# 1NC

## Off

### 1

#### Topical detention cases must deal with persons designated as enemy combatants---that’s how war powers authority is used in the area

CFC 4 – The Committee on Federal Courts, 2004, “THE INDEFINITE DETENTION OF "ENEMY COMBATANTS": BALANCING DUE PROCESS AND NATIONAL SECURITY IN THE CONTEXT OF THE WAR ON TERROR,” The Record of The Association of The Bar of the City of New York, 59 The Record 41

The President, assertedly acting under his "war power" in prosecuting the "war on terror," has claimed the authority to detain indefinitely, and without access to counsel, persons he designates as "enemy combatants," an as yet undefined term that embraces selected suspected terrorists or their accomplices. Two cases, each addressing a habeas corpus petition brought by an American citizen, have reviewed the constitutionality of detaining "enemy combatants" pursuant to the President's determination: - Hamdi v. Rumsfeld, 316 F.3d 450 (4th Cir. 2003), cert. granted, 124 S. Ct. 981 (Jan. 9, 2004) (No. 03-6696), concerns a citizen seized with Taliban military forces in a zone of armed combat in Afghanistan; - Padilla ex. rel. Newman v. Bush, 233 F. Supp. 2d 564 (S.D.N.Y. 2002), rev'd sub nom., Padilla ex. rel. Newman v. Rumsfeld, 352 F.3d 695 (2d Cir. 2003), cert. granted, 124 S. Ct. 1353 (Feb. 20, [\*42] 2004) (No. 03-1027), concerns a citizen seized in Chicago, and suspected of planning a terrorist attack in league with al Qaeda. Padilla and Hamdi have been held by the Department of Defense, without any access to legal counsel, for well over a year. No criminal charges have been filed against either one. Rather, the government asserts its right to detain them without charges to incapacitate them and to facilitate their interrogation. Specifically, the President claims the authority, in the exercise of his war power as "Commander in Chief" under the Constitution (Art. II, § 2), to detain persons he classifies as "enemy combatants": - indefinitely, for the duration of the "war on terror"; - without any charges being filed, and thus not triggering any rights attaching to criminal prosecutions; - incommunicado from the outside world; - specifically, with no right of access to an attorney; - with only limited access to the federal courts on habeas corpus, and with no right to rebut the government's showing that the detainee is an enemy combatant.

#### The plan would rule on immigration detention. That’s a presidential non-war powers authority.

Nofil 12

Brianna Nofil (Department of History, Duke University). Detained Immigrants, Excludable Rights: The Strange Devolution of U.S. Immigration Authority, 1882-2012. April 23, 2012.

President **Reagan’s decision seemed to represent a radical departure from existing immigration law, which had almost entirely phased out immigration detention** over the previous 30 years. Following the atrocities of World War II, **both citizens and policymakers** of the 1950’s **grew wary of** the ethical and human rights implications of **indefinitely detaining immigrants without legal hearings.** As the United States tried to maintain its identity as an international beacon of freedom and liberty, compared to the fascist regimes proliferating around the globe, immigration detention proved too difficult for policymakers to justify. **Thus, immigration detention fell out of practice until 1981, when Reagan initiated the policy shift through an executive order.** The order saw no debate in Congress, no published rules on detention practices, and no formal standards given to the federal immigration bureaucracy.3 Subsequently, the public remained largely unaware of the sweeping policy change. **In reinstating detention, Reagan used the discretionary authority that had come to characterize the immigration bureaucracy throughout its history. Despite having no formal judicial authority, the Immigration and Naturalization Service (INS) now had the power to arrest immigrants and indefinitely detain them in county jails, federal detention centers, and eventually, privately-owned detention facilities.**

#### Yes, suspension clause still applies

Neuman 98 (Herbert Wechsler Professor of Federal Jurisprudence, Columbia Law School, Columbia Law Review, Vol. 98, No. 4)

The Suspension Clause provides a central guarantee of personal liberty and the rule of law by assuring that independent courts will be available to inquire into the lawfulness of detention by federal executive officials. The Clause contains its own exception for times of crisis caused by rebellion or invasion, and otherwise deprives Congress of the power to obstruct that inquiry. Although the Constitution contains no definition of the scope of the required inquiry, a nearly uniform tradition assists us in identifying the core of the guarantee. That core is not limited to review of constitutional issues; it also includes determination of the statutory basis for executive detention and enforcement of statutory restrictions on executive authority. Constitutional provisions are capable of evolving, but it is too soon to say that the Suspension Clause has shrunk below its traditional dimensions. Habeas inquiry into executive detention has attracted little attention in recent years because more generous methods of review have been provided, not because executive tribunals have become constitutionally indistinguishable from independent courts. Regrettably, the 1996 immigration legislation has brought habeas corpus to a crossroads. The misleading slogans of congressional power over immigration and congressional power over federal jurisdiction invite the courts to deny their jurisdiction over habeas challenges to the removal of aliens. Some lower courts have sought a compromise by preserving jurisdiction solely over constitutional claims. But that is no compro- mise: that is the abandonment of the achievement of centuries of struggle against detention at the will of the executive. It remains to be seen whether the courts will preserve their habeas jurisdiction against congressional efforts to confer finality on immigration decisions, as they did at the turn of the last century, or will permanently diminish a central constitutional guarantee.

#### Vote neg:

#### Limits---they explode the topic to include any class of petitioners whose detention is functionally indefinite but not justified as an expression of war powers---all immigration detention, disease quarantine, the domestic prison system all become viable aff areas.

### 2

#### Court rulings on war powers spillover---that decks the ability to respond to regional wars, prolif and terrorism

Blomquist 10 Robert, Professor of Law, Valparaiso University School of Law, J.D., Cornell Law School

“The Jurisprudence of American National Security Presiprudence” Valparaiso University Law Review 44 (33) 881-894 http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1063&context=vulr

Supreme Court Justices—along with legal advocates—need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks.7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court’s interpretation of national security law-making and decision-making by the President are several pertinent points. First, “Hart and Sacks’ intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together.”8 By implication, therefore, the Court should be mindful of the unique constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish “institutionalized[] procedures for the settlement of questions of group concern”9 and regularize “different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions”10 because “every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others—e.g., courts for ‘judicial’ decisions and legislatures for ‘legislative’ decisions”11 and, extending their conceptualization, an executive for “executive” decisions.12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies.13 While all four are part of “legal arrangements in an organized society,”14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats.16 The Justices should also consult Professor Robert S. Summers’s masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. 17 The most important points that Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role"18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unify of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit."19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision- making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders.20 Third, according to Summers, "a conception of the overall form of the whole functional (legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit."21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS—unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution—may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation.22 [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations. (1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27 (2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28 (3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30 (4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32 (5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34 [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39 Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### Rogue states multiply and cause extinction

**Johnson, Forbes contributor and Presidential Medal of Freedom winner, 2013**

(Paul, “A Lesson For Rogue States”, 5-8, <http://www.forbes.com/sites/currentevents/2013/05/08/a-lesson-for-rogue-states/>, ldg)

Although we live in a violent world, where an internal conflict such as the Syrian civil war can cost 70,000 lives over a two-year period, there hasn’t been a major war between the great powers in 68 years. Today’s three superpowers–the U.S., Russia and China–have no conflicts of interest that can’t be resolved through compromise. All have hair-trigger nuclear alert systems, but the sheer scale of their armories has forced them to take nuclear conflict seriously. Thus, in a real sense, nuclear weapons have succeeded in abolishing the concept of a winnable war. The same cannot be said, however, for certain paranoid rogue states, namely North Korea and Iran. If these two nations appear to be prospering–that is, if their nuclear threats are winning them attention and respect, financial bribes in the form of aid and all the other goodies by which petty dictators count success–other prospective rogues will join them. One such state is Venezuela. Currently its oil wealth is largely wasted, but it is great enough to buy entree to a junior nuclear club. Another possibility is Pakistan, which already has a small nuclear capability and is teetering on the brink of chaos. Other potential rogues are one or two of the components that made up the former Soviet Union. All the more reason to ensure that North Korea and Iran are dramatically punished for traveling the nuclear path. But how? It’s of little use imposing further sanctions, as they chiefly fall on the long-suffering populations. Recent disclosures about life in North Korea reveal how effectively the ruling elite is protected from the physical consequences of its nuclear quest, enjoying high standards of living while the masses starve. Things aren’t much better in Iran. Both regimes are beyond the reach of civilized reasoning, one locked into a totalitarian vise of such comprehensiveness as to rule out revolt, the other victim of a religious despotism from which there currently seems no escape. Either country might take a fatal step of its own volition. Were North Korea to attack the South, it would draw down a retribution in conventional firepower from the heavily armed South and a possible nuclear response from the U.S., which would effectively terminate the regime. Iran has frequently threatened to destroy Israel and exterminate its people. Were it to attempt to carry out such a plan, the Israeli response would be so devastating that it would put an end to the theocracy forthwith. The balance of probabilities is that neither nation will embark on a deliberate war but instead will carry on blustering. This, however, doesn’t rule out war by accident–a small-scale nuclear conflict precipitated by the blunders of a totalitarian elite. Preventing Disaster The most effective, yet cold-blooded, way to teach these states the consequences of continuing their nuclear efforts would be to make an example of one by destroying its ruling class. The obvious candidate would be North Korea. Were we able to contrive circumstances in which this occurred, it’s probable that Iran, as well as any other prospective rogues, would abandon its nuclear aims. But how to do this? At the least there would need to be general agreement on such a course among Russia, China and the U.S. But China would view the replacement of its communist ally with a neutral, unified Korea as a serious loss. Compensation would be required. Still, it’s worth exploring. What we must avoid is a jittery world in which proliferating rogue states perpetually seek to become nuclear ones. The risk of an accidental conflict breaking out that would then drag in the major powers is too great. This is precisely how the 1914 Sarajevo assassination broadened into World War I. It is fortunate the major powers appear to have understood the dangers of nuclear conflict without having had to experience them. Now they must turn their minds, responsibly, to solving the menace of rogue states. At present all we have are the bellicose bellowing of the rogues and the well-meaning drift of the Great Powers–a formula for an eventual and monumental disaster that could be the end of us all.

#### Presidents will never comply with a direct court refutation of war time policy-he’ll always use extenuating justifications-this wrecks the Court’s institutional strength

**Pushaw, Pepperdine law professor, 2004**

(Robert, Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, lexis, ldg)

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59 Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62 This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65 Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to dis-close.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach. Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that he will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it. Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

#### Weakening the court prevents sustainable development

**Stein, New South Wales Court of Appeal former judge, 2005**

(Paul Stein, “Why judges are essential to the rule of law and environmental protection”, IUCN Environmental Policy and Law Paper No. 60, online, ldg)

The Johannesburg Principles state: “We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.” There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts. Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized. A role for judges? It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Extinction

**Barry, Wisconsin land resources PhD, 2013**

(Glen, “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse”, 2-4, <http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp>, ldg)

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere. It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities. Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet. Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies. If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last? The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us. Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric. I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000). Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival—entirely dependent upon the natural world—depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats. The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life. The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative. Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers. Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long. Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies. In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever. One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program—funded by a carbon tax—to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries. In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

### 3

#### Court proceedings lead to compromising intelligence AND freezes future cooperation

**Friedman et al., National Strategy Forum president and chair, 2009**

(Richard, “Trying Terrorists in Article III Courts Challenges and Lessons Learned”, July, <http://prawfsblawg.blogs.com/files/trying-terrorists-art-iii-report-final.pdf>, ldg)

There was substantial agreement among the workshop participants that the government faces unique foreign relations and intelligence issues when using classified and sensitive evidence obtained through foreign liaison relations for terrorism trials in a public Article III court. Some discussants agreed that these issues were partly legal and partly political, and that all of these issues have the potential to threaten either successful prosecution or important intelligence relations. The following is a brief account of many discussants’ concerns with the foreign relations and intelligence challenges of trying terrorists in Article III courts. First, the disclosure of evidence in some terrorism trials may force a decision about whether to expose important intelligence gathering priorities, methods, and sources. This exposure may lead to conflicting interests between U.S. intelligence and law enforcement agencies; the risk of conflict is no less substantial when using sensitive evidence as opposed to classified evidence.17 In addition, it is not always clear at the outset which intelligence information will be valuable in the future, meaning that intelligence agencies are resistant to disclosing any intelligence information unless its secrecy can be adequately safeguarded and its use will result in meaningful benefits to the government. Second, the use of classified and sensitive evidence obtained from the intelligence arm of a foreign government can pose an obstacle to future cooperation between the United States and the foreign government. Intelligence information is often shared between governments with the express understanding that such cooperation will remain secret. In terrorism trials, the prosecution may face the dilemma of either (i) turning over the evidence of foreign cooperation and thereby undermining the trust of the foreign government, (ii) proceeding with litigation on a more restricted set of evidence, or, in some rare cases, (iii) withdrawing some charges against the defendant. Third, where a secret informant only cooperates with U.S. intelligence under assurances that she will never be identified or have to testify in an American courtroom, prosecutors and intelligence officials may be faced with losing a valuable intelligence source for the purpose of prosecuting a single (or a small group of) terrorist suspect(s). The higher value the informant, the less likely the intelligence service will agree to such disclosure, meaning that the prosecution may be forced to proceed on significantly less evidence. This problem also arises where the source is a foreign intelligence agent barred from testifying in an American courtroom by her own government. A few discussants argued, however, that these were merely practical barriers for the prosecution that can be, and in past cases have been, overcome, for example, by renegotiating with an intelligence source or engaging in diplomacy with a foreign government on a case-bycase basis. Some discussants urged that criminal prosecutors often handle issues pertaining to reluctant and secret witnesses, meaning that prosecutors can continue to do so in terrorism trials. However, other discussants disagreed, asserting that the national security, intelligence, and foreign relations implications of handling secret witnesses in terrorism trials are different and more complex than secrecy considerations typically at issue in traditional criminal trials.

#### Intelligence cooperation solves WMD use

**Yoo, Berkley law professor, 2004**

(John, “War, Responsibility, and the Age of Terrorism”, UC-Berkeley Public Law and Legal Theory Research Paper Series, <http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=johnyoo>, ldg)

Third, the nature of warfare against such unconventional enemies may well be different from the set-piece battlefield matches between nation-states. Gathering intelligence, from both electronic and human sources, about the future plans of terrorist groups may be the only way to prevent September 11-style attacks from occurring again. Covert action by the Central Intelligence Agency or unconventional measures by special forces may prove to be the most effective tool for acting on that intelligence. Similarly, the least dangerous means for preventing rogue nations from acquiring WMD may depend on secret intelligence gathering and covert action, rather than open military intervention. A public revelation of the means of gathering intelligence, or the discussion of the nature of covert actions taken to forestall the threat by terrorist organizations or rogue nations, could render the use of force ineffectual or sources of information useless. Suppose, for example, that American intelligence agencies detected through intercepted phone calls that a terrorist group had built headquarters and training facilities in Yemen. A public discussion in Congress about a resolution to use force against Yemeni territory and how Yemen was identified could tip-off the group, allowing terrorists to disperse and to prevent further interception of their communications.

#### And, Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

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

**McGill, Norwich School of Graduate and Continuing Studies in Diplomacy, 2012**

(Anna-Katherine, “Challenges to International Counterterrorism Intelligence Sharing”, Summer, <http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf>, ldg)

It is clear that diplomacy will continue to be a key component in US counterterrorism coalition building. Intelligence sharing, as a by-product of these efforts, will likely improve for as long as trust is maintained or improved and compromises are made in the greater interest of combating the shared threat of terrorism. However, the US is also likely to face continuing foreseeable challenges from the ever expanding breadth of its international allies, its increasing dependence on its counterterrorism coalitions, and unpredictable setbacks to international trust like WikiLeaks. There are ways, however, to allay the impact of these challenges if not overcome them all together. With regards to traditional allies the United States must continue to negotiate a close working relationship with its NATO, EU, and 5 EYES partners. Great strides have been made but future disagreements on policy, tactics, and strategy for the war on terrorism are inevitable. The best way to prepare for such future issues is to continue to foster a positive collaborative relationship with these nations so that mutual trust will prevent arguments from threatening the survival of the alliance. This means that the US must carefully manage its international position. It cannot exploit legal loopholes like exporting suspects to other nations for questionable interrogations; it cannot bully its friends nor act unilaterally against their wishes; and it must hold itself to high moral standards befitting a liberal democracy. For new and non-traditional allies, Reveron states that “the long-term challenge for policymakers will be to convert these short-term tactical relationships into meaningful alliances while protecting against counterintelligence threats” (467). Traditional alliances have to start somewhere and over time these new relationships can turn in to tried and tested cooperation. In order to further develop these relationships the US should attempt to iron out policy differences in other arenas rather than turn a blind eye to them and continue providing technical and material support to their development of effective intelligence programs. The US should not however hold CT cooperation supreme over other critical issues such as nuclear and conventional arms proliferation and human rights violations. Nations like Iran and Syria may be helpful in the short term and for limited purposes but this does not negate their less desirable practices. Finally, the US will also need to look inward to prevent more classified information leaks. The US needs to be more critical in the issuance of security clearances, employ digital monitoring of who is downloading information and in what amount to prevent mass dumps, and give greater importance to curtailing the “insider threat” of US citizens leaking information overall. Improving intelligence security will help to mitigate the blowback from WikiLeaks and will go a long way to advancing US credibility and trust building.

#### Intelligence sharing is key to NATO effectiveness-solves war

**Ara et al., London School of Economics MS and USNA lieutenant, 2011**

(Martin, “Help A Brother Out: A Case Study In Multinational Intelligence Sharing, Nato Sof”, December, <http://www.dtic.mil/dtic/tr/fulltext/u2/a556078.pdf>, ldg)

\*Note: SOF = Special Operation Forces

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

#### NATO prevents global nuclear war

**Brzezinski, John Hopkins American foreign policy professor, 2009**

(Zbigniew, “An Agenda for NATO”, Foreign Affairs, September/October, ebsco, ldg)

And yet, it is fair to ask: Is NATO living up to its extraordinary potential? NATO today is without a doubt the most powerful military and political alliance in the world. Its 28 members come from the globe’s two most productive, technologically advanced, socially modern, economically prosperous, and politically democratic regions. Its member states’ 900 million people account for only 13 percent of the world’s population but 45 percent of global GDP. NATO’s potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO’s real power derives from the fact that it combines the United States’ military capabilities and economic power with Europe’s collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today’s world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction - not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity’s recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers—the United States, the EU, China, Japan, Russia, and India—at least two, or perhaps even three, are revisionist in their orientation. Whether they are “rising peacefully” (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons - and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country’s political stability.

### 4

#### There will be a narrow ruling on Bond now but conservative advocates are pushing.

Donnelly 11-5-13

Tom, Constitutional Accountability Center’s Message Director and Counsel and former Climenko Fellow and Lecturer on Law at Harvard Law School, Constitutional law as soap opera: Bond v. United States http://blog.constitutioncenter.org/2013/11/constitutional-law-as-soap-opera-bond-v-united-states/

Colorful facts aside, in the conservatives’ rendering of Bond, the very fabric of the Republic is at stake. George Will has called it the Term’s “most momentous case,” arguing that the Roberts Court must step in to check a “government run amok.” The Heritage Foundation warns that the case challenges a key lesson that “Americans are taught from a young age” – that “our government is a government of limited powers.” And Ted Cruz frames the legal issue as follows: whether the “Treaty Clause is a trump card that defeats all of the remaining structural limitations on the federal government.” A scary proposition, indeed . . . But will the Court even get this far? Ms. Bond’s primary argument is that the chemical weapons treaty and its implementing statute should be read to exclude her conduct – a question of statutory interpretation and hardly the stuff of Tenthers’ dreams. If the Court decides the case on those grounds, Ms. Bond could very well prevail, while the ruling itself could be rather minor. The main reason that this case may prove “momentous” is that leading conservative academics, advocates, and legal groups are pushing the Roberts Court to turn this case from an interesting-but-far-from-historic statutory case into a monumental constitutional one. While the Court denied a request from Professor Nicholas Rosenkranz and the Cato Institute – the main proponents of the treaty-power-as-dangerous-trump-card theory – for time to press their argument during tomorrow’s hearing, the Court generally rejects such requests from amicus curiae, so we can’t read too much into that. And, following other recent cases addressing the scope of federal power – including, most prominently, the Affordable Care Act case – there is every reason to believe that the Court may wade into the important constitutional issues lurking just beneath the surface in Bond. The primary constitutional issue in the case involves the scope of the federal government’s treaty power – a power that was of central interest to George Washington and his Founding-era colleagues – and, in turn, Congress’s power under the Necessary and Proper Clause to pass laws to implement validly enacted treaties. However, in Bond, conservative legal groups have proceeded to turn the Constitution’s text and history on their head, arguing that the Constitution itself requires a ruling that sharply limits federal power and overturns nearly a century’s worth of precedent – dating back to a 1920 ruling by Justice Oliver Wendell Holmes. Indeed, Bond is just one of several cases this Term featuring an aggressive call by conservatives to overturn well-established precedent. Furthermore, a broad ruling by the Court’s conservatives could significantly limit Congress’s power to enact laws under the Necessary and Proper Clause, generally, opening up new challenges to various government programs and regulations. In the past, the right’s constitutional arguments may have gone unanswered. However, increasingly, leading progressive academics and practitioners have begun to stake their own claim to the Constitution’s text and history – the tired battle between the progressive community’s “living Constitution” and Justice Scalia’s “dead Constitution” replaced by new battles between the left and the right over the Constitution’s meaning. Bond is a clear example of this new dynamic. Rather than ceding the Constitution’s text and history to conservative legal groups, progressives have fought back in Bond with originalist arguments of their own in briefs authored by some of the progressive community’s leading lights, including Walter Dellinger, Marty Lederman, and Oona Hathaway. These briefs – as well as one filed by my organization, Constitutional Accountability Center – remind the Court that, in ditching the dysfunctional Articles of Confederation, the Founders sought to create a strong national government with the power to negotiate treaties with foreign nations, pass laws to fulfill those treaty obligations, and, in turn, enhance the young nation’s international reputation. With progressives fully engaged in the battle over the Constitution’s meaning, the question facing the Court in important constitutional cases is now less about whether the Constitution’s text and history should prevail and more about which side’s version rings truer.

#### Aff is a massive change – kills court capital and will be ignored by the President.

Devins 2010

Neal, Professor of Law at William and Mary, Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1024&context=facpubs

Without question, there are very real differences between the factual contexts of Kiyemba and Bush-era cases. These differences, however, do not account for the striking gap between accounts of Kiyemba as likely inconsequential and Bush-era cases as "the most important decisions" on presidential power "ever., 20 In the pages that follow, I will argue that Kiyemba is cut from the same cloth as Bush-era enemy combatant decision making. Just as Kiyemba will be of limited reach (at most signaling the Court's willingness to impose further limits on the government without forcing the government to meaningfully adjust its policymaking), Bush-era enemy combatant cases were modest incremental rulings. Notwithstanding claims by academics, opinion leaders, and the media, Supreme Court enemy combatant decision making did not impose significant rule of law limits on the President and Congress. Bush-era cases were certainly consequential, but they never occupied the blockbuster status that so many (on both the left and the right) attributed to them. Throughout the course of the enemy combatant dispute, the Court has never risked its institutional capital either by issuing a decision that the political branches would ignore, or by compelling the executive branch to pursue policies that created meaningful risks to national security. The Court, instead, took limited risks to protect its turf and assert its power to "say what the law is." That was the Court's practice during the Bush years, and it is the Court's practice today.

#### Upholding Missouri v Holland is key to treaties but capital is key.

Spiro 2008

Peter J., Professor of Law, Temple University, Resurrecting Missouri v. Holland, Missouri Law Review http://law.missouri.edu/lawreview/files/2012/11/Spiro.pdf

Even with respect to the Children’s Rights Convention, the balance may change. At both levels, the game is dynamic. On the international plane, as more attention is focused on human rights regimes, the costs of nonparticipation rise. Other countries and other international actors (human rights NGOs, for example) will train a more focused spotlight on U.S. nonparticipation.28 From a human rights perspective, it’s low-hanging fruit; the mere fact that the United States finds itself alone with Somalia outside the regime suffices to demonstrate the error of the American stance as a leading example of deplored American exceptionalism. For progressive advocacy groups focusing on children’s rights, the Convention is emerging as an agenda item.29 More powerful actors, including states and such major human rights groups as Amnesty International and Human Rights Watch, may be unlikely to put significant political resources into the effort, but there is the prospect of a drumbeat effect and accompanying stress to U.S. decisionmakers. 30 In the wake of international opprobrium associated with post-9/11 antiterror strategies, U.S. conformity with human rights has come under intensive international scrutiny. That scrutiny is spilling over into other human rights-related issues; there will be no more free passes for the United States when it comes to rights.31 Human rights may present the most obvious flash point along the Holland front, but it will not be the only one. As Antonia Chayes notes, “resentment runs deep” against U.S. treaty behavior.32 International pressure on the United States to fully participate in widely-subscribed international treaty regimes, some of which could constitutionally ride on the Treaty Power alone, will grow more intense. At the same time that the international price of non-participation rises, a subtle socialization may be working to lower the domestic cost of exercising Holland-like powers. Globalization is massaging international law into the sinews of American political culture. The United States may not have ratified the Convention on the Rights of the Child, for example, but it has acceded to Hague Conventions on abduction33 and adoption,34 as well as optional protocols to the Children’s Rights Convention itself,35 and has enthusiastically pursued an agreement on the transboundary recovery of child support.36 As international law becomes familiar as a tool of family law, the Children’s Convention will inevitably look less threatening even against America’s robust sentiments regarding federalism. Regimes in other areas should be to similar effect and will span the political divide. It is highly significant, for instance, that conservative Americans have become vocal advocates of international regimes against religious persecution, a key factor in the aggressive U.S. stance on Darfur.37 To the extent that conservatives see utility in one regime they will lose traction with respect to principled category arguments against others. Which is not at all to say that Holland will be activated with consensus support. A clear assertion of the Treaty Power against state prerogatives would surely provoke stiff opposition in the Senate and among anti-internationalist conservatives, setting the scene for a constitutional showdown.38 The adoption of a treaty regime invading protected state powers would require the expenditure of substantial political capital. Any president taking the Treaty Power plunge would be well advised to choose a battle to minimize policy controversy on top of the constitutional one. A substantively controversial regime depending on Holland’s authority (say, relating to the death penalty) would increase the risk of senatorial rebuke. Perhaps the best strategy would be to plant the seeds of constitutional precedent in the context of substantively obscure treaties, ones unlikely to attract sovereigntist flak. If a higher profile treaty implicating Holland were then put on the table, earlier deployments would undermine opposition framed in constitutional terms. Such was the case with the innovation of congressional-executive agreements, which, before their use in adopting major institutional regimes in the wake of World War II, had been used with respect to minor agreements in the interwar years.39 In contrast to the story of congressional-executive agreements, advocates of an expansive Treaty Power will have the advantage of Holland itself, that is, a Supreme Court decision on point and not superseded by a subsequent ruling. That would lend constitutional credibility to the proposed adoption of any agreement requiring the Treaty Power by way of constitutional support. But it wouldn’t settle the question in the face of the consistent practice described above. Holland is an old, orphaned decision, creating ample space for contemporary rejection. An anti-Holland posture, the decision’s status as good law notwithstanding, would also be bolstered by the highly credentialed revisionist critique.40 That of course begs the question of what the Supreme Court would do with the question were it presented. The Court could reaffirm Holland, in which case its resurrection would be official and the constitutional question settled, this time (one suspects) for good. That result would comfortably fit within the tradition of the foreign affairs differential (in which Holland itself is featured).41 One can imagine the riffs on Holmes, playing heavily to the imperatives of foreign relations and the increasing need to manage global challenges effectively. The opinion might not write itself, but it would require minimal creativity. Recent decisions, Garamendi notably among them,42 would supply an updated doctrinal pedigree. And since the question would come to the Court only after a treaty had garnered the requisite two-thirds’ support in the Senate, the decision would not likely require much in the way of political fortitude on the Court’s part. It would also likely draw favorable international attention, reaffirming the justices’ membership in the global community of courts.43 IV. CONCLUSION:CONSTITUTIONAL LIFE WITHOUT MISSOURI V. HOLLAND Holland’s judicial validation would hardly be a foregone conclusion. The Supreme Court has grown bolder in the realm of foreign relations. Much of this boldness has been applied to advance the application of international norms to U.S. lawmaking, the post-9/11 terror cases most notably among them.44 The VCCR decisions, on the other hand, have demonstrated the Court’s continued resistance to the application of treaty obligations on the states. In Medellín, where the Court found the President powerless to enforce the ICJ’s Avena decision on state courts, that resistance exhibited itself over executive branch objections. The Court rebuffed the President with the result of retarding the imposition of international law on the states and at the risk of offending powerful international actors.

#### Treaties are key to cooperation on every issue – solve extinction

Koh and Smith 2003

Harold Hongju Koh, Professor of International Law, and Bernice Latrobe Smith, Yale Law School; Assistant Secretary of State for Democracy, Human Rights and Labor, “FOREWORD: On American Exceptionalism,” May 2003, 55 Stan. L. Rev. 1479

Similarly, the oxymoronic concept of "imposed democracy" authorizes top-down regime change in the name of democracy. Yet the United States has always argued that genuine democracy must flow from the will of the people, not from military occupation. 67 Finally, a policy of strategic unilateralism seems unsustainable in an interdependent world. For over the past two centuries, the United States has become party not just to a few treaties, but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to break or bend one treaty commitment thus rarely end the matter, but more usually trigger vicious cycles of treaty violation. In an interdependent world, [\*1501] the United States simply cannot afford to ignore its treaty obligations while at the same time expecting its treaty partners to help it solve the myriad global problems that extend far beyond any one nation's control: the global AIDS and SARS crises, climate change, international debt, drug smuggling, trade imbalances, currency coordination, and trafficking in human beings, to name just a few. Repeated incidents of American treaty-breaking create the damaging impression of a United States contemptuous of both its treaty obligations and treaty partners. That impression undermines American soft power at the exact moment that the United States is trying to use that soft power to mobilize those same partners to help it solve problems it simply cannot solve alone: most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, or the renewed nuclear militarization of North Korea.

### 5

#### Text: The United States President, through an executive order, should restrict the use of indefinite detention by the President of the United States including the following:

#### -executive authorities should conduct an independent, impartial, prompt, and public investigation to enforce the mandates of the executive order,

#### -following up any alleged detention with an independent, intra-executive investigation,

#### -a private cause of action to enforce the mandates of the order,

#### -an accompanying Fact Sheet explaining the administration’s legal rationale for restricting detention

#### And, Congress should end arms sales abroad.

## Deference Adv

### 1NC

#### Structural factors prevent Executive overreach without constraining flexibility

**Posner et al., Chicago law professor, 2007**

(Eric, Terror in the Balance: Security, Liberty, and the Courts, pg 53)

Four points are critical, and they suggest that the concern is either greatly overblown or does not support civil libertarian prescriptions, or both: presidential or executive preferences need not systematically favor increased executive power during emergencies; political constraints will rule out abuses that the politically engaged public does not favor; even if increased executive power in emergencies creates abuses, the security gains may be greater still; and in any event civil libertarian judicial review is a feeble bulwark against a truly imperial executive. ¶ First, the executive-despotism concern supposes that executive officials desire, above all, to maximize their power. As Daryl Levinson has emphasized, both for officials generally and for executive officials in particular, it is hardly obvious that this is so, at least in any systematic way. Lower—level executive officials and administrative agencies have many other possible goals or maximands, including the desire to enjoy leisure or to advance programmatic or ideological goals—goals which will usually be orthogonal to the tradeoff between security and liberty and which might even include the protection of civil liberties. The same is true for presidents: some have been power maximizers; some have not. Moreover, even with respect to power-maximizing presidents, critics fail to distinguish the [person] man from the office. Presidents as individuals do not internalize all of the gains from expanding the power of the presidency as an institution, because those gains are shared with future presidents and senior executive officials. Conversely, presidents as individuals do not fully internalize harms to the institution and may thus acquiesce its limitations on executive power for partisan or personal advantage. The latter point may be more pronounced in emergencies than in normal times, because emergencies shorten the relevant time horizon: policymaking for the short run looms larger than in normal times. (We bracket for now the question of whether this is bad, an issue taken up in chapter 2.) Emergencies thus increase the divergence between the utility of individual officeholders and the institutional power of their offices, which extends into the remote future, beyond the horizon of the emergency.¶ Second, whatever the intrinsic preferences of presidents and executive officials, politics sharply constrains their opportunities for aggrandizement, especially in times of emergency. The president is elected from a national constituency (ignoring the low probability that the Electoral College will make a difference). A first—term president who seeks reelection to a second term, or even a second—term president who seeks to leave a legacy, will try to appeal to the median voter, or at least to some politically engaged constituency that is unlikely to be extremist in either direction. If the national median or the political center favors increased executive authority during emergencies, them the president will push the bounds of his power, but if it does not, then he will not: there is no general reason to think that national politics will always push executive authority as far as possible, even during emergencies.¶

#### US and China will never go to war-overwhelming mutual interest and history of conflict resolution prove.

**Wu, China Foundation for International Studies Center for American Studies executive director, 2013**

(Zurong, “China and America’s Innate Goal: Avoiding War Forever”, 7-30, <http://watchingamerica.com/News/217271/china-and-americas-innate-goal-avoiding-war-forever/>, ldg)

China and the U.S. are currently constructing a new kind of relationship between major powers, with several aims. One intrinsic aim is especially worthy of attention, namely that China and the U.S. will not go to war today, nor in the future, and will forever maintain a peaceful association. The Chinese and American governments and people are striving toward this goal unceasingly because it is in the best interests of the people of China, America and the whole world. To avoid conflict, to keep from fighting, to be mutually respectful and to embark upon a path of mutual cooperation — acting in these ways would benefit everyone. First of all, the globalization of the economy, information and other essential factors have created a global village, and the U.S. and China live and work together within this community; their interests are intertwined and neither can break the inseparable bond each has with the other. The global financial crisis of 2007 once again made clear the great extent to which the Chinese and American economies are linked and mixed, for when one sinks into a recession or depression, it is almost impossible for the other to recover and flourish alone. When it comes to international security, climate change, energy, counterterrorism, oceans and all sorts of other unprecedented areas, China and the U.S. share more common interests every day, and cooperative negotiations are unceasingly strengthened. Within this sort of atmosphere, discussing whether the U.S. and China want to go to war seems a little bit untimely and excessive. Second, the current period is fundamentally different than the era of the Cold War, for the development of peace is the theme of the present. People from countries around the world are all concentrating their energy on revitalizing the economy and improving quality of life. After the end of the Cold War, America launched several localized wars in smaller countries under the banner of the fight against terrorism, in the process bringing upon itself a heavy financial and economic burden. Perhaps it was upon consideration of the fact that large-scale conflicts could yield a level of suffering and destruction that would be difficult to endure that America has not launched any wars against the great powers that are in possession of nuclear arms. Even in the Cold War, during the Cuban missile crisis of 1962, America and the Soviet Union did not go to war. The experience of history tells us that the inherent goal of this new form of Sino-U.S. relations will have the support of the strength of the entire ranks of the world’s great powers; thus as long as both China and the U.S. have unflagging perseverance, it can be achieved. Third, for over 40 years, China and the U.S. have promoted a strategy of mutual trust, of the expansion of cooperation, of controlling differences of opinion. These lessons from experience are the U.S. and China’s most valuable treasure. Since Nixon visited the Chinese, Sino-American relations have gone through wind and rain but have always developed onward; moreover, the speed, breadth and depth of the development have far exceeded everyone’s expectations. Indeed, Sino-U.S. relations enjoy a great vitality. And since the foundations were laid fairly recently, Sino-U.S. relations continually make significant progress. The highest leaders communicate freely and military leaders exchange visits often. The two militaries are in the process of issuing plans for Chinese troops to participate in the 2014 Pacific Rim joint military exercises. Both sides have decided to actively investigate significant military activities, report mechanisms to each other and continue to research matters of security and issues regarding standards of conduct, which are relevant to the Chinese and American navies and air forces. These collaborations will give rise to a significant and far-reaching influence on world peace and international security and will vigorously promote the actualization of the inherent goal of the new form of Sino-U.S. great power relations.

#### No Russia war-no motive or capability

**Betts, Columbia war and peace studies professor, 2013**

(Richard, “The Lost Logic of Deterrence”, Foreign Affairs, March/April, ebsco, ldg)

These continuities with the Cold War would make sense only between intense adversaries. Washington and Moscow remain in an adversarial relationship, but not an intense one. If the Cold War is really over, and the West really won, then continuing implicit deterrence does less to protect against a negligible threat from Russia than to feed suspicions that aggravate political friction. In contrast to during the Cold War, it is now hard to make the case that Russia is more a threat to NATO than the reverse. First, the East-West balance of military capabilities, which at the height of the Cold War was favorable to the Warsaw Pact or at best even, has not only shifted to NATO's advantage; it has become utterly lopsided. Russia is now a lonely fraction of what the old Warsaw Pact was. It not only lost its old eastern European allies; those allies are now arrayed on the other side, as members of NATO. By every significant measure of power -- military spending, men under arms, population, economic strength, control of territory -- NATO enjoys massive advantages over Russia. The only capability that keeps Russia militarily potent is its nuclear arsenal. There is no plausible way, however, that Moscow's nuclear weapons could be used for aggression, except as a backstop for a conventional offensive -- for which NATO's capabilities are now far greater. Russia's intentions constitute no more of a threat than its capabilities. Although Moscow's ruling elites push distasteful policies, there is no plausible way they could think a military attack on the West would serve their interests. During the twentieth century, there were intense territorial conflicts between the two sides and a titanic struggle between them over whose ideology would dominate the world. Vladimir Putin's Russia is authoritarian, but unlike the Soviet Union, it is not the vanguard of a globe-spanning revolutionary ideal.

## Afghanistan Adv

### 1NC – Afghanistan

#### We handed over Bagram – that’s what the 1AC Eviatar evidence is about

Al Jazeera 3-26 2013

US hands over Bagram prison to Afghanistan http://www.aljazeera.com/news/asia/2013/03/201332534437116216.html

Afghanistan has taken full control of Bagram military prison from the US, as US-led forces wind down more than a decade of war. On Tuesday, US Secretary of State John Kerry met for a second day in a row with Afghan President Hamid Karzai to discuss the handover among other issues, as they tried to end recent tensions. The handover on Monday follows an agreement reached after a week of negotiations between US and Afghan officials, which includes assurances that inmates who "pose a danger" to Afghans and international forces will continue to be detained under Afghan law. Kerry arrived in Kabul for a surprise trip, holding a news conference with Karzai on Monday in which he said that both governments were "on the same page" on talks with the Taliban, another source of political strain in recent weeks. Karzai praised the handover as a positive step for the Afghan-US relations, and said that he hoped that negotiations to reach an agreement to govern US presence in Afghanistan after 2014 would reach a favourable conclusion.

#### Military presence will remain and be enough to solve their impacts.

Hirsch 2013

Michael, NATO's Plan for Afghanistan Post-2014: A 'Stable Instability', May 2013, National Journal Correspondent, http://www.theatlantic.com/international/archive/2013/05/natos-plan-for-afghanistan-post-2014-a-stable-instability/275803/

But Carter, in a blunt assessment, indicated that ISAF is under no illusions about the war ending in the foreseeable future and that, even after years more of effort, the optimal results will not be pretty. Asked whether the ultimate outcome ISAF is aiming for would be a version of the somewhat cynical term attributed to a former ISAF commander, Gen. David Petraeus --"Afghan Good Enough," meaning a democratic government that remains corrupt and weak, and an unsatisfactory Afghan security force that barely holds the country's center -- Carter said he prefers to use another term to describe Afghanistan's likely future: "a stable instability." Outside of major cities such as Kabul, Kandahar, and Herat, he says, substantial portions of the country will not be very "connected" to the central government. But at the same time the Taliban will not be able to take over the country again, said Carter, who serves as deputy to Marine Corps Gen. Joseph Dunford, the ISAF commander. That's not necessarily a disaster for ISAF, Carter said, adding, "I'm sure that's going to be the case in large parts of Central Asia for some time to come." In many parts of Afghanistan, especially rural areas, a combination of local, often corrupt interests will be dominated by warlords, drug lords, tribal leaders or insurgents who will "pursue their own interests." He said that it was "rather like West Virginia" or "parts of the United Kingdom and Europe where groups pursue their own interests." Still, most details of these more ambitious plans have yet to be negotiated, Carter said. While Obama is committed to withdrawing the remaining 63,000 or so U.S. troops by the end of 2014, his administration is still negotiating a post-2014 strategic partnership with Karzai that calls for a residual U.S. force numbering from 5,000 to 10,000 troops, according to various reports. Karzai, meanwhile, recently revealed that he has been discussing the use of as many as nine military bases to be used by the United States and ISAF after 2014. Carter confirmed that ISAF is considering the need for that many bases to support and supply six Afghan corps, as well as provide a headquarters, air-support mission, and training facility.

#### Central Asia will cooperate, solves the impact.

Lamb et al 2014

Robert D., Senior Fellow and Director of the Program on Crisis, Conflict, and Cooperation at the CSIS, ‘South Asia Regional Dynamics and Strategic Concerns, http://csis.org/files/publication/140116\_Lamb\_SouthAsiaRegionalDynamics\_WEB.pdf

Afghanistan's neighbors would suffer the consequences of a major escalation of Af- ghanistan's internal conflict. All neighboring countries are concerned about refugee flows. All are concerned about incursions by combatants across their borders to stage attacks, recruit fighters, or form alliances with local extremist groups. All are concerned about the safety of their nationals working in Afghanistan (diplomats, development officials, train- ers, advisers, and so on). And all are concerned about the security of any economic projects that they are sponsoring or would benefit from. Some are concerned about the safety of Afghans who share their ethnic identify. And Pakistan and India are concerned about having influence with the central government in Kabul and, in Pakistan's case, with the governors and power brokers in the provinces along its border. In the event of conflict escalation in Afghanistan, China would be in direct contact with the Afghan government, the power brokers it has a relationship with, and with Pakistani civilian and (especially) military leaders to strongly encourage a political settlement. It would put its economic projects on hold temporarily. But it would not become involved militarily; instead, it would try to contain the fallout with, for example, stronger border security. Iran would certainly take similar measures to contain spillover from an escalated Afghan conflict, but otherwise its involvement would depend almost entirely on the state of its conflicts and rivalries in the Levant and the Gulf, much higher-priority areas than Afghanistan. If things settle down to its west and south, Iran might turn some attention eastward to Afghanistan's conflict. This would not be in the form of direct military incur- sions but rather of funding, military equipment, and possibly safe haven to Hazara, Tajik, and Uzbek groups, as it has in the past, with a particular priority on protecting Afghani- stan's Shi'ite minority. Saudi Arabia, working with Pakistan, would probably offer support to groups that oppose Iranian-support groups. Qatar might follow Saudi Arabia's lead or it might offer to mediate talks between opposing groups, as it has recently. Beyond that, Qatar and UAE would probably stay out. Russia would probably increase its security presence in Central Asia, as noted above, but work diplomatically with the United States, European powers, or NATO to find ways to contain the spread of violence from Afghanistan into Central Asia.

### 1NC – A/T Rule of Law

#### Can’t solve – too many alt causes.

Cordesman 2013

Anthony, CSIS Chair in Strategy, former director of intelligence assessment in the Office of the Secretary of Defense, Afghanistan: Meeting the Real World Challenges of Transition, January 23 2013, http://csis.org/files/publication/Afghan-Meeting%20Challenges%20NEW.pdf

Governance is equally dependent on the rule of law – especially in areas where tribal, sectarian, and ethnic tensions require the rapid resolution of civil and criminal cases. Once again, there are no unclassified maps showing the trends in actually enforcing a meaningful rule of law and partnering it with effective security and governance. The end result is simply too embarrassing to make public. Moreover, because the various elements of the police are lumped together with the Afghan Army, virtually all reporting on the police force ignores the massive problems in their civil effectiveness, corruption, and lack of ties to the rest of the justice system. The US Department of Defense summarized these problems as follows as of the end of 2012: 3 Widespread corruption and insufficient transparency remain the main challenges with respect to establishing a self-sustaining rule-of-law system in Afghanistan. The country’s principal anticorruption institutions, the High Office of Oversight and Anti-Corruption (HOOAC) and the Attorney General’s Office (AGO), have minimal political support in encouraging and enforcing transparency and accountability measures within the Afghan government. Weaknesses within both the formal and traditional Afghan justice systems, and the link between the two, ensure the Taliban system of dispute resolution remains a viable option for segments of the Afghan population because the Taliban process is rapid, enforced, and often considered less corrupt than that of the formal Afghan justice system. Although traditional dispute resolution is often touted as more developed in parts of Afghanistan not under central control, some dispute resolution processes, such as the practice of baad,.. are inconsistent with international human rights principals. Overall, progress in rule of law promotion and implementation continue to be mixed. The main challenges include access to the formal justice system, poor enforcement of human rights protections guaranteed by the Afghan constitution, corruption, insufficient transparency, and inadequate security for justice facilities and personnel. The shortage of human capital and the Afghan government’s insufficient political will to operate and maintain justice programs and facilities are key impediments. To fulfill the requirements of security and sustainability, security transition must include the transition of rule of law activities and assistance from military to civilian support, with an end state of full ownership of all aspects of the justice sector—police, courts, and prisons—by local, provincial, and national Afghan stakeholders. …Successful rule of law efforts are more likely to be found in transitional areas where Afghan governance followed ISAF-supported stability. Expanding the reach of the rule of law into remaining areas, where the transition from an ISAF security lead to an Afghan lead has not yet occurred, poses a greater challenge as the Afghan government works to stabilize areas simultaneously with building capacity, effective governance processes, and personnel. At best, it seems likely that most of the real-world rule of law after the end of 2014 will revert to something close to Afghan standards before Western intervention, and many areas will have “prompt justice” on traditional terms, through power brokers and warlords or through insurgents like the Taliban. If Afghanistan follows the pattern of past cases like the US withdrawal from Iraq, the rule of law that outside advisors have sought over the last decade will at best extend to a few urban areas, and even then be both corrupt and tied to local power brokers

### A/T Indo Pak

#### No Indo-Pak war-neither one can afford it.

**Hameed, CSIS Crisis, Conflict and Cooperation program fellow,**

(Sadika, “Kashmir Violence Strains India-Pakistan Dialogue”, 9-4, <http://www.worldpoliticsreview.com/articles/13191/kashmir-violence-strains-india-pakistan-dialogue>, ldg)

Regardless of what happens in Afghanistan, there have been positive indicators that neither India nor Pakistan wants to escalate tensions on the Kashmir border. Pakistan and India have made efforts to normalize relations and increase cooperation despite the outstanding disputes in Kashmir, Siachen and Sir Creek. In a recent speech, Pakistani Prime Minister Nawaz Sharif proclaimed his determination to create peace with India, saying that the two countries had for too long wasted their scarce resources on war and large militaries. Sharif is viewed favorably in India and has a long history of reaching out to his Indian counterparts for greater cooperation. Given Pakistan’s grave energy crisis, economic problems and the threat from terrorism, Pakistan can no longer afford antagonism with India. Both countries would benefit from moving forward on trade and economic cooperation despite the occasional cross-border violence. The Pakistani army has made it clear that its most pressing concern is internal security. Some have argued that as the threat from terrorism grows, the Pakistani military could see a renewed Kashmir conflict as a way to funnel extremists away from targeting Pakistani military establishments and cities. This is unlikely for a number of reasons. First, the groups that Pakistan needs to tackle internally challenge the state of Pakistan and not India. They cannot be diverted. Second, the Pakistani security establishment would not likely risk escalating conflicts on multiple fronts by channeling those groups that have historically been used in Kashmir, given India’s clear military superiority and the internal security threats Pakistan faces. India also has an interest in promoting regional security, which will allow its economy to continue to grow. The current round of harsh rhetoric by Indian politicians may be due a desire to avoid being seen as “soft” on Pakistan as Indian elections approach. India is also concerned about the possibility of spillover effects from regional conflicts, in particular on India’s large Muslim population. Perhaps the source of the most tension is that India does not believe that Pakistan is doing enough to curb terrorism—particularly with regard to the Lashkar-e-Taiba (LeT), a group that has historically conducted attacks in India. Although Pakistan has for the first time put together a counterterrorism strategy, it only addresses domestic terrorism and not those groups that attack other countries. But it seems to be in the civilian government’s interest to rein in groups such as LeT. Historically the Pakistani security establishment has had control over LeT, and could direct it as a wing of its foreign policy. If this is still the case, the interests of the Pakistani Inter-Services Intelligence (ISI) and military will determine the group’s future. Since dealing with internal security issues is the main part of their doctrine now, it goes against their interests to actively engage with groups like LeT in Kashmir. However, the splintering of LeT and lack of effective chain of command in the ISI means that the Pakistani security establishment may find it more difficult to control LeT operations than it has in the past. Managing this challenge will require a concerted effort from both the civilian and military apparatus, cooperation that has been scarce in the past but may now be possible due to aligned civilian and military interests in internal stability. While exogenous events could derail the ongoing India-Pakistan peace process, there is hope that after 2014 India and Pakistan will continue to engage cautiously, especially regarding Kashmir. While there may not be much progress in resolving the dispute in the near future, maintaining the status quo remains in both countries’ interests.

### 1NC – Afghanistan Impact D

#### Afghanistan won’t spillover to central Asia

**Kazemi, Afghanistan Analysts Network, 12-12-12**

(S. Reza, “A Potential Afghan Spill-Over: How Real Are Central Asian Fears?”, <http://aan-afghanistan.com/index.asp?id=3152>, ldg)

A spill-over of the Afghan conflict or aspects of it like the drug trade into Central Asia is realistic, but it need not be as threatening and disastrous as the region’s governmental officials depict it. It also may differ for particular Central Asian countries. Tajikistan and Uzbekistan – of Afghanistan’s three direct Central Asian neighbours (with the third being Turkmenistan) – are likely to continue to be most affected. A spill-over of Islamist terrorism from Afghanistan seems unlikely, however, at least for the time being. The leadership of the IMU, regarded as the most serious militant threat against the region, has been largely dismantled. Although a 2011 AAN report identified some IMU presence in Afghanistan’s Balkh, Faryab and Kunduz provinces bordering Central Asia, the bulk of the IMU fighters are based in Pakistan’s Waziristan, far away from any shared Afghanistan-Central Asia frontier. It is unclear, therefore, if the movement can re-group to organise and carry out attacks in Central Asian territory, apart from causing localised instability and violence on Afghan soil.(9) And even if so, terrorist and extremist threats facing Central Asia (and particularly Tajikistan and Uzbekistan) are more home-grown than what would originate from Afghanistan, as, for example, Christian Bleuer argues (read, for example, here), although others like Ahmed Rashid have, both in the past and recently, talked about larger regional networks of militants. If there is any actual spill-over of the Afghan conflict into Central Asia, it is more likely to continue to be drug trafficking. Afghanistan is by far the largest global producer of poppy and hashish and increasingly of derivates produced from them. As the recent fighting in Tajikistan’s Gorno-Badakhshan Autonomous Oblast (GBAO) has shown, there are cross-border networks functioning and corrupt government officials both in Afghanistan and Central Asia can hugely benefit from their trafficking (for a UN report on drug trafficking from Afghanistan through Central Asia and onwards, see here). In a reverse way, Uzbekistan has engaged to influence Afghanistan’s socio-political developments more seriously than any other Central Asian government. It has supported the Uzbek commander-turned-politician Abdul Rashid Dostum and his party Jombesh-e Melli-ye Islami-ye Afghanistan (Afghanistan’s National Islamic Movement) (for latest developments in the party, read a recent AAN paper). Tajikistan and Uzbekistan also have large numbers of co-ethnics inside Afghanistan, but Afghan Tajiks and Uzbeks are very different from their ethnic kin in Tajikistan and Uzbekistan, mainly because of Central Asia’s Sovietisation, despite speaking almost similar languages (see, for example, here).(10) It also needs to be recalled that conflicts in Afghanistan and Tajikistan have had mutual spill-over effects. During the 1992-97 Tajik civil war, parts of the Tajik opposition fled to Afghanistan, were supported by Afghan mujahedin and used Afghanistan as a safe haven and base to carry out attacks in Tajikistan. During the conflict between the Northern Alliance and the Taleban, Tajikistan had provided, among other things, an airbase to the Northern Alliance in Kulyab in southern Tajikistan for them to use to mobilise and organise the resistance against the Taleban’s advance towards northern Afghanistan (read, for example, here). In addition, the civil war in Tajikistan drove tens of thousands of people out of Tajikistan to the northern Afghan provinces of Balkh, Kunduz and Takhar (read here). Judging by recent contemporary precedents, an American Central Asia researcher, who requested not to be named, wrote to AAN that ‘the previous experience in the mid- to late 1990s of having a civil war in northern Afghanistan and a Taleban government controlling much of the north was not particularly traumatic’. Whatever the speculations about the Afghan conflict going northwards may be, Central Asia plus Afghanistan is one of the world’s least integrated regions. To subsume the five former Central Asian Soviet republics under one term – ‘the -stans’ – reflects an un-informed and superficial look at this region. Considering the growing number of bilateral and intra-regional conflicts and competing attempts to achieve regional leadership, this perception is everything but justified.

# 2NR

## Counterplan

### Detention General

#### Executive has authority over detention

Posner-prof law, Chicago-13

(Eric Posner, a professor at the University of Chicago Law School, is a co-author of The Executive Unbound: After the Madisonian Republic and Climate Change Justice, “President Obama Can Shut Guantanamo Whenever He Wants” May 2, 2013, <http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/05/president_obama_can_shut_guantanamo_whenever_he_wants_to.html>, KB)

The NDAA does not, however, ban the president from releasing detainees. Section 1028 authorizes him to release them to foreign countries that will accept them—the problem is that most countries won’t, and others, like Yemen, where about 90 of the 166 detainees are from, can’t guarantee that they will maintain control over detainees, as required by the law.¶ There is another section of the NDAA, however, which has been overlooked. In section 1021(a), Congress “affirms” the authority of the U.S. armed forces under the AUMF to detain members of al-Qaida and affiliated groups “pending disposition under the law of war.” Section 1021(c)(1) further provides that “disposition under the law of war” includes “Detention under the law of war without trial until the end of the hostilities authorized by” the AUMF. Thus, when hostilities end, the detainees may be released.¶ The president has the power to end the hostilities with al-Qaida—simply by declaring their end. This is not a controversial sort of power. Numerous presidents have ended hostilities without any legislative action from Congress—this happened with the Vietnam War, the Korean War, World War II, and World War I. The Supreme Court has confirmed that the president has this authority.

President has ability to reform detention policy-Guantanamo proves

Joscelyn-Foundation for Defense of Democracies-13

(Thomas Joscelyn, senior fellow at the Foundation for Defense of Democracies, “Obama, Not Congress, Is the Reason Guantánamo Is Still Open” May 3, 2013, <http://www.thedailybeast.com/articles/2013/05/03/obama-not-congress-is-the-reason-guantanamo-is-still-open.html>, KB)

During a news conference earlier this week, President Obama was asked about the mass hunger strike at the Guantánamo Bay detention facility. The president said it does not surprise him “that we’ve got problems in Guantánamo,” and it’s why he still believes “that we’ve got to close” it down. Obama ordered Guantánamo shuttered as one of his first acts in office, but more than four years later it is open. The president blamed Congress for the failure to deliver on his pledge. “I’m going to go back at this” and “reengage with Congress,” Obama vowed.¶ Congressional restrictions have made it more difficult to transfer or relocate Guantánamo detainees. But congressional opposition is not the only reason Guantánamo’s cells are occupied. Closing Guantánamo has always been a tricky proposition—one that is far more difficult than the president’s rhetoric implies.¶ Consider the findings of Obama’s own Guantánamo Review Task Force, which reviewed the files on the 240 detainees held as of January 2009. The task force’s final report, issued in January 2010, outlined the various national security challenges closing Guantánamo entails. Indeed, the report goes a long way toward explaining why 166 detainees remain in their cells to this day.¶ The task force split the detainee population into three general categories: those who will stay in indefinite detention, those who should be prosecuted, and detainees who have been approved for transfer.¶ Forty-eight detainees were placed in the first category, as they were “determined to be too dangerous to transfer but not feasible for prosecution.” They will stay in indefinite detention at Guantánamo or some other location for the foreseeable future.¶ Oddly, the president’s discussion of Guantánamo this week was at odds with his own task force’s recommendations. The president ticked off the reasons why he believes indefinite detention is unnecessary. “Why are we doing this?” Obama asked rhetorically. “I mean, we’ve got a whole bunch of individuals who have been tried who are currently in maximum-security prisons around the country. Nothing’s happened to them. Justice has been served.”¶ But the Obama administration has determined that dozens of men must remain in detention without prosecution. Moving them to a maximum-security prison without trial simply substitutes Gitmo North for Gitmo South.¶ The task force referred a second category of detainees, 36 in all, “for prosecution either in federal court or a military commission.” These proceedings have progressed far too slowly, and few trials have been brought to a close. Still, the task force slated these detainees for prosecution, not freedom.¶ The precise counts have changed since the task force issued its final report in 2010, but about half of today’s detainee population falls into these first two categories. According to a recent article published by Reuters, 80 of the 166 detainees are held in indefinite detention, awaiting prosecution, or have already been either charged or convicted by a military commission.¶ The final 86 detainees have been “approved for transfer,” but their status is widely misunderstood. The press frequently reports that these detainees have been “cleared for release.” The implication is that these detainees have been deemed innocent and can be safely released without any cause for concern. If that were true, of course it would be outrageous for the U.S. government to continue holding them.¶ It is not true, however. Obama’s task force made it clear that other than 17 Chinese Uighur detainees, most of whom have since been released from Guantánamo, “no detainees were approved for ‘release’ during the course” of its review. Instead, the task force “approved for transfer” 126 detainees “subject to security measures.” Dozens of the detainees “approved for transfer” have since left Cuba, but 86 of them remain in detention.¶ The task force did not “clear” these men of any wrongdoing, nor does the Obama administration think transferring them out of Guantánamo is a risk-free endeavor.¶ “There were considerable variations among the detainees approved for transfer,” the task force wrote in its final report. “For a small handful of these detainees, there was scant evidence of any involvement with terrorist groups or hostilities against Coalition forces in Afghanistan.” However, “for most of the detainees approved for transfer, there were varying degrees of evidence indicating that they were low-level foreign fighters affiliated with al-Qaida or other groups operating in Afghanistan.”¶ The task force stressed “that a decision to approve a detainee for transfer does not reflect a decision that the detainee poses no threat or no risk of recidivism.” On the contrary, the task force concluded that “any threat posed by the detainee can be sufficiently mitigated through feasible and appropriate security measures in the receiving country.”¶ And there’s the rub. Mitigating the threat posed by transferred detainees is an inherently difficult proposition. The Obama administration worked hard to transfer detainees, to both their home countries and allied nations. But 56 of the remaining 86 detainees who have been “approved for transfer” are from Yemen. The task force approved 30 of the 56 Yemeni detainees for “conditional” detention. They can only be transferred home if security conditions improve and other measures are met. That isn’t happening anytime soon.¶ Obama himself issued a moratorium on transfers to Yemen on Jan. 5, 2010. The move was in response to al Qaeda in the Arabian Peninsula’s attempted attack on a Detroit-bound airliner on Christmas Day 2009. The White House said this week that the moratorium “remains in place,” despite the president’s pledge “to go back at this.”¶ Look at the numbers again. Obama’s task force slated 80 of the current detainees for indefinite detention or prosecution. An additional 56 Yemeni detainees have been approved for transfer but are in custody because of al Qaeda’s rise in their home country and the president’s subsequent moratorium on transfers.¶ The bottom line is that most of the Guantánamo detainees—136 out of 166—are in U.S. custody because that is where the Obama administration thinks they belong.

### 2NC Perception-International

#### Presidential commitments credible

Marvin Kalb 13, Nonresident Senior Fellow at Foreign Policy, James Clark Welling Presidential Fellow, The George Washington University Edward R. Murrow Professor of Practice (Emeritus), Kennedy School of Government, Harvard University, 2013, "The Road to War," book,pg. 7-8, www.brookings.edu/~/media/press/books/2013/theroadtowar/theroadtowar\_samplechapter.pdf

As we learned in Vietnam and in the broader Middle East, a presidential commitment could lead to war, based on miscalculation, misjudgment, or mistrust. It could also lead to reconciliation. We live in a world of uncertainty, where even the word of a president is now questioned in wider circles of critical commentary. On domestic policy, Washington often resembles a political circus detached from reason and responsibility. But on foreign policy, when an international crisis erupts and some degree of global leadership is required, the word or commitment of an American president still represents the gold standard, even if the gold does not glitter as once it did.

#### Presidential action is perceived globally

Sunstein-prof law, Chicago- 95 [Cass, Karl N. Llewellyn Professor of Jurisprudence, University of Chicago Law School and Department of Political Science, “An Eighteenth Century Presidency in a Twenty-First Century World” Arkansas Law Review, 48 Ark. L. Rev. 1, Lexis]

With the emergence of the United States as a world power, the President's foreign affairs authority has become far more capacious than was originally anticipated. For the most part this is because the powers originally conferred on the President have turned out - in light of the unanticipated position of the United States in the world - to mean much more than anyone would have thought. The constitutionally granted authorities have led to a great deal of unilateral authority, simply because the United States is so central an actor on the world scene. The posture of the President means a great deal even if the President acts clearly within the scope of his constitutionally-granted power. Indeed, mere words from the President, at a press conference or during an interview, can have enormous consequences for the international community.

### Nato

#### NATO is still relevant, will continue despite austerity, and solves multiple scenarios for conflict

Kamp 13 (Karl-Heinz, research director at the NATO Defense College in Rome, “Is NATO Set to Go on Standby?” <http://www.atlanticcouncil.org/images/publications/NATO_Set_to_Go_on_Standby.pdf>)

NATO’s Strengths in the Post-2014 World NATO had its real identity crisis in the early 1990s, when the dissolution of the Warsaw Pact, marking the end of the overarching Soviet threat, seemed to have deprived the Alliance of its raison d’être. The result was an agonizing debate on NATO’s future roles and missions, culminating in the idea, particularly in European security circles, of transforming NATO into a subcontractor of the United Nations (UN) in order to justify its further existence. Nowadays, more than two decades later, it is generally understood that NATO would be ill-suited to function as a world policeman or as a military arm of the UN. Moreover, it has become evident that NATO does not need any proxy functions to assure its survival: the Alliance exists primarily because twenty-eight member states want it to exist as a means of collective defense. With the end of the Afghanistan mission, NATO loses one of its major occupations of recent times. However, for at least four reasons, the Alliance looks in a far better position today than it was after the collapse of the Soviet Union. First, there is no compelling nexus between the justification of a political-military Alliance and ongoing combat missions: NATO does not need to be constantly engaged in military operations to prove what it is worth or why it is needed. What is fundamental for NATO is a rationale, in the form of common threats or challenges, that gives a reason for its existence. Such a rationale certainly exists, given the broad range of dangers to NATO members’ security interests, from potentially escalating crises in the Middle East and Northern Africa, to the rise of nuclear powers like North Korea or Iran, and disruptive threats to critical computer networks. In other words, NATO’s standing as a cost-effective and mutually advantageous instrument of protection, deterrence, and defense is undeniable, regardless of whether it is actually running military assignments at any given time. This holds all the more true as NATO has adapted in recent decades to deal with a broad spectrum of security challenges, extending well beyond the risk of direct military attacks on Alliance territory. Second, in Afghanistan NATO has shown incredible political cohesion. Who would have seriously believed in 2001 that NATO Allies would stand together in Afghanistan for more than twice the duration of the Second World War? At the same time, the Alliance has also demonstrated its military capabilities, fighting for years on one of the world’s most demanding battlefields: an extremely poor, landlocked country thousands of kilometers away with hardly any infrastructure. The result is that all NATO allies today have experienced and combat-hardened military forces. There was also the experience of the Libyan campaign: NATO showed that it is capable not only of acting swiftly in reaction to an immediate crisis, but also of terminating a military operation in time and not allowing itself to be drawn down the slippery slope towards the quagmire of an endless engagement. Despite the complaints about lacking European capabilities in Libya in areas like intelligence and refueling capacities, NATO forces were much better equipped there than they would have been in a comparable situation in the early 1990s, and this difference would have been even clearer if all European NATO members had contributed militarily to the mission. It is therefore no coincidence that NATO is perceived from outside as the most successful (and most powerful) political-military alliance in history, despite its internal debates and navel gazing. Third, the basis of NATO—i.e., the transatlantic link, based on shared benefit—is still valid and persuasive to both the North Americans and the Europeans. Skeptics tend to point out that, with the generational changes on both sides of the Atlantic, the positive connotations of European-American friendship and the support for a transatlantic security alliance might fade away. In addition, it is sometimes claimed that NATO is being eroded by dwindling financial resources and increasing transatlantic debates over military spending, commitments, and burden sharing. According to such a view, the United States is becoming increasingly unwilling–and unable–to pay for the military shortcomings of its European allies. Yet, the almost habitual NATO quarrels about burden sharing miss one crucial point: nations join and keep up an alliance not for altruistic reasons or nostalgia, but to serve their interests. Europe and North America don’t invest in NATO to please each other, but because the mutual benefits outweigh the investments. NATO was founded and kept up during the Cold War because it was advantageous for both sides of the Atlantic. The United States provided protection for Europe, whereas the European allies in turn guaranteed Washington's influence in Europe. Such a transatlantic bargain still exists, in a slightly different perspective. Through NATO, the United States guarantees its influence in today's Europe, a continent which is stable, prosperous (the Euro crisis notwithstanding, Europe's combined economy is greater than that of the United States), benign and, above all, politically like- minded. No other region in the world combines these attributes in a similar manner, and no other continent is open to such a strong US voice in its own affairs. Moreover, the European NATO members, all committed to transatlantic values and all firm democracies (even if some Southeastern European allies have to further mature in that respect), can provide political legitimacy for military actions conducted by the US beyond its own borders. Lastly, Europe remains a logistical hub for global US military operations. Europe, in turn, benefits from the transatlantic security partnership in at least three respects. The United States still provides military protection (with conventional as well as nuclear forces) - a benefit which is of tremendous importance for many Eastern European NATO members. In addition, the United States protects the global commons, for instance, sea lines of communication and unlimited access to air and space. Finally, the United States is a decisive power of global order and stabilizes regions that are important for the European allies. Thus, for both sides of the Atlantic, membership in NATO means benefit sharing rather than burden sharing. The fourth and final consideration is that, even if 2014 is a major turning point for NATO, the Alliance will not go out of business. Instead, it will do what it did before Afghanistan: stay militarily engaged in the Balkans or the Horn of Africa, conduct training exercises, plan for all kinds of contingencies, and continue to develop common standards and procedures. Furthermore, NATO members have the chance to consult on any emerging security problems and to assess means of collective or individual action. This possibility of preemptively taking on upcoming challenges is codified in Article 4 of the Washington Treaty. Unfortunately, NATO allies have not always made use of these consultation mechanisms because some NATO members want to limit the Alliance primarily on its military dimension and try to avoid too many political debates in the North Atlantic Council. This shortcoming needs to be addressed. Finally, NATO members also will develop and advance their international partnership network with states and organizations, in order to cope with the realities of a globalized security environment.

### Yes nuke terror

#### Terrorists have means and motive now-expertise and materials are widespread and multiple attempts prove.

**Jaspal, Quaid-i-Azam University IR professor, 2012**

(Zafar, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, <http://pu.edu.pk/images/journal/pols/pdf-files/Nuclear%20Radiological%20terrorism%20Jaspa_Vol_19_Issue_1_2012.pdf>, ldg)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dual-use nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth.x Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187)

## Afg

#### Tons of alt causes and Karzai will just move the goalposts.

Chayes 2013

Sarah, senior associate in the Democracy and Rule of Law Program and the South Asia Program at the Carnegie Endowment and former special adviser to the chairman of the Joint Chiefs of Staff, Take the Bilateral Security Agreement Out of Afghan Politics http://carnegieendowment.org/2013/04/15/take-bilateral-security-agreement-out-of-afghan-politics/fznr

For six months, U.S. negotiators have been wrangling with their Afghan counterparts over a bilateral agreement that would govern the presence of U.S. troops after 2014. A raft of issues, from placement of bases to the judicial status of U.S. soldiers, is stalling the effort. Such details are normally vexed. They are typical sticking points whenever agreements of this sort are being hammered out, be they bilateral treaties or mandates negotiated with the United Nations during peacekeeping efforts. In this case, the process may also be suffering from timing. Given the political climate in Kabul, Washington should consider pausing negotiations and restarting them with a new government after Afghan presidential elections next spring. That would not mean taking negotiations off the table completely. Washington has already signaled its interest in concluding a pact that would allow for the presence of some residual forces in Afghanistan after December 31, 2014. Apart from U.S. troops’ role supporting the Afghan National Security Forces, such a presence would presumably be a means of retaining a platform in a region that remains important for U.S. national security. Many Americans and Afghans also see an ongoing troop presence as a stabilizing factor that could help Afghanistan navigate the transition away from the overwhelming international involvement it has experienced in the past dozen years. Troops, more than any other item of support, seem to symbolize the “enduring commitment” U.S. officials keep emphasizing. Without troops, many fear, such commitments may prove easy to shrug off. In other words, there may be real and symbolic value, for both Americans and Afghans, in concluding a bilateral security agreement. Negotiations with Afghan President Hamid Karzai, however, have never been straightforward. The list of provocative outbursts and manipulative fits of pique on the part of the Afghan president is long. His sudden repudiation of terms governing the transfer of detainee facilities, which negotiators thought he had approved, and his March 10 assertion that insurgent attacks were to “serve the United States” and “pave the way for troops not to leave but to stay” were the latest episodes in a timeworn pattern. Karzai has a history of using negotiations with the United States as a prop in internal political wrangles. Indeed, several Afghan commentators suggested that this latest posturing was part of Karzai’s effort to position himself as a kingmaker ahead of the election.

#### It’s just posturing – Karzai will sign no matter what. Domestic pressure and stability concerns.

Hanly 2013

Ken, professor emeritus at Brandon University, Op-Ed: Afghan Loya Jirga approves bilateral security pact with US http://www.digitaljournal.com/print/article/362777#ixzz2s88atJ7l

The Loya Jirga or Afghanistan Grand Council requested that the Afghan President Hamid Karzai sign the bilateral security agreement with the US by the end of this year. Personally, I am surprised at the decision. The agreement gives US troops immunity from being tried under Afghan law and also still allows raids on Afghan homes. The 2,500 members were all approved by Karzai and no doubt that is an important factor in the outcome but I thought that many would reject the deal because it will be unpopular with many Afghans. Perhaps, the group felt that their own power depends upon US aid and protection and that if the US left they would lose everything. Karzai as is his custom continues to make loud noises that upset the US. He continues to say that the agreement should be signed after the presidential elections in 2014. US officials say that it was "neither practical nor possible" to delay the signing of the agreement. However, the deal still needs to be approved by the Afghan parliament. Given the Loya Jirga approved the deal they are unlikely to turn it down, but I may be wrong about that as I was wrong about the Loya Jirga. Karzai continues posturing about not signing the agreement but given the Loya Jirga has now asked him to sign, no doubt, he will give in to the "voice of the Afghan people" and sign on before the end of the year as requested. Saturday Aimal Faizi said of the Americans: "They have waited this long, they can certainly wait five more months". It is unlikely that will be necessary since after having made the appropriate noises, Karzai will cave as he usually does.

#### Uniqueness overwhelms – Afghanistan is definitely going to collapse now

#### A – economy and governance

Miller 2013

Paul, Afghanistan After the Drawdown, political scientist at the nonprofit, nonpartisan Rand Corp. A former CIA analyst, he served from 2007 to 2009 as director for Afghanistan and Pakistan on the White House's National Security Council, http://shadow.foreignpolicy.com/posts/2013/12/04/afghanistan\_after\_the\_drawdown

The political and economic recommendations are what set this report apart. I have long argued that governance and development are the weak legs of U.S. policy in Afghanistan. The U.S. has, justifiably, thrown an enormous amount of money and effort at building an entire army and police force from scratch. We finally began seeing the fruits of that massive effort over the last few years, especially since June when the Afghans assumed lead responsibility for security. But the U.S. has never come close, under either President Bush or Obama, to putting out the same level of effort rebuilding the Afghan state or the Afghan economy. The net result is that the U.S. has built a strong Afghan army and a weak Afghan state. That is not a recipe for lasting stability, and anyone with a passing familiarity with political science or the history of post-colonial states knows what that mixture yields. Jones and Crane are right to complement their security recommendations with strong political and economic components.

## Deference

#### Doesn’t solve “better wars”

**Nzelibe et al., Northwestern law professor, 2006**

(Jide, “Rational War and Constitutional Design,” Yale Law Journal, Vol. 115, SSRN)

But before accepting this attractive vision, we should ask whether the Congress first system produces these results. In other words, has requiring congressional ex ante approval for foreign wars produced less war, better decision making, or greater consensus? Students of American foreign policy generally acknowledge that comprehensive empirical studies of American wars are impractical, due to the small number of armed conflicts. Instead, they tend to focus on case studies. A cursory review of previous American wars does not suggest that congressional participation in war necessarily produces better decision making. We can certainly identify wars, such as the Mexican-American War or the Spanish-American War, in which a declaration of war did not result from extensive deliberation nor necessarily result in good policy.14 Both wars benefited the United States by expanding the nation’s territory and enhanced its presence on the world stage,15 but it seems that these are not the wars that supporters of Congress’s Declare War power would want the nation to enter – i.e., offensive wars of conquest. Nor is it clear that congressional participation has resulted in greater consensus and better decision making. Congress approved the Vietnam War, in the Tonkin Gulf resolution, and the Iraq war, both of which have produced sharp division in American domestic politics and proven to be mistakes. The other side of the coin here usually goes little noticed, but is just as important for evaluating the substantive performance of the Congress-first system. To a significant extent, much of the war powers literature focuses on situations in which the United States might erroneously enter a war where the costs outweigh the expected benefits. Statisticians usually label such errors of commission as Type I errors. Scholars rarely, if ever, ask whether requiring congressional ex ante approval for foreign wars could increase Type II errors. Type II errors occur when the United States does not enter a conflict where the expected benefits to the nation outweigh the costs, and this could occur today when the President refuses to launch a preemptive strike against a nation harboring a hostile terrorist group, for example, out of concerns over congressional opposition. It may be the case that legislative participation in warmaking could prevent the United States from entering, or delaying entry, into wars that would benefit its foreign policy or national security. The clearest example is World War II. During the inter-war period, Congress enacted several statutes designed to prevent the United States from entering into the wars in Europe and Asia. In 1940 and 1941, President Franklin D. Roosevelt recognized that America’s security would be threatened by German control of Europe, and he and his advisers gradually attempted to bring the United States to the assistance of Great Britain and the Soviet Union.16 Nonetheless, congressional resistance prevented Roosevelt from doing anything more than supplying arms and loans to the Allies, although he arguably stretched his authority to cooperate closely with Great Britain in protecting convoys in the North Atlantic, among other things. It is likely that if American pressure on Japan to withdraw from China had not helped triggered the Pacific War, American entry into World War II might have been delayed by at least another year, if not longer.17 Knowing what we now know, most would agree that America’s earlier entry into World War II would have been much to the benefit of the United States and to the world. A more recent example might be American policy in the Balkans during the middle and late 1990s.

#### Checks on executive overreach-no bad interventions

**Yoo, UC Berkeely law professor, 2009**

(John, Crisis and Command, google books)

A second lesson of this book is that the notion of an unchecked executive, wielding dictatorial powers to plunge the nation into disaster, is a myth born of Vietnam and Watergate. Congresses have always possessed ample ability to stalemate and check an executive run amok. Congress regularly ignores executive proposals for legislation, rejects nominees, and overrides vetoes. It can use its power over legislation, funding, and oversight to exercise significant control over the administrative state. There would be no agencies, no delegated powers, and no rule-making without Congress's basic decisions to create the federal bureaucracy. It can use these authorities even at the zenith of presidential power: foreign affairs. Congress can cut off war funding, shrink the military, stop economic aid, and block treaties. It used its sole control of the purse to limit the Mexican-American War and to end the Vietnam conflict, for example.

#### No South China conflict-engagement will check miscalc and mistrust

**Thayer, New South Wales emeritus professor, 2013**

(Carlyle, “Why China and the US won’t go to war over the South China Sea”, 5-13, <http://www.eastasiaforum.org/2013/05/13/why-china-and-the-us-wont-go-to-war-over-the-south-china-sea/>, ldg)

China’s increasing assertiveness in the South China Sea is challenging US primacy in the Asia Pacific. Even before Washington announced its official policy of rebalancing its force posture to the Asia Pacific, the United States had undertaken steps to strengthen its military posture by deploying more nuclear attack submarines to the region and negotiating arrangements with Australia to rotate Marines through Darwin.Since then, the United States has deployed Combat Littoral Ships to Singapore and is negotiating new arrangements for greater military access to the Philippines. But these developments do not presage armed conflict between China and the United States. The People’s Liberation Army Navy has been circumspect in its involvement in South China Sea territorial disputes, and the United States has been careful to avoid being entrapped by regional allies in their territorial disputes with China. Armed conflict between China and the United States in the South China Sea appears unlikely. Another, more probable, scenario is that both countries will find a modus vivendi enabling them to collaborate to maintain security in the South China Sea. The Obama administration has repeatedly emphasised that its policy of rebalancing to Asia is not directed at containing China. For example, Admiral Samuel J. Locklear III, Commander of the US Pacific Command, recently stated, ‘there has also been criticism that the Rebalance is a strategy of containment. This is not the case … it is a strategy of collaboration and cooperation’. However, a review of past US–China military-to-military interaction indicates that an agreement to jointly manage security in the South China Sea is unlikely because of continuing strategic mistrust between the two countries. This is also because the currents of regionalism are growing stronger. As such, a third scenario is more likely than the previous two: that China and the United States will maintain a relationship of cooperation and friction. In this scenario, both countries work separately to secure their interests through multilateral institutions such as the East Asia Summit, the ASEAN Defence Ministers’ Meeting Plus and the Enlarged ASEAN Maritime Forum. But they also continue to engage each other on points of mutual interest. T

he Pentagon has consistently sought to keep channels of communication open with China through three established bilateral mechanisms: Defense Consultative Talks, the Military Maritime Consultative Agreement (MMCA), and the Defense Policy Coordination Talks. On the one hand, these multilateral mechanisms reveal very little about US–China military relations. Military-to-military contacts between the two countries have gone through repeated cycles of cooperation and suspension, meaning that it has not been possible to isolate purely military-to-military contacts from their political and strategic settings. On the other hand, the channels have accomplished the following: continuing exchange visits by high-level defence officials; regular Defense Consultation Talks; continuing working-level discussions under the MMCA; agreement on the ‘7-point consensus’; and no serious naval incidents since the 2009 USNS Impeccable affair. They have also helped to ensure continuing exchange visits by senior military officers; the initiation of a Strategic Security Dialogue as part of the ministerial-level Strategic & Economic Dialogue process; agreement to hold meetings between coast guards; and agreement on a new working group to draft principles to establish a framework for military-to-military cooperation. So the bottom line is that, despite ongoing frictions in their relationship, the United States and China will continue engaging with each other. Both sides understand that military-to-military contacts are a critical component of bilateral engagement. Without such interaction there is a risk that mistrust between the two militaries could spill over and have a major negative impact on bilateral relations in general. But strategic mistrust will probably persist in the absence of greater transparency in military-to-military relations. In sum, Sino-American relations in the South China Sea are more likely to be characterised by cooperation and friction than a modus vivendi of collaboration or, a worst-case scenario, armed conflict.

# 1NR

### Uniqueness

#### Legitimacy is on the brink---collapses threatens the rule of law

Burke 8/23 (Kevin Burke is a partner in Sidley's New York office. He litigates class actions and other complex disputes in the areas of securities, LLP, “How Low Public Trust Threatens the Legitimacy of Court Decisions,” http://proceduralfairnessblog.org/2013/08/23/how-low-public-trust-threatens-the-legitimacy-of-court-decisions/)

Trust is an essential component of procedural fairness, which, in turn, has been shown to be a key source of legitimacy for decision-makers. All public institutions now face serious skepticism from the public about their trustworthiness. However, a trust deficit – and the resulting lack of legitimacy – are of particular threat to the judiciary. Legitimacy is essential if courts are to be respected and, indeed, if court orders are to be obeyed. Simply put, failure to maintain and enhance the legitimacy of court decisions imperils the judiciary as an institution and the vital role assigned to the judiciary in our Constitutional tradition. The threat is real. Today, 75% of the American public thinks judges’ decisions are, to a moderate to significant extent, influenced by their political or personal philosophy. Of course, judges have a range of philosophical views and exercise discretion, so some differences of opinion among judges are to be expected. But 75% of the American public also believes judges’ decisions are, to a moderate to significant extent, influenced by their desire to be appointed to a higher court. Two recent articles explain the potentially grave implications. First, Politico recently published a contribution by law professors Charles Geyh and Stephen Gillers advocating for a bill to make the Supreme Court adopt a code of ethics. They argue: [I]t would be a mistake for the Court to view the [ethics] bill as a challenge to its power. It is rather an invitation. No rule is thrust on the justices. Under the … bill, the justices are asked to start with the code governing other federal judges, but are then free to make ‘any amendments or modifications’ they deem ‘appropriate.’ A response that says, in effect, ‘We won’t do it because you can’t make us’ will hurt the court and the rule of law. Second, Linda Greenhouse, a regular commentator on the New York Times Blog “Opinionator,” recently wrote this post about the Foreign Intelligence Surveillance Court entitled Too Much Work?. Greenhouse writes: As Charlie Savage reported in The Times last month, Chief Justice John G. Roberts Jr. has used that authority to name Republican-appointed judges to 10 of the court’s 11 seats. (While Republicans in Congress accuse President Obama of trying to “pack” the federal appeals court in Washington simply by filling its vacant seats, they have expressed no such concern over the fact that the chief justice has over-weighted the surveillance court with Republican judges to a considerably greater degree than either of the two other Republican-appointed chief justices who have served since the court’s creation in 1978.) What do these two pieces mean for judges? Both articles highlight how the judiciary itself, if not careful, can contribute to the erosion of public trust in our decisions. To be sure, the erosion of the legitimacy of judicial decisions is not entirely the fault of the Supreme Court, nor of judges in general. The media, for example, often refers to which President appointed a judge as a shorthand way to explain a decision. But that is, in part, why Ms. Greenhouse’s piece is important. The Chief Justice is recognized as a brilliant man. He and every other judge in the United States know the inevitable shorthand the media will use to describe judges and to explain their decisions. And so the Chief Justice, the members of the United States Supreme Court, indeed every judge in this country needs to be particularly sensitive to what we are doing that might either advance trust in courts or contribute to the erosion of the legitimacy of our courts. The bottom line is: Appearances make a difference. There will be decisions by judges at every level of court that test the public’s trust in our wisdom. It is therefore imperative that judges act in a manner that builds a reservoir of goodwill so that people will stand by courts when a decision is made with which they disagree. There may have been an era when trust in the wisdom and impartiality of judicial decisions could be taken as a given. But if there was such an era, we no longer live in it. Trust and legitimacy today must be earned.

#### Previous decisions did not invalidate policies-just the institutional arrangement-the plan changes this

**Scheppele, Princeton public affairs professor, 2012**

(Kim Lane, “The New Judicail Deference”, Boston University Law Review, January, lexis, ldg)

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides—the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won. Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won [\*92] in these cases—and they prevailed overwhelmingly in their claims, especially at the Supreme Court—but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question. Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead. [\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives. Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference. This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted—often bold, ambitious, and brave solutions—nonetheless fail to address the plights of the specific individuals who brought the cases. This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something—an appearance not entirely false in the long run—while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

### AT: Absention Solves

#### Your evidence is out of context and assumes a cold war mindset stuck in conflict between nation-states – our scenario is the best predictor for war in the twenty first century and takes out your deference bad arguments

**Li, Georgetown Journal of law public policy, 2009**

(Zheyoa, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare”, 7 Geo. J.L. & Pub. Pol'y 373, lexis, ldg)

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons. 122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945. 123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends. 124It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modern trend toward a new phase of warfighting, the authors argued that:[\*395] In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new theory of war powers. As evidenced by Part III, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise.

### AT: Enviro Defense

#### Climate change ends all life – runaway climate hothouse earth.

Farley 2010

John, Professor of physics and astronomy @ UNLV, Monthly Review Vol 62 issue 4 september 2010 <http://monthlyreview.org/2010/09/01/our-last-chance-to-save-humanity>

If the sea level rises 70 meters (250 feet), it would not extinguish all human life. After all, hominids have existed on earth for several million years, and homo sapiens more than a hundred thousand, surviving numerous ice ages, during which ice sheets a mile thick covered areas that came to be Boston and New York City. But the world population during the last ice age, ten thousand years ago, has been estimated at five million. It is now six billion. It is human civilization that is unlikely to survive a flooding catastrophe. According to the penultimate chapter, The Venus Syndrome, it might be even worse. Hansen posits a possible future earth, in which a “runaway greenhouse effect” takes over: anthropogenic global warming from greenhouse gases causes increased water vapor in the atmosphere, which in turn causes further warming. The methane clathrate deposits are destabilized, releasing vast amounts of methane in the atmosphere. The oceans become acidified by dissolution of carbon dioxide from the atmosphere. This could eliminate all life on Earth. This is speculation, of course. But Venus, the planet most similar to earth, has a very strong greenhouse effect, much stronger than earth’s. In the absence of atmospheric greenhouse gases, the surface temperature of the earth would be -18°C (0°F). The actual observed temperature of the Earth is 15°C (59°F). Thus, the greenhouse effect on the Earth raises the temperature by 33°C (59°F). On Venus, the surface temperature, in the absence of the greenhouse effect, would be -41°C (-42°F), well below the melting point of ice. A very strong greenhouse effect raises the surface temperature to the observed temperature of 464°C (867°F). The greenhouse effect on Venus is a staggering 505°C (909°F), creating a planetary surface hot enough to melt lead (!!), which requires “only” 327°C (621°F).

### Turns Case

Substantive rulings will be outright ignored by the executive because of lack of precedent; the plan fails to be enforced while also creating a terrible model---that’s McGinnis

Losing legitimacy collapses the effectiveness of Judicial Review

Jackson 11 (Lester, state Senator from Chatham County,“The Threat Of Liberal Judicial Activism Reaches New Heights,” http://www.americanthinker.com/2011/08/the\_threat\_of\_liberal\_judicial\_activism\_reaches\_new\_heights.html)

From time to time, there are calls for making Supreme Court nominations a major issue in presidential elections. These calls have never been really met. This time, the presidential candidates should wake up. They should be talking seriously and often about justices who have contempt for the law, so that the American people will also wake up to the danger. If they don't wake up in 2012, they surely will wake up in 2013 to a Supreme Court that a majority of Americans do not respect because the majority of the Court lacks respect for them. In turn, that will call into question the very legitimacy of judicial review for which Chief Justice Marshall so eloquently laid the groundwork.

Turn outweighs solvency-without support activism crashes-legitimacy is a pre-requisite

Hirsch 4 (Ran Hirsch is an Associate Professor of Political Science and Law at the University of Toronto, “'Juristocracy' - Political, not Juridical,” Project Muse)

In sum, the existence of an active, non-deferential constitutional court is a necessary, but not a sufficient condition, for persistent judicial activism and the judicialization of mega politics. Assertion of judicial supremacy cannot take place, let alone be sustained, without the tacit or explicit support of influential political stakeholders. It is unrealistic, and indeed utterly naïve, to assume that core political questions such as the struggle over the nature of Canada as a confederation of two founding peoples, Israel's wrestling with the question of "who is a Jew?" and its status as a Jewish and democratic state, the struggle over the status of Islamic law in predominantly Muslim countries, or the transition to democracy in South Africa could have been transferred to courts without at least the tacit support of pertinent political stakeholders in these countries. And we have not yet said a word about the contribution of ineffective political institutions, the spread of litigation oriented NGOs, or opposition and interest group use of the courts to the judicialization of mega-politics. A political sphere conducive to judicial activism is at least as significant to its emergence and sustainability as the contribution of courts and judges. In short, judicial power does not fall from the sky. It is politically constructed. The portrayal of constitutional courts and judges as the major culprits in the all-encompassing judicialization of politics worldwide is simply too simple a tale.

### Link – Legit

AND---Restricting powers risks endangering prestige only advisory rulings that leave the decisions of implementation up to the political branches can preserve legitimacy

McGinnis 93 (JOHN 0. MCGINNIs is an Assistant Professor, Benjamin N. Cardozo School of Law, “CONSTITUTIONAL REVIEW BY THE EXECUTIVE IN FOREIGN AFFAIRS AND WAR POWERS: A CONSEQUENCE OF RATIONAL CHOICE IN THE SEPARATION OF POWERS,” http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4213&context=lcp)

The Court has the least interest of all in exercising rights of governance in the foreign affairs and war powers areas. The Court does not have the institutional capacity to make assessments in these areas. Any inept decision about war and peace may have dramatic and readily understood real world consequences that may erode the Court's prestige and endanger its public respect. Thus, decisions in this area stand in contrast with decisions elaborating individual rights, a role in which it may appear as the tribune of the people.66 The latter decisions, even when controversial, are likely to have some group of supporters, and their real world consequences are less immediate and dramatic than issues of war and peace. Resistance, if encountered, can be tempered by incremental implementation. 67

### Link – War Powers

#### Deference is key to maintain military strategy and decisiveness

**Fenster et al., Mckenna Long & Aldridge LLP, 2010**

(Herbert, Phillip Carter, “Brief Of The Veterans Of Foreign Wars Of The United States As Amicus Curiae In Support Of Defendants And Dismissal”, http://ccrjustice.org/files/Amicus\_Curiae\_Brief\_of\_VFW.pdf)

War is the province of chance. “If we now consider briefly the subjective nature of war—the means by which war has to be fought—it will look more than ever like a gamble . . . [i]n the whole range of human activities, war most closely resembles a game of cards.” Clausewitz, 86-87. Within this field of human endeavor, the most successful armies are those led by decisive commanders who visualize the operational environment and make rapid, sound decisions. Combat leadership involves the motivation of others to risk their lives, and only the most decisive and confident leaders can inspire this kind of self-sacrifice. Leadership is the multiplying and unifying element of combat power. Confident, competent, and informed leadership intensifies the effectiveness of all other elements of combat power by formulating sound operational ideas and assuring discipline and motivation in the force . . . Leadership in today’s operational environment is often the difference between success and failure. Dept. of the Army, Field Manual 3-0, Operations, at ¶¶ 4-6 - 4-8 (2008), available at http://www.army.mil/fm3-0/fm3-0.pdf. Battle command is a subset of combat leadership—it is how wartime leaders operationalize their intent and transmit their guidance to subordinate units. Battle command is the art and science of understanding, visualizing, describing, directing, leading, and assessing forces to impose the commander’s will on a hostile, thinking, and adaptive enemy. Battle command applies leadership to translate decisions into actions—by synchronizing forces and warfighting functions in time, space, and purpose—to accomplish missions. Battle command is guided by professional judgment gained from experience, knowledge, education, intelligence, and intuition. It is driven by commanders. Id. at ¶ 5-9. Battlefield decisionmaking involves the visualization of the battlefield and all its components, the deliberate assessment of operational risk, and the selection of a course of action which accepts certain risks in order to achieve tactical, operational or strategic success. Id. at ¶ 5-10; see also Gen. Frederick M. Franks, Jr., Battle Command: A Commander’s Perspective, Military Review, May-June 1996, at 120-121. “Given the inherently uncertain nature of war, the object of planning is not to eliminate or minimize uncertainty but to foster decisive and effective action in the midst of such uncertainty.” Army Field Manual 3-07, Stability Operations, at ¶ 4-4 (2008), available at http://usacac.army.mil/cac2/repository/FM307/FM307.pdf. In bringing this case, Plaintiff asks this Court to substitute itself as the battlefield commander, and to second-guess the strategic, operational and tactical decisions made by this nation’s military chain of command in the campaign against Al Qaeda. Judicial decisionmaking is incompatible with military decisionmaking. Rather than produce rapid, confident, decisive actions, judicial resolution of this matter would produce deliberate and measured decisions which are the product of adversarial process, and which would reflect judicial considerations, not strategic or tactical ones. Also, judicial involvement may induce risk aversion among commanders, who would worry about how their actions might be judged in courtrooms far removed from the battlefield, and thus hedge their battlefield decisions in order to protect themselves and their units from future judicial scrutiny. This is particularly true of Plaintiff’s prayer for relief, which calls upon the Court to enjoin the Government from using lethal force “except in circumstances in which they present concrete, specific, and imminent threats to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threats.” Such decisions about the use of force can often be made by soldiers in a split-second, on the basis of intuition and training. The specter of judicial involvement will affect the way soldiers and leaders approach these decisions, potentially complicating and slowing their decisions by injecting judicial considerations which have no place on the battlefield.

### Internal Link

#### Court’s public trust doctrine is key to sustainable development. Now is the key time. We are dangerously close to planetary boundaries

**Sagarin et al., Arizona Institute of the Environment research scientist, 2012**

(Raphael, “The Public Trust Doctrine: Where Ecology Meets Natural Resources Management”, Annual Review of Environment and Resources, ScienceDirect, ldg)

We are failing to preserve ecosystems and their services on which humanity relies. Forests, freshwater sources, oceans, and the atmosphere itself are all at degraded states and may be hovering dangerously close to “planetary boundaries” (1), where they will no longer provide the services of food production, nutrient cycling, and climate regulation as they do currently. These resources are common-pool resources, meaning resources from which it is hard (i.e., costly) to exclude users but simultaneously are subject to degradation from overuse (2). It has proven difficult to devise ways of governing our sustainable use of common-pool resources. A particular legal doctrine called the public trust doctrine (PTD), which appears in several countries but initially evolved in the United States, is appealing to environmental law and policy scholars on both philosophical and practical grounds. In its most basic interpretation, it states that certain natural resources cannot be subject to private ownership and must be held in trust for the people of a State (or US state) by the government. Governments must manage trust resources for the exclusive benefit of their citizens, both current and future, and if they fail to do so, citizens can seek remedy in the courts. Philosophically, the PTD is appealing because it provides a framework for structuring the relationship among citizens, both current and future, the governments they elect, and natural resources and the services they provide. Additionally, by protecting the rights of both current and future citizens to functioning ecosystems, the PTD is tied to the important notion in international environmental governance of intergenerational equity. Practically, the PTD is appealing because it scales well from backyard creeks to international waters, and from resources with clear monetary value (e.g., fish) to those with more diffuse values (e.g., intact ecosystems). It is widely incorporated in US states’ law and has increasingly been used in other countries by their legislatures to prescribe a more accountable way forward for environmental governance and by their courts to prevent harm to trust resources or demand their restoration. Achieving laws and policies that prevent overuse of natural resources is an imperative in the enduring global effort to achieve sustainable development (3). With the current global negotiations about sustainable development, climate change, and high seas governance, not to mention ongoing environmental conflicts at every level, now is an opportune time to clarify the PTD and its potential opportunities and pitfalls as a tool for more effective and sustainable natural resources management. Depending on one’s perspective, the PTD could be a powerful tool for recognizing ecological advances in law and policy or a dangerously unwieldy cudgel that threatens democracy and property rights. Those who advocate in academic discussions, court cases, legislative debates, or as delegates to international environmental conferences for an expanded PTD need to understand the many facets of the PTD concept. The vast majority of recent PTD discussion has occurred in law review journals, which have both benefits and drawbacks. Law review articles are built on extensive knowledge of legal precedent, but because they are essentially framed as arguments, they tend to rely on judicial opinions and other articles that support the commentator’s viewpoint and relegate opposing views to an unelaborated “but see . . .” citation in the footnotes. Pg. 474-475

#### US judicial decisions protecting the environment will create a global norm.

**Long, Florida Coastal law professor, 2008**

(Andrew, “International Consensus and U.S. Climate Change Litigation”, 33 Wm. & Mary Envtl. L. & Pol'y Rev. 177, lexis, ldg)

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