged in war in two countries." n110 This assertion was also an exaggeration. While the United States was indeed at war in Iraq and in Afghanistan, none of the United States' adversaries in those countries fielded a naval force--let alone the advanced "silent submarines" that MFA sonar was designed to detect. The Navy failed to explain the connection between adequate sonar training and combat readiness against these land-based, non-state forces. The Navy failed to explain how a delay in sonar training presented an "unacceptable risk" to [\*208] ground forces in Iraq and Afghanistan. n111 The Navy also failed to explain how the injunction affected the combat readiness of already-deployed forces, other than underlining the importance of fleet-wide integration. n112 Professor Burke refers to such **unsubstantiated claims** as "thought-terminating cliches." n113

#### 4. The navy would just move out of the way

Gillespie 12 -- Prof @ Univ of Waikato, has advised the Ministry of Foreign Affairs and Trade and the Department of Conservation, provides commissioned work for the United Nations and the Commonwealth Secretariat, has been awarded a Rotary International Scholarship, a Fulbright Fellowship, a Rockefeller Fellowship (Alexander, Winter 2012, "ARTICLE: The Limits of International Environmental Law: Military Necessity v. Conservation," 23 COLO. J. INT'L ENVTL. L. & POL'Y 1, L/N)

The **examination of alternatives** is a **key consideration** with impact assessments in general. In the cases pertaining to sonar, the adoption of alternative sites where there would be the least impact, has become standard. This practice first arose in the 1994 case of NRDC v. the United States Department of the Navy, which turned on the Navy's failure to examine meaningfully the possibility of alternative sites for the planned ship-shock trial, which would have resulted in taking fewer marine mammals and other animals. This was juxtaposed against evidence that suggested the planned site was a "uniquely populous nature of the Southern California Bight." n90 Similar considerations, whereby the importance of looking at all suitable alternative sites - and choosing the one which would result in the least impact on cetaceans - available to [\*22] test the new technologies, were reiterated in the cases of NDRC v. United States Navy n91 and NRDC v. Evans. n92 In Evans, after reviewing the Navy's SURTASS LFAS Program, the Northern District of California imposed an injunction that permitted the Navy to train and test LFAS in a wide range of oceanic conditions as needed, "while restricting it from operating in certain sensitive areas when marine mammals are particularly abundant there." n93 Particular areas, identified as "Offshore Biologically Important Areas," were later added to this list. n94 Following this case, the Navy and the Natural Resources Defense Council ("NRDC") settled their lawsuit over global deployment of LFAS by the Navy agreeing to limit ongoing training missions to a region of the West Pacific, which is of great strategic importance to the Navy, yet relatively free of cetacean populations. In 2008, as attempts were made for a further roll-out of this technology, the Navy and NRDC agreed to a settlement in which both training and operational use of LFAS would continue to be limited to defined areas of the Pacific Ocean (although there were broad exemptions to these limits when Naval commanders deemed LFAS necessary in the search for potentially hostile submarines). n95

#### 5. Pre-9/11 restrictions disprove the DA – no significant effect on readiness

Dycus 05

[Stephen, Professor, Vermont Law School, Osama's Submarine: National Security and

Environmental Protection After 9/11, William & Mary Environmental Law and Policy Review, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1112&context=wmelpr>]

The evidence that compliance with environmental laws has seriously impaired U.S. preparations for war is, however, far from conclusive. After all, the U.S. military's successes in Afghanistan and Iraq were achieved using troops trained and weapons tested under **pre-September 11th environmental statutes** and regulations. A Navy Admiral, testifying before Congress in support of RRPI in 2003, declared that "the readiness of the Navy is excellent. 32 According to a General Accounting Office report in 2002, "[d]espite the loss of some capabilities, service readiness data do not indicate the extent to which encroachment has significantly affected reported training readiness.” 33 In fact, the report concluded, "Training readiness, as reported in official readiness reports, remains high for most units.,34 Environmental Protection Agency ("EPA") Administrator Christine Todd Whitman went further in early 2003, stating, "**I don't believe that there is a training mission anywhere in the country that is being held up or not taking place because of environmental protection regulation**."35 A more recent study by the Congressional Research Service noted that "[a]lthough DOD has cited some examples of training restrictions or delays at certain installations and has used these as the basis for seeking legislative remedies, the department does not have a system in place to comprehensively track these cases and determine their impact on readiness.' "36 Some have taken a dimmer view of DOD's protests. EPA complained that the definition of "military readiness activities" in the DOD proposal was "broad and unclear and could be read to encompass more than the Department intends."37 Congressman John Dingell, a Democrat from Michigan, was much more emphatic: "I have dealt with the military for years and they constantly seek to get out from under environmental laws. But using the threat of 9-11 and al Qaeda to get unprecedented environmental immunity is despicable. 38

### NEPA Readiness DA – 2AC

#### 4. Turn – NEPA allows for flexibility and makes our military more effective

Dycus 96

[Stephen, Professor, Vermont Law School, 1996, "National Defense and the Environment"pp 149]

There is serious, continuing debate about whether the domestic environmental laws apply abroad. 89 The Defense Department expressly disavows the applicability of NEPA to military actions outside the nation's borders, especially to armed conflict.90 The Pentagon's "Overseas Environmental Baseline Guidance Document" claims only to have "considered" United States environmental laws and regulations, not to be governed by them, and it does not apply to "deployments for operations," that is, to warfare.91 The environmental laws themselves are silent on the question, and the legislative histories are almost as enigmatic. Aside from the usual presumption that domestic laws are not meant to apply abroad unless Congress expressly states otherwise, there is no compelling evidence that Congress intended to exclude their application to armed conflict. Indeed, these laws should be applied to warfare. As a practical matter, they provide convenient, familiar mechanisms for evaluating and minimizing risks to the environment in time of war just as they do in peacetime. Applied with a practical flexibility, **they need not interfere with military operations**. No one has suggested that the Defense Department ought to have prepared the kind of formal environmental impact statement required by NEPA before deploying troops and equipment in the Persian Gulf, even though Operations Desert Shield and Desert Storm were undeniably "major federal actions affecting the human environment." The political objectives of freeing Kuwait and protecting Saudi Arabia from further Iraqi advances might well have been frustrated by delays inherent in the usual public notice and interagency review process. Very much to its credit, the Pentagon did not ignore the environmental risks altogether. But it failed to undertake, even internally, the kind of systematic, coordinated environmental evaluation that NEPA requires. We cannot expect the environmental laws to apply the same way on the battlefield that they do in planning a highway or operating a sewage disposal plant. A field commander whose forces come under attack cannot stop to prepare an environmental assessment or apply for a Clean Water Act permit before mounting a counteroffensive. Because of the need for speed and secrecy, members of the public cannot expect to receive advance notice or have an opportunity to comment on proposed tactics. Citizen enforcement will be nearly impossible; we will have to rely on the military branches to police their own operations and personnel, aided by oversight from their inspectors general. It may not even be practical for our field commander to fully document his consideration of environmental effects, making accountability more problematic. Yet even in a combat setting, our commander can apply performance standards and follow procedures set out in the domestic environmental laws as closely as circumstances permit. Much that takes place on the battlefield is planned far in advance. Operation plans, rules of engagement, and standardized tactics should be routinely vetted for compliance with domestic environmental law standards, just as they are now reviewed for conformity with the law of war, even though for security reasons neither the planning process nor the plans themselves can be made public. The designs of weapons and other equipment, and protocols for their use on the battlefield, should also conform to requirements of the environmental laws. Just as the law of war proscribes weapons that cause unnecessary suffering, application of the environmental laws ought to prevent the deployment of weapons that cause unnecessary injury to the environment. Thus, the Navy should only deploy ships that have the capacity to treat or store their solid wastes while at sea, instead of dumping them overboard in violation of the Ocean Dumping Act or the Clean Water Act. 92 The Army has decided that if chemical herbicides are used in combat, they "must be employed in accordance with federal laws and regulations which would govern their use within the United States.... Environmental Protection Agency regulations pertaining to dilution, droplet size, protective clothing, etc. are binding on U.S. forces."93 The EPA regulations are promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).94 The military services are beginning to **incorporate environmental compliance into combat training, just as they now train every soldier, sailor, and airman to be familiar with the law of war**. As one high­ranking Air Force officer put it, "we fight the way we are trained." Long before reaching the battlefield, for example, a tank commander needs to learn not to drive through the middle of a wetland if a path across high ground offers the same tactical advantage. The same commander should be instructed to carry along not only a change of oil for his tank's engine, but also a safe receptacle for the old oil, so it will not have to be drained onto the ground, as was done in the Persian Gulf War. Finally, environmental compliance on the battlefield itself **will not necessarily make combat units less effective in carrying out their military missions**. A recent Army­ financed study concluded that successful introduction of pollution prevention initiatives into combat doctrine and planning would actually enhance fighting strength by increasing each unit's self­sufficiency, **reducing disease and nonbattle injury, and reducing the unit's visibility to the enemy**. 95

### Deference DA – 2AC

#### Obama will continue to consult for military actions – takes out the link

Rothkopf 13

[David, CEO and editor at large of Foreign Policy, The Gamble, 8/31/13, <http://www.foreignpolicy.com/articles/2013/08/31/the_gamble?page=0,1>]

Whatever happens with regard to Syria, the larger consequence of the president's action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to initiate military action without seeking congressional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary. But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of precedent -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way. 4. This president just dialed back the power of his own office. Obama has reversed decades of precedent regarding the nature of presidential war powers -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship. The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider that John Boehner was instantly more clear about setting the timing for any potential action against Syria with his statement that Congress will not reconvene before its scheduled September 9 return to Washington than anyone in the administration has been thus far. Perhaps more importantly, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to **dial back the imperial presidency than anything his predecessors or Congress have done for decades.**

#### Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### 2. Plan doesn’t affect all power – the president will do what he wants absent direct prohibition

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008,

<http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>]

The first and perhaps overarching reason underlying the growth of presidential power is that the constitutional text on the subject is notoriously unspecific, allowing as one writer maintains, for the office “to grow with the developing nation.”19 Unlike Article I, which sets forth the specific powers granted to Congress,20 the key provisions of Article II that grant authority to the President are written in indeterminate terms such as “executive power,”21 or the duty “to take care that the laws be faithfully executed.”22 Moreover, unlike the other branches, the Presidency has consistently been deemed to possess significant inherent powers.23 Thus, many of the President’s recognized powers, such as the authority to act in times of national emergency24 or the right to keep advice from subordinates confidential,25 are nowhere mentioned in the Constitution itself. In addition, case law on presidential power is underdeveloped. Unlike the many precedents addressing Congressional26 or federal judicial27 power, there are remarkably few Supreme Court cases analyzing presidential power. And the leading case on the subject, Youngstown Sheet & Tube Co. v. Sawyer, 28 is known less for its majority opinion than for its concurrence by Justice Jackson, an opinion primarily celebrated for its rather less-than-definitive announcement that much of presidential power exists in a “zone of twilight.”29 Accordingly, the question whether a President has exceeded her authority is seldom immediately obvious because the powers of the office are so openended.30 This fluidity in definition, in turn, allows presidential power to readily expand when factors such as national crisis, military action, or other matters of expedience call for its exercise.31 Additionally, such fluidity allows political expectations to affect public perceptions of the presidential office in a manner that can lead to expanded notions of the office’s power.32 This perception of expanded powers, in turn, can then lead to the perceived legitimacy of the President actually exercising those powers. Without direct prohibitions to the contrary, expectations easily translate into political reality.33

#### 6. **Rules during crises don’t hurt flexibility**

Holmes 9 -- Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 4/30/2009, "In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1140&context=californialawreview)

Thus, it also illustrates the truism, profoundly relevant to the war on terror, that limiting options available during emergencies can be good or bad, depending on what emergency responders, who may be tempted by sheer exhaustion to take hazardous shortcuts, will do with the latitudes they seize or receive. Campaigners for executive discretion routinely invoke the imperative need for "**flexibility**" to explain why counterterrorism cannot be successfully conducted within the Constitution and the rule of law. But general rules and situation-specific improvisation, far from being mutually exclusive, are perfectly compatible. 1 8 There is no reason why mechanically following protocols designed to prevent harried nurses from negligently administering the wrong blood type should preclude the same nurses from improvising unique solutions to the unique problems of a particular trauma patient. Drilled-in emergency protocols provide a **psychologically stabilizing floor**, shared by co- workers, on the basis of which **untried solutions can then be improvised**. 9 In other words, there is no reason to assert, at least not as a matter of general validity, that the importance of flexibility excludes reliance on rules during emergencies, including national-security emergencies. The emergency-room example can also deepen our understanding of national-security crises by bringing into focus an important but sometimes neglected distinction between threats that are novel and threats that are urgent. **Dangers may be unprecedented without demanding a split-second response**. Contrariwise, urgent threats that have appeared repeatedly in the past can be managed according to protocols that have become automatic and routine. Emergency-room emergencies are urgent even when they are perfectly familiar. Terrorists with access to weapons of mass destruction ("WMD"), by contrast, present a novel threat that is destined to endure for decades, if not longer. **Such a threat is not an "emergency"** in the sense of a sudden event, such as a house on fire, **requiring genuinely split-second decision making**, with no opportunity for serious consultation or debate. **Managing the risks of nuclear terrorism requires sustained policies, not short-term measures**. This is feasible precisely because, in such an enduring crisis, national-security personnel have **ample time to think and rethink, to plan ahead and revise their plans**. In depicting today's terrorist threat as "an emergency," executive-discretion advocates almost always blur together urgency and novelty. This is a consequential intellectual fallacy. But it also provides an opportunity for critics of executive discretion in times of crisis. If classical emergencies, in the house- on-fire or emergency-room sense, turn out to invite and require rule-governed responses, then the justification for dispensing with rules in the war on terror seems that much more tenuous and open to question. In crises where "time is of the essence" 2 1 and serious consultation is difficult or impossible, it is imperative for emergency responders to follow previously crafted first-order rules (or behavioral commands) to enable prompt remedial action and coordination. In crises that are not sudden and transient but, instead, endure over time and that therefore allow for extensive consultation with knowledgeable parties, it is essential to rely on previously crafted second-order rules (or decision-making procedures) designed to **encourage decision makers to consider the costs and benefits of, and feasible alternatives to, proposed action plans**. In medicine, a typical first-order rule is "always wash your hands before inserting a stent," and a typical second-order rule is "always get a second opinion before undertaking major surgery."

#### 8. Court expertise is sufficient—their link is blown out of proportion

Knowles 9 [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

A common justification for deference is that the President possesses superior competence due to expertise, information gathering, and political savvy in foreign affairs. These conclusions flow from the realist tenet that the external context is fundamentally distinct from the domestic context. The domestic realm is hierarchical and legal; the outside world is anarchical and political. The international realm is thus far more complex and fluid than the domestic realm. The executive is a political branch, popularly-elected and far more attuned to politics than are the courts. n258 Judges are, for the most part, generalists who possess no special expertise in foreign affairs. n259 Courts can only receive the information presented to them and cannot look beyond the record. n260 The President has a vast foreign relations bureaucracy to obtain and process information from around the world. Executive agencies such as the State Department and the military better understand the nature of foreign countries - their institutions and culture - and can predict responses in ways that courts cannot. n261 In the context of the political question doctrine, this rationale often appears when courts conclude that an issue lacks "judicially discoverable and manageable standards." n262 A stronger, related rationale is that the political branches are better suited for tracking dynamic and evolving norms in the anarchic international environment. n263 The meaning of international law changes over time and nations do not agree today on its meaning. Moreover, the relationships among nations in many instances will be governed by informal norms that do not correspond to international law. n264 In addition, many foreign affairs provisions in the Constitution had fixed meanings under international law in the Eighteenth Century - what it meant, for example, to "declare war" or to issue "letters of marquee and [\*129] reprisal" - but subsequent practice has substantially altered their meaning or rendered them irrelevant. n265 Courts are not adept at tracking these shifts. As many critics have observed, the "lack of judicially-manageable standards" argument is weak. Courts create rules to govern disputes regarding vague constitutional provisions such as the Due Process Clause. n266 Furthermore, if courts were to adjudicate foreign affairs disputes more often, they would have the opportunity to create clearer standards, making them more manageable. n267 Thus the lack-of-standards argument does not alone explain why foreign affairs should be off-limits. The argument regarding courts' limited access to information and lack of expertise seem persuasive at first, but it loses its force upon deeper inspection. For instance, expertise is also a rationale for Chevron deference in the domestic context. n268 Generalist judges handle cases involving highly complex and obscure non-foreign affairs issues while giving appropriate deference to interpretations of agencies charged with administering statutory schemes. n269 What makes foreign affairs issues so different that they justify even greater deference? n270 Perhaps foreign affairs issues are just an order of magnitude more complex than even the most complex domestic issues. However, this line of thinking very quickly leads to boundary problems. Economic globalization, rapid global information flow, and increased transborder movement have "radically increased the number of cases that directly implicate foreign relations" and have made foreign parties and conduct, as well as international law questions, increasingly [\*130] common in U.S. litigation. n271 If courts were to cabin off all matters touching on foreign relations as beyond their expertise, it would result in an ever-increasing abdication of their role. The political norm-tracking argument reveals the second major problem with using anarchy as a basis for special deference: it fails to account for the degree of deference that should be afforded to the President. Under the anarchy-based argument, the meaning of treaties and other concepts in foreign affairs depend entirely on politics and power dynamics, which the President is especially competent (and the courts especially incompetent) in tracking. If this is so, the courts must give total deference to the executive branch. If one does not wish to take the position that the courts should butt out altogether in foreign affairs, there must be other reasons for the courts' involvement. Even proponents of special deference generally acknowledge that some of the courts' strengths lie in protecting individual rights and "democracy-forcing." n272 But what is the correct balance to strike between competing functional goals of the separation of powers?

### Backlash DA -2AC

No ROL impact

#### Will comply – even if they disagree

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

#### Obama supports NEPA agency review

Goad & Kroh 13 -- \*Manager of Research and Outreach for American Progress’ Public Lands Project AND\*\* Deputy Editor of ClimateProgress, worked on the Energy policy team at American Progress as the Associate Director for Ocean Communications (Jessica and Kiley, 4/25/2013, "Using Executive Authority to Account for the Greenhouse-Gas Emissions of Federal Projects," http://www.americanprogress.org/issues/green/report/2013/04/25/61446/using-executive-authority-to-account-for-the-greenhouse-gas-emissions-of-federal-projects/)

While Congress has shown no signs that it will take action to address the growing threat of climate change, there are a **number of executive authorities** under existing laws to address the crisis. The National Environmental Policy Act, which requires analyses of the environmental impacts of federal activities, is frequently overlooked in this context but could be an important tool for assessing the potential climate impacts from a proposed project—a key first step in shaping informed decisions. The Council on Environmental Quality should finalize its draft guidance for federal agencies to include carbon pollution in NEPA analyses, and the president should issue an executive order on this subject to give it more clarity and permanence. Additionally, CEQ must be certain to include federal resource-management agencies in its final guidance. Burning the oil, coal, and natural gas that come from our public lands and waters accounts for nearly a quarter of all U.S. greenhouse-gas emissions. Ignoring the federal mineral estate in the guidance is leaving out a large portion of the federal governments’ activities related to climate change. As President **Obama made clear** in his 2013 State of the Union address: **I will direct my cabinet to come up with executive actions we can take**, now and in the future, to **reduce pollution**, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy. Ensuring that federal agencies—especially the land- and ocean-management agencies—assess greenhouse-gas pollution generated by proposed federal actions when reviewing their impacts is an important step in making this promise a reality.

#### The military will comply

Gillespie 12 -- Prof @ Univ of Waikato, has advised the Ministry of Foreign Affairs and Trade and the Department of Conservation, provides commissioned work for the United Nations and the Commonwealth Secretariat, has been awarded a Rotary International Scholarship, a Fulbright Fellowship, a Rockefeller Fellowship (Alexander, Winter 2012, "ARTICLE: The Limits of International Environmental Law: Military Necessity v. Conservation," 23 COLO. J. INT'L ENVTL. L. & POL'Y 1, L/N)

Generally, the answer is that **the military can be made to comply** with laws that seek to resolve internationally significant environmental problems. In some instances, such as where they are main culprits in the causation of the problem, **they can be the subject** of particular treaties. This was the case with the testing of nuclear weapons in the atmosphere. In other instances, **obligations can be placed upon them to control their pollutants**, just as all other sectors within a country may be obligated to comply with agreed international rules. This is true with climate change, ozone depletion, and some persistent organic pollutants. Nonetheless, in some instances, the ability for the military to be granted exceptions exists, although they are rarely used. Rather, militaries have learned to adapt and comply with international standards.

#### President will protect the courts

**Grove 12**

[Tara Leigh,Assistant Professor, William and Mary Law School, The Article II Safeguards Of Federal Jurisdiction, Columbia Law Review March, 2012, L/N]

This Article argues that scholars have overlooked an important (and surprising) advocate for the federal judiciary in these jurisdictional struggles: the executive branch. The Constitution gives the President considerable authority to block constitutionally questionable legislation. The President can veto problematic legislation or use the threat of a veto to urge Congress to pursue other alternatives. Moreover, under Article II's Take Care Clause, the President is in charge of enforcing federal law in the federal courts - a task that he has largely delegated to the Department of Justice (DOJ). n6 The executive branch can use this enforcement authority to ensure that laws are applied in a manner that accords with constitutional values. Drawing on recent social science scholarship, this Article contends that the executive branch has a strong incentive to use this constitutional authority to oppose efforts to curb federal jurisdiction. First, social scientists have argued that the President often expresses his constitutional philosophy through litigation in the federal courts. Accordingly, the President has some incentive to ensure that the federal courts retain jurisdiction over constitutional claims. These presidential incentives are reinforced by the institutional incentives of the DOJ. Relying on theories of path dependence and institutional entrenchment, this Article argues that the DOJ has a substantial interest in defending the authority of the federal judiciary, because it can thereby maintain its own enforcement power. The DOJ has a particularly overriding interest in protecting the [\*253] appellate jurisdiction of the Supreme Court, because the Solicitor General is in charge of all federal litigation at that level. By defending the authority of the Supreme Court, the DOJ can maximize its power and influence over the development of federal law. In sum, this Article contends that the executive branch has strong institutional incentives to oppose the very kind of legislation that scholars find most problematic: restrictions on the Supreme Court's appellate jurisdiction and the federal courts' authority to adjudicate constitutional claims. The executive branch should be inclined to use its constitutional authority to shield the judiciary from such challenges to the federal judicial power. This structural argument has considerable historical support. The § Marked 15:28 § executive branch has sought to protect federal jurisdiction in two major ways. First, the executive branch has repeatedly opposed bills targeted at the Supreme Court's appellate review power or at federal jurisdiction over constitutional claims. n7 Notably, that has been true even when the President strongly disagreed with the federal courts' constitutional jurisprudence. For example, during the New Deal era, the Roosevelt Justice Department opposed efforts to eliminate the Supreme Court's appellate jurisdiction over constitutional claims. n8 Likewise, the Reagan Justice Department spoke out against proposals to strip federal jurisdiction over cases involving school prayer and abortion. n9 Other DOJ officials have similarly urged Congress to refrain from enacting jurisdiction-stripping proposals, at times expressly invoking the threat of a presidential veto. Although most jurisdiction-stripping bills have been defeated in the legislative process, some proposals to curb federal jurisdiction have, in recent decades, captured sufficient political support to gain the assent of both Congress and the President. But the executive branch has an additional constitutional tool to limit the impact of such laws: The DOJ controls the enforcement of most federal laws and can urge the federal judiciary to interpret those laws narrowly in order to preserve federal jurisdiction. That is the approach that recent Justice Departments have taken. Both the Clinton and the second Bush Administrations urged the courts to construe broadly worded jurisdiction-stripping statutes, like the Antiterrorism and Effective Death Penalty Act, so as to preserve jurisdiction over federal constitutional claims. n10 The federal courts, of course, could disregard these arguments and independently determine their jurisdiction. But, to the extent that the [\*254] courts are already inclined to interpret jurisdiction-stripping laws narrowly, the DOJ's arguments provide substantial reassurance that such constructions will have the support of a coequal branch of the federal government. And, in practice, the federal judiciary has proven quite receptive to the executive branch's efforts to preserve the scope of federal jurisdiction.