## 1AC

**1AC: Blowback**

**Contention 1 is Blowback:**

**US legitimacy has been severely damaged by detention—ending use of military commissions is key to reverse negative perceptions**

**Carson 10** (Carlissa, Judge Advocate, US Army Reserves; former US Army Military Intelligence Officer. J.D., Emory University School of Law, Spring 2010, "Yes We Can Revise the Current Military Commission System, but Why?" Connecticut Journal of International Law, Lexis)

Conclusion President Obama recently has taken a step towards the preservation of human rights through deciding to revise some provisions of the 2006 MCA and to use federal courts to try some detainees (e.g., Khalid Sheikh Mohammad). **Given that current military commissions still fail to address all of the human rights violations present in previous commissions, the US has not yet reached its final destination.** Even though the US Constitution allows our President broad war-making powers, the US is not immune to the provisions and prohibitions set forth in international treaties and customary international law. Customary international law and the treaties the US has signed and ratified undoubtedly bind the nation. n326 Even the Supreme Court has consistently held that international law is an important part of US law. n327 **The US failure to adhere to** i**nternational** law **is detrimental** in several respects. This is especially true today given the US's increasingly negative reputation in the international community. One can look to the widening political gap between the US and Europe as an example. n328 **As the US's reputation diminishes, so does its power** to negotiate and garner much needed support from other nations. Moreover, **the presence of contrasting definitions and applications of the law governing detention and trial of detainees worldwide is dangerous**. If the US, as the most powerful nation in the world, does not adhere to international law, what states will?[\*430] In short, **failure to adhere to international law, especially concerning human rights, may provide fertile ground for the development of permanent blemishes on the US's reputation as a leader** in the realm of human rights. **Given that the use of military commissions is unnecessarily unfair and unlawful, their use should cease.** The US, while fighting terrorism, must not forget that it is not helpful to ignore international law and succumb to using the techniques implemented by our enemies, the terrorists. **The very reason we are fighting terrorism is to preserve rights such as human dignity, which should be inherent in a democratic society. The US must adopt detention and trial procedures that are in accordance with** both domestic US and international bodies **of law**, for these are the foundation upon which the US stands. "This is the destiny of democracy-it does not see all means as acceptable, and the ways of its enemies are not always open before it." n329 **Use of** courts-martial and/or **regularly constituted courts,** while imperfect, nonetheless would bring the US into conformity **with the principles of international law.** Perhaps if current procedures are brought into conformity with international law, UN Special Rapporteur Martin Scheinin will no longer have reason to wear a frown on flights back from Guantanamo Bay.

**Legitimacy is crucial to sustainable and effective US hegemony—collapse causes great power war**

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

**American unipolarity has created a challenge for realists. Unipolarity was thought to be inherently unstable because other nations, seeking to protect their own security**, form alliances to counter-balance the leading state. n322 **But no nation or group of nations has yet attempted to challenge America's military predominance**. n323 Although some realists predict that [\*140] counter-balancing will occur or is already in some ways occurring, n324 William Wohlforth has offered a compelling explanation for why true counter-balancing, in the traditional realist sense, will probably not happen for decades. n325 American unipolarity is unprecedented. n326 First, **the United States is geographically isolated from other potential rivals**, who are located near one another in Eurasia. n327 **This mutes the security threat that the U.S. seems to pose while increasing the threats that potential rivals seem to pose to one another**. n328 Second, **the U.S. far exceeds the capabilities of all other states in every aspect of power** - military, economic, technological, and in terms of what is known as "soft power." **This advantage "is larger now than any analogous gap in the history of the modern state system."** n329 Third, **unipolarity is entrenched as the status quo** for the first time since the seventeenth century, multiplying free rider problems for potential rivals and rendering less relevant all modern previous experience with balancing. n330 Finally, the potential rivals' possession of nuclear weapons makes the concentration of power in the United States appear less threatening. A war between great powers in today's world is very unlikely. n331 These factors make the current system much more stable, peaceful and durable than the past multi-polar and bipolar systems in which the United States operated for all of its history until 1991. **The lack of balancing means that the U**nited **S**tates, **and by extension the executive branch, faces** much **weaker external constraints on its exercise of power** than in the past. n332 Therefore, **the internal processes of the U.S. matter now more than any other nations' have in history**. n333 And **it is these internal processes**, as much as external developments, **that will determine the durability of American unipolarity. As one realist scholar has argued, the U.S. can best ensure the [\*141] stability of this unipolar order by ensuring that its predominance appears legitimate**. n334 **Hegemonic orders take on hierarchical characteristics**, with the preeminent power having denser political ties with other nations than in a unipolar order. n335 **Stability in hegemonic orders is maintained in part through security guarantees and trade relationships that result in economic specialization** among nations. n336 For example, if Nation X's security is supplied by Hegemon Y, Nation X can de-emphasize military power and focus on economic power. In a hegemonic system, **the preeminent state has "the power to shape the rules of international politics according to its own interests."** n337 **The hegemon**, in return, **provides public goods for the system as a whole**. n338 **The hegemon possesses** not only superior command of military and economic resources but "**soft" power, the ability to guide other states' preferences and interests.** n339 **The durability and stability of hegemonic orders depends on other states' acceptance of the hegemon's role. The hegemon's leadership must be seen as legitimate.** n340 [\*142] **The U**nited **S**tates **qualifies as a global hegemon**. In many ways, **the U.S. acts as a world government**. n341 **It provides public goods for the world**, such as security guarantees, the protection of sea lanes, and support for open markets. n342 After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions - such as the United Nations, NATO, the International Monetary Fund, and the World Bank - that remain in place today. The U.S. provides security for allies such as Japan and Germany by maintaining a strong military presence in Asia and Europe. n343 Because of its overwhelming military might, the U.S. possesses what amounts to a "quasi-monopoly" on the use of force. n344 This prevents other nations from launching wars that would tend to be truly destabilizing. Similarly, **the United States provides a public good through its efforts to combat terrorism** and confront - even through regime change - rogue states. n345 **The U**nited **S**tates also **provides a public good through its promulgation and enforcement of international norms. It exercises a dominant influence on the definition of international law because it is the largest "consumer" of such law and the only nation capable of enforcing it on a global scale.** n346 The U.S. was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law. n347

Moreover, **controlling international norms are** [\*143] sometimes **embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law.** For example, **whether terrorist threats will be countered effectively depends "in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants.**" n348 **These public goods provided by the United States stabilize the system by legitimizing it and decreasing resistance to it.** **The transnational** political and economic **institutions created by the U**nited **S**tates **provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to "bandwagon"** with the U.S. rather than seek to create alternative centers of power. n349 American hegemony also coincided with the rise of globalization - the increasing integration and standardization of markets and cultures - which tends to stabilize the global system and reduce conflict. n350 **The legitimacy of American hegemony is strengthened and sustained by the democratic and accessible nature of the U.S. government. The American constitutional separation of powers is an international public good. The risk that it will hinder the ability of the U.S. to act swiftly, coherently or decisively** in foreign affairs **is counter-balanced by the benefits it provides in permitting foreigners multiple points of access to the government**. n351 Foreign nations and citizens lobby Congress and executive branch agencies in the State, Treasury, Defense, and Commerce Departments, where foreign policy is made. n352 They use the media to broadcast their point of view in an effort to influence the opinion of decision-makers. n353 Because the United States is a nation of immigrants, many American citizens have a specific interest in the fates of particular countries and form "ethnic lobbies" for the purpose of affecting foreign policy. n354 **The courts,** too, **are accessible to foreign nations and non-citizens. The Alien Tort Statute is emerging as an** [\*144] **important vehicle for adjudicating tort claims among non-citizens in U.S. courts.** n355 Empires are more complex than unipolar or hegemonic systems. Empires consist of a "rimless-hub-and-spoke structure," with an imperial core - the preeminent state - ruling the periphery through intermediaries. n356 The core institutionalizes its control through distinct, asymmetrical bargains (heterogeneous contracting) with each part of the periphery. n357 Ties among peripheries (the spokes) are thin, creating firewalls against the spread of resistance to imperial rule from one part of the empire to the other. n358 The success of imperial governance depends on the lack of a "rim." n359 Stability in imperial orders is maintained through "divide and rule," preventing the formation of countervailing alliances in the periphery by exploiting differences among potential challengers. n360 Divide-and-rule strategies include using resources from one part of the empire against challengers in another part and multi-vocal communication - legitimating imperial rule by signaling "different identities ... to different audiences." n361 Although the U.S. has often been labeled an empire, the term applies only in limited respects and in certain situations. Many foreign relations scholars question the comparison. n362 However, the U.S. does exercise informal imperial rule when it has routine and consistent influence over the foreign policies of other nations, who risk losing "crucial military, economic, or political support" if they refuse to comply. n363 The "Status of Force Agreements" ("SOFAs") that govern legal rights and responsibilities of U.S. military personnel and others on U.S. bases throughout the world are typically one-sided. n364 And the U.S. occupations in Iraq and Afghanistan had a strong imperial dynamic because those regimes depended on American support. n365 [\*145] But the management of empire is increasingly difficult in the era of globalization. Heterogeneous contracting and divide-and-rule strategies tend to fail when peripheries can communicate with one another. The U.S. is less able control "the flow of information ... about its bargains and activities around the world." n366 In late 2008, negotiations on the Status of Force Agreement between the U.S. and Iraq were the subject of intense media scrutiny and became an issue in the presidential campaign. n367 Another classic imperial tactic - the use of brutal, overwhelming force to eliminate resistance to imperial rule - is also unlikely to be effective today. The success of counterinsurgency operations depends on winning a battle of ideas, and collateral damage is used by violent extremists, through the Internet and satellite media, to "create widespread sympathy for their cause." n368 The abuses at Abu Ghraib, once public, harmed America's "brand" and diminished support for U.S. policy abroad. n369 Imperial rule, like hegemony, depends on maintaining legitimacy.B. Constructing a Hegemonic Model International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some instances, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. "World power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington." n370 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs. [\*146] One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations - liberalism. Liberal IR theory generally holds that internal characteristics of states - in particular, the form of government - dictate states' behavior, and that democracies do not go to war against one another. n371 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world. n372 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states. n373 Because domestic and foreign issues are "most convergent" among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches' powers. n374 With respect to non-liberal states, the position of the U.S. is more "realist," and courts should deploy a high level of deference. n375 One strength of this binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has observed that it would put courts in the difficult position of determining which countries are liberal democracies. n376 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness - which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the twenty-first century, **America's global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well. The international realm remains highly political** - if not as much as in the past - but **it is American politics that matters most.** If the U.S. is truly an empire - [\*147] and in some respects it is - the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, **the management of hegemony or unipolarity requires a different set of competences.** Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order. n377 The hegemonic model I offer here adopts common insights from the three IR frameworks - unipolar, hegemonic, and imperial - described above. First, the "hybrid" hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America's security and prosperity, than the alternatives. If the U**nited** S**tates were to withdraw from its global leadership role, no other nation would be capable of taking its place. n378 The result would be radical instability and a greater risk of** major war. n379 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that **American hegemony is unusually stable and durable**. n380 As noted above, **other nations have many incentives to continue to tolerate the current order**. n381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, **the U.S. will remain dominant in most measures of capability for decades.** According to 2007 estimates, the U.S. economy was projected to be twice the size of China's in 2025. n382 **The U.S. accounted for half of the world's military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors. n383 Predictions of American decline are not new, and they have thus far proved premature.** n384 [\*148] Third, **the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy. n385 All three IR frameworks for describing predominant states - although unipolarity less than hegemony or empire - suggest that legitimacy is crucial to the stability and durability of the system.** **Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control. n386 Legitimacy as a method of maintaining predominance is far more efficient.** The hegemonic model generally values courts' institutional competences more than the anarchic realist model. **The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy.** This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. **The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap**. And **the dilemma caused by the need to weigh different functional considerations** - liberty, accountability, and effectiveness - **against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.**

**U.S. leadership is key to global stability and preventing great power wars**

Yuhan Zhang, Carnegie Endowment for International Peace, and Lin Shi, Columbia University, “America’s Decline: A Harbinger of Conflcit and Rivalry,” EAST ASIA FORUM, 1—22—11, <http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/>

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear,many actors have bandwagoned with US hegemony and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, creating a status quo that has tended to mute great power conflicts. However,asthehegemonythat drew these powers together withers,so will the pulling power behind the US alliance.The result will be aninternationalorder where power is more diffuse, American interests and influence can be more readily challenged, and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation. For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that a post-hegemonic world would return tothe problems of the 1930s:regional blocs, trade conflicts and strategic rivalry.Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy. Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). A world without American hegemony is one where great power wars re-emerge, the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

**Indefinite detention increases terrorism—multiple mechanisms**

Martin **Scheinin**, Professor, International Law, “Should Human Rights Take a Back Seat in Wartime?” REAL CLEAR WORLD, interviewed by Casey L. Coombs, 1—11—**12**, www.realclearworld.com/articles/2012/01/11/national\_defense\_authorization\_act\_scheinin\_interview-full.html, accessed 8-21-13.

CLC: As a world leader and active promoter of universal human rights, **the practice of indefinite detention without charge would** seem to **clash with U.S. ideals**. Could you comment on this contradiction? MS: **One of the main lessons learned in the** international **fight against terrorism is that counter-terrorism professionals** have gradually **come to learn and admit that human rights violations are not an acceptable shortcut** in an effective fight against terrorism. **Such measures** tend to **backfire in multiple ways**. **They** result in legal problems by **hamper**ing **prosecution, trial and punishment**. **The use of torture is a clear example** here. **They** also tend to **alienate** the **communities with which authorities should be working** in order **to** detect and **prevent terrorism**. And **they add to causes of terrorism,** both **by perpetuating "root causes" that involve the alienation of communities and by providing "triggering causes" through which bitter individuals** make the morally inexcusable decision to **turn to** methods of **terrorism.** The NDAA is just one more step in the wrong direction, by aggravating the counterproductive effects of human rights violating measures put in place in the name of countering terrorism. CLC: Does the NDAA afford the U.S. a practical advantage in the fight against terrorism? Or might the law undermine its global credibility? MS: **It is hard to see any practical advantage gained through the NDAA**. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being "tough" or as "doing something." The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism. By constraining the choices by the executive, **it** nevertheless **hampers e**ffective counter-terrorism work, including criminal investigation and prosecution, as well as **international counter-terrorism cooperation**, markedly in the issue of closing the Guantanamo Bay detention facility. Hence, **it carries the risk of distancing** the **U**nited **S**tates **from its closest allies and the international community generally**. And of course **these kinds of** legal **provisions are** always **open for bad faith copying by repressive governments that will use them for their own political purposes**.

**Prosecution in federal courts solves and facilitates counter-terrorism—experts agree**

Oona **Hathaway**, Professor, International Law, Yale Law School, Samuel Adelsberg, Spencer Amdur, Philip Levitz, Freya Pitts and Sirine Shebaya, “The Power to Detain: Detention of Terrorism Suspects after 9/11,” YALE JOURNAL OF INTERNATIONAL LAW v. 38, Winter 20**13**, p. 161-167.

The United States is still actively engaged in hostilities with global terrorist organizations, but there are indications that "we're within reach of strategically defeating al-Qaeda." n227 This development, combined with the growing distance from the national trauma of September 11, has reinvigorated the debate surrounding the detention and prosecution of suspected terrorists both outside of and within the United States. Even though Congress has recently expanded military detention and prosecution, n228 **prosecution in federal court offers several key advantages over law-of-war detention, including predictability, legitimacy, greater cooperation** by defendants and international partners, **and flexibility**. n229 These advantages have led a diverse set of actors - from current Department of Defense and counterterrorism officials, n230 to [\*162] former Bush Administration officials, n231 to the Washington Post editorial board n232 - to support the prosecution and detention of individuals through the federal courts, despite Congress's recently expressed preference for law-of-war detention. **In some cases, prosecution in federal court is the only available option for prosecuting an accused terrorist. Federal antiterrorism statutes are extensive and provide statutory authority to prosecute individuals who are** part of or **supporting terrorist groups without direct ties to** forces associated with **al-Qaeda or the Taliban** (and therefore outside the scope of the 2001 AUMF or the NDAA), n233 **and independently operating terrorists** who are inspired by, but are not part of or associated with, al-Qaeda or the Taliban. **n234 These** **statutes also reach persons** or citizens **who, because they are apprehended in the U**nited **S**tates, **cannot be tried under the MCA**. The following sections discuss the contours and limitations of such criminal prosecution and detention in the terrorism context. Even where detention under the law of war is available, **the criminal justice system offers** some **key advantages** **for** the **detention and prosecution of suspected terrorists.** We thus aim here to offer a correction to the recent trend toward favoring law-of-war detention over criminal prosecution and detention. **In the vast majority of cases, criminal prosecution** and detention **is the most effective and legitimate way to address the terrorist threat.** A. The Advantages of Criminal Prosecution and Detention The least contested bases for detention authority in any context are post-conviction criminal detention and pre-verdict detention for those who pose a risk of flight. It is often assumed that such criminal detention is ill-suited to terrorists. However, with very little fanfare, **federal district court dockets have been flush with terrorism cases over the past decade. Strikingly, efforts to measure the conviction rate in these cases place it between 86 and 91 percent.** n235 Far from being ineffective, then, **trying suspected terrorists in criminal courts is remarkably effective. It also offers** the **advantages** of predictability, legitimacy, and strategic benefits in the fight against terrorism. **1. Predictability Post-conviction detention of terrorists after prosecution in federal court provides predictability that is currently absent in the military commission system. Federal** district **courts have years of experience trying complex cases and convicting dangerous criminals, including international terrorists, and the rules are well established and understood. The current military commission system**, on the other hand, **is** a **comparatively untested** adjudicatory regime. n236 As already noted, **conviction rates in terrorism trials have been close to ninety percent** since 2001, and those rates have remained steady in the face of large increases in the number of prosecutions. **The military commissions,** by contrast, **have** - as of this writing - **convicted seven people** since 2001, five of whom pled guilty. n237 Charges have been dropped against several defendants, n238 [\*164] and other defendants have been charged but not tried. n239 The commission procedures have been challenged at every stage, and it is unclear what final form they will ultimately take. Even their substantive jurisdiction remains unsettled. In October 2012, the Court of Appeals for the D.C. Circuit overturned Salim Hamdan's military commission conviction for providing material support to terrorism. n240 The Court held that the Military Commissions Act of 2006, which made material support for terrorism a war crime that could be prosecuted in the commissions, was not retroactively applicable to Hamdan's conduct prior to enactment of the statute. n241 Moreover, the Court explained that material support for terrorism was not a recognized war crime under international law. n242 As a result, his conviction for material support for terrorism in the commission could not stand. n243 It is uncertain how this will affect other trials of detainees, but this decision clearly illustrates the unsettled nature of the commissions. n244 **2. Legitimacy** **Federal courts are** also generally **considered more legitimate than military commissions. The stringent procedural protections reduce the risk of error and generate trust and legitimacy**. n245 **The federal courts**, for example, **provide** more **robust hearsay protections** than the commissions. n246 In addition, **jurors are** [\*165] **ordinary citizens, not U.S. military personnel**. Indeed, **some of the weakest procedural protections in the military commission system have been successfully challenged as unconstitutiona**l. n247 **Congress and the Executive have responded to these legal challenges - and to criticism of the commissions from around the globe - by significantly strengthening the commissions' procedural protections. Yet the remaining gaps - along with** what many regard as **a tainted history - continue to raise doubts about the fairness and legitimacy of the commissions.** The current commissions, moreover, have been active for only a short period - too brief a period for doubts to be confirmed or put to rest. n248 **Federal criminal procedure**, on the other hand, **is well-established and widely regarded as legitimate. Legitimacy of the trial process is important** not only to the individuals charged but also **to the fight against terrorism.** As several successful habeas corpus petitions have demonstrated, **insufficient procedural protections create a real danger of erroneous imprisonment** for extended periods. n249 **Such errors can generate resentment and distrust of the U**nited **S**tates **that undermine** the **effectiveness of counterterrorism efforts.** Indeed, evidence suggests that **populations are more likely to cooperate in policing when they believe they have been treated fairly.** n250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House. n251 **3. Strategic Advantages There is clear evidence that other countries recognize and respond to the difference in legitimacy between civilian and military courts and that they are**, indeed, **more willing to cooperate with U.S. counterterrorism efforts when terrorism suspects are tried in the criminal justice system. Increased international cooperation is** therefore **another advantage of criminal prosecution.** Many **key U.S. allies have been unwilling to cooperate in cases involving law-of-war detention** or prosecution **but have cooperated in criminal** [\*166] **prosecutions.** In fact, **many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court.** n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the United Kingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. federal criminal justice system and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus hinder extradition and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence. Finally, **the criminal justice system is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the U**nited **S**tates, **and subsequently to detain those who are convicted.** n258 **This greater variety of offenses** - military commissions can only [\*167] punish an increasingly narrow set of traditional offenses against the laws of war n259 - **offers prosecutors important flexibility.** For instance, **it might be very difficult to prove al-Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp** or participated in a specific terrorist act, **federal prosecutors may convict under various statutes tailored to more specific criminal behavior.** n260 In addition, military commissions can no longer hear prosecutions for material support committed before 2006. n261 Due in part to the established track record of the federal courts, **the federal criminal justice system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are powerful incentives for defendants to cooperate, and often lead to valuable intelligence-gathering, producing more intelligence over the course of prosecution**. n262

**Al Qaeda is still a major threat—predictions of decline are premature and false**

**Sinai 13** (Joshua, JINSA Fellow, Washington, DC-based consultant on national security studies, focusing primarily on terrorism, counterterrorism, and homeland security, 3-11-13, “Al Qaeda Threat to U.S. Not Diminished, Data Indicates” The Jewish Institute for National Security Affairs) http://www.jinsa.org/fellowship-program/joshua-sinai/al-qaeda-threat-us-not-diminished-data-indicates#.UbaiWvmsiSo

**Conventional wisdom holds that the threat** to America **posed by al Qaeda** and its affiliates **is greatly diminished** compared to 9/11. Today, it is claimed, al Qaeda is less well organized, with many of its top leaders eliminated, and is so broken into geographically disparate franchises that it is unable to recruit, train, and deploy a specialized cell to carry out a comparable catastrophic attack against America. The fact that no al Qaeda terrorist attacks have been carried out in America over the last two years, while some 20 individuals have plotted to carry out attacks but were arrested and convicted during the pre-incident phases, is seen as evidence that this terrorist threat is decreasing domestically. Therefore, according to this thesis, security authorities should prepare for more numerous and frequently occurring but low casualty attacks mounted by less well-trained and capable homegrown operatives, particularly by what are termed "lone wolves." **When a more complete compilation of all the components** involved in terrorism **are taken into account, however, the magnitude of the threat becomes much clearer and includes a higher likelihood of attempts to carry** out catastrophic attacks as **well as evidence that al Qaeda continues to recruit and prepare terrorist operatives in the United States.** Downplaying the terrorist threat posed by al Qaeda and its affiliates also has significant political implications due in part to the more than $70 billion that is spent annually on America's domestic counterterrorism programs (with larger amounts expended for overseas operations), all of which need to be continuously justified as cost effective by Administration planners and Congressional appropriators. Such purported decline in al Qaeda attacks domestically, however, is now being seized upon by those who favor reduced government funding for counterterrorism programs, including weakening the USA PATRIOT Act, to support their position that a reduced threat requires reduced funding and resources. **When the trajectory of attacks by al Qaeda and its associates over the years are carefully studied,** however, **certain patterns recur.** Specifically, **every time the threat is underplayed, it is invariably followed by a major attack. In the months leading up to the November 2012 elections, the media was filled with pronouncements that al Qaeda's threat had greatly diminished** as a result of the elimination of its leadership and the reduced operational role over attacks by what is termed "al Qaeda Central" in Pakistan's tribal areas. **While accurate on one level, this did not stop al Qaeda and its affiliates from continuing to launch major terrorist attacks, including** that by its Libyan affiliate against the U.S. consulate in **Benghazi** on September 11, 2012, which led to severe political repercussions for the Administration for its unpreparedness to anticipate such an attack. **This was followed by** the launching of **the devastating cross-border attack against the natural gas facility in eastern Algeria** in mid-January by another al Qaeda affiliate in Mali. **Thirty-six foreign workers were murdered in that attack, which, again, was unanticipated.** Moreover, **the fact that a catastrophic attack against America comparable to 9/11 has not occurred over the past 11 years should not suggest that a future one is not being planned. In summer 2006, al Qaeda-linked operatives in London plotted to detonate liquid explosives on board 10 transatlantic airliners flying from the UK to America and Canada. In** September **2009**, Najibullah **Zazi and his associates were arrested for plotting to conduct a suicide bombing attack against the New York City subway system. On Christmas Day, 2009,** Umar Farouk **Abdulmutallab failed to detonate plastic explosives while on board an airliner heading to Detroit.** Anwar al Awlaki, a former American extremist cleric, reportedly masterminded Abdulmutallab's operation. Awlaki was killed in a drone attack in Yemen on September 30, 2011. The killings of al Awlaki and Samir Khan, another American extremist who had made his way to Yemen in 2009, could well trigger a catastrophic attack by al Qaeda to avenge their deaths. **The recent capture of** Osama **Bin Laden's son-in-law**, Sulaiman abu Ghaith, and the decision to try him in New York City, **is also likely to trigger a major revenge attack against America.** Finally, **organizing catastrophic terrorist attacks requires** extensive **planning, funding and preparation. A terrorist group that feels** itself **strong will take its time to carefully plan a few but devastating attacks**, while a group that regards itself as weak may feel compelled to carry out frequent, but low-casualty attacks to demonstrate its continued relevancy. Some **incident databases, such as** a recent compilation of **data about American al Qaeda terrorists by the UK-based Henry Jackson Society, only account for completed attacks** and convictions of those arrested. **If such counting is expanded to include other factors**, however, then **the overall threat becomes much more severe. Other factors**, therefore, **should include** the **potential consequences of** the **thwarted attacks** had they not been prevented, **the number of radicalized Americans** who travel overseas to join al Qaeda-affiliated insurgencies, and the extent of radicalized activity by al Qaeda's American sympathizers in jihadi website forums and chatrooms. **A more complete accounting of the threat will** now **reveal that the supportive extremist infrastructure for al Qaeda in America is actually not diminishing and that the purported "lone wolf" actors have actual ties to al Qaeda operatives overseas. We should not,** therefore, also **be misled into complacency if catastrophic attacks by al Qaeda do not occur for lengthy periods. Nor so by the comforting but false sense of security that comes with believing that "lone wolf" attacks** in the United States **are not a product of al Qaeda** recruitment and support. It is also possible, nevertheless, that **al Qaeda's terrorist planners are considering both types of attacks, infrequent catastrophic and frequent low casualty. This may explain why al Qaeda's propaganda organs are calling on its radicalized followers in the West to take matters into their own hands and embark on any sort of attacks that may be feasible at the moment, but with further surprise attacks of a catastrophic nature still ahead.**

**Risk of nuclear terrorism is real and high now**

**Bunn**, et al, 10/2/**13** [ Bunn, Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>]

I. Introduction **In 2011, Harvard’s Belfer Center** for Science and International Affairs **and the Russian Academy** **of Sciences’** Institute for U.S. and Canadian Studies **published “The U.S. – Russia Joint Threat** **Assessment** on Nuclear Terrorism.” **The assessment analyzed the means, motives, and access of would-be nuclear terrorists**, **and concluded that the threat of nuclear terrorism is urgent and real**. **The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated** a **consensus** **among political leaders from around the world that nuclear terrorism poses** **a serious threat to the peace**, security, and prosperity **of our planet**. **For any country, a terrorist** **attack** **with a nuclear device would be an immediate and catastrophic disaster**, **and** the negative effects **would reverberate around the world far beyond the location and moment of the detonation.** Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest//xperience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • **Nuclear terrorism is a real and urgent threat**. Urgent actions are required to reduce the risk. **The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam**; **by the spread of information about the decades-old technology of nuclear weapons**; **by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world.** • **Making a crude nuclear bomb** would not be easy, but **is potentially within the capabilities of a technically sophisticated terrorist group**, **as numerous government studies have confirmed**. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). **Terrorists could**, however, **cut open a stolen** **nuclear weapon and make use of its nuclear material for a bomb of their own**. • **The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen**. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • **Al-Qaeda has sought nuclear weapons for almost two decades**. **The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise**. **Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan**. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. **Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use.** While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, **there is no sign the group has abandoned its nuclear ambitions.** On the contrary, **leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.**

**Nuke terror causes extinction—equals a full-scale nuclear war**

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

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

**Russia’s rule of law deficit undermines cooperation and internal stability—plan is key to restoring our credibility to deal with this issue**

Sarah E. **Mendelson**, Director, Human Rights and Security Initiative, Center for Strategic and International Studies, “U.S.-Russian Relations and the Democracy and Rule of Law Deficit,” CENTURY FOUNDATION REPORT, 20**09**, p. 3-4.

Since the collapse of the Soviet Union in 1991, every U.S. administration has considered Russia’s political trajectory a national security concern. Based on campaign statements and President Barack Obama’s early personnel choices, this perspective likely will affect policy toward Russia in some way for the foreseeable future. **While** the **Obama** administration **plans to cooperate with Moscow** on a number of issues, **it will find that Russia’s** current **deficit in** the areas of **democracy and the rule of law complicate the relationship and** may, in some cases, **undermine** attempts at **engagement.** The organizers of the Century Foundation Russia Working Group have labeled this policy problem “coping with creeping authoritarianism.” Results from nearly a dozen large, random sample **surveys** in Russia since 2001 that examine the views and experiences of literally thousands of Russians, combined with other research and newspaper reporting, all s**uggest the current democracy and rule of law deficit is** rather **stark**. The deficit does not diminish the importance of Russia in international affairs, nor is it meant to suggest the situation is unique to Russia. The internal conditions of many states have negative international security implications. As Europeans repeatedly pointed out during the administration of George W. Bush, **U.S. departures from the rule of law made the** **U**nited **S**tates **increasingly problematic as a global partner**, whether through the use of force in Iraq or the manner in which the United States pursued and handled terrorist suspects. In fact, **coping with authoritarian trends in Russia** (and elsewhere) **will involve changes in U.S. policies** that have, on the surface, nothing to do with Russia. Bush administration **counterterrorism policies that authorized torture, indefinite detention** of terrorist suspects, and the rendering of detainees to secret prisons and Guantánamo **have had numerous negative unintended consequences** for U.S. national security, **including serving as a recruitment tool** for al Qaeda and insurgents in Iraq. Less often recognized, **these policies also have undercut** whatever **leverage the** **U**nited **S**tates **had, as well as limited the effectiveness of American decision-makers, to push back on authoritarian policies adopted by,** among others, the **Putin** administration. At its worst, **American departures from the rule of law** may **have enabled abuse inside Russia.** These departures certainly left human rights defenders isolated. **Repairing the damage to U.S. soft power and reversing the departure from human rights norms** that characterized the Bush administration’s counterterrorism policies **will provide the** Obama **administration strategic and moral authority and improve the ability of the United States to work with allies. It also can have positive consequences for Obama’s Russia policy.** The **changes** that **need to be made in U.S.** counterterrorism **policies**, however politically sensitive, **are** somewhat more **straightforward** than the adjustments that must be made to respond to the complex issues concerning Russia. The Obama administration must determine how best to engage Russian leaders and the population on issues of importance to the United States, given Russia’s poor governance structures, the stark drop in oil prices, Russia’s continued aspirations for great power status, and the rather serious resentment by Russians concerning American dominance and prior policies. The policy puzzle, therefore, is how to do all this without, at the same time, sacrificing our values and undercutting (yet again) U.S. soft power. This report assesses the political dynamics that have shaped Russia’s authoritarian drift, briefly addresses a few of the ways in which they matter for U.S. policy, and suggests several organizing principles to help the Obama administration manage this critical relationship. Possible approaches include working closely with Europe on a joint approach to Russia, accurately anticipating the unintended consequences of U.S. policy in one realm (such as Kosovo) for Russia policy, and embracing the rights of states to choose their own security alliances. A final important principle relates to U.S. engagement with Russians beyond the Kremlin. President Obama should speak directly to the Russian people, engaging in a manner that respects their interests and desires, but also reflects the core values of the Obama administration; that is, “reject[s] as false the choice between our safety and our ideals.”6 The Obama administration also should endorse a platform and a process for a renewed dialogue between U.S. and Russian civil society. the VIew from the KremlIn Two interactive dynamics over the past several years have shaped the dominant approach by the Russian government to the outside world: the United States declined as a world power, and at the same time, the Russian state accumulated massive wealth from high gas and oil prices. Following what many in the Russian elite view as the “humiliation” of the 1990s, by 2008, Russia was no longer a status quo power. Instead, revisionist in nature, Russian authorities focused on the restoration of great power status.7 Fueled by petrodollars, the government tackled this project in numerous ways, including military exercises around the globe, soft power projects such as a twenty-four-hour-a-day English language cable news station, “think tanks” in New York and Paris, and perhaps most important, gas and oil distribution systems meant to make Russia a central player in energy security for decades to come.8 This restoration project undoubtedly will be slowed by the current financial crisis and drop in oil revenues, but the building blocks remain in place. As the restoration project evolved, the Putin administration increasingly challenged aspects of the post–World War II and post–cold war legal, security, and economic architecture, and suggested the need for new arrangements. Many in the Russian elite seemed to view the changes that have occurred in Europe over the past twenty years, such as the enlargement of the North Atlantic Treaty Organization (NATO) and the European Union (EU), as illegitimate, driven not by the choices of local governments or populations, but by the will of Washington. Nostalgia for the Soviet era, a related sentiment, is widely shared, and is an important source of former president and now Prime Minister Vladimir Putin’s popularity.9 Some experts even suggest that many in Russia’s governing structures believe that Europe whole and free—that is, post–cold war Europe—is not in the security interest of Russia. The Carnegie Moscow Center’s Lilya Shevtsova has labeled this view “great power nationalism” and observes that the “Putin-Medvedev-Lavrov doctrine” derives from the premise that Russia seeks to contain the West—while the West is busy trying not to offend Russia.10 Some other studies suggest that Russian policymakers have attempted, in fact, to divide the United States from Europe, and generally have preferred bilateral to multilateral engagement.11 At the United Nations, Russia, together with China, repeatedly has challenged international responses to gross human rights violations in Burma, Darfur, and Zimbabwe, and it has engaged in systematic efforts to undermine the Organization for Security and Co-operation in Europe’s (OSCE) election monitoring efforts and the Council of Europe’s human rights monitoring.12 Meanwhile, Russian leaders seem to believe the current European security arrangements are soft commitments, ripe for renegotiation and restructuring. President Dmitri Medvedev has, in fact, called for a new “collective security arrangement,” at the same time reintroducing the concept of spheres of influence.13 All of these actions taken together, along with the decline in U.S. soft power, have looked at times as if some in the Russian government were trying to reset the table on human rights and international law, exporting its democracy and rule of law deficit abroad. How best can the United States, together with Europe, respond to this situation? Two additional dynamics are relevant: Russian internal weaknesses, both political and economic, but also the degree to which the Russian authorities’ assessment of the condition of the international system is correct. For example, in August 2008, Russian government officials fecklessly deployed human rights and international law rhetoric to justify the Russian use of force in South Ossetia—was that just a murky reflection of the current deeply inconsistent international order?14 Will that calculation be challenged by the Obama administration? How can it do so effectively? Will we see a new era of more robust international organizations, underpinned by respect for human rights and international law? If not, will we be in for a period of serious instability in Europe, along Russia’s borders? russIa’s democracy and rule oflaw defIcIt What makes these questions so pressing is the reality that American and European political strategy dating back to the early 1990s of integrating Russia into the Euro-Atlantic community and thus encouraging democratic development has largely failed. By 2009, Vladimir Putin’s policies have systematically closed off nearly all legitimate structures for voicing opposition. Many nongovernmental organizations are under daily pressure from the authorities.15 The parliament is dominated by a government-run party, United Russia, and outcomes of local and national elections are controlled by the authorities. The government controls national television. The few critically minded journalists that exist routinely are threatened or are under constant surveillance by the authorities, and twenty murders of journalists since 2000 have gone unsolved.16 One small newspaper known for its criticism of Kremlin policies has seen four of its journalists killed in recent years. At a minimum, the authorities have presided over an era of impunity, and at worst, some fear government authorities may have been directly involved in these deaths.17 Meanwhile, the democratic political opposition is extremely marginal and dysfunctional—irrespective of whatever government pressures are brought to bear on it. Russia has no leading liberal figures that might emerge as national leaders at present. In years past, the fighting among liberal parties was legendary, and led to multiple fratricidal losses in single-mandate districts, as liberal parties ran against one another—back when there were competitive elections for parliamentary seats.18 Today, it is unclear when or how the democratic opposition will repair itself. Yet, as political space has shrunk steadily in the past ten years, the majority of Russians do not appear to mind. In terms of the younger generation, the conventional wisdom that wealth would lead to a demand for democracy has not been borne out; only about 10 percent of survey respondents could be considered strongly supportive of democracy, while most are ambivalent. In the early 1990s, many in the West assumed that the older Soviet generation would be replaced eventually by a younger, pro-Western, pro-democratic generation. Experts and policymakers alike assumed this succession would be a natural course of events, like gravity. A similar conventional wisdom about the younger generation in Russia continues. It holds that iPods, lattes, skateboards, and other artifacts of Western consumer culture will translate into a desire for independent media, justice, and human rights. In 2005 and 2007, in an environment of steadily shrinking political space, a study based at the Center for Strategic and International Studies (CSIS) explored how young Russians viewed Soviet history and Stalin. Our nationally representative surveys of 16-to- 29-year-old Russians suggested that, despite economic prosperity, most young people gravitated enthusiastically to Vladimir Putin’s ideological platform of revisionist history and nostalgia. The narrative advanced by the government concerning recent history quite simply resonated with this younger generation. In both surveys, a majority believed that Stalin did more good than bad and that the collapse of the Soviet Union was the greatest geopolitical catastrophe of the twentieth century. These findings undoubtedly reflected coordinated strategic communications efforts by government authorities, including support of a teacher’s guide rewriting Soviet history, downplaying the deaths of millions of citizens, and effacing historical memory. These actions facilitated Russia’s authoritarian trend.19 In sum, the Russian middle class and support for authoritarian governance coexist. The tacit bargain of the past decade, however, in which dissenters were punished but Russians’ pocketbooks grew, may now be threatened by the international economic crisis. Oil prices plunged from a high of $147 a barrel in July 2008 to about $40 a barrel in December 2008. If the price of oil stays low, the lubricating effect of oil and gas revenues may well dry up, laying bare Russia’s dysfunctional state institutions and challenging the authorities’ ability to govern. Economic hardship and poor governance seem, at least anecdotally, to correlate with an increase in public protest and nervousness on the part of the ruling authorities.20 Perhaps, in the long run, the mix of economic hard times and poor governance will stimulate a greater demand for democracy and the rule of law in Russia, as citizens grow unhappy with state institutions that do not function and link that dysfunction to poor governance. In the near term, we can expect growth in nationalism and xenophobia. 21 To be sure, the democracy and rule of law deficit and the growth in nationalism pose problems primarily for Russians. In the twenty-first century, independent investigative journalism and the legitimate use of courts for prosecution are necessary to fight corruption. Today, Russia is plagued by corruption, and the Russian authorities dominate both television and court decisions.22 Independent newspapers and Internet sites exist, but journalists who have engaged in investigative journalism have been killed or live under threat.23 In a state where the rule of man predominates, the population experiences the police as predatory rather than protective. Torture in police stations is said to be common and police officers who have been rotated through Chechnya are said to be especially abusive.24 In a 2004 CSIS survey of 2,400 Russians ages 16 to 65, 41 percent of respondents feared arbitrary arrest by the police.25 In a 2007 CSIS survey of 2,000 Russians ages 16 to 29, 62 percent of respondents fully or partially distrusted the police.26 While one cannot make direct comparisons for methodological reasons, it is worth bearing in mind a recent study of attitudes toward police in China, where only 25 percent reported distrust.27 Undoubtedly, the democracy and rule of law deficit varies regionally, but it is particularly worrisome in the southern regions of Russia. The government’s approach to what it perceives as widespread radical Islamic sentiment in the North Caucasus has increased violence rather than contained it. Between May 1 and August 31, 2008, there were at least 282 incidents, and between September 1 and December 31, 2008 there were at least 333.28 When the situation is at its most dire, the Russian government appears not to control this part of its territory. Many experts worry that there will be war in the North Caucasus in 2009, or possibly that, south of the border, a Russian-Georgia war will break out again.29 That prognosis may be overly gloomy, but violence is clearly on the rise and the socioeconomic conditions in the region are dire. why It matters What does any of this have to do with the Obama administration? The democracy and rule of law deficit in Russia has a range of security and human rights implications for the United States and our allies in Europe. For example, the Obama administration comes to office with a number of arms control goals. These plans may be complicated by the absence of Russian military reform that, in turn, correlates with abuse inside the army. (They are also complicated by continued government reliance on nonconventional forces: in September 2008, President Medvedev committed to modernizing the nuclear arsenal.30) Serious, joint counterterrorism efforts with the United States, Europe, and Russia are likely to remain illusive as long as the police and security services are corrupt and abusive, and the media, a potential source to expose that corruption, is largely controlled by the government. Even at the nongovernmental, track-two level, it is now difficult to have the sort of transatlantic policy dialogue on terrorism that has been common among other nations and societies since 2001.31 The most dire evidence suggests that security service personnel or contractors have been deployed abroad, in European cities, to eliminate Kremlin enemies. In the most famous example, British authorities have sought the extradition from Moscow of former KGB bodyguard and current Duma member Andrew Lugovoi for the murder by Polonium poisoning of Alexander Litvinenko in London in November 2006.32 Kremlin proxies, such as Chechnya’s Ramzan Kadyrov, may have agents doing the same on his behalf on the streets of Austria, also with apparent impunity.33 At a minimum, the Russian authorities seem to have drawn a red line at additional enlargement of Euro-Atlantic organizations. Instead of allowing states and societies to decide for themselves what alliances and security or economic arrangements they want, Russian officials speak of “zones of interest” and “neutral” spaces—presumably such as Ukraine. In the worst case scenario, the Kremlin might decide to probe the resolve of existing NATO and EU security commitments. Presumably, this realization led General James Craddock to request that NATO begin defense planning for the Baltic states.34 Some believe, although the evidence is not clear, that the May 2007 cyber attack on Estonian government agencies, banks, newspapers, and other organizations was a first probe by the Russian government.35 In the August 2008 war in Georgia, for which all sides deserve some blame, experts saw evidence of additional Russian government cyber attacks and a prime example of blatant disregard for international law as the Russian government sought to change an internationally recognized border by force.36 Meanwhile, existing Euro-Atlantic organizations are negatively and directly affected by Russia’s democracy and rule of law deficit. In recent years, the European Court of Human Rights has heard far more cases from Russia than any other country, effectively substituting for Russia’s domestic judiciary. Some European human rights lawyers argue that this situation is severely undermining the court’s efficacy and ability to handle cases from a broad range of countries. Moreover, the Russian government increasingly has failed to compensate victims or their families, apparently now risking its expulsion from the Council of Europe.37 According to numerous OSCE officials, the Kremlin has waged a systematic campaign to undercut the organization’s various monitoring efforts.38 The emergent norm of international election observation has been undermined by the Kremlin’s attempts to legitimize fraudulent elections at home and in neighboring states, supporting a wave of authoritarian governments in this region.39 an obama strategy The unprecedented economic crisis and wars in Iraq and Afghanistan dominate the initial agenda of the Obama administration. Worries over another Israeli Palestinian war, relations with Iran, nuclear proliferation, and the status of al Qaeda are somewhere next on the list of serious security challenges. Russia is, of course, on the list, as was made clear by Vice President Joseph Biden’s speech in Munich, Secretary of State Hillary Clinton’s meeting with Foreign Minister Sergei Lavrov in Geneva, the April London meeting and the July Moscow summit with President Obama and President Medvedev. The Obama administration appears keen not to let U.S.-Russia policy drift as it did in the Bush administration, and the

Obama team is moving quickly to establish the organizing principles that would drive policy and guide how it copes with the political realities of Russia today, and seeking opportunities to change the relationship. As a guide to coping with creeping authoritarianism, and for planning purposes, **the Obama administration** reasonably **can** (1) assume that Russia will continue, in the near term, on an authoritarian trajectory while at the same time, try to **encourage** President **Medvedev toward more openness and engagement**; (2) consider that Russia’s political regime may grow more brittle and thus potentially more fragile, rather than more robust and invulnerable; (3) propose and prepare for joint cooperation with Moscow on a number of issues, but anticipate that these plans could be overwhelmed by internal dynamics in Russia; and (4) understand and prepare for that which is difficult to anticipate, such as the depth and length of the economic crisis, and the potential divisions within Russian leadership that might emerge over a range of issues such as whether and how to cooperate with the United States and how to address the effects of the crisis, including the use of force against civilians to stop public protest.40 The ability of any U.S. administration to shape what happens inside Russia has long been exaggerated and misunderstood. The impact of foreign assistance clearly matters to those individuals who receive funds and technical training, but recent evidence suggests that **how the U**nited **S**tates **conducts itself in the world has far more weight in terms of its ability to bolster or undermine democracy, human rights and the rule of law in other countries.**41 For example, **U.S. noncompliance with human rights norms and laws has enabled**, although not caused, **Russia’s authoritarian drift. Therefore, a robust and comprehensive effort to opt back in to international legal frameworks will have important knock-on effects for our relations with Russia, in addition to bolstering our ability to work with allies. The United States needs to shape the larger policy context in a positive, rather than a negative, way. 42 An array of** **new U.S. policies unrelated to Russia (such as** **closing Guantánamo, ending detention without charge**, and halting unlawful interrogation of terror suspects) **can help restore U.S. soft power, as well as repair the international architecture that Russia** (correctly) **views as weak and that it** (regrettably) **seeks to replace. If the United States once again is associated with justice** instead of injustice, **it will do much to shore up human rights activists inside Russia. It will also challenge core assumptions that have taken hold within the Russian elite about the hypocrisy and weakness of democracy and human rights norms within the international system.**

**Continued human rights violations risk a Russian revolution**

Harlan **Ullman**, senior advisor, Atlantic Council, “The Third Russian Revolution,” UPI, 6—12—**13**, www.upi.com/Top\_News/Analysis/Outside-View/2013/06/12/Outside-View-The-third-Russian-Revolution/UPI-84461371009900/, accessed 8-7-13.

**Make no mistake: On the current trajectory, Russia won't be immune to** many of the **forces that provoked** the so-called colored **revolutions in** adjacent states and even **the** misnomered **Arab Awakening. A third Russian revolution is unfolding.** The only questions are when will that revolution reach a critical mass and, most importantly, will the forces of autocracy or pluralism carry the day? Russia, of course, experienced two revolutions in the 20th century. The Kaiser's Germany provoked the first by sending Lenin from Switzerland to Russia in the famous sealed train in 1917. That led to the undoing of the tsar and the Kerensky government as well as the Treaty of Brest-Litovsk that ended the war with Germany and allowed the Bolsheviks to sweep away the opposition. The second revolution came about in some seven decades later. The causes were a corrupt and fundamentally dishonest political system kept in place by a disciplined central leadership and dictatorship of the party. But that required able or at least competent leadership. Instead, the ruling Politburo became a genitocracy headed by sick, old men. Leonid Brezhnev took years to die and was replaced by two even less well general secretaries. In the mid-1970s, CIA Director William Colby repeatedly predicted Brezhnev's pending demise. It wasn't until 1982 that Colby's forecast came true. In the succession process, a few younger members were elevated to the Politburo. Because of the succession of antiquated leaders, Mikhail Gorbachev found himself moving from post to post from his appointment to the Politburo in 1979. In each post, he realized that the Soviet Union was an empty shell and each department was grossly mismanaged and underperforming. Six years later, when he became general secretary, Gorbachev was determined to save the Soviet Union and modernize the failing system. Gorbachev's tools were glasnost (openness) and perestroika (restructuring). The floodgates of reform were fully opened and the old and unworkable system couldn't resist them. By 1991, the Soviet Union was no more. In the two decades since, Vladimir **Putin has emerged as the Ironman of Russia.** In the process, **Russia has been** described and **viewed by many as a kleptocracy ruled by the few who have pillaged national wealth** for their own benefits. Under what Republicans and Democrats alike in the United States see as a government of and by thugs, **human rights have been violated; dissidents and members of the media arrested; and opponents of the Kremlin subjected to purges and show trials leading to long prison sentences.** Russia's immediate neighbors are fearful of the return of the aggressive Russian bear anxious to spread its influence through manipulating its oil and natural gas reserves for political purposes and through military maneuvers designed to intimidate. Further, cyberattacks, principally against Estonia, reinforce this perception of a neo-Soviet Union under the leadership of former KGB Colonel Putin. And Putin's commitment to far greater military spending as well as unwillingness to accept NATO's missile defenses raises sinister possibilities. **Within Russia, discontent** on the part of many Russians **is waxing. Outright theft on the part of oligarchs has gone too far. Persecution** of political **opposition is particularly vexing**. And **the health and longevity of a declining population** reflects more than excesses of consumption of vodka and harsh winters. Indeed, as a buffer to Putin's intent to ramp up his military, the Kremlin faces a very limiting factor: 90 percent of all Russian youth are unfit for military service. Unfortunately, the West in general and the United States in particular have never been very good at Kremlinology (or indeed in understanding many foreign cultures). **Whether Putin is aware of the ticking time bomb over which he presides or not, Russia is still very important to Western interests**. Syria and Iran are two major crises where Russian support could be important.

**That causes miscalc and nuclear war**

**Pry 99** (Peter Vincent, Former US Intelligence Operative, War Scare: U.S.-Russia on the Nuclear Brink, netlibrary)

**Russian internal troubles**—such as a leadership crisis, coup, or civil war—**could aggravate Russia’s fears of foreign aggression and lead to a miscalculation of U.S. intentions and to nuclear overreaction**. While this may sound like a complicated and improbable chain of events, **Russia’s story** in the 1990s **is one long series of domestic crises that have all too often been the source of nuclear close calls.** The war scares of August 1991 and October 1993 arose out of coup attempts. The civil war in Chechnya caused a leadership crisis in Moscow, which contributed to the nuclear false alarm during Norway’s launch of a meteorological rocket in January 1995. Nuclear war arising from Russian domestic crises is a threat the West did not face, or at least faced to a much lesser extent, during the Cold War. **The** Russian **military’s continued fixation on surprise-attack scenarios into the 1990s, combined with Russia’s deepening internal problems, has created a situation in which the U**nited **S**tates **might find itself the victim of a preemptive strike for no other reason than a war scare born of Russian domestic troubles.** At least in nuclear confrontations of the 1950s–1970s—during the Berlin crisis, Cuban missile crisis, and 1973 Middle East war—both sides knew they were on the nuclear brink. There was opportunity to avoid conflict through negotiation or deescalation. The nuclear war scares of the 1980s and 1990s have been one-sided Russian affairs, with the West ignorant that it was in grave peril.

### Judiciary

#### Contention ( ) is Judicial Independence:

#### Recent detention rulings have undermined U.S. judicial independence

**McCormack 13** (Wayne, E. W. Thode Professor of Law at the University of Utah S.J. Quinney College of Law, "U.S. Judicial Independence: Victim in the “War on Terror”," https://today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/)

**One of the principal victims in the U.S**. so-called “**war on terror” has been the** independence of the U.S. Judiciary. **Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside**, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. **The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review**. In the face of governmental claims of crisis and national security needs, **the courts have refused to examine, or have examined with undue deference, the actions of government officials**.¶ **The U.S**. Government has taken the position that inquiry by the **judiciary** into a variety of actions **would threaten the safety of the nation**. **This is pressure that** amounts to intimidation. When this level of pressure is mounted to create exceptions to established rules of law, it undermines due process of law. Perhaps one or two examples of Government warnings about the consequences of a judicial decision would be within the domain of legal argument. But **a long pattern of threats and intimidation to depart from established law undermines judicial independence**. That has been the course of the U.S. “war on terror” for over a decade now.¶ Here are some of the governmental actions that have been challenged and a brief statement of how the Courts responded to Government demands for deference.¶ 1. Guantanamo.¶ **In Boumediene** v. Bush,1 **the Supreme Court allowed the U.S. to detain** alleged “terrorists” under unstated standards to be developed by the lower courts **with “deference” to Executive determinations**. The intimidation exerted on the Court was reflected in Justice Scalia’s injudicious comment that the Court’s decision would “surely cause more Americans to be killed.

#### The plan’s ruling reaffirms judicial independence—it’s modeled across the world and solves rule of law- specifically nepal

Michael P. **Scharf** et al., Counsel of Record, Brief of the Public International Law & Policy Group as Amicus Curiae in Support of the Petitioners, Jamal Kiyemba, et. Al., v. Barack H. Obama, et al., SCOTUS, No. 08-1234, 12—**09**, p. 3-8.

**The precedent of this Court has a significant impact on rule of law in foreign states**. **Foreign governments, in particular foreign judiciaries, notice and follow the example set by the U.S. in upholding the rule of law**. **As foreign** governments and **judiciaries grapple with** new and challenging issues associated with **upholding the rule of law during times of conflict, U.S. leadership on the primacy of law during the war on terror** is particularly **important**. Recent decisions of this Court have reaffirmed the primacy of rule of law in the U.S. during the war on terror. As relates to the present case, a number of this Court’s decisions, most notably **Boumediene** v. Bush, 128 S.Ct. 2229 (2008**), have established clear precedent that** Guantanamo detainees **have a right to** petition for **habeas corpus relief. Despite a clear holding** from this Court in Boumediene, the **Court of Appeals sought** in Kiyemba v. Obama **to narrow Boumediene** **to such a degree as to render this Court’s ruling hollow**. 555 F.3d 1022 (D.C. Cir. 2009). **The** present **case is** thus **a test of both the substance of the right granted in Boumediene and the role of this Court in ensuring** faithful **implementation of its prior decisions**. Although this Court’s rulings only have the force of law in the U.S., foreign governments will take note of the decision in the present case and use the precedent **set by this Court** to guide their actions in times of conflict. PILPG has advised over two dozen foreign states on peace negotiations and post-conflict constitution drafting, as well as all of the international war crimes tribunals. Through providing pro bono legal assistance to foreign governments and judiciaries, PILPG has observed the important role this Court and U.S. precedent serve in promoting rule of law in foreign states. In Uganda, for example, the precedent established by this Court in Hamdan v. Rumsfeld, 548 U.S. 557 (2006), and Boumediene, influenced judges and legislators to incorporate the principles of judicial review and enforceability in their domestic war crimes bill. In Nepal, this Court has served as a model for the nascent judiciary. In Somaliland, the government relied heavily on U.S. terrorism legislation when drafting terrorism legislation for the region. And in the South Sudan peace process, the Sudan People’s Liberation Movement/Army (SPLM/A), the leading political party in the Government of Southern Sudan, relied on U.S. precedent to argue for the primacy of law and the importance of enforceability of previous adjudicative decisions in the Abyei Arbitration, one of the most important and contentious issues in the ongoing implementation of the peace agreement**. Foreign judges also follow the work of this Court closely**. In a number of the judicial training programs PILPG has conducted, **foreign judges have** asked PILPG detailed questions about the role of this Court in upholding rule of law during the war on terror. A review of foreign precedent confirms how closely foreign judges follow this Court. **In numerous foreign states, and in the international war crimes tribunals, judges regularly cite the precedent of this Court to establish their own legitimacy, to shore up judicial authority against overreaching** **by powerful executives, and to develop** a strong **rule of law within their own legal systems.** **Given the significant influence of this Court on foreign governments and judiciaries**, a decision in Kiyemba implementing Boumediene will reaffirm this Court’s leadership **in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict**.

#### Rule of law solves global instability

Feldman 8 [Noah Feldman, a contributing writer for the magazine, is a law professor at Harvard University and an adjunct senior fellow at the Council on Foreign Relations, “When Judges Make Foreign Policy”, NEW YORK TIMES, 9—25—08, www.nytimes.com/2008/09/28/magazine/28law-t.html]

Looking at today’s problem through the lens of our great constitutional experiment, it emerges that there is no single, enduring answer to which way the Constitution should be oriented, inward or outward. The truth is that we have had an inward- and outward-looking Constitution by turns, depending on the needs of the country and of the world. Neither the text of the Constitution, nor the history of its interpretation, nor the deep values embedded in it justify one answer rather than the other. In the face of such ambiguity, the right question is not simply in what direction does our Constitution look, but where do we need the Constitution to look right now? Answering this requires the Supreme Court to think in terms not only of principle but also of policy: to weigh national and international interests; and to exercise fine judgment about how our Constitution functions and is perceived at home and abroad. The conservative and liberal approaches to legitimacy and the rule of law need to be supplemented with a healthy dose of real-world pragmatism. In effect, the fact that the Constitution affects our relations with the world requires the justices to have a foreign policy of their own. On the surface, it seems as if such inevitably political judgments are not the proper province of the court. If assessments of the state of the world are called for, shouldn’t the court defer to the decisions of the elected president and Congress? Aren’t judgments about the direction of our country the exclusive preserve of the political branches? Indeed, the **Supreme Court** does need to be limited to its proper role. But when it comes to our **engagement with the world,** that roleinvolves taking a stand, **not stepping aside.** The reason for this is straightforward: the court is in charge of interpreting the Constitution, and the Constitution plays a major role in shaping our engagement with the rest of the world. The court therefore has no choice about whether to involve itself in the question of which direction the Constitution will face; it is now unavoidably involved. Even choosing to defer to the other branches of government amounts to a substantive stand on the question. That said, **when the court exercises its own independent political judgment, it** still **does so in** a distinctively legal way**.** For one thing, the court can act only through deciding the cases that happen to come before it, and the court is limited to using the facts and circumstances of those cases to shape a broader constitutional vision. The court also speaks in the idiom of law — which is to say, of regular rules that apply to everyone across the board. It cannot declare, for instance, that only this or that detainee has rights. It must hold that the same rights extend to every detainee who is similarly situated. **This**, too, **is an effective constraint on the way the court exercises** its policy **judgment.** Indeed, it is this very regularity that gives its decisions legitimacy as the product of judicial logic and reasoning. Why We Need More Law, More Than Ever So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. **We need to build and rebuild alliances — and law has** historically **been** one of **our best tool**s for doing so. In our present precarious situation, **it would be a** terrible **mistake to** abandon ourhistoric **position of leadership in the g**lobal **spread of** the **rule of law. Our leadership matters** for reasons both universal and national. Seen from the perspective of the world, **the fragmentation of power** after the cold war **creates new dangers** of disorder that need to be mitigated by the sense of regularity and predictability **that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all**. From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration’s lawyers often insisted that law was a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of “lawfare” as a threat to the United States is based on a misunderstanding of the very essence of how law operates. **Law** comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it **regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker** people or **states by promising them rules** and a fair hearing than by threatening them constantly with force**.** After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over.

#### That solves corruption

Sanghera 11**,** Office of the High Commissioner for Human Rights in Nepal, Nepal Bar Association (NBA) Interaction on Independence of Judiciary for Human Rights, http://nepal.ohchr.org/en/resources/Documents/English/statements/HCR/Year2011/May/2011\_05\_26\_Speech\_NBA\_Interaction\_on\_Independence\_of\_Judiciary\_for\_HR\_E.pdf

• It is crystal clear that judicial Independence is a matter of human rights. Independent judiciary is a must for rule of law and effective protection of fundamental human rights and freedoms of the people. If we take a look at universal bills of human rights, we can see a number of references to independent judiciary. For instance, Article 8 of UDHR provides, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” • This has also been incorporated in ICCPR. Article 2(3) of the ICCPR obliges the State to ensure that the right to a remedy is determined by competent judicial, legal or administrative authorities while the Article 14 (1) of the ICCPR guarantees the right to equality before the courts and tribunals and right to a fair and public hearing by a competent, independent and impartial tribunal. In response to Gonzalez del Rio v. Peru (1992) case, the UN Human Rights Committee labeled this right as “an absolute PAGE: 2 right that may suffer no exception”. UN HRC further recognizes that the independence of judiciary consist of a number of things including "actual independence of the Judiciary from the executive branch and the legislative’. • Independence of judiciary has been recognized as an unchallengeable principle globally. This principle received considerable elaboration in the UN Basic Principles on the Independence of the Judiciary (1985), which urges the States to ensure institutional as well as functional independence of judiciary. In this regard, allow me to remind you what these principles mainly require: constitutional guarantee that the judiciary is independent of the other branches of government; non-interference in internal matters of judicial administration; independence in financial matters and a provision of sufficient funds to perform their functions efficiently; the duty of others to respect judicial independence and observe the judicial decisions; jurisdictional exclusivity over all issues of a judicial nature (ban on exceptional or military courts); finality of decisions, meaning that the decisions of the courts are not subject to any revision outside the judiciary; and right and duty of the Judiciary to ensure fair court proceedings and reasoned decisions. • In terms of functional independence, UN Principles on Independence of Judiciary stand for a transparent and representative system of appointments by an independent body based on professional qualifications and personal integrity; security of tenure and adequate remuneration; effective and independent disciplinary mechanisms; right of judges to join professional associations; independence of judges in the performance of professional duties; a right and a duty to decide cases according to law; promotion of judges on basis of objective factors; and removal only for reasons of ‘incapacity or behaviour that renders them unfit to discharge their duties’. • I am pleased to note that Nepal has a strong constitutional tradition of guaranteeing fundamental rights together with an independent judiciary as an immutable safeguard for such rights. Since the ongoing Constitution-making process offers an historic opportunity to strengthen the foundation for the Nepalese State firmly grounded on respect for human rights and justice, it is crucial that the Constituent Assembly further strengthen the independence of the judiciary at the highest level in order to enable PAGE: 3 Nepali people to receive an appropriate remedy determined by competent and independent judicial institutions. In this regard, it is highly important to ensure an independent check and balance through judiciary against legislative and executive excesses encroaching upon fundamental rights and freedoms. • Experience from around the world tells us that even the most perfectly drafted Constitution does not, in itself, guarantee the enjoyment of human rights. The rights recognized in the Constitution must be given effect by independent bodies. In this regard, strong independent judiciary with sufficient power to hold the Government to account, and national human rights institutions that can adjudicate complaints of human rights violations are vital for effective accountability mechanisms.

#### It’s increasing now and will collapse Nepal

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FOR more than two decades, Nepal, a resource-rich, impoverished country wedged between China and India, has teetered between paralysis and upheaval. Its people have witnessed the transition, in 1990, from an authoritarian Hindu kingdom to a constitutional monarchy; the massacre of members of the royal family in 2001 by the heir to the throne; a decade-long civil war between Maoist insurgents and the government that ended in a faltering peace agreement in 2006; and the removal of the monarchy altogether in 2008.

Since the civil war ended, after the loss of more than 16,000 lives, **a** stalemate has ensued as each party caters to caste, class and ethnic divisions instead of national unity. Many politicians are maneuvering to get their hands on money from foreign aid, tourism and hydropower; even the Maoists have become crony capitalists, reaping large profits for themselves and their ostensibly proletarian party. Meanwhile, the bureaucracy, army and police — historically dominated by privileged social groups that never held them accountable — are becoming even more politicized and corrupt. Although Nepal is no stranger to crises, the one currently seizing the country risks turning it into afailed state. On May 27, the 601-member legislature, which had been directed to write a new constitution for what is now a democratic republic, missed its deadline for the fourth time since it was created in 2008. Hours before the deadline, after the Supreme Court refused to grant another extension, the Maoist prime minister, Babur/am Bhattarai, dissolved the legislature, known as the Constituent Assembly, and scheduled nationwide elections for Nov. 22. Although averting imminent political disaster and violence, the call for elections is unlikely to bring consensus among the self-interested and fractious political leaders, and is quite likely to produce an even more divided legislature. The fitful struggle to develop a constitution bothepitomizes and exacerbatesthe country’sethnic, religious, geographical, caste and class divisions. More than 90 languages are spoken in this country, about the size of Illinois. Buddhists and Muslims are sizable minorities among the largely Hindu population. Lower-caste people and rural residents have been historically marginalized; the grievances run deep. However, instead of unifying the country, constitution-drafting has become a frenzied contest to secure special privileges for one’s own community. By making promises they can’t fulfill, politicians arelosing control of the very animosities they’ve whipped up. Political parties have organized paralyzing protests, with barricades and roadblocks, to demand, or oppose, separate ethnic- and caste-based states within a federal system. The protests have shut down commercial activity across a country that can ill afford such losses: with a per-capita gross domestic product of $490, Nepal is one of the poorest countries in the world;unemployment is at 45 percent**.** The parties are using criminal groups to recruit stick-wielding youths to protest. Induced by a fistful of rupees, a rare treat of a meat meal and an illusion of empowerment, these youth have roughed up drivers and set fire to vehicles that attempt to pass the barriers. Some groups have attacked journalists. Reinforced by former fighters, the Maoist party is among the most effective in demonstrating its street might. Fearing a loss of power, the traditional economic and political elite, the Brahmin and Chhetri castes, who dominate the Nepali Congress Party, have begun to emulate the Maoists’ street tactics. On Monday, in a move symptomatic of the mistrust and cynicism, dozens of political parties, including the Nepali Congress, raised suspicions about the Maoists’ motives in dissolving the Constituent Assembly and called for protests against its dissolution. Few Nepalis expect the present situation to explode into another civil war, but increasingly brazen and regular acts of violence in the capital demonstrate that lawlessness has reached crisis proportions. With most institutions malfunctioning and the system of patronage deeply ingrained, bribery and political connections rule the day. Individual acts of courage against corruption are cause for hope, but to fully restore the rule of law, and respect for it, Nepal needs to step up its efforts to improve public integrity. A prominent anti-corruption agency has been leaderless for over a year as parties bicker over who should lead it.

#### Nepali instability causes India-China nuclear war

Poudel 2 (Keshab, Looming Uncertainty, The National NewsMagazine, 21(34), 3-8,

http://www.nepalnews.com.np/contents/englishweekly/spotlight/2002/mar/mar08/national2.htm)

Following the September 11 terrorist attacks, however, the United States and western European countries have been expressing solidarity with Nepal. The visit of US Secretary of State Colin Powell and expressions of concern from other western powers over the last three months underscore how the dimensions of violence in Nepal has extended beyond its frontiers. After the government imposed the state of emergency and the Maoist launched deadly assaults in Achham and Salyan districts, **western powers have** increased their interest in the kingdom. The growing concern expressed by Washington and European powers is understandable, as escalating violence and instability in Nepal could heighten the possibility of external intervention. Such intervention from either of Nepal's two neighbors — India and China — may trigger a direct conflict between the two. Even an indirect conflict between the two Asian powers could prove to be more dangerous than the confrontation between India and Pakistan. Foreign-relations experts say the recent visit of British Foreign Office Minister Ben Bradshaw to Nepal and US Ambassador Michael E. Malinowski trip to Achham and Salyan are clear indicators of Nepal's geo-strategical importance. Another senior US diplomat, A. Peter Burleigh, spoke more candidly about US concerns over the possibility of a prolonged confrontation. "[W]hen situations arise that challenge that positive world order, and which can be addressed by a collective response, it is the responsibility and obligation of all of our countries to come together to restore and preserve the peace," said Ambassador Malinowski in an address to a seminar on South Asian Peace Operations. "Here in Nepal, as we all know, there is no peace. But I do believe that there are lessons for both those of us who live in Nepal and for the international community," he said. Nepal's Position in South Asia Nepal has been ensnared in political instability following the restoration of democracy in 1990. After the Maoist insurgency began in 1996, the kingdom's economic, security and political processes have been thrown into a tangle. According to the Central Bureau of Statistics, Nepal has a length of 885-km (east-west) and a non-uniform mean width of 193-km (north-south). The kingdom shares a frontier of more than 1400 km with China in north and more than 1600 km with India in the east, west and south. The Nepal-India border is open and easy to cross. Although the frontier with China is more or less open, it straddles rugged mountain terrain. It is impossible to build border posts along the border with either country. Therefore, the geographical position of Nepal has been psychologically threatening to both neighbors. "China appears very sensitive towards activities against her in neighboring countries, including Nepal. China's security concern is indicated from [the visits of its] defense minister, senior army officials and home ministry officials from time to time," says Hiranya Lal Shrestha, a foreign relations expert in his article "Nepal-India Relations: Security Issue" published in Policy Study Series by the Institute of Foreign Affairs (November 2000). "At the same time, we cannot overlook the weaknesses of a landlocked state. Indian security perception regards the Himalayas as its sphere of influence. Since 14.9 percent of Nepal's territory lies to the north of the Himalayas, we may have to be divided into two spheres of influence if the northern neighbour also puts forward similar logic concerning its security perception. Nepal, in brief, does not want to remain under anyone's sphere of influence," says Shrestha. Be it the British Raj or independent India, Chinese influence in Nepal has always been a matter of concern to leaders of the south neighbor. In the book, "Life of Brian Houghton Hodgson, the British Resident at the Court of Nepal", William Wilson Hunter mentions how the British government was worried about Nepal's relations with China in 18th century. "But my situation by no means so agreeable as it might be if these barbarians did but know their own good. Instead of which they are insolent and hostile and play off on us, as far as they can dare, the Chinese etiquette and foreign polity. The Celestial Emperor is their idol, and, by the way, whilst I write, the  [Nepalese] sovereign himself is passing by the Residency in all royal pomp to go three miles in order to receive a letter which has just reached Nepal from Pekin. There they go! Fifty chiefs on horseback, royalty and royalty's advisors and on eight elephants and three thousand troops before and behind the cavalcade! They have reached the spot. The Emperor's letter, enclosed in a cylinder covered with brocade, hangs round the neck of a chief; who mounted on a spare elephant, is placed at the head of the cavalcade, and the cortege," writes Hodgson in a letter. This reflected how assertive and powerful the Chinese were in the internal dimensions of Nepalese politics in the 18th century. After independence, Indian leaders have been equally concerned about security issues, considering Nepal and Tibet to be the soft underbelly of their own country's security. "This is altogether more inexplicable when one examines the rapidity with which Nehru reacted to events in Nepal in the mid-fifties, forcefully intervening there to restore the Nepalese monarchy. Nepal and Tibet were both Himalayan kingdoms, both were of vital strategic importance to India, and they were both afflicted, almost simultaneously, whether externally or internally, and yet India and its political leadership reacted differently," writes Indian Foreign Minister Jaswant Singh in his book "Defending India". Referring to India's security, Indian Prime Minister Jawahar Lal Nehru once observed: "Now our interest in the internal conditions of Nepal became still more acute and personal, if I may say so, because of the developments in China and Tibet, to be frank. And regardless, of our feelings about Nepal, we were interested in our country's border. We have had from immemorial time a magnificent frontier, that is to say, the Himalayas are concerned, and they lie on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal and we are not going to tolerate any person coming over that barrier. Therefore, much as we appreciate the independence of Nepal, we cannot risk our own security by anything going wrong in Nepal." For his part, Li Peng, the chairman of China's National People's Congress, openly expressed China's security concerns in Nepal during the visit of Sher Bahadur Deuba in 1998 as a former prime minister. South Asia has three nuclear powers, India, China and Pakistan. Two powers, China and India, are competing for the status of regional power. Any form of direct confrontation between China and India in the south of the Himalayas will have far-reaching consequences.

**US judicial independence is a key model for Africa—detention policy is used to justify abuses**

**CJA et al 3** ("Brief of the Center for Justice and Accountability, International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," October, Odah vs. USA and Rasul vs. Bush, <http://jenner.com/system/assets/assets/5567/original/AmiciCuriae_Center_for_Justice_Int_League_Human_Rights_Adv_For_Indep_Judiciary2.pdf?1323207521>)

**Other Nations Have Curtailed Judicial Review During Times Of Crisis, Often Citing the United States' Example, And Individual Freedoms Have Diminished As A Result.** While much of the world is moving to adopt the institutions necessary to secure individual rights, many still regularly abuse these rights. **One of the hallmarks of tyranny is the lack of a strong and independent judiciary**. Not surprisingly, where countries make the sad transition to tyranny, one of the first victims is the judiciary. **Many of the rulers that go down that road** justify their actions on the basis of national security and **the fight against terrorism, and, disturbingly**, many **claim to be modeling their actions on the U**nited **S**tates. Again, a few examples illustrate this trend**. In Peru, one of former President Alberto Fujimori’s first acts in seizing control was to assume direct executive control of the judiciary**, claiming that it was justified by the threat of domestic terrorism. He then imprisoned thousands, refusing the right of the judiciary to intervene. International Commission of Jurists, Attacks on Justice 2000-Peru, August 13, 2001, available at http://www.icj.org/news.php3?id\_article=2587&lang=en (last visited Jan. 8, 2004). In Zimbabwe, President Mugabe’s rise to dictatorship has been punctuated by threats of violence to and the co-opting of the judiciary. He now enjoys virtually total control over Zimbabweans' individual rights and the entire political system. R.W. Johnson, Mugabe’s Agents in Plot to Kill Opposition Chief, Sunday Times (London), June 10, 2001; International Commission of Jurists, Attacks on Justice 2002— Zimbabwe, August 27, 2002, available at http://www.icj.org/news.php3?id\_article=2695&lang=en (last visited Jan. 8, 2004). While Peru and Zimbabwe represent an extreme, the independence of the judiciary is under assault in less brazen ways in a variety of countries today. **A highly troubling aspect of this trend is the fact that** **in many of these instances those perpetuating the assaults on the judiciary have pointed to the United States’ model to justify their actions**. Indeed, **many have specifically referenced the United States’ actions in detaining persons** in Guantánamo Bay. For example, Rais Yatim, **Malaysia's "de facto law minister" explicitly relied on the detentions at Guantánamo to justify** Malaysia's **detention of more than 70 suspected Islamic militants for over two years**. Rais stated that Malyasia's detentions were "just like the process in Guantánamo," adding, "I put the equation with Guantánamo just to make it graphic to you that this is not simply a Malaysian style of doing things." Sean Yoong, "Malaysia Slams Criticism of Security Law Allowing Detention Without Trial," Associated Press, September 9, 2003 (available from Westlaw at 9/9/03 APWIRES 09:34:00). Similarly, when responding to a United States Government human rights report that listed rights violations in Namibia, **Namibia's Information Permanent Secretary Mocks Shivute cited the Guantánamo Bay detentions, claiming that "the US government was the worst human rights violator in the world**." BBC Monitoring, March 8, 2002, available at 2002 WL 15938703. Nor is this disturbing trend limited to these specific examples. At a recent conference held at the Carter Center in Atlanta, **President Carter**, specifically citing the Guantánamo Bay detentions, **noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already."** Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "**Every dictator in the world is using what the** U**nited** S**tates has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights**." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in **indefinite detention** in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — **helps create a free license for tyranny in Africa**. **It helps justify Egypt's move to detain human rights campaigners as threats to national security, and does the same for similar measures by the governments of Ivory Coast, Cameroon and Burkina Faso.**" Available at http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat e=20030121123259. In our uni-polar world, **the United States** obviously **sets an important example** on these issues. As reflected in the foundational documents of the United Nations and many other such agreements, **the international community has consistently affirmed the value of an independent judiciary to the defense of universally recognized human rights**. In the crucible of actual practice within nations, **many have looked to the** U**nited** S**tates model when developing independent judiciaries with the ability to check executive power in the defense of individual rights. Yet others have justified abuses by reference to the conduct of the United States**. **Far more influential than** the **words** of Montesquieu and Madison **are the actions of the United States. This** case **starkly presents the question of which model this Court will set for the world**. This case starkly presents the question of which model **this Court** will set for the world. CONCLUSION Much of the world models itself after this country’s two hundred year old traditions — and still more on its day to day implementation and expression of those traditions. To say that a refusal to exercise jurisdiction in this case will have global implications is not mere rhetoric. **Resting on this Court’s decision** is not only the necessary role this Court has ¶ historically played in this country. Also at stake **are the freedoms that many in emerging democracies around the globe seek to ensure for their peoples**. Africa

#### Judicial independence prevents African instability

Mbaku 13 (John Mukum, Presidential Distinguished Professor of Economics, Willard L. Eccles Professor of Economics, and John S. Hinckley Research Fellow at Weber State University, "PROVIDING A FOUNDATION FOR WEALTH CREATION AND DEVELOPMENT IN AFRICA: THE ROLE OF THE RULE OF LAW," 38 Brooklyn J. Int'l L. 959, lexis)

These priorities are all interrelated. For example, the failure of African governments to manage ethnic and religious diversity has often resulted in destructive and violent mobilization by groups that perceive themselves as being marginalized by a central government dominated and controlled by other groups. n308 The result has been significantly high levels of political instability, which have created economic environments that are not suitable for, or conducive to, investment and/or engagement by entrepreneurs in productive activities. Peaceful coexistence creates opportunities for mutually-beneficial exchanges between groups, which may include cultural exchanges and trade. Such exchanges can lead to innovation and the creation of new knowledge that can aid production and the peaceful resolution of problems and conflicts. State actors, such as civil servants and politicians, are responsible for a significant amount of the corruption and rent seeking that takes place in the African countries today. n309 [\*1051] Thus, to minimize the engagement of state actors in growth-inhibiting behaviors, it is necessary that the state be adequately constrained by the constitution. To adequately restrain the state, the law must be supreme--no citizen, regardless of their political, economic, or traditional standing in society, can be above the law. Judicial independence must alsobe assured, so that the executive does not turn judiciary structures into instruments of control and plunder**.** In addition, the laws chosen must reflect the values and aspirations of citizens, that is, the laws need to be locally-focused, and must also be laws that citizens can obey in order to enhance compliance and minimize the costs of policing. Furthermore, government operations must be conducted in an open and transparent manner to minimize corruption, enhance participation, and increase the people's trust in the government. Finally, the rights of minorities must be protected--it is critical that the rights of minority ethnic and religious groups be protected, not just from state tyranny, but also from violence perpetuated against them by non-state actors. The rule of law is a critical catalyst to Africa's effort to deal effectively with poverty. Each country must engage its citizens in democratic constitution-making to provide laws and institutions that guarantee the rule of law. One must caution that what is being advocated here is not simple regime change as has occurred in many countries throughout the continent. In order to secure institutional arrangements that guarantee the rule of law, countries must engage in the type of robust state reconstruction that provides all of the country's relevant stakeholders with the wherewithal to participate fully and effectively in institutional reforms. It is only through such a democratic process that a country can avail itself oflegal and judicial frameworks that guarantee the rule of law, and hence, provide the environment forpeaceful coexistence, wealth creation, and democratic governance.

**Escalates to great power war**

**Glick 7** (Caroline, Senior Middle East Fellow – Center for Security Policy, “Condi’s African Holiday”, 12-12, [http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568](http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568%29))

US Secretary of State Condoleezza Rice introduced a new venue for her superficial and destructive stewardship of US foreign policy during her lightning visit to the Horn of Africa last Wednesday. The Horn of **Africa is a dangerous and strategically vital place. Small wars**, which rage continuously, **can** easily escalate **into big wars. Local conflicts** have regional and global **aspects. All** of the **conflicts in this tinderbox, which controls shipping lanes** from the Indian Ocean into the Red Sea, **can** potentially **give rise to** regional, and indeed global conflagrations **between competing regional actors and** global powers. Located in and around the Horn of Africa are the states of Eritrea, Djibouti, Ethiopia, Somalia, Sudan and Kenya. Eritrea, which gained independence from Ethiopia in 1993 after a 30-year civil war, is a major source of regional conflict. Eritrea has a nagging border dispute with Ethiopia which could easily ignite. The two countries fought a bloody border war from 1998-2000 over control of the town of Badme. Although a UN mandated body determined in 2002 that the disputed town belonged to Eritrea, Ethiopia has rejected the finding and so the conflict festers. Eritrea also fights a proxy war against Ethiopia in Somalia and in Ethiopia's rebellious Ogaden region. In Somalia, Eritrea is the primary sponsor of the al-Qaida-linked Islamic Courts Union which took control of Somalia in June, 2006. In November 2006, the ICU government declared jihad against Ethiopia and Kenya. Backed by the US, Ethiopia invaded Somalia last December to restore the recognized Transitional Federal Government to power which the ICU had deposed. Although the Ethiopian army successfully ousted the ICU from power in less than a week, backed by massive military and financial assistance from Eritrea, as well as Egypt and Libya, the ICU has waged a brutal insurgency against the TFG and the Ethiopian military for the past year. The senior ICU leadership, including Sheikh Hassan Dahir Aweys and Sheikh Sharif Ahmed have received safe haven in Eritrea. In September, the exiled ICU leadership held a nine-day conference in the Eritrean capital of Asmara where they formed the Alliance for the Re-Liberation of Somalia headed by Ahmed. Eritrean President-for-life Isaias Afwerki declared his country's support for the insurgents stating, "The Eritrean people's support to the Somali people is consistent and historical, as well as a legal and moral obligation." Although touted in the West as a moderate, Ahmed has openly supported jihad and terrorism against Ethiopia, Kenya and the West. Aweys, for his part, is wanted by the FBI in connection with his role in the bombing of the US embassies in Kenya and Tanzania in 1998. Then there is Eritrea's support for the Ogaden separatists in Ethiopia. The Ogaden rebels are Somali ethnics who live in the region bordering Somalia and Kenya. The rebellion is run by the Ogaden National Liberation Front (ONLF) which uses terror and sabotage as its preferred methods of warfare. It targets not only Ethiopian forces and military installations, but locals who wish to maintain their allegiance to Ethiopia or reach a negotiated resolution of the conflict. In their most sensationalist attack to date, in April ONLF terror forces attacked a Chinese-run oil installation in April killing nine Chinese and 65 Ethiopians. Ethiopia, for its part has fought a brutal counter-insurgency to restore its control over the region. Human rights organizations have accused Ethiopia of massive human rights abuses of civilians in Ogaden. Then there is Sudan. As Eric Reeves wrote in the Boston Globe on Saturday, "The brutal regime in Khartoum, the capital of Sudan, has orchestrated genocidal counter-insurgency war in Darfur for five years, and is now poised for victory in its ghastly assault on the region's African populations." The Islamist government of Omar Hasan Ahmad al-Bashir is refusing to accept non-African states as members of the hybrid UN-African Union peacekeeping mission to Darfur that is due to replace the undermanned and demoralized African Union peacekeeping force whose mandate ends on December 31. Without its UN component of non-African states, the UN Security Council mandated force will be unable to operate effectively. Khartoum's veto led Jean-Marie Guehenno, the UN undersecretary for peacekeeping to warn last month that the entire peacekeeping mission may have to be aborted. And the Darfur region is not the only one at risk. Due to Khartoum's refusal to carry out the terms of its 2005 peace treaty with the Southern Sudanese that ended Khartoum's 20-year war and genocide against the region's Christian and animist population, the unsteady peace may be undone. Given Khartoum's apparent sprint to victory over the international community regarding Darfur, there is little reason to doubt that once victory is secured, it will renew its attacks in the south. **The conflicts in the Horn of Africa have** regional and global dimensions. Regionally, Egypt has played a central role in sponsoring and fomenting conflicts. Egypt's meddling advances its interest of preventing the African nations from mounting a unified challenge to Egypt's colonial legacy of extraordinary rights to the waters of the Nile River which flows through all countries of the region.

**African instability destroys the Congo River Basin**

**Sites 4** (Kevin, Conflict Studies Expert @ World Wildlife Fund, "Conflict in the Green Heart of Africa," http://wwf.panda.org/what\_we\_do/where\_we\_work/congo\_basin\_forests/problems/conflict/)

**In the Congo River Basin, conflict has been a recurring nuisance** for the development of several countries. Natural resources play a significant role in feeding **conflicts**, many of which **involve securing** control and **access to natural resources**. **Communities and forests pay the price**.¶ Wars in the Congo River Basin involve groups of combatants that are always on the move, gaining temporary control over towns and settlements, but who are almost never able to subdue the surrounding areas. ¶ The constant movement of militias and the unpredictability of their actions have a devastating impact on human lives. ¶ Estimates of war-related deaths in eastern regions of the Democratic Republic of Congo (DRC) range from 3.3 million to 4.5 million. **To avoid conflict, refugees and displaced rural populations avoid major roads and move into the forests and protected areas**, where they are less likely to encounter soldiers and rebels.1 ¶ How natural resources fuel war¶ **Natural resources such as timber**, as well as other commodities such as diamonds, **all play roles in motivating these wars because of their characteristics** (accessibility, weight-to-value ratios and the ability to loot, conceal and sell them later)2. ¶ In the DRC, rebel groups, government troops and their foreign allies have used the country’s diamonds, gold, timber, ivory, coltan and cobalt to pay for their war-related expenses.3 ¶ Perpetuating conflict…¶ A United Nations panel of experts on the illegal exploitation of natural resources of the DRC recently stated that "**illegal exploitation remains one of the main sources of funding for groups involved in perpetuating conflict**". ¶ According to the panel, neighbouring countries such as Rwanda, Uganda, Burundi and Zimbabwe have all helped themselves to the DRC's gold, diamonds, timber and coltan; systematically stripping factories, farms and banks in the process.4 ¶ What are the impacts of conflict?¶ A breakdown in the rule of law and other controls during and immediately after conflicts. ¶ Mass movements of people and human rights abuses. ¶ Decline in agricultural production, trade and food availability as conditions become unsafe to carry out such activities and transport is disrupted. ¶ Increased dependence on wild natural resources (such as bushmeat) for survival when other livelihoods are made impossible: **As refugees seek means to sustain themselves away from their home areas and hold their families together, they often invade poorly protected areas** in search of housing materials, bush foods and products that they can sell. ¶ **Protected areas** also **often contain more wildlife than other areas** and can thus provide a ready supply of meat for rebels or small armies. ¶ Moreover, **when it becomes too dangerous for the staff in protected zones to continue patrols, the frequency of illegal** mining of gold and diamonds, hunting for ivory and bushmeat, **felling of timber** and agricultural encroachment **often increases.5**

**Destruction of the Congo River Basin forests ensures planetary extinction**

Boukongou 5 (Jean Didier, Professor – Central African Catholic University (Cameroon), “The Protection of the Congo basin: A Multilateral Challenge", www.african-geopolitics.org/show.aspx?ArticleId=3836#\_ftn1)

This is not a revival of “good savage” ideology which is useful for the “civilized world,” but it is simply a matter of understanding that the forests of the Congo basin is the entire humanity’s precious “lung.” Beyond the traditional quarrels1 of the sycophants of environmental protection and the relevance of advocated public programs2, one notices the intensification of multilateral initiatives, which try to respond both to the stakes of protecting the Congo basin as well as to the challenge of preserving life on Earth. Nevertheless, even the advocates of sustainable development cannot forget that “bio-humanity” is a naturally complex vision of society. As far as one can go back in time, and on the principle of the divine message, man will always return to nature. This implies an organization and structuralization of spaces, which cannot be strictly limited to the protection of the fauna and flora. Consequently, international concern about the ecosystem of the Congo basin is neither the result of sudden philanthropy, nor the outcome of triumphant environmentalism. The region is a dynamic geopolitical area, where forests are a source of oil and conflicts. I think that it is fundamental not to separate the issue of forests from the less media-covered question of the rich oil and mineral resources in the hinterland and maritime zones of Central Africa. The predators are in the forests and on the political scene, and they are searching for democratic legitimacy3. Thus, I’m calling for combining the “green” debate with the “political” debate in order to promote better governance of the geopolitical basin of the Congo, give rise to concrete and multilateral awareness of the problems of Central Africa which aren’t only environmental but also political. It is a matter of emphasizing political and civil implications, on one hand, and legal instruments and institutional frameworks, on the other, in order to assure a better progressive transition in Central Africa from “Black governance” (in other words, oil-based governance) to “green governance”. A Geopolitical Basin The geographic entity called the “Congo basin” includes territories extending from the end of the Sahelian areas of Chad and Sudan and the edge of the plains along the Zambezi. The voluntarily extensive vision of this basin challenges the thesis that this forest area is confined to narrow post-colonial zones in Central African States, which doesn’t challenge the principles of international law relating to boundaries. This basin is a vast forest area that covers approximately 2,300,000 sq. km., or 26 percent of the world’s rainforests4. The forests are well known for their exceptional biodiversity and contribute, in an important way, to countering the greenhouse effect by absorbing the carbon dioxide which is emitted into the atmosphere5. This is the natural environment of more than half of the world’s wildlife and vegetable species. Some consider it the compost of numerous diseases, such as the terrible Ebola fever.The Congo basin regroups several countries (Cameroon, the Congo, the Democratic Republic of the Congo, the Central African Republic, Equatorial Guinea, Gabon, Burundi, Rwanda, Angola and Chad), which form (with Sao Tome e Principe) the Economic Community of Central African States (ECCAS). On the one side, one may identify the Congo basin area itself to the ECCAS, and on the other, consider it as the logical construction of a regional area where sustainable governance of ecosystems should contribute, via the mobility of people, to economic links and ecological flows, to restoring and strengthening peace. One must remember that during the Millenium Summit held in New York in 2000 the Heads of State and Government declared their intention not to spare “any effort in order to assure that the entire humanity, and especially our children and grandchildren, will not live on a planet irreversibly degraded by human activities whose resources can no longer meet their requirements6.” This appeal is in line with the dynamics of building the concept of sustainable development, advocated by the UICN7 in 1980 and resumed in the Bundtland report in 19878. States have to cooperate in a spirit of world partnership in order to preserve, protect and restore the integrity of the ecosystem. Of course, according to Resolutions 1803 (XVII) and 1514 (XV)9 of the United Nations General Assembly and Principle 2 of the Rio Declaration, “States have the sovereign right to exploit their own resources according to their environment and development policies.” In other words, they can implement their proper environmental policies. But these actions do not produce concrete effects. The degradation of the environment and certain natural or industrial disasters directly affect the Earth as a continuous portion of space. It is only on this scale that adequate initiatives can be taken in order to obtain durable and adequate results. International CooperationActually, environmental protection has become one of the most important issues in contemporary world relations. International cooperation is necessary to protect humanity’s common heritage. No country can do it on its own, because this is a common responsibility. Therefore, the quality of air and the atmosphere depends on world coordination in many domains. The protection of the quality of the waters of a boundary river, or of a lake common to several countries, requires international coordination and cooperation. As the International Court of Justice reminded in the case Gabcikovo-Nagymaros: “During ages, man did not stop influencing nature for economic and other purposes. In the past it often accomplished this without taking into account the effects on the environment. Due to the new horizons opened by science and the increasing awareness of the risks of these interventions for humanity – whether it is for the present or for future generations – new standards and requirements have been put in place, enounced in a substantial number of instruments over the past two decades. These new standards must be taken in consideration and these new requirements appropriately appreciated, not only when States envisage launching new activities, but also when they pursue projects that have already been launched. The concept of sustainable development expresses the need for reconciling economic development and environmental protection10.” Since the Earth Summit in Rio in 1992 the pressure exercised by NGOs and the international financial backers prompted governments to adjust their institutional frameworks and to work out coherent policies, in particular environmental action plans relating to the national, regional and international dimension. At the sub-regional level, such initiatives led to setting up mechanisms and processes such as the Conference of Ministers for Forests of Central Africa (COMIFAC)11, Conference on Central Africa’s Moist Forest Ecosystem (CEFDHAC) and the Africa Forest Law Enforcement and Governance Process (AFLEG)12. Organized in March, 1999 in Yaoundé, the summit of leaders of Central African States on the conservation and sustainable management of rain forests confirmed the Rio commitment to lead common policies for sustainable management of forested ecosystems. This regional dynamics led to the elaboration and adoption of a “convergence plan” for the Congo basin, whose main objective is the “conservation, restoration, development and durable use of biologic resources in the framework of management adapted to the social and cultural economic development of populations and the protection of the global environment13.” This convergence plan covers a ten-year period (2004-2013 and will globally cost an estimated US$ 1.5 billion, or 840 billion CFA Francs14. Regional dynamics led to international participation in efforts to respond to this universal concern, and the Johannesburg summit on sustainable development in September 200215 paved the way to a multilateral initiative: the United States of America and South Africa inspired, along with many other actors, the idea of a multilateral partnership for the protection of forests in the Congo basin. Considered as the left lung of the earth, these forests are a vegetable and wildlife reserve inextricably bound to human life16. According to Walter Kansteiner, they are a “world treasure,” a “world lung” necessary for preserving biologic diversity.

**Iraq models U.S. detention jurisprudence**

**Scharf** et al **9**, PILPG Managing Director [Professor Michael P. Scharf is the PILPG Managing Director, John Deaver Drinko — Baker & Hostetler Professor of Law and Director of the Frederick K. Cox International Law Center at the Case Western Reserve University School of Law, “BRIEF OF THE PUBLIC INTERNATIONAL LAW & POLICY GROUP AS AMICUS CURIAE IN SUPPORT OF PETITIONERS”, [www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuPILPG.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_08_1234_PetitionerAmCuPILPG.authcheckdam.pdf)]

As the foregoing examples illustrate, **foreign governments rely on the precedent set by the U.S. and this Court** when addressing new and complex issues in times of conflict. Finding for the Petitioners in the present case will reaffirm this Court’s leadership in promoting respect for rule of law in foreign states during **times of conflict.** B. **Foreign Judges Follow U.S. and Supreme Court Leadership in Times of Conflict.** In addition to its work advising foreign governments, **PILPG has been and continues to be involved in a number of judicial training initiatives in foreign states**. **These** initiatives aim to foster independent and fair judicial systems in **transitional and post-conflict states throughout Central and Eastern Europe, Africa, and the Middle East**. In these trainings, **PILPG frequently relies on the work of this Court to illustrate and promote adherence to the rule of law**. In 2004, for example, PILPG led a week-long training session for Iraqi judges in Dubai **on due process and civil liberties protections** to institute in the new post-Saddam legal system. Th**e training was seen as an important step toward the democratization of Iraq**, and something that would hasten the ability of the U.S. to withdraw its troops from Iraq. **On the second day** of the training program, local and **international media published the leaked photos of the abuses at Abu Ghraib.** **The Iraqi judges would not allow the training sessions to continue until PILPG answered to their satisfaction questions about whether the U.S. judicial system could ensure that the perpetrators would be brought to justice**, that the victims would be able to bring suit for their injuries, and that the abuses would be halted. When PILPG returned for another training session several months later, **the Iraqi judges had mixed reactions to the prosecutions of the Abu Ghraib perpetrators**. **Some judges perceived the U.S. Prosecutions of the perpetrators as not aggressive enough,** which left the Iraqi judges with the impression that **the U.S. was not leading by example**. Although other Iraqi judges appreciated and sought to follow the U.S. example to try those responsible for abuses before an independent tribunal, it was clear that **Abu Ghraib temporarily set back U.S. efforts to establish rule of law in Iraq.** A year later, in 2005, **PILPG conducted training sessions for the Iraqi high tribunal judges who would be presiding over the trial of Saddam Hussein** and other former leaders of the ba’athist regime. Even more than the human rights training of ordinary Iraqi judges discussed above, **the successful operation of the Iraqi high tribunal was seen as critical to suppressing** the spread of sectarian violence and heading off a **full-scale civil war in Iraq**. The objectives of the tribunal were twofold. First, the tribunal sought to bring those most responsible for the atrocities committed under the Ba’athist regime before an independent panel of judges to be tried under international standards of justice. Second, the tribunal sought to establish a model for upholding and implementing rule of law in Iraq and to demonstrate that the need for rule of law is greatest in response to the gravest atrocities. During the training sessions, **the Iraqi judges requested guidance on controlling disruptive defendants in the courtroom**. Specifically, **the judges asked whether they could bind and gag the defendants in the courtroom as they understood had been done to the defendants in the 1969 “Chicago Seven” trial in the U.S.** **PILPG explained that the U.S. Court of Appeals had ultimately overturned the convictions** in that case, in part because of the mistreatment of the defendants in the courtroom. United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972). **This information persuaded the Iraqi judges to seek less draconian means of control** in the trial of Saddam Hussein, which was televised gavel to gavel in Iraq. See generally Michael Newton and Michael Scharf, Enemy of the State: The Trial and Execution of Saddam Hussein (2008). **Foreign judicial interest in U.S. respect for rule of law during the war on terror is not limited to Iraqi judges**. In 2006, PILPG conducted sessions in a weeklong rule of law training program in Prague for fifty judges from former Soviet Bloc countries in Eastern Europe. At the start of the first session, one of the judges asked “Sobriaetes’ li vi goverit’ o slone v komnate?,” which translates to “Are you going to be addressing the elephant in the room?” Michael P. Scharf, The Elephant in the Room: Torture and the War on Terror, 37 Case W. Res. J. Int’l L. 145, 145 (2006). **The question referred to the so-called “White House Torture Memos,” released just before the training session began**, which asserted that Common Article 3 of the 1949 Geneva Conventions was not applicable to detainees held at Guantanamo Bay and which **provided justification for Military Commissions whose procedures would not meet the Geneva standards**. Id. at 145-46. **The group of judges asked PILPG to explain “how representatives of the** U**nited** S**tates could expect to be taken seriously in speaking about the importance of human rights law when the United States itself has recently done so much that is contrary to that body of law in the context of the so-called ‘Global War on Terror.**’” Id. at 145. PILPG addressed judges’ concerns by explaining that the President’s decision to establish Military Commissions via Executive Order, and whether those Commissions had to comport with the Geneva Conventions, was currently being reviewed by this Court in Hamdan v. Rumsfeld, 548 U.S. 557 (2006), and that the Executive Branch would be bound to follow the holding of this Court. Scharf, supra, at 148. **Foreign** judges closely follow the work of this Court and the example set by the U.S. Government in upholding the rule of law during the war on terror. As these examples illu**strate, when the U.S. upholds the rule of law, foreign judges are more likely to follow.**

**Data proves Iraqi civil war is coming now—only strong systems of governance can stabilize the country**

**Cordesman and Khazai 13** , [09/09/13, Anthony H. Cordesman holds the Arleigh A. Burke Chair in Strategy at CSIS, and Sam Khazai is an Associate at CSIS,, “Violence in Iraq: The Growing Risk of Serious Civil Conflict”, https://csis.org/files/publication/120718\_Iraq\_US\_Withdrawal\_Search\_SecStab.pdf]

**Iraq is a nation with great potential and its political divisions and ongoing low-level violence do not mean it cannot succeed in establishing stability, security, and a better life for its people**. **Iraq cannot succeed**, however, **by** denying its growing **level of violence and the responsibility of Iraq’s current political leaders for its problems**. **There are gaps in the data** on Iraq’s current level of violence, its causes, and the responsibility of given actors. **The data are** still **good enough**, however, **to warn that Iraq may be moving back to a level of civil conflict that** will amount to **a serious civil war**. **There is** also **substantial reporting to show** **that** Iraq’s violence is not simply the product of extremists and terrorist groups. **Iraq’s growing violence is** **also the result of the fact that Iraq is the scene of an ongoing struggle to establish a new national identity**: one that can bridge across the deep sectarian divisions between its Shi’ites and Sunnis as well as the ethnic divisions between its Arabs and its Kurds and other minorities. **Improving the quality and focus of Iraqi efforts at counterterrorism and internal security is a key priority**, **but** it **Iraq cannot end its violence through force or repression**. **Iraq’s leaders must build a new structure of political consensus. They must build an effective structure of governance,** and social order that sharply reduces the problems caused by the mix of dictatorship, war, sanctions, occupation, and civil conflict that began in the 1970sand create the kind of national government that can give democracy real meaning and serve the needs of all the Iraqi people.. Iraq **must also deal with deep underlying problems.** It must cope with a steadily growing population, and diversify an economy that is so dependent on petroleum exports that they provide some 95% of its government revenues. **If Iraq’s leaders fail, try to deal with this mix of political divisions and structural problems by denial, or continue their present factional struggles; the end result will be to delay Iraq’s progress by every year their present search for self-advantage** continues. What is far worse is that their failures may cause a new major civil war or even divide the country.

**Strengthened judicial independence is key to solve that—addresses alt causes**

**Pimental and Anderson 13**, Associate and Assistant Professors of Law [June 2013, David Pimentel is Visiting Associate Professor of Law, Ohio Northern University; Brian Anderson is a Reference Librarian and Assistant Professor, also at Ohio Northern University, “Judicial Independence in Post-Conflict Iraq: Establishing the Rule of Law in an Islamic Constitutional Democracy”, http://works.bepress.com/cgi/viewcontent.cgi?article=1013&context=david\_pimentel]

**Contemporary Iraq is** facing the full range of challenges that come **with post-conflict transitional justice.** **That includes the backward-looking issues of restorative and retributive justice**, for the atrocities and mass human rights violations they suffered during the Saddam Hussein regime and the conflict that followed his downfall.1 **It also includes the forward-looking efforts, “paving the road toward peace and reconciliation” and establishing a functional state, characterized by the Rule of Law**, in the society torn apart by conflict.2 **Among the critical institutions demanding attention in the post-conflict reconstruction is the judiciary, particularly the need for an independent judiciary.**3 **There is increasing recognition that a functional legal system**, **one that protects rights and redresses wrongs, is vital to restoring the peace and stability to a war-torn society**. **Only with such a sound legal system— and a fair, impartial and independent** judiciary—will people trust their disputes to the state, and refrain from the vigilante score-settling that signals the breakdown of the Rule of Law.

**Global nuclear war**

**Morgan 7** (Former member of the British Labour Party Executive Committee, 3/4, "Better another Taliban Afghanistan, than a Taliban NUCLEAR Pakistan!?" http://www.electricarticles.com/display.aspx?id=639)

The nightmare that is now Iraq would take on gothic proportions across the continent. The prophesy of an arc of civil war over Lebanon, Palestine and Iraq would spread to south Asia, stretching from Pakistan to Palestine, through Afghanistan into Iraq and up to the Mediterranean coast. Undoubtedly, this would also spill over into India both with regards to the Muslim community and Kashmir. Border clashes, terrorist attacks, sectarian pogroms and insurgency would break out. A new war, and possibly nuclear war, between Pakistan and India could not be ruled out. Atomic Al Qaeda Should Pakistan break down completely, a Taliban-style government with strong Al Qaeda influence is a real possibility. Such deep chaos would, of course, open a “Pandora's box” for the region and the world. With the possibility of unstable clerical and military fundamentalist elements being in control of the Pakistan nuclear arsenal, not only their use against India, but Israel becomes a possibility, as well as the acquisition of nuclear and other deadly weapons secrets by Al Qaeda. Invading Pakistan would not be an option for America. Therefore a nuclear war would now again become a real strategic possibility. This would bring a shift in the tectonic plates of global relations. It could usher in a new Cold War with China and Russia pitted against the US.

**1AC: Plan**

**Plan: The United States federal judiciary should rule that individuals indefinitely detained under the War Powers authority of the President of the United States must be tried by an existing Article III court or be released.**

**1AC: Solvency (1:10**

**Contention 3 is Solvency:**

**Mandating release is crucial—any alternative leaves the judiciary powerless and fails to rectify injustice**

**Stanton 10** (Caroline Wells, J.D. at Georgetown Law, Summer 2010, "Rights and Remedies: Meaningful Habeas Corpus in Guantanamo" Georgetown Journal of Legal Ethics, Lexis)

**The** inclusion of the **Suspension Clause** in the Constitution **was meant to preserve the common law tradition of protection against the Executive, and the ability of the petitioner to force the Executive to justify detention** or release the petitioner. **In 2008, the Supreme Court held that these protections had "full effect" in Guantanamo.** n105 **Because the writ of habeas** corpus **is both a statement of the rights of the individual and the means by which he can enforce a remedy, the denial of access to a remedy has resulted in a de facto suspension of the writ at Guantanamo. Without the power to order a remedy, the Court lacks the power to enforce the right, and it becomes no right at all.** **"Without a remedy, judicial decisions are merely advisory opinions, hypothetical undertakings with no practical effect" n106 that are unlikely to present any significant limitation on the government's ability to restrict individual liberty.** **While some argue that our Constitutional system contains instances in which certain rights lack enforceable remedies, it would be anathema to our understandings of judicial review and individual liberty to accept that the executive and the courts can concede that detention is unlawful, but the courts lack the power to grant release.** The Court has deemed the ability to order release the "Constitutionally required remedy," and by denying Guantanamo petitioners a remedy to enforce the writ, **the D.C. Circuit has circumvented Boumediene and denied Guantanamo petitioners full habeas rights.** The Government has simply substituted the plenary power of immigration for MCA § 7--the net effect of which is the same--petitioners are denied release from unlawful detention. **Because rights are only as meaningful as the remedies available to enforce them, extending a right of habeas without also extending the right to order a remedy to end the unlawful imprisonment has resulted in a de facto suspension of the writ.** n107 The extension of habeas to Guantanamo has become meaningless. If the Suspension Clause truly has "full effect" in Guantanamo, the denial of a remedy constitutes a suspension of habeas and the elimination of a fundamental protection to ensure personal liberty. **The Government has raised concerns that permitting the courts to craft remedies directing transfer to particular countries and restricting transfer to others would set a dangerous precedent of allowing the judiciary to direct the executive's foreign relations.** n108 **But appropriately crafting the judicial remedy,** [\*905] **rather than denying it all together, can sufficiently avoid this peril. The courts need not issue detailed release orders; they simply need to issue a traditional habeas order requiring release within a specified time period.** n109 **Such an order would likely "induce" the Executive to quickly effectuate transfer** in almost every case where it was safe. n110 Indeed, the Government has shown that it will respond to judicial pressure to effectuate transfer. In Ali Ahmed v. Obama, the petitioner was abruptly transferred ngs indicated the judge was "losing patience with the delay in complying with her order." n111 The Executive is apt to respond to judicial pressure because if the Government is unable to repatriate detainees within the time period specified, the court could order the release of detainees within the United States, while still permitting the government to transfer detainees as soon as such transfer becomes possible. n112 Notably, the government's success in obtaining resettlement offers for the Kiyemba petitioners did not come until after the Supreme Court granted cert and judicial review appeared imminent. n113 The appropriate remedy in this case is no different than that offered in Clark and Zadvydas: the Government is entitled to a reasonable, specified period of time to effectuate the Court's order, and then the detainee is entitled to release wherever the Executive may accomplish it. Such a remedy would give the Executive fair notice of the potential consequence of failure to transfer, while at the same time protecting the detainee's liberty.

**Obama will comply—the Court has the final word**

Joe **Meacham,** executive editor, Random House, “Why Obama Shouldn’t Declare War on Supreme Court,” TIME, 4—2—**12**, http://ideas.time.com/2012/04/02/why-obama-shouldnt-declare-war-on-the-supreme-court/

With the Supreme Court weighing the constitutionality of a central element of President Obama’s comprehensive health care reform, there’s a lot of talk (in the places where people talk about such things, usually unburdened by responsibility or firsthand knowledge) of making the court an issue in the campaign if it were to rule against the White House. But here is a pretty good rule of thumb for Democratic Presidents: if it didn’t work for Franklin D. Roosevelt, who won four terms and a World War, it probably won’t work for you either. In one of the rare political debacles of his long life, FDR overreached after his landslide win against Alf Landon in 1936. (Roosevelt carried every state, save for Maine and Vermont.) A largely conservative Supreme Court had already struck down key parts of New Deal legislation, and there was the threat of more anti-Roosevelt decisions to come. And so FDR proposed a plan that would have enabled him to appoint additional justices in an attempt to shift the court’s political orientation. The effort failed, miserably. Justified or not, **the Supreme Court has** a kind of **sacred status in American life**. For whatever reason, **Presidents can safely run against Congress**, and vice versa, **but** I think **there is an inherent popular aversion to assaults on the court itself**. Perhaps **it has to do with an instinctive belief that life needs umpires**, even ones who blow calls now and then. Ironies abound. One of the great partisans of the early republic, John Marshall, created an ethos around the court that has largely protected it (even from itself) from successful partisan attack. **Even when it makes bad law (Bush v. Gore), it has the last word**. **Even when it makes decisions that enrage vast swaths of** politically, culturally and religiously motivated **citizens** (Roe v. Wade), **it** basically **has the last word**. (If you disagree with this example, ask yourself how successful pro-lifers have been in amending the Constitution over the past 40 years.) It has had the grimmest of hours (Dred Scott v. Sandford) and the finest (Brown v. Board of Education). The court is, of course, a political institution. In no way is it a clinically impartial tribunal, for virtually every decision requires an application of values and an assessment in light of experience. “Activist judges” tend to be judges who make decisions with which you disagree. Wise Presidents have learned that taking the court on directly rarely turns out well. Thomas Jefferson cordially hated his cousin Marshall, but even Jefferson trod carefully as he repealed John Adams’ extension of Federalist judicial power. “John Marshall has made his decision,” Andrew Jackson is alleged to have said after a Cherokee case. “Now let him enforce it.” The showdown between Marshall and Jackson over the fate of Native Americans, however, was much more subtle on both sides, with Marshall characteristically taking care not to force an existential crisis with the executive branch. Segregationist Southerners may have put up billboards urging the impeachment of Earl Warren in the 1950s, but the chief justice’s job — and his place in history — was never in actual jeopardy. On a human level, Presidents who have to fight and claw their way to shape public opinion, pass legislation and then try to implement their policies must be mightily tempted to make a hostile Supreme Court a target to energize the base. But history shows that Obama should resist the temptation. There are subtle ways to make the point about a given court’s seeming hostility to your agenda and still win over highly informed independents in swing states who tend to decide elections. The big thing experience shows is that you should not declare war on the court. More in sadness than in anger, just mention the issues on which you feel stymied by the justices. From health care to campaign finance, those independent voters will get the message without being frightened off by an unsettling rhetorical attack on the judiciary. That’s what FDR got wrong. Obama may well have a chance to get it right.

**\*\*Action by the judiciary is key**

**Feldman 13** (Noah, professor of Constitutional and International Law at Harvard, “Obama Can Close Guantanamo: Here’s How,” Bloomberg, May 7, 2013, http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html)

**Faced with a standoff between two branches, the system allows an orderly answer: turning to the** third branch, the **courts, to resolve the conflict. Since 2003, the Supreme Court has taken an interest in Guantanamo, deciding on the statutory and constitutional rights extended there, and vetting procedures for detainee hearings and trials.** Along the way, it has shown an equal-opportunity willingness to second-guess the executive -- as when President George W. Bush denied hearings to detainees -- and Congress, which passed a law denying habeas corpus to the prisoners. How could the court get involved? The first step would be for the Obama administration to show some of the legal self-confidence it did in justifying drone strikes against U.S. citizens or in ignoring the War Powers Resolution in the Libya military intervention. Likewise, it could assert a right of control over where the detainees should be held. And if the president’s lawyers are worried about Bush-style assertions of plenary executive power (which, for the record, didn’t concern them when it came to drones or Libya), there is a path they could follow that would hew closer to their favored constitutional style. Geneva Conventions **The reasoning could look like this:** The president’s war power must be exercised pursuant to the laws of war embodied in the Geneva Conventions. And though Guantanamo once conformed to those laws -- as the administration asserted in 2009 -- it no longer does. The conditions are too makeshift to manage the continuing prisoner resistance, and **indefinite detention in an indefinite war with no enemy capable of surrendering is pressing on the bounds of lawful POW detention.** Congress doesn’t have the authority to force the president to violate the laws of war. Yet by blocking Obama from closing Guantanamo, that is just what Congress is doing. What’s more, he has the inherent authority to ensure that we are complying with our treaty obligations. This argument isn’t a certain winner. And there would still be the problem of whether the president could put the detainees in an existing prison. But at least spelling this out would put the fear of God into Congress. Continued congressional resistance would also trigger a court case. The president could have a tough time convincing five justices. According to the framework developed by Justice Robert Jackson in the Truman-era steel seizure case, and used today by the courts, the president’s power is at its “lowest ebb” when Congress has expressly barred him from acting. But even at ebb tide there is still an ocean, and **lots of things Congress can’t stop the president from doing. Complying with** his **legal obligations should surely be at the top of the list.** The Supreme Court might want to duck this controversial issue. But **there is a precedent for the court wading in where Congress is blocking necessary action. In the Cold War, lawful racial segregation in the U.S. became costly as a matter of foreign relations.** President Harry **Truman desegregated the military, but he lacked the authority to overturn state-based discrimination.** The Senate filibuster, originally born of slavery, ensured that Congress wouldn’t pass a civil-rights bill that could have solved the problem. **That left the high court -- which gave us Brown v. Board** of Education. And in that case, the U.S. -- as friend of the court -- quoted Secretary of State Dean Acheson to the effect that segregation was being used as propaganda by the Soviet Union. It is absurd that the commander in chief can’t do what he believes is in the country’s national interests when it comes to detainees. Win, lose or draw, it is time to get around Congress. And if ordinary politics won’t do the trick, **going to the courts may be the best option -- because it is the only one.**

## 2AC

### Solve Def

**Plan solves deference**

**Pearlstein 03** [Deborah N., Deputy Director of the U.S. Law and Security Program at the Lawyers Committee for Human Rights, and a Visiting Fellow at the Stanford University Center for Democracy, Development and the Rule of Law, “The Role of the Courts in Protecting Civil Liberties and Human Rights for the Post-9/11 United States”, 2nd Pugwash Workshop on Terrorism: External and Domestic Consequences of the War on Terrorism, http://www.pugwash.org/reports/nw/terrorism2003-pearlstein.htm]

**In each** of the **historical examples** just given, **the judiciary** **ultimately played a critical role in evaluating the legality of executive action**. In the Civil War case, Lambdin Milligan, who had led armed uprisings against Union forces in Indiana, appealed his military tribunal prosecution to the U.S. Supreme Court. In Ex Parte Milligan (1865), the U.S. Supreme Court held Milligan's military prosecution unconstitutional, holding that as long as the civilian "courts are open and their process unobstructed, . . . they can never be applied to civilians in states which have upheld the authority of the government." In Ex Parte Quirin (1942), the Supreme Court reviewed the military prosecution of the German army spies for violations of the laws of war and concluded that it was within the executive's power**.** Unlike the civilian subject to military justice in Ex Parte Milligan, the Quirin defendants were members of the army of a nation with which the United States was in declared war. And critically, Congress had expressly authorized military commission trials for the offenses for which they were accused. The Supreme Court likewise upheld the exclusion of Japanese-Americans from their homes in Korematsu v. United States (1944), explaining: "Korematsu was not excluded from the military area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, and finally, because Congress, reposing its confidence in this time of war in our military leaders - as inevitably it must - determined that they should have the power to do just this." As these examples demonstrate, the U.S. Supreme Court has not always acted to enforce positive legal protections in favor of the individual against the government's exercise of 'wartime' power. Nonetheless**, the Court's structural involvement conveyed a critical political message that executive power remained subject to the rule of law.** In addition**, the Court's** published majority **opinions clarified the nature of the executive action** taken in response to perceived wartime threats, **providing a basis for comparative analysis of subsequent executive conduct**. In vigorous and public dissenting opinions accompanying each decision, minority justices gave expression to the strong opposing arguments on the resolution of the legal questions presented. Perhaps most important, the judicial decisions provided Congress, legal scholars, and the American public a means for understanding and, in the relative calm of post-war decision-making, for reevaluating the political wisdom of the challenged actions. Thus, for example, a federal court eventually granted a writ of coram nobis in Mr. Korematsu's case as a result of executive misrepresentations. (Korematsu v. United States (N.D. Cal. 1984)). In 1971, to rein in what was by then broadly recognized as executive excesses, Congress passed 18 U.S.C. § 4001(a), providing: "No citizen shall be . . . detained by the United States except pursuant to an Act of Congress." And in 1988, Congress awarded reparations to the remaining survivors and descendants of those interned during World War II as a result of the military exclusion order.

**Heg DA: 2AC**

**Their impacts are outdated—based on realist assumptions that are false**

**Knowles 09** (Robert, Assistant Professor, New York University School of Law, Spring 2009, "American Hegemony and the Foreign Affairs Constitution" Arizona State Law Journal, Lexis)

American courts treat foreign affairs issues as unique and requiring very strong, sometimes absolute, deference to the Executive. n1 These "special deference" doctrines are a swamp of under-justification and inconsistent application. n2 But **when courts** and scholars do **seek to justify special deference in foreign affairs, they** usually **resort to received wisdom about superior executive branch competence - attributes such as speed, flexibility, secrecy, and uniformity - contrasted with judicial incompetence.** n3 In the [\*90] years since 9/11, in particular, these pragmatic arguments have been the weapon of choice for defenders of special deference. n4 The courts are, apparently, bringing a knife to a gunfight. n5 **Why do foreign affairs demand that the executive branch enjoy vast discretion?** The courts' view of their own competence has been shaped by America's role in the world. **There is a deep**, if usually unarticulated, **connection between the assumed need for special deference and** a popular theory of international relations known as **realism. Realism depicts an anarchic international realm**, populated only by nation-states, and dominated by roughly co-equal great powers carefully balancing one another. n6 **Executive competences are required to handle this dangerous and unstable external environment**. n7 **This** classic realist **model** of comparative institutional competence **seemed appropriate when America was one of several**, or even two, **great powers. But even then, importing** international relations ("IR") **realism into constitutional foreign affairs doctrine was a recipe for chaos. Realpolitik teaches that the state must do whatever is necessary to protect itself.** n8 But **how can courts successfully balance this** overriding principle **against other constitutional values** such as the protection of liberty? Moreover, **the post-Cold War world has provoked a crisis in realism.** n9 **The U**nited **S**tates **is a global hegemon. It is unrivaled** in its ability to deploy force throughout the globe, and it provides "public goods" for the world - such as the protection of sea lanes - in exchange for broad acceptance of [\*91] U.S. leadership. n10 Although realism predicts counter-balancing, **no great power or coalition has yet emerged to challenge America's predominance.** And **despite** a new round of **predictions about American decline, the U.S. is still projected to have by far the largest economy and the largest military for decades.** n11 Political scientists have struggled to define this American-led system, but courts and scholars of constitutional law have largely ignored it. n12 Instead, **most debates about** special **deference have simply accepted outmoded classic realist assumptions** that became conventional wisdom in the 1930s and 40s. This Article offers a new model for assessing appropriate judicial deference in foreign affairs that takes account of American-led order. **By maintaining consistent interpretation of U.S. and international law over time** and providing virtual representation for other nations and non-citizens, **U.S. courts bestow legitimacy on the acts of the political branches, provide public goods for the world, and increase America's soft power - all of which assist in maintaining the stability and legitimacy of the American-led hegemonic order.**

**Courts can effectively review national security cases—regulatory lawsuits prove**

**Martin 11** Craig, Visiting Assistant Professor, University of Baltimore School of Law, “ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with International Law”, Winter, 76 Brooklyn L. Rev. 611, Lexis

**Turning to the normative arguments against judicial review of national security** issues, **many of these are similar to** the **functionalist claims for executive power in** the **war power**s debate. **These claims are a subset of undertheorized and** often **internally inconsistent "special deference" doctrines**, according to which the courts ought to defer entirely on foreign affairs issues. n323 **The reasons given include the need for secrecy** in decision making; **the courts' lack of access to crucial information** to resolve complex issues relating to national security; **the courts' lack of professional competency** to decide such issues; and from the political question doctrine itself, **the need to avoid "embarrassment**" flowing from conflicting decisions from different branches of government in foreign affairs, **and the lack of manageable standards for the judiciary to apply** in resolving disputes, particularly given the allegedly political and dynamic nature of international norms (in contrast to the stable and legal norms in the domestic system). n324 **All of these claims have been dismissed at some length elsewhere**, n325 **and many of the more general counterarguments to broader functionalist claims have already been addressed** in the previous section on the legislative role. To address briefly a few of the criticisms specific to the judicial role, **the arguments advanced on the lack of judicial competency do not bear scrutiny when placed in the context of the demands made of courts for the resolution of incredibly complex**, large scale, and hugely significant domestic **issues. The problems relating to judicial access to information, specialized knowledge and competency**, and the development of sufficiently manageable standards **are no less problematic in various kinds of** environmental, securities, insolvency, and **similarly technical issues arising in a regulatory context**, some of which may include constitutional aspects and even impact the state's foreign affairs. n326 **Yet the advocates of special deference on national security issues do not object to judicial review of these** [\*703] sorts of **complex domestic cases**. Moreover, **those who suggest that there is some fundamental difference between these kinds of cases and those relating to national security issues again mischaracterize the question** at is

sue in national security cases. As already discussed, **the courts are not seeking to second-guess the policy determination** as to what is in the na-tional interest on the basis of highly classified information--**they are simply assessing whether such decisions were made with the requisite authority**, based on a sufficient consideration of the required criteria, and not otherwise in violation of constitutional rights or limitations. **The notion of "special deference" is inconsistent with** a thick conception of the **rule of law**, as David Dyzenhaus has argued, **and even champions of "special deference" such as** like Adrian **Vermeule have conceded**. n327 The idea rests in part on the theories of Carl Schmitt regarding the ineffectiveness of constitutional law constraints in moments of crisis--arguments that were ultimately intended to prove the invalidity of liberal democratic theory, as we have already examined. And it will of course be clear by now that this entire project is premised upon the legitimacy and validity of liberal democratic theory and the importance of a thick or substantive conception of the rule of law. n328 **Claims for deference to the executive in foreign affairs are also grounded in an anachronistic adherence to the most conservative versions of realism in i**nternational **r**elations. They flow from the belief in a Hobbesian world char-acterized by an anarchical international system in perpetual conflict, in which unitary sovereign states are the sole ac-tors and self-preservation is the prime directive. n329 **That worldview does not comport with the reality of an increasingly** interconnected and **globalized** international **society**, with growing networks of transnational relations at various levels and involving nonstate actors, governed by an increasingly integrated web of international and domestic legal systems. Descriptively, the **international society does not reflect the Hobbesian conception of the world**, and normatively, this project is predicated upon [\*704] the need to move us further away from the vestigial remnants of that pre-twentieth century understanding of the world. **In short, as an empirical matter, the evidence casts doubt on the extent to which courts are reluctant to engage national security issues. The normative arguments for such deference are neither persuasive nor grounded in theories of i**nternational **r**elations **and constitutional law that are consistent with a liberal understanding of international law and explanations for the democratic peace, or indeed deliberative democracy and the place of the rule of law in liberal democracy. There is evidence to suggest that courts will** quite willingly **engage in judicial review where there are clear** constitutional **provisions regarding the distribution of authority** and the establishment of limits on the exercise of such au-thority in national security matters. **And the kinds of questions that are presented to courts in such situations do not attract many of the objections**, such as technical competence and the nature of standards to be applied, **that are often raised by opponents of judicial review in** the realm of **national security**

### Defer Add-On: Nuclear Accidents 2AC

#### Deference causes nuclear accidents

Yap 04 [Julie G., JD Cand @ Fordham, “Just Keep Swimming: Guiding Environmental Stewardship out of the Riptide of National Security,” 73 Fordham L. Rev. 1289, December, LN//uwyo-ajl]

The U.S. Supreme Court's opinion in Weinberger v. Catholic Action, a case in which the Court rejected a NEPA challenge to a Navy construction project, illustrates the degree of judicial deference afforded to the military when the issue of national security is invoked. In Catholic Action, the Navy built forty-eight earth-covered magazines on Hawaii that had capabilities for storing nuclear weapons. Actual nuclear storage at the site could not be confirmed due to classification for national security reasons. No EIS was prepared. "A local citizens' group ... filed suit calling for an EIS that would analyze: (1) the risk and consequences of a nuclear accident, (2) the effect of a plane from nearby Honolulu International Airport crashing into one of the magazines, and (3) the hazard to local residents from low-level radiation." The U.S. Court of Appeals for the Ninth Circuit had ordered that the Navy prepare a hypothetical EIS for a facility capable of storing nuclear weapons. The Supreme Court held that an EIS was not required because the Navy was only contemplating storing nuclear weapons at the site; nuclear storage was not actually proposed. The Court also stated that "ultimately, whether or not the Navy has complied with NEPA "to the fullest extent possible' is beyond judicial scrutiny" because the trial would ultimately lead to the disclosure of confidential information. Given this level of judicial deference to military secrecy, the invocation of national security by the military would almost always eliminate NEPA's effectiveness as a check on the military's decision-making process, even when the proposals and decisions may involve major risks to the community and the environment where the proposed action is to occur.

#### Nuclear meltdowns will destroy all life

Wasserman 02 [Harvey, senior advisor to Greenpeace USA and the Nuclear Information & Resource Service “Nuclear Power and Terrorism,” Earth island Journal Spring 2002 Vol. 17, No.1//delo-uwyo]

As at Three Mile Island, where thousands of farm and wild animals died in heaps, natural ecosystems would be permanently and irrevocably destroyed. Spiritually, psychologically, financially and ecologically, our nation would never recover. This is what we missed by a mere 40 miles on September 11. Now that we are at war, this is what could be happening as you read this. There are 103 of these potential Bombs of the Apocalypse operating in the US. They generate a mere 8 percent of our total energy. Since its deregulation crisis, California cut its electric consumption by some 15 percent. Within a year, the US could cheaply replace virtually all the reactors with increased efficiency. Yet, as the terror escalates, Congress is fast-tracking the extension of the Price-Anderson Act, a form of legal immunity that protects reactor operators from liability in case of a meltdown or terrorist attack. Do we take this war seriously? Are we committed to the survival of our nation? If so, the ticking reactor bombs that could obliterate the very core of our life and of all future generations must be shut down.

### Defer Add-On: Nuclear Testing 2AC

#### Deference allows massive nuclear testing

Barry Kellman, Professor, Law, Depaul University, “Judicial Abdication of Military Tort Accountability: But Who is to Guard the Guards Themselves?” DUKE LAW JOURNAL, December 1989, p. 1600-1601.

The flaw in the court of appeals' decision is that the judiciary's reluctance to review military discretion is without either definition or limitations. Is the critical factor the asserted connection between atomic testing and strategic deterrence policy, or is it the direct line of authority from the AEC officer at the site up to the President of the United States? As to the absence of limitations on the decision, is reckless conduct by a junior functionary completely immune simply because the judiciary does not believe that it is appropriate to review the conduct of atomic tests? It may be helpful to ask what conduct, if any, could have given rise to a litigable claim. Judge Logan's opinion for the Tenth Circuit indicates that the plaintiffs would have had to prove that the test manager "failed to release information he was required to give out" or "failed to take a specific radiation measurement that had been decided upon." n170 This requirement signifies that the less defined the authority delegated to junior managers, the broader their discretion. Any decision made by those managers would be beyond review so long as the decision is in fact carried through. This extraordinarily broad delegation of authority is not justified by any accepted notion of administrative law, but is based fundamentally on the judiciary's unwillingness to intrude into military affairs. Like the Stanley litigation, the plaintiffs' claims in Allen did not focus on the improper decisions of Pentagon planners; rather, their claims alleged that the atomic tests were conducted in a manner that significantly ignored the health concerns of affected citizens and thereby violated their rights. No challenge was made to the policy decision to develop nuclear weapons nor to test prototypes. The claims were focused against the ground level managers at the test sites who decided where people would be stationed and what protective equipment would be distributed. Like the Supreme Court in Stanley, the Tenth Circuit in Allen decided against allowing such claims not because of deference to reasonable decisions reasonably executed, but rather because the national security implications of atomic testing placed those decisions beyond the reach of judicial review. The atomic testing litigation was, quite literally, a once-in-a-nation's-lifetime case. Never before has the government, acting in a non-combat situation, caused such widespread suffering. Hopefully, it never will again. It is hard to imagine that the federal courts again will be asked to hold in judgment military decisions of such consequence, so imbued with national security considerations. It is unfortunate that the Supreme Court did not consider this matter of sufficient importance to grant certiorari. Furthermore, it is unfortunate that the undefined and limitless doctrine established in the atomic testing litigation may be extended to controversies where the judiciary's reluctance to review "national security" cases is based on far less weighty considerations.

#### Sun goes nova

Daniel Shaddox, “Nova Trauma Therapy,” ZKD MEDICAL CENTER LITERATURE, 1999, <http://business.gorge.net/zdkf/mcl-ntt.html>, accessed 1/30/06.

Unfortunately, at this time, the exact date of the Sun's erruption into a Nova cannot be predicted, scientifically! Moreover, the timing situation is in grave danger of rapid acceleration, do to the side-effects of advanced nuclear testings (ie D'Stridium events). So, while we do not know its exact timing, we know that it is SOON, and that every day brings us closer to it! So, what are we saying here? Is it going to be 5, 10, 20, 50, or 100 years? Hopefully, around 100! But, with testing, we may find that the Nova is set off in next year's Sun cycle, with its standard erruptions continuing to expand into... Which brings up another issue. Some Stars go straight into Super-Novas and explode! (If our sun were to do this, it would wipe out the whole solar system in a matter of minutes.) Others swell and slowly expand into super-giants, sometimes.

### T-Release: 2AC

#### 1. We meet—the plan ends indefinite detention by mandating release for those who do not have a trial

**2. Counter-interpretation:**

**Indefinite detention is holding an individual without deciding when they will be released**

The lead author for this report is Cara M. **Cheyette et al 11**, JD, MPH. The drafting and editing of the report was overseen by Scott Allen, MD, Co-Director of the Center for Prisoner Health and Human Rights at Brown University and Medical Advisor to PHR and Vincent Iacopino, MD, PhD, PHR Senior Medical Advisor.June 2011 Physicians for Human Rights physiciansforhumanrights.org “Punishment Before Justice: Indefinite Detention in the US” https://s3.amazonaws.com/PHR\_Reports/indefinite-detention-june2011.pdf

The Nature of Indefinite Detention **By definition, indefinite detention refers to a situation in which the government places indi - viduals in custody without informing the detainee – and** perhaps **without the governmental custodian having decided – when or whether the detainee will be released**. Indefinite detention therefore creates a situation of profound uncertainty that sets it apart from other types of gov - ernmental custody. 35 Whereas a criminal trial imposes on the government a rigorous burden of proving that a defendant engaged in conduct that meets carefully and constitutionally defined standards and which results in either a conviction and sentence or an acquittal and freedom, **indefinite detention schemes permit the government to keep a detainee in a dead zone of pro - longed custody on the basis of facts or suspicions about the detainee’s associations, affiliations, inclinations, religious or political beliefs, national or ethnic identity, that the detaining authority asserts makes the detainee dangerous.** 36 Many of **these factors are** ones that are **neither sus - ceptible to evidentiary standards of proof nor over which the detainee has substantial control.**

**A restriction on war powers authority limits Presidential discretion**

Jules **Lobel 8**, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, **the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war**—“limited in place, in objects, and in time.” 63 **When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations**. For example, **Congress authorized** President George H. W. **Bush to attack Iraq** in response to Iraq’s 1990 invasion of Kuwait, **but** it **confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions** directed to force Iraqi troops to leave Kuwait. **That restriction would not have permitted the President to march into Baghdad** after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

**We meet the counter-interp – telling the president that they have to release detainees if they win their trial is a restriction of the presidents war powers authority.**

**3. Prefer it:**

**A. They overlimit—requiring a prohibition means only 4 affs are topical—destroys aff ground, which is key to fairness.**

**B. Topic education—Fiating the process is key to every aff—the problem with the Boumediene decision was that it didn’t mandate a remedy—they limit out all detention affs**

**4. Prefer reasonability—competing interpretations cause a race to the bottom. If they had ground, don’t vote us down.**

**5. Potential abuse is not a voter.**

**Amend CP: 2AC**

**Perm do both—solves the link**

**Denning 2** (Brannon P, Assistant Professor of Law – Southern Illinois University School of Law; John R. Vile, Chair of Political Science – Middle Tennessee State University; November, 77 Tul. L. Rev. 247, Lexis)

The Article V process is, as the Framers intended, rigorous. **The supermajority provisions for both proposal and ratification almost always guarantee that additions will not be made to the Constitution without both deep and broad support. Though some have criticized the necessity of such supermajorities, 127 holding additions to the Constitution in abeyance until it is clear that support is broad generally prevents populous regions from dominating less populous ones. This, in turn, allows the amendment to become part of the Constitution with a near-conclusive presumption of legitimacy. This legitimacy, then, helps free the other branches (courts, for example) to enforce it vigorously; indeed, such enforcement would likely be expected after an amendment makes it through Article V's arduous process.** And if, after popular expectations were raised through the debates over proposal and ratification, the amendment is not enforced, institutions responsible for the foot-dragging may again face costs for evasion. This legitimization element is so crucial that the examples Strauss cites of amendments that, he argues, did not do anything immediately (the Reconstruction Amendments) or are not likely to have a significant effect despite their eventual ratification (the Twenty-Seventh Amendment), 128 could be cited as proof of what [\*279] happens when attempts are made to short-circuit (or play games with) Article V's procedural requirements. 129

**Doesn’t solve the aff:**

**A. Modeling—court action is key to bolster rule of law because foreign judiciaries model ours—that’s Scharf**

**B. Legitimacy—only perception of court action reinforces necessary transparency—that’s Knowles**

**Court has unique symbolic effect --- key to foreign perception of the plan**

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

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

**Courts will ignore the amendment—interp means it fails**

**Segal & Spaeth ‘02** [The Supreme Court and the Attitudinal Model Revisted, p. 5-6]

If action by the Congress to undo the Court’s interpetation of one of its laws does not subert judicial authority, a fortiori neither does the passage of a constitutional amendment, for example, the Twenty-Sixth Amendment reducing the voting age to eighteen and thereby undoing the decision in Oregon v. Mitchell, which held that Congress could not constitutionally lower the voting age in state elections. Furthermore, not only does a constitutional amendment not subvert judicial authority, courts themselves—ultimately, **the Supreme Court—have the last word when determining the** sanctioning **amendment’s meaning**. Thus, **the Court is free to construe any amendment**—whether or not it overturns one of its decisions—**as it sees fit, even though its construction deviates** appreciably **from the language or purpose of the amendment.** Consider, for example, the fourteenth and Sixteenth Amendments. The former clearly overturned the Court’s decision in Scott v. Sandford and was meant to give blacks legal equality with whites. Scholars disagree about other objectives the amendment may have had, but it does appear that the prohibition of sex discimination was not among them. Nonetheless, in 1871 the Court held that the equal protection clause of the Fourteenth Amendment encompassed women. As for the Sixteenth Amendment, it substantially, but not completely, reversed the Court’s decisions in Pollock v. Farmers’ Loan and Trust Co., which declared unconstitutional the income tax that Congress had enacted in 1894. In 1913, the requisite number of states ratified an amendment that authorized Congress to levy a tax on income “from whatever source derived.” The language is unequivocal. Yet for the next twenty-six years the [6] Supreme Court ruled that this language excluded the salaries of federal judges. Why the exclusion? Because Article III, section I, of the original Constitution orders that judges’ salaries “not be diminished during their continuance in office.” Though it is an elementary legal principle that later language erases incompatible earlier language, the justices ruled that any taxation of their salaries, and those of their lower court colleagues, would obviously diminish them. Finally, in 1939 the justices overruled their predecessors and magnaminously and unselfishly allowed themselves to be taxed.

**Const’l changes = instability—ethnic wars**

Douglas A. **Ollivant**, Senior National Security Fellow, New America Foundation, “Renewed Violence in Iraq,” CONTINGENCY PLANNING MEMORANDUM n. 15, Council on Foreign Relations, 8—**12**, http://www.cfr.org/iraq/renewed-violence-iraq/p28808

**The most serious risks to Iraq's internal instability come from** the overlapping and interacting effects of **renewed ethnic** or sectarian **conflict, on** the one hand, **and** an irreversible **breakdown of the current constitutional order**, on the other. Either of these **conflicts could arise along any of the major fault lines in Iraq**: Shia-Sunni, Arab-Kurd, or intra-Shia. Further, either of **these contingencies could spark the other**, as **political declarations enflame ethno-sectarian tensions**, or ethno-sectarian conflict spurs political declarations of independence or withdrawal from the political system. To complicate matters, turmoil in the region could also spill over into Iraq and exacerbate internal tensions.

**Nepal models the CP --- they’ve built their independent judiciary around limiting amendments**

**CJA 3** (Center for Justice and Accountability, Supreme Court Brief, October, http://supreme.lp.findlaw.com/supreme\_court/briefs/03-334/03-334.mer.ami.cja.pdf)

Their tyrannical pasts and to ensure the protection of individual rights**, emerging democracies have consistently looked to the United States and its Constitution in fashioning frameworks that safeguard the independence of their judiciaries**. *See* Ran Hirschl, *The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions*, 25 LAW & SOC. INQUIRY 91, 92 (2000) (stating that of the “[m]any countries . . . [that] have engaged in fundamental constitutional reform over the past three decades,” nearly all adopted “a bill of rights and establishe[d] some form of active judicial review”). Establishing judicial review by a strong and independent judiciary is a critical step in stabilizing and protecting these new democracies. *See* Christopher M. Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605, 605-06 (1996) (describing the judicial branch as having “a uniquely important role” in transitional countries, not only to “mediate conflicts between political actors but also [to] prevent the arbitrary exercise of government power; *see also* Daniel C. Prefontaine and Joanne Lee, *The Rule of Law and the Independence of the Judiciary*, International Centre for Criminal Law Reform and Criminal Justice Policy (1998) (“There is increasing acknowledgment that **an independent judiciary is the key to upholding the rule of law in a free society . . . . Most countries in transition from dictatorships and/or statist economies recognize the need to create a more stable system of governance, based on the rule of law.”), available at http://www.icclr.law.ubc.ca/ Publications/Reports/RuleofLaw.pdf (viewed Jan. 8, 2004). Although the precise form of government differs among countries, “they ultimately constitute variations within, not from, the American model of constitutionalism . . . [a] specific set of fundamental rights and liberties has the status of supreme law, is entrenched against amendment or repeal . . . and is enforced by an independent court .** . . .” Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism*, 49 AM. J. COMP. L. 707, 718

**Leads to instability**

**Poudel 1** (Keshab, Ritualistic Respect, The National NewsMagazine, 21(19))

At a time when **the country is facing manifold challenges in the field of social and economic transformation, Nepalese politicians and intellectuals are involved in an unending debate on the Constitution of Kingdom of Nepal1990 which has nothing to do with the overall development drive of the country. The Maoist insurgency broke** out in 1996 following a decision by the Supreme Court to reinstate the House of Representatives. In the first five years under the new constitution, the country saw only two prime ministers. But after the Supreme Court's decision, Nepal has seen six prime **ministers.  "If efforts to amend the constitution are made, the country will be** **plunged into** further **chaos**," says a political analyst. "As there is a mechanism to internally improve the constitution**, touching the constitution is not going to fulfill the interest of any party," he** says. After a few years of relative stability and peace, controversies have been arising regularly following the Supreme Court's misinterpretation of constitution in 1995. The decision also paved the way for seemingly   unending political uncertainty as well as chaos and violence. Although the  decision has been accepted by all, it has stripped the prime minister of his  ability to discipline members by dissolving the House of Representatives, which  is a leading cause of today's political instability. The Nepali Congress, which secured an absolute majority in the last election, has seen three prime ministers in its two and half years in  power. When a small misinterpretation by the court can bring such unbearable instability and chaos, **amending the constitution would open a Pandora's box. "The constitution must be allowed to evolve and develop," said Taranath Ranabhat, speaker of the House of Representatives, addressing a program organized by the Society for Constitutional and Parliamentary Exercises (SCOPE) on the 11th anniversary of the promulgation of the constitution. "There is no need to go for amendment."**

**Israel--WMD Use—1NC**

**alt causes to peace process**

Dov **Waxman,** 9/8/**11**, [coauthor of the recently published Israel's Palestinians: The Conflict Within (Cambridge University Press, 2011] “The Death of the Peace Process” National Interest, http://nationalinterest.org/commentary/the-death-the-peace-process-5859

As international attention increasingly focuses on the Palestinian Authority’s coming bid for UN recognition of a Palestinian state and Middle East watchers incessantly speculate on the possible ramifications of this latest development in the seemingly never-ending saga of the Israeli-Palestinian conflict, it is easy to lose sight of the bigger picture. **Whatever happens at the UN in September, what really matters is the fact that the peace process is now well and truly over and a new phase of the conflict is beginning**. Twenty years after Israeli-Palestinian peace talks began at the 1991 Madrid Conference and eighteen years after the start of the Oslo peace process**, the bilateral negotiating track has reached a dead end.** **The end of the peace process has, of course, been announced many times before**. The collapse of the Camp David summit meeting in July 2000 between Ehud Barak and Yasser Arafat, the outbreak of the second Intifada, the demise of the Bush administration’s Roadmap for Peace have all led onlookers to gloomily declare the death of the peace process. **Yet somehow, defying expectations, the process has limped on, or at least it continued to show faint signs of life. As these past failures testify, the peace process—always more process than peace—has suffered setback after setback**, but it was still the only game in town. **Despite all its limitations and frustrations, it always remained the only way that Israelis and Palestinians could hope to achieve their national objectives**—security for the former, self-determination for the latter. **Now neither side in its heart of hearts believes that bilateral negotiations can succeed in giving it what it wants. After two decades of talking, arguing and cajoling, both Israel and the Palestinians have effectively given up. Not publicly of course**. That would be impolitic. It would certainly not be well received by the Obama administration, which is now the only true believer in the peace process**. But Israeli and Palestinian official declarations about their willingness to negotiate should not fool anyone. Both sides are more concerned with avoiding blame for the lack of negotiations than they are with actually resuming talks**

**.** **Even if they do finally get around to negotiating again, it would only be for show** (as last year’s short-lived negotiations between Netanyahu and Abbas were), and future dialogues are almost certainly going to end up like all the others—in acrimonious failure. **The bitter truth is that the majority of Israelis and Palestinians are in no mood to compromise. Traumatized and embittered by their long conflict, they remain deeply suspicious of each other and implacably hostile**, at least for the foreseeable future. Nor are their leaders any more conciliatory. To be sure, President Abbas is as moderate a Palestinian leader as one could possibly hope for, but even he cannot meet Prime Minister Netanyahu’s demands. On all the core issues—the delineation of final borders, the future of Jerusalem, the right of return for Palestinian refugees and the recognition of Israel as a Jewish state—the bottom lines of the current leaderships in Jerusalem and Ramallah are still far apart (notwithstanding all the assurances to the contrary of those in the “peace process industry”). Nor are there any potential leaders waiting in the wings who will be much more accommodating on these issues. **Since a negotiated final settlement of the conflict is currently out of the question, where does this leave us? In the past, violence would have been the most likely outcome. That’s what happened when the Oslo peace talks broke down. This time, however, a different scenario is more likely**. The violence of the second Intifada brought the Palestinians nothing but misery. Armed resistance to Israel—the siren song of Hamas and Hezbollah—no longer enthralls Palestinians as it once did. Instead, they are drawn to a different means of resistance**. Nonviolent, large-scale popular resistance is now seen by many Palestinians as their last hope to end Israel’s occupation and achieve independence. Having unsuccessfully tried negotiations and armed struggle, this appears to be all that’s left**.

**Israel nuclear lashout empirically denied**

Sean P. **Smeland** Spring, **2004** "Countering Iranian Nukes: A European Strategy" The Nonproliferation Review http://www.gcsp.ch/e/publications/Security\_Challenges/WMD/Academic\_Papers/Smeland.pdf

From Israel, Iran has only to fear a quick strike by missile or aircraft (presumably through Turkish airspace, though the Islamic Justice and Development [AK] Party which presently holds power would be unlikely to allow this). Such a strike could be preemptive, as Ray Takeyh has suggested; however, such a contingency would be a response to Iran’s proliferation efforts, not a security threat that calls for proliferation. The only genuine preexistent threat posed by Israel is one of retaliation, either for a direct attack or, more likely, for support of anti-Israeli terrorism. However, **the notion that Israel would respond to terrorism (or even a direct attack) with a nuclear strike is undercut by the fact that Israel has, in all likelihood, had nuclear weapons since the mid-1960s, but has never—through two full-scale wars and thousands of terrorist attacks—seriously considered nuclear retaliation**. 23 Any such retaliation would be by conventional arms, would fall well short of endangering the existence of Iran, and would not be deterred by an Iranian nuclear arsenal. Iranian nuclear weapons clearly have no purpose with respect to any genuine threat posed by Israel (though they could be marketed to the Iranian public as anti-Israel weapons).

**Peace process solves extinction**

Kamal **Nawash**, the president of the Free Muslims Coalition. “Israel/Palestine Conflict May Lead to Nuclear War.” 01/10/**09**

Surprise, surprise, once again **the Palestinian/Israeli conflict spirals out of control. However, this particular battle has produced circumstantial evidence that the conflict has become more dangerous than ever before. Unless a permanent solution is found soon, the violence may increase in severity until the conflict ends tragically**. In the latest fighting, Israel has bombed the HAMAS controlled city of Gaza for the stated reason of neutralizing HAMAS and stopping them from firing rockets into Southern Israel. As of the date of this article, approximately 800 Palestinians and 10 Israelis have been killed. HAMAS’ stated reasons for firing the rockets is to end the siege of Gaza by Israel which HAMAS alleges is preventing the free movement of people and goods and causing a humanitarian crisis. Israel denies the existence of a humanitarian crisis and refuses to end the siege of Gaza unless HAMAS recognizes Israel or is out power. In general**, what makes the Palestinian/Israeli conflict so dangerous is that half the world, (three billion people (Jews, Christians & Muslims)) are emotionally, historically and religiously attached to the land known as Israel/Palestine. This fact was demonstrated in the last few days as demonstrations erupted in more than 95 countries around the world.** Moreover, due to the affordability of satellite TV, in even the most underdeveloped countries, billions of interested people are exposed to 24 hour graphic coverage of this latest battle in Gaza. Western News stations like BBC and CNN no longer have a monopoly on reporting news. Many Middle Eastern TV stations have surpassed the reach of BBC, CNN and other western media. As to graphic images, dozens of news stations like Aljazeera have been broadcasting live and prerecorded graphic images of Palestinian babies blown up into pieces by the Israeli military. One particular gruesome scene that was played over and over again was that of a three year old little girl with her heart protruding out of her body after a bomb fell on her house. Another station, Al Alam, repeated the scene of four dead babies who were placed next to each other in the same refrigerator of a morgue because of the large number of dead in Gaza. The graphic and often emotional coverage of this latest battle is inspiring the fury of the masses **which in turn are putting enormous pressure on their governments to join the fight** on the side of the Palestinians. **This conflict is much more dangerous than most people realize**. For example, Egypt is receiving so much negative media coverage for not opening its border with Gaza that People throughout the Arab and Muslim world started calling for the overthrow of the Egyptian government and demonstrators attacked Egyptian embassies in several countries. The pressure on Egypt is so intense and ruthless that a shaken Egyptian president was forced to hold two press conferences to explain his government’s position and to distance Egypt from Israel. Similarly, the friendly nation of Jordan came under so much pressure for not breaking diplomatic relations with Israel that King Abdullah held a publicity stunt in which he was seen donating blood for the people of Gaza and for the first time in recent memory he referred to Israel as the Enemy. **Even the Saudi government was not immune from attacks and calls for the overthrow of the** Saudi **government**. Media outlets repeated scenes of demonstrators burning the effigy of the King of Saudi Arabia with the Israeli flag wrapped around him for hundreds of millions of people to see. Saudi Arabia is perceived as a secret ally of Israel in the desire to destroy HAMAS and the refusal of the Saudi government to allow demonstrations against Israel only reinforced this belief. Whatever the truth, the Saudi government was so shaken by the attacks against it and the constant portrayal of the Saudi King rapped in the Israeli flag that the official Saudi media began publicizing Saudi efforts to raise money for the people of Gaza. **The conflict between Israel and the Palestinians is becoming extremely dangerous and can only be described as a ticking NUCLEAR BOMB. Currently, only Israel has nuclear weapons in the Middle East. But Iran may also go nuclear and if that happens the Arabs will try to do the same. Without a doubt, there is no conflict on earth that has the same global impact as the Palestinian/Israeli conflict. Because of the potential for global instability, the entire world must do all it can to bring peace between the Palestinians and Israelis.** The question is can this conflict be solved after many wars failed to end the conflict? The answer is YES **but time is running out.** Currently, there are four proposals to the Israel/Palestinian conflict and three have been attempted and failed. The first is that the Israelis and Palestinians continue fighting until one submits to the other, a plan that has been tried and failed. The second is a plan where both people separate by creating two separate countries. This plan is referred to as the two state solution and all attempts to implement it have failed. The third is to divide the Palestinian territories and place them under the control of Egypt and Jordan. This solution has been tried (1948-1967) and also failed because it did not address the core of the conflict. The fourth solution is based on integration of both Israelis and Palestinians in one nation and is the only solution that has proven successful. For the last 20 years the world has focused on the two state (two country) solution which has clearly failed. However, contrary to unanimous belief, neither the Palestinians nor the Israelis are to blame for the failure of the two state solution. The two state solution failed because the concept of creating two separate countries by dividing Israel/Palestine was and still is a difficult pill to swallow for Israelis & Palestinians. It is a fact that Israelis and Palestinians have religious, historical and emotional attachments to every square inch of the land that includes Israel and Palestine and neither side is eager to embrace permanent separation or “amputation” as described by Israeli novelist Amos Oz. Consequently, it is highly unlikely that permanent separation will lead to permanent peace. In light of the above facts some may think that a solution is impossible. NOT TRUE. The Palestinian/Israeli conflict can be solved as long as both sides give up the notion that they deserve exclusive control and rule over Israel/Palestine. In light of the attachments that both parties have for the same territory, the solution cannot be in separating but in finding a formula for living together. Many Israelis and Palestinians agree that Israel/Palestine is indivisible. Thus, the solution lies in uniting Israelis and Palestinians in one country while guaranteeing both sides equality and absolute security. What is being proposed here is the creation of two sovereign states similar to New York and New Jersey, joined together in a confederation to form one country. To illustrate further, after occupying the West Bank and Gaza in 1967, Israel could have annexed those territories into Israel by providing the Palestinians with Israeli citizenship. Israel did not do this and instead chose to treat the West Bank and Gaza as part of Israel without granting the Palestinians citizenship, equality or political participation. Legally, Palestinians were and continue to have the same status as American blacks in the 19th century. Israel did not integrate the Palestinians into Israel because Israelis were afraid that the Palestinians may one day outnumber the Jews and vote Israel out of existence. While this is a legitimate concern, Jews and Israelis who fear equality for Palestinians assume that granting the Palestinians equality would lead to the destruction of Israel. This is a false assumption. The world has produced many successful formulas for different people living together and sharing power and a formula can be found in this case. An example of a formula is the creation of a confederation of Israel/Palestine based on the principles of free trade and the free movement of labor and people. As to the national government, Israel and Palestine can each contribute 50% to the national parliament, a formula that would guarantee security, and eliminate political dilution from demographic changes and make certain that extremist become marginalized. The above formula is an example that gives Palestinians and Israelis most of what they want while allowing both people to be independent and secure. Moreover, with this solution, Jerusalem becomes a non-issue and borders become less relevant. As proof that integration can work, consider that Israel has one million Palestinians with Israeli citizenship who are often referred to as “Israeli Arabs.” It is important to note that they are not participating in violence. This is because Palestinians who are citizens of Israel have civil and political rights while the Palestinians in the West Bank and Gaza have nothing. Without a doubt most readers of this article will think that the author is naïve, idealistic, stupid, Zionists or trying to destroy Israel. We understand your beliefs. However, please ask yourself if Israel destroys Hamas or Islamic Jihad will there be peace between Israelis and Palestinians? Consider that Hamas was created in 1987. Before HAMAS was created, Israel fought five major wars and numerous other battles. Moreover, before HAMAS there were the PLO, Fatah, PFLP, PFLP-GC, 15 May Organization, Abu Ali Mustapha Brigades, Al-'Asifah, Arab Liberation Front, Force 17, Black Hand , Popular Front for the Liberation of Palestine - Special Command, Popular Resistance Committees, Popular Revolutionary Front for the Liberation of Palestine, Black September, Democratic Front for the Liberation of Palestine, Doghmush, Omar Ben al-Khatib Warriors, Palestinian Liberation Army, Palestinian Popular Struggle Front, Palestinian fedayeen, Swords of Truth, Rejectionist Front, among other organizations. Today most of the above organizations have been destroyed or just vanished. However, the conflict has not ended as the above organizations have been replaced by Hamas, Islamic Jihad, Holy Jihad Brigades, Izz ad-Din al-Qassam Brigades, Army of Islam, As-Sa'iqa, Tanzim, Al-Quds Brigades, among others. The point here is that even if Israel destroys HAMAS, the conflict between Israelis and Palestinians would not be solved and it would only be a matter of time before a new group forms to replace HAMAS. Israelis and Palestinians must realize that what they have done for the last 70 years will never bring peace to either Palestine or Israel under the best of circumstances. Under the worst of circumstances **this conflict may lead to an all out nuclear war** where millions will die and this is no longer an exaggeration. To summarize, Israel and its neighbors have fought numerous wars and no side has given up on their fundamental claims. For the last 20 years, both sides have tried to separate by creating two separate countries but this approach has failed because all sides have attachments to Israel and Palestine. The only solution that has a record of success is integration as demonstrated by the Palestinians who are citizens of Israel. **If peace is not found then** the day may soon come when **the governments of the Middle East maybe overthrown by people who want to directly intervene on behalf of the Palestinians. If an uprising erupts throughout the Middle East then nuclear war may soon follow. Therefore, the choices are between total annihilation or equality for Palestinians and security for Israel. There are no other choices.**

**NLRB DA: 2AC**

**Already argued**

**Wahington Post 1-14**, http://www.washingtonpost.com/blogs/federal-eye/wp/2014/01/14/supreme-court-case-has-big-implications-for-national-labor-relations-board/

**The** U.S. **Supreme Court on Monday heard oral arguments in** a case that could invalidate hundreds of **N**ational **L**abor **R**elations **B**oard rulings and set the agency back more than a year in its workload if it loses.

The dispute could also determine when presidents can use so-called “recess appointments” to fill key positions that generally require Senate approval, creating serious implications for the White House.

MORE: Supreme Court questions Obama’s recess appointment power

**The case, NLRB v**. Noel **Canning, challenges a D.C. Circuit Court of Appeals decision** early last year that said the president’s 2012 board appointments, which occurred while the Senate was on break, were unconstitutional. Hundreds of NLRB rulings involving those panel members are now at stake.

**Filibuster rule change takes out the case**

**USA Today 12-16**-13 "Shrinking high court docket bedevils conservatives" www.usatoday.com/story/news/politics/2013/12/16/supreme-court-labor-housing-abortion-discrimination/4038497/

**The next time the justices take their seats in court, they will confront what was to be the marquee case of the term: a battle between the White House and Congress over the power to make appointments. But even that case has lost some of its steam.¶** The dispute between two branches of the government, to be decided by the third, involves a president's ability to fill vacancies without Senate confirmation by making appointments during congressional recesses. Presidents of both parties have used that power to avoid filibusters, when just 41 of 100 senators can block action on any nominee.¶ **Democrats who control the Senate** — as well as the White House — **changed the rules last** month to defang what had been the most important power of the minority party. **Now judicial and executive branch nominees can be confirmed with a simple 51-vote majorit**y. So although the high court's ruling could be critical in years when the White House and Senate are divided, **the standoff that led to the lawsuit no longer exists.**

**Notice rule dead—no appeal**

**Boehm 1/7**/14 [Eric, “No appeal: Pro-union NLRB posters won’t advance to Supreme Court”, <http://watchdog.org/122490/nlrb-posters-appeal/>]

An **effort by** the **N**ational **L**abor **R**elations **B**oard **to require businesses to post pro-union information** in workplaces **has been defeated**.¶ The **NLRB** said in a statement Monday it **decided not to appeal** two federal court rulings that struck down a rule requiring most private sector businesses to display a poster informing workers of their rights, including the right to unionize. Business groups had challenged the rule in court, arguing it was a violation of employers’ right to free speech.¶ The posters in question are 11″ x 17″ and list the rights protected by the National Labor Relations Act, including the “right of employees to organize and bargain collectively with their employers.” The posters are available in 27 different languages.¶ The NLRB approved the poster rule in August 2011, but a three-judge panel for the U.S. Court of Appeals for the D.C. Circuit struck down the rule in May 2013. Another panel for the U.S. Court of Appeals for the Fourth Circuit followed suit in June 2013.¶ The NLRB had until last week to file an appeal to the U.S. Supreme Court, but declined to do so.

**Predicting the decision is impossible**

**Shane 13** (Peter, Ohio State University College of Law, "THE FUTURE OF RECESS APPOINTMENTS IN LIGHT OF NOEL CANNING V. NLRB" Bloomberg Law) about.bloomberglaw.com/practitioner-contributions/the-future-of-recess-appointments-in-light-of-noel-canning-v-nlrb/

**The government has asked the Supreme Court to hear Noel Canning**, and it would be surprising for the Court not to do so. The importance of the issues, the conflict in the circuits, and the expansiveness of the D.C. Circuit rationale all augur for Supreme Court review. **Predicting the outcome**, however, **is all but impossible. The Court is unlikely to adopt the D.C. Circuit’s reasoning be**

**cause it goes so far beyond what is necessary to decide the case. That leaves,** however, **at least three options** for the Court: It could uphold the Obama appointments because a three-day break is a recess or because the pro forma sessions left the relevant 20-day recess intact. It could uphold the Obama appointments because intrasession recess appointments to fill vacancies that arose at any time are constitutionally permissible, and the length of adjournment necessary to constitute a “recess” is best regarded as a political question to be fought out between the executive and legislative branches. Or, the Court could overturn the appointments following the more modest rationale that three days are too short to count as a “recess,” and the Jan. 3-23 “recess” was no more than a series of three-day breaks. **For Justices Scalia and Thomas, the D.C. Circuit’s textualist methodology will be attractive, but its execution by the lower court was clumsy. These Justices will also be aware that the D.C. Circuit’s reasoning could seriously weaken the presidency as an institution, and each is a reliable defender of executive power in almost all constitutional contexts. The same is likely true of Chief Justice Roberts and Justices Alito and Kennedy**. They will not be oblivious to the institutional implications of deciding the case against the NLRB. On the other hand, the current Justice best known for a pragmatic style of constitutional interpretation—Justice Breyer—is also an institutional veteran of the Senate, having served as both a Special Counsel and later as Chief Counsel to the Senate Judiciary Committee. He will not be dismissive of the Senate’s role in the confirmation process. In short, **the recess appointments issue—occurring at the confluence of concerns over executive power, constitutional interpretation, and party politics—resists easy categorization. The Noel Canning reasoning is unlikely to survive. Beyond that, we can only guess.**

**Empirics prove the Court doesn’t consider capital**

**Schauer 04** [Frederick, Law prof at Hravard, “Judicial Supremacy and the Modest Constitution”, California Law Review, July, 92 Cal. L. Rev. 1045, ln //uwyo-kn]

Examples of the effects of judicial supremacy hardly occupy the entirety of constitutional law. As the proponents of popular constitutionalism properly claim, it is simply not plausible to argue that all of the Supreme Court's decisions are counter-majoritarian, nor that the Court is unaware of the potential repercussions if a high percentage of its decisions diverges too dramatically from the popular or legislative will. Nevertheless, **there is no indication that the Court uses its vast repository of political capital only to accumulate more** political capital, and in many areas judicial supremacy has made not just a short-term difference, but a long-term difference as well. Perhaps most obvious is school prayer. For over forty years the Court has persisted in its view that organized prayer in public schools is impermissible under the Establishment Clause 59 despite the fact that public opinion is little more receptive to that view now than it was in 1962. 60 So too with flag burning, where the Court's decisions from the late 1960s 61 to the present have remained dramatically divergent from public and legislative opinion. 62 Or consider child pornography, where the Court's decision in Ashcroft v. Free Speech Coalition 63 flew in the face of an overwhelming congressional majority approving the extension of existing child pornography laws to virtual child pornography. Similarly, in the regulation of "indecency," **the Court has spent well over a decade repeatedly striking down acts of Congress that enjoyed overwhelming public and** [\*1059] **congressional support**. 64 Most dramatic of all, however, is criminal procedure, where the Supreme Court's decision in Dickerson v. United States, 65 invalidating a congressional attempt to overrule Miranda v. Arizona, 66 underscores the persistent gap in concern for defendants' rights between Congress and the public, on the one hand, and the Supreme Court, on the other.

**They’ve bailed on the quickie rule**

**Witkin 12/11**/13 (Scott, Shareholder Barnes & Thornburg, “ NLRB Throws in towl on quickie election rule appeal,” <http://www.lexology.com/library/detail.aspx?g=3bd2e2b8-aa78-45f2-8fc3-f5e27aaa3b7f>)

In a surprising development, the **NLRB has dropped its appeal of the D.C. Circuit’s decision invalidating its “Quickie Election Rules.”** By those rules, [which we’ve blogged about previously,](http://btlaborrelations.com/blog.aspx?topic=100&All=null&IsListParentTopic=true) the Board sought to, among other things, shorten the already-brief period of time between the filing of an election petition and the holding of an election. The Board adopted the rules in late 2011 and intended on instituting them in April 2012, but the **D.C. Circuit ruled** in May 2012 **that the Board lacked a proper quorum** when the rules were adopted and, accordingly, were invalid. The Board, which had previously attempted, but failed, to get the Court to reconsider its decision, has yet to comment on the dropping of its appeal.

**Issues are compartmentalized**

**Redish and Cisar 91** prof law @ Northwestern and Law clerk to US Court of Appeals, 1991

(MARTIN H. REDISH, prof law and public policy @ Northwestern; ELIZABETH J. CISAR, Law Clerk to Chief Judge William Bauer, United States Court of Appeals, Seventh Circuit, Dec 1991, “CONSTITUTIONAL PERSPECTIVES: ARTICLE: "IF ANGELS WERE TO GOVERN" \*: THE NEED FOR PRAGMATIC FORMALISM IN SEPARATION OF POWERS THEORY.”41 Duke L.J. 449)

**Choper's assumption that the judiciary's institutional capital is transferable from structural cases to individual rights cases is no more credible**. Common sense should tell us that **the public's reaction to con- troversial individual rights cases**-for example, cases **concerning abor- tion**,240 school prayer,241 busing,242 **or criminal defendants' rights**243- **will be based largely, if not exclusively, on the basis of its feelings con- cerning those particular issues. It is unreasonable to assume that the public's acceptance or rejection of these individual rights rulings would somehow be affected by anything the Court says about wholly unrelated structural issues.**

**Pro-Canning ruling causes massive political obstructionism and kills SOP**

**Neuborne 13** (Burt, Professor of Civil Liberties and founding Legal Director of the Brennan Center for Justice at NYU Law School, Sidney Rosdeitcher, Wendy Weiser, 9-20-13, “Brief Of Amicus Curiae The Brennan Center For Justice In Support Of Petitioner And Reversal” In The Supreme Court of the Qunited States National Labor Relations Board. Petitioner, v. Noel Canning, a Division or the Noel Corp., et al.) http://www.americanbar.org/content/dam/aba/publications/supreme\_court\_preview/briefs-v2/12-1281\_pet\_amcu\_bcj.authcheckdam.pdf

**The** unduly **narrow interpretation of the recess appointment power** espoused by the court below, and the Senate's use of pro forma sessions to eliminate recesses, **would eviscerate the Recess Appointments Clause as a structural check on partisan obstructionism. This would invite the full Senate**, when controlled by a party opposed to the President, **or a Senate minority** armed with the filibuster rule**, to distort the advice and consent power into an engine designed to prevent the President from appointing officers of ~~his~~ choosing. Eliminating the structural check** provided by a viable Recess Appointments Clause **would**, moreover, **be particularly destructive at this time, given the extreme and unprecedented level of partisan obstruction** that currently prevails and the ease [with which extreme partisans can hijack the Senate under the modern filibuster rule. A. **The D.C. Circuit's Interpretation** of the Recess Appointments Clause and the Senate's Use of Pro Forma Sessions Would Remove Checks on the Senate and **Would Subvert the Separation of Powers** By limit

ng the power to fill vacancies to those arising during a recess, the D.C. Circuit would empower the Senate to refuse to act on nominations during its regular sessions, knowing that vacancies could not be filled temporarily by the President during a Senate recess. And, by limiting the recess appointment power to intersession recesses, the D.C. Circuit's interpretation would enable the Senate to manipulate recesses to eliminate intersession recesses, or to limit their duration to a metaphysical instant between two sessions, while expanding the number and duration of intrasession recesses, thus preventing the President from filling vacancies even though the Senate is unavailable to exercise its advice and consent function. In fact, in this very case, the D.C. Circuit found that there was no intersession recess before the session of Congress that began on January 3, 2012.10 Allowing the pro forma sessions to prevent the exercise of the recess appointment power, even though the Senate is in fact unavailable to provide advice and consent, would have a similar destructive effect on the role of the Recess Appointments Clause as a structural check on unconstitutional efforts to abuse the advice and consent power. Pro forma Senate sessions permit the Senate to take what are in fact extended recesses in any common-sense understanding of the term, free from the check of the recess appointment power. Indeed, **they would enable the Senate to eliminate the recess appointment power altogether. Under any of these scenarios, the President could be deprived of any ability to fill crucial vacancies in the face of** the Senate's, or a Senate minority's, **obstruction** of the regular method of appointment through advice and consent. The Senate minority would be able to engage in these obstructive tactics without any check and oblige the President to either leave vacancies unfilled or accept conditions that the Senate minority sought to extort. Such an aggrandizement of the powers of the Senate or a Senate minority at the expense of the President would severely distort the balance of powers which the Founders established in designing the Constitution's appointments mechanism.

**That decks the economy**

**NCPA 13** (2-22-13, "Policy Uncertainty Undermines Economic Recovery" National Center for Policy Analysis) www.ncpa.org/sub/dpd/?Article\_ID=22874

**Partisan gridlock** and debates over the debt limit, spending and taxes **send signals to Americans and businesspeople that the future of economic policy is uncertain. For an economic recovery, this uncertainty can slow economic growth** and employment, **says** Nicholas **Bloom**, a **professor of economics at Stanford** University. Though uncertainty is a subjective concept, **Bloom created a proxy measure called Economic Policy**

**Uncertainty (EPU).** It indicates that uncertainty has increased and remained high since 2008.The EPU measure quantifies newspaper coverage, expiring tax code provisions and disagreement about economic forecasts among the Philadelphia Federal Reserve's Survey of Professional Forecasters. The indicator shows that tax, government spending and health care policy uncertainty are the main drivers of uncertainty since 2008, while monetary policy uncertainty has little effect, presumably because of stable inflation and low interest rates. **Policy uncertainty leads to forecasts of decreasing economic growth and employment in the future. The statistical model accounts for the effects of EPU factors, interest rates, inflation and stock-market levels on gross domestic product growth and employment.**

**Issues are compartmentalized**

**Redish and Cisar 91** prof law @ Northwestern and Law clerk to US Court of Appeals, 1991

(MARTIN H. REDISH, prof law and public policy @ Northwestern; ELIZABETH J. CISAR, Law Clerk to Chief Judge William Bauer, United States Court of Appeals, Seventh Circuit, Dec 1991, “CONSTITUTIONAL PERSPECTIVES: ARTICLE: "IF ANGELS WERE TO GOVERN" \*: THE NEED FOR PRAGMATIC FORMALISM IN SEPARATION OF POWERS THEORY.”41 Duke L.J. 449)

**Choper's assumption that the judiciary's institutional capital is transferable from structural cases to individual rights cases is no more credible**. Common sense should tell us that **the public's reaction to con- troversial individual rights cases**-for example, cases **concerning abor- tion**,240 school prayer,241 busing,242 **or criminal defendants' rights**243- **will be based largely, if not exclusively, on the basis of its feelings con- cerning those particular issues. It is unreasonable to assume that the public's acceptance or rejection of these individual rights rulings would somehow be affected by anything the Court says about wholly unrelated structural issues.**

**Economic decline doesn’t cause war**

**Miller 2k** – Professor of Management, Ottawa (Morris, Poverty As A Cause Of Wars?, http://www.pugwash.org/reports/pac/pac256/WG4draft1.htm, AG)

Thus, these armed conflicts can hardly be said to be caused by poverty as a principal factor when the greed and envy of leaders and their hegemonic ambitions provide sufficient cause. The poor would appear to be more the victims than the perpetrators of armed conflict. It might be alleged that some dramatic event or rapid sequence of those types of events that lead to the exacerbation of poverty might be the catalyst for a violent reaction on the part of the people or on the part of the political leadership who might be tempted to seek a diversion by finding/fabricating an enemy and going to war. According to a study undertaken by Minxin Pei and Ariel Adesnik of **the Carnegie Endowment** for International Peace, there would not appear to be any merit in this hypothesis. **After studying 93 episodes of economic crisis in 22 countries** in Latin America and Asia in the years since World War II **they concluded that** Much of **the conventional** wisdom about **the** political **impact of economic crises may be wrong**... The **severity of economic crisis** - as measured in terms of inflation and negative growth - **bore no relationship to** the **collapse** of regimes. A more direct role was played by political variables such as ideological polarization, labor radicalism, guerilla insurgencies **and** an anti-Communist military... (**In democratic states) such changes seldom lead to** an outbreak of **violence (while**) in the cases of **dictatorships** and semi-democracies, the ruling elites **responded** to crises **by** increasing repression (thereby **using one form of violence to abort another.**

## 1AR

### Heg: A2 “Alt Cause—Drones”

#### Obama decreasing drone strikes now

LA Times 13 (5-23-13, "Obama puts restrictions on drone program" LA Times) articles.latimes.com/2013/may/23/world/la-fg-obama-drones-20130524

WASHINGTON — Reining back the aggressive counter-terrorism strategy he has embraced for five years, President Obama declared clear, public restrictions for the first time on using un~~manned~~ [staffed] aircraft to kill terrorists, a shift likely to significantly reduce U.S. drone strikes in Pakistan and elsewhere.

### Heg: A2 “Alt Cause—Surveillance”

**PRISM doesn’t matter**

**Paramaguru 9-27** (Kharunya, 9-27-13, “Three Months After Snowden’s NSA Revelations, Europe Has Moved On” Time Magazine) http://world.time.com/2013/09/27/three-months-after-snowdens-nsa-revelations-europe-has-moved-on/#ixzz2g969BszS

**When** Edward **Snowden**, a former National Security Agency contractor, **disclosed details about** some of the clandestine electronic **surveillance programs run by the intelligence agencies** of the United States government in June, **it was widely seen as one of the biggest intelligence leaks in American history.** The Guardian, the British paper Snowden leaked the information to, saw record surges in web traffic as it published his exposés. Its main article on Edward Snowden, in which the paper declared that Snowden “will go down in history as one of America’s most consequential whistleblowers,” has become the most popular article ever read on the website, with over 3.7 million page impressions and counting according to the Guardian. **But, three months later, it’s difficult to see how consequential Snowden’s revelations have actually been. Despite** immediate and **widespread interest** from the news media and diplomatic backlash from some parts of the world (mainly from foreign officials who found out that the U.S. had been intercepting their communications), **the allegations of widespread spying conducted through the NSA’s PRISM program have not become the subject of any successful legislative efforts in Congress**–an initial attempt in July to cut the NSA’s funding for its phone metadata program fell flat after a narrow defeat. **And in some parts of the world, responses beyond the immediate surprise** caused by the revelations **have been particularly muted, with** some **British and French politicians suggesting** that **there was nothing in the leaks to cause the general public any concern.** Some politicians, such as Conservative Member of Parliament David Davis, questioned if there was adequate oversight of intelligence operations. But **in general, Europeans have shrugged and moved on.**

**Heg: A2 “Alt Cause—Syria”**

**Russia deal helped Obama dodge the Silver Syria Bullet – saved legitimacy**

**American Thinker** “Lavrov Helped Obama Dodge the Syrian Bullet” **9/10**/13

<http://www.americanthinker.com/blog/2013/09/lavrov_helped_obama_dodge_the_syrian_bullet.html>

Any diplomatic initiative on Syria coming from Russia, whose UN votes have perpetuated Assad's killing machine for over two years, should be viewed with extreme suspicion. Nevertheless, **the latest Russian proposal merits serious consideration**. Russian Foreign Minister Sergey **Lavrov's proposal, which exploited an offhand remark by U.S. Secretary of State John Kerry, calls for the destruction of Syria's chemical weapons arsenal in exchange for a cancellation of the U.S. military action against Syria being debated by Congress. Syria has "accepted" the proposal** with alacrity. Russian national interests underlie this proposal: helping Russia's last Mideast client state to survive, reinforcing the image of Russia as a Mideast power broker, and diminishing the perception that Russia supports chemical weapons use. But **these interests intersect with US interests insofar as a diplomatic solution decreases the odds of an Islamist takeover of Syria** (should U.S. strikes actually alter the balance of power between the Syrian regime and the opposition) **while possibly removing the need for potentially risky and costly U.S. military action -- without further undermining U.S. credibility**. **The h**

**marked**

**umanitarian justification for intervention --** with over two million Syrian refugees and 110,000 dead -- **grows stronger by the day. The geo-strategic reasons for U.S. action are also manifest**: Syria's chemical weapons could be used unpredictably by the Assad regime, its terrorist ally Hezb'allah, or Islamist rebels; **rogue regimes like North Korea and Iran will view U.S. inaction as a green light to oppose U.S. interests where they see fit** (particularly with respect to their nuclear plans); and the toppling of Assad's regime -- Iran's closest ally -- would weaken the Iranian regime while signaling that it is next unless diplomacy quickly resolves the Iranian nuclear standoff. But opinion polls have consistently revealed that the U.S. public opposes involvement in the Syrian conflict. Had Obama shown more active and forceful leadership on the Syrian conflict back when the opposition was comprised mostly of secular rebels, it's unlikely that the tragedy -- and related U.S. policy options -- would have deteriorated into what they are today. Had Obama not drawn a "red line" to show that the U.S. still cares about international norms (particularly when their enforcement makes the U.S. safer), the potential damage to U.S. credibility caused by inaction might not have been so great. Finally, had Obama strongly backed the Syrian rebels from the outset, Russia might not have opposed U.S. interests as aggressively, U.S. allies might have been more forthcoming with their support for any eventual military action, and Americans might not have reflected the ambivalence and confusion of their president when it comes to Syria. Given these policy blunders and the unfortunate circumstances they produced, **Obama's best move now is to explore the Russian proposal for the remote chance that it can improve the Syrian situation at little cost.** **Success would mean that Russia effectively enabled Obama to dodge the Syrian bullet.** Failure would force Obama to return to the three bad options available before the Russian proposal: 1) stay out of the conflict (despite the damage to U.S. credibility and the risk of an even bigger crisis requiring intervention later), 2) enter with the necessary strategy and commitment for victory, or, worst of all, 3) launch "symbolic strikes" that only boost Assad's standing (for successfully withstanding the "mighty" U.S. before continuing with his murderous military campaign) and possibly draw the U.S. into a much greater conflict on terms dictated by Assad, Hezbollah, and/or Iran.

### Legitimacy True

#### legitimacy is true, and wolforth is wrong--impact is global instability

Krzysztof J. Pelc 10¶ Department of Government,¶ Georgetown University¶ “Constraining Coercion? Legitimacy and its Role in US Trade Policy,” 1975-2000¶ Forthcoming, International Organizationh1 Volume 64 / Issue 01 / January 2010, pp 65-96

Abstract¶ The role of legitimacy in international relations is the topic of much¶ debate, yet there is little understanding of the mechanism behind it. Here I¶ address this discrepancy by asking: are state threats perceived as¶ (il)legitimate more or less likely to be successful? By operationalizing¶ illegitimacy as unilateral action in the presence of a multilateral option, I¶ consider the variation in the success of US trade measures from 1975 to¶ 2000. As I show, the (il)legitimacy of threats modifies the nature of the¶ signal sent by concessions to those threats, and this effect can be measured¶ and predicted. I find that, controlling for material pressure, perceived¶ illegitimacy of US trade threats decreases the likelihood of a target¶ conceding by over 34%. Moreover, it pays to resist: targets that resist¶ illegitimate unilateral measures from the US are 25% less likely to¶ encounter similar unilateral measures over the following 5 years.¶ Acknowledgements: I thank the editors and two anonymous reviewers, as well as Marc L.¶ Busch, Philipp Bleek, Luis Felipe Mantilla, Adam Mount, Erik Voeten, James Vreeland, and¶ the participants of the Mortara Seminar Series at Georgetown, for helpful comments.¶ Naturally, all remaining errors are my own. I gratefully acknowledge financial support from¶ the Canadian Social Science and Humanities Research Council, grant # 752 2007 0569.¶ 1¶ Constraining Coercion? Legitimacy and its Role in US Trade Policy, 1975-2000**¶** State leaders are regularly observed going to great lengths to portray their actions¶ as resting on a base of legitimacy, rather than relative power. The reasoning behind such¶ behavior, as argued by social scientists since Max Weber, is that preserving order through¶ coercion alone is costlier than obtaining it through voluntary compliance, and leads to¶ less stable orders.1 In an international system devoid of a central authority, however, it¶ remains unclear exactly what those costs should result from.¶ Indeed, despite widespread beliefs linking legitimacy and the effective wielding¶ of state power, there is surprisingly little evidence for any relation between the two. Nor¶ is there a clear theoretical understanding of the mechanism behind the working of¶ legitimacy. Such a disparity between conventional wisdom and evidence provides this¶ paper’s puzzle: in the realm of international trade, is state coercion that is perceived as¶ (il)legitimate more or less likely to be successful?¶ The legitimacy of coercion is best determined by examining the means through¶ which it is exerted. Accordingly, I consider that state threats formulated multilaterally are¶ legitimate; unilateral threats in the presence of a multilateral option are not. This reflects¶ a broad literature, which argues that channeling power through a multilateral institution¶ has been the predominant means of obtaining legitimacy in the last half century.2¶ Nonetheless, I devote an entire section of the paper to justifying this operationalization of¶ legitimacy, relying both on theory and archival evidence.¶ 1 Weber 1964.¶ 2 See Claude 1966; Davis 2003, Franck 1990; Hurd 2005; Thompson 2005, 2006; Voeten 2005.¶ 2¶ Rather than taking the familiar approach of considering the costs of illegitimacy¶ imposed by third-party states,3 I examine the impact that the legitimacy of threats has on¶ the response of targeted states themselves. I argue that the signal sent by targets’¶ concessions to threats varies according to the perceived legitimacy of those threats. States¶ that concede to extra-legal, illegitimate coercion incur a reputational loss. With only material power undergirding a threat, concessions signal weakness, in keeping with¶ classic realist expectations, and increase the expected value to the sender from further¶ unilateral threats. Indeed, senders want to change the target’s policy, but would prefer to¶ achieve this without the constraints imposed by a multilateral institution. If the sender¶ believes that material power alone will not sway the target—a belief formed by the¶ target’s past actions—then it is more likely to trade-off autonomy for increased pressure¶ through a multilateral instrument. Concessions to legitimate threats made in keeping with¶ international rules, conversely, signal the target’s willingness to play by international¶ rules even when those rules happen to go against its immediate interests. In sum, seeking¶ to strategically control the signals they send pushes states, all things constant, to concede¶ to legitimate threats and resist illegitimate ones.¶ I test these claims by comparing the success of two instruments through which the¶ US tried to influence foreign countries’ trade practices from 1975 to 2000. The first is a¶ domestic legislative measure, Section 301, which allowed the US to take a number of¶ retaliatory actions against any foreign measures violating existing agreements or¶ otherwise impeding its interests. Section 301 was universally condemned by foreign¶ 3 Thompson 2006, 2008, Martin 1993.¶ 3¶ states as “aggressive unilateralism” that undermined international trade rules.4 The¶ second instrument is the multilateral World Trade Organization (WTO) and its¶ predecessor, the General Agreement on Tariffs and Trade (GATT), through which the US¶ could bring foreign measures to dispute settlement. The GATT/WTO is a longstanding¶ multilateral agreement that enjoys legitimacy flowing from its internationally shared¶ principles. The simultaneous existence of these two options of divergent perceived¶ legitimacy but similar objectives presents a unique opportunity for isolating the role of¶ legitimacy by comparing their success in getting targets to concede to US demands.5 The¶ comparison is all the more compelling given that the material sanctions behind the¶ unilateral Section 301 were by all accounts as credible, if not more so, than those behind¶ GATT.¶ The results of the statistical analysis strongly corroborate the paper’s claims,¶ showing that US trade pressure is significantly less likely to elicit concessions when it is¶ perceived as illegitimate. Moreover, the results provide strong evidence for the signaling¶ mechanism I point to as the explanation behind legitimacy effects: I find that if a given¶ country resists US unilateral threats, then it is 25% less likely to encounter similar¶ unilateral threats (rather than being brought to legitimate multilateral dispute settlement)¶ in the following five years. The US, indeed, prefers not to give up its autonomy with¶ regards to a given threat, but will accept institutional constraints if unilateral power alone¶ is deemed unlikely to elicit concessions. In other words, it pays to resist illegitimacy:¶ 4 The term “aggressive unilateralism”, which has gained wide currency, is attributed to Jagdish Bhagwati,¶ and the book of the same title (Bhagwati 1990).¶ 5 A state is said to “concede” to a trade threat if it removes or sufficiently modifies the trade measure that¶ the complainant deems harmful.¶ 4¶ despite a high immediate cost (in the form of likely US trade sanctions), countries with a¶ history of resistance are much less likely to become targets of unilateralism in the future.¶ I go to considerable lengths to guard against a possible selection problem. It is¶ essential to verify that cases that end at Section 301 are not somehow fundamentally¶ different from those that went to GATT directly, or those that started as 301 measures¶ and went on to GATT. To be clear, the selection of trade instrument need not be random,¶ but it should not be correlated with potential concessions.¶ One implication of this article for the study of international relations is that taking¶ legitimacy seriously need not entail abandoning a rationalist view of politics. There does¶ exist a norm against unilateralism in the presence of a multilateral option, and I illustrate¶ how member states appeal to it, but it is by no means removed from state interests, which¶ allows us to hypothesize on the conditions under which such a norm will emerge.¶ Legitimacy and Power Among States¶ In large measure inspired directly by the work of Max Weber, political scientists¶ have long been interested in the observation that state leaders seek to portray their¶ actions—if not to their citizenry as a whole, then at least to their subordinates—as resting¶ on a base of legitimacy. A consensus of sorts has developed around the Weberian view of¶ legitimacy which suggests that material power alone is often insufficient to establish a¶ stable order, and that it relies in part on some form of voluntary compliance.¶ Scholars have examined the effect of perceived illegitimacy in the success of¶ foreign policy,6 humanitarian intervention,7 use of force,8 and environmental reforms.9

### Isr DA

**Talks are doomed to fail—both sides refuse to compromise,**

**Cook 10-31**-13 (Jonathan, won the Martha Gellhorn Special Prize for Journalism. His latest books are “Israel and the Clash of Civilisations: Iraq, Iran and the Plan to Remake the Middle East” (Pluto Press) and “Disappearing Palestine: Israel’s Experiments in Human Despair” (Zed Books), "Whatever happened to the Israeli-Palestinian Peace Process?" www.globalresearch.ca/whatever-happened-to-the-israeli-palestinian-peace-process/5356250?utm\_source=rss&utm\_medium=rss&utm\_campaign=whatever-happened-to-the-israeli-palestinian-peace-process

You could be forgiven for thinking everyone packed up shop a while ago and forgot to inform you. There’s been barely a peep about it since the revival of talks was greeted with great fanfare back in July. The negotiations, which have been conducted in a fug of secrecy, flitted briefly back on to the radar last week when the US Secretary of State, John Kerry, met Israeli prime minister Benjamin Netanyahu for what the media called an “unusually long”, seven-hour meeting in Rome. Much of the conversation was held in private, with not even officials present, but, according to reports, discussions concentrated on the revived peace process. Kerry, concerned about the lack of tangible progress, is believed to have tried to pin Netanyahu down on his vision of where the nine-month negotiations should lead. Kerry’s intervention follows weeks of mounting Palestinian frustration, culminating in rumours that the talks are on the verge of collapse. After a meeting with Kerry in Paris, an Arab League official, Nasif Hata, added to the desultory atmosphere, saying there were “no positive indications of progress”. Palestinian president Mahmoud Abbas, on a tour of European capitals last week in search of diplomatic support, tried to scotch suggestions that the talks were at a “dead end”. They were “difficult”, he admitted, and after nearly three months of meetings the two sides were still “at the beginning of the road”. But privately his **officials have expressed exasperation at Israel’s inflexibility and the miserliness of its opening positions.** Earlier this month the Al-Hayat newspaper reported that **Israel** had **refused to discuss the key issue of borders,** instead focusing exclusively on its own security concerns.**None of this is surprising.** At Israel’s insistence, the talks have been entirely shielded from public view. Privacy, Israel argued, would ease the pressure on the two parties and give them greater room to be forthcoming and creative. The reality, however, is that the **lack of scrutiny has allowed Israel to drag its feet and browbeat the weaker, Palestinian side. Israel’s lead negotiator,** Tzipi **Livni, has already warned that the talks’ timetable is likely to overrun. Similarly, US envoy Martin Indyk was supposed to be Kerry’s eyes and ears in the talks. Instead he spent the first two months locked out of the proceedings, apparently again at Israel’s instigation. Secrecy, Israel hopes, will give it the cover it expects to need when – as seems certain – the talks end inconclusively, or the Palestinians storm out.** Widespread ignorance about developments can be exploited to cast the Palestinians as the treacherous party, as occurred following the collapse of the Camp David talks in 2000. But belatedly **we are seeing a little of the leadership role Washington promised**. Indyk is said to be now actively involved. The rate of meetings between the negotiators has been stepped up sharply in the past fortnight. And last week’s meeting in Rome suggested that the US hopes to pressure Netanyahu either into making a big concession or into beginning the face-to-face talks with Abbas that this process is supposed eventually to lead to. According to Hata, of the Arab League, the US has also promised that it will “take action” if there is no breakthrough by January, presenting “viable suggestions for ways to end the thaw”. But **whatever Netanyahu has told Kerry in private, few believe the Israeli prime minister is really ready to seek peace.** Earlier this month he set out in public his vision for the talks, **in a follow-up to his famous speech in 2009,** when, faced with a newly installed US president, Barack Obama, he agreed to a two-state solution. This time, speaking from the same podium, **he sounded in no mood for conciliation. “Unless the Palestinians recognize the Jewish state and give up on the right of return there will not be peace,” he said**. He denied the “occupation and settlements” were causes of the conflict, and insisted on Israel’s need for “extremely strong security arrangements”. **It is this kind of uncompromising talk that has discredited the negotiations with everyone outside the White House. Last week Yuval Diskin, a recent head of the Shin Bet, Israel’s domestic intelligence service, warned that there was no realistic prospect that “the Israeli public will accept a peace agreement”.** Israelis’ distrust of the negotiations is fuelled by the constant opposition of government ministers. **In a further show of dissension, they have backed a bill that would require a two-thirds parliamentary majority before Israel can even broach at the talks the key issue of dividing Jerusalem. If passed, the legislation would turn the negotiations into a dead letter.** On the other side, Hamas has grown emboldened. Ismail Haniyeh, the prime minister in Gaza, has called on Palestinians to renew a “popular uprising”, just as a 1.5km-long underground tunnel Hamas had built into Israel was exposed. In the West Bank, a spate of attacks and killings of Israelis over the past few weeks – after a year without the loss of a single Israeli life from the conflict in 2012 – has provoked much speculation in Israel about whether a Palestinian uprising is imminent. **A Palestinian driving a bulldozer who recently rampaged through a military base near Jerusalem only reinforced the impression. Conveniently, Netanyahu has exploited widespread Israeli opposition to the next round of Palestinian prisoner releases this week – the carrot to keep the Palestinians at the negotiating table – to justify plans for an orgy of settlement building.** This time the government has committed to building 5,000 settler homes in return for the release of 25 prisoners jailed before the Oslo accords were signed two decades ago. **All indications are that these talks, like their predecessors, are doomed to fail.** The question is whether the Palestinians have the nerve to unmask the charade. If not, Israel will use the peace process as cover while its settlements devour yet more of the Palestinian state-in-waiting.

**Peace talks are unlikely to succeed**

**Hibbard 11-1**-13 (Steve, served for 37 years in the Canadian foreign office, in the Middle East "Israeli-Palestinian Peace Talks: Little Cause for Optimism" Cyprus Mail) cyprus-mail.com/2013/11/01/israeli-palestinian-peace-talks-little-cause-for-optimism/

U.S. Secretary of State John **Kerry has brought Israelis and Palestinians to the peace table. But are they any closer to peace?** Direct talks were launched in Washington under Kerry’s auspices at the end of July. The parties are now meeting on a weekly basis, alternately in Jerusalem and Jericho. Talks cover a full range of issues, including Jerusalem, borders, security arrangements, Israeli settlements, and refugees. Palestinians long said they would not reopen negotiations until Israel froze settlement activity. While Israel still refuses to do so, it has agreed to release 104 long-serving Palestinian prisoners in compensation. In return, the Palestinians promised not to upgrade their membership in UN agencies. Palestinian complaints about ongoing Israeli settlement activity, which some maintain is meant to undermine the talks, have been matched by vociferous protests in Israel over the release of the most recent 26 Palestinian prisoners. There is stark evidence of sensitivities and passions on both sides. A two-state solution to Israeli–Palestinian differences would be welcome. For decades, the conflict has contributed to Middle East tensions and the rise of extremist groups such as Al Qaeda. The conflict has been especially problematic for the United States, which has had to reconcile reflexive support for Israel with broader interests in the Arab and Islamic worlds. Little news has leaked from the secret talks, but one can gauge progress through a Palestinian complaint that the U.S. special envoy, Martin Indyk – a former U.S. ambassador to Israel – has not been attending the weekly sessions. Indyk’s uncharacteristically relaxed approach suggests the two sides have yet to broach matters of substance. The pace of the meetings is not indicative of pressure to achieve results. An axiom of American-led Middle East peace efforts has been the need for active involvement from the U.S. president. Without U.S. President Jimmy Carter’s mediation, there would have been no deal between Israeli Prime Minister Menachem Begin and Egyptian President Anwar el-Sadat at Camp David in 1978. The backing of U.S. President George H.W. Bush gave his secretary of state, James Baker, what was needed to bring Israeli Prime Minister Yitzhak Shamir to the 1991 Madrid Peace Conference. But even the active involvement of the U.S. president is no guarantee of success, as President Bill Clinton found in 2000 when he failed to broker a deal between Israeli Prime Minister Ehud Barak and Palestinian leader Yasser Arafat. U.S. President Barack Obama’s agenda includes sensitive international and domestic issues such as Iran’s nuclear program, Syria, the economy, and immigration reform. These must be managed in the face of a hostile Republican majority in the House of Representatives. Any hint of pressure on Israel, given the influence of Israel’s supporters, would lead to an outcry not only from Republicans, but also from members of his own party. Burnt on this front during his first term, Obama, with good reason, is likely to be wary. **The outlook for a breakthrough to an Israeli–Palestinian settlement or even meaningful progress on issues such as borders, settlements, and Jerusalem is dim**. Israeli Prime Minister Benjamin **Netanyahu,** who has boasted of undermining the Oslo accords, is **unlikely to endorse many substantive proposals acceptable to the Palestinians. The credibility of** the Palestinian President, Mahmoud **Abbas, has been damaged by factors such as his inability to halt illegal Israeli settlement activity and differences between the Fatah controlled West Bank and Hamas ruled Gaza**. The Gaza leadership, facing internal pressure from extremists, has taken a negative stance consistent with the call by the Qatar-based head of its political wing, Khaled Mashal, to immediately end talks with Israel. Hamas’ position will also resonate with a good many West Bank Palestinians. Abbas’ negotiation parameters will be constrained by such opposition, especially on the most sensitive issue of all, Jerusalem. **In the unlikely event that negotiations survive such difficult issues as settlements, borders, and refugees, Jerusalem is the rock on which they could founder**. As the late Palestinian leader Yasser Arafat told me, Jerusalem was the issue that undermined President Clinton’s peace efforts. **The holy city is central to the national identity of both Israelis and Palestinians.** Neither President Abbas nor any other Palestinian leader could survive an agreement that did not make East Jerusalem, with Al Haram al-Sharif, the capital of a Palestinian state. Images of its holy sites are fixtures in Palestinian homes. But the Al Aqsa Mosque and Dome of the Rock are built on the Temple Mount, which is holy to Judaism and central to Jewish history – and, by extension, to the Jewish state. **It would be difficult for any Israeli leader to find support in the Knesset or among the Israeli people for concessions on Jerusalem sufficient to meet Palestinian needs. Given his record, it is doubtful Israeli Prime Minister Netanyahu will even try. Perhaps these negotiations will modestly narrow Israeli–Palestinian differences. More likely, they will break down in acrimony and further complicate the road to separate Israeli and Palestinian states.**

**Palestinians will collapse negotiations**

**Toameh 10-9**-13 (Khaled, staff writer, “PLO official: Palestinians 'seriously considering' declaring failure of peace talks” JPOST) http://www.jpost.com/Middle-East/PLO-official-Palestinians-seriously-considering-to-declare-failure-of-peace-talks-328273

**The Palestinians are seriously considering declaring the failure of the peace talks with Israel, a senior** PLO **official said** Wednesday. Hanna Amireh, a member of the PLO Executive Committee, said that this was one of the scenarios that were discussed during the last meeting of the Palestinian leadership. Amireh accused Israel of seeking to “win time” and blame the Palestinians for the failure of the US-sponsored talks. **Israel, he said, is benefiting from the prolonged negotiations in order to “impose more facts on the ground and dictate the outcome of the talks.” Amireh criticized Justice Minister Tzipi Livni for stating that the talks with the Palestinians may extend beyond the nine- month deadline set by the US Administration.** He said that Livini’s remarks were in violation of the agreement reached with the Americans. The PLO official also criticized Prime Minister Binyamin Netanyahu’s demand that the Palestinians recognize the Jewishness of Israel. **“All the previous sessions of negotiations have nor produced anything,” he said. “We are now seriously discussing the nature of our steps in the aftermath of the collapse of the negotiations.”**

#### Peace talks will fail now—Fatah

Ronen 7-18 (Gil, staff writer, 7-18-13, “Palestinians Torpedo Kerry Plan to Restart Negotiations” Israel National News) http://www.israelnationalnews.com/News/News.aspx/170048#.Ueif2o2siSo

Fatah - the party of Palestinian Authority President Mahmoud Abbas and the dominant faction within the PA - has effectively torpedoed U.S. Secretary of State John Kerry's plan for restarting negotiations between Israel and the Palestinian Authority, a report by AFP indicates. According to the report, Fatah officials demanded on Thursday that changes be made to Kerry's Middle East peace plan, following a meeting in Ramallah. The move means it is likely the PA will also reject the plan. "Fatah wants to make some alterations to Kerry's plan... because the proposed ideas are not encouraging for a return to negotiations," a top official from Fatah said. "The central committee is demanding, for a return to talks... that Kerry announce they should be based on the 1967 lines," said Amin Maqbul, secretary general of the ruling Fatah movement's Revolutionary Council. The vote came after two rounds of intensive talks between Kerry and Palestinian Authority chairman Mahmoud Abbas on Tuesday and Wednesday, in which they thrashed out the plan. Abbas is also Fatah's leader. It was the top US diplomat's sixth visit to the region in as many months to try to broker a compromise formula to allow a resumption of direct peace talks after a three-year hiatus. Israel had rejected Palestinian demands for a publicly declared freeze to all settlement construction in Judea and Samaria as a condition to resume talks, and Abbas and his negotiating team had referred those terms to the Palestinian political leadership.

**h1**

### impacts NU

#### Timeframe. Middle East is on the brink of a major conflict

Brooks 9-1 (David, New York Times columnist, 9-1-13, "David Brooks: Middle East reaches brink of all-out sectarian war" Post Bulletin) www.postbulletin.com/opinion/david-brooks-middle-east-reaches-brink-of-all-out-sectarian/article\_4677a9b4-19ed-52d8-88f2-d580aa29cc1a.html

What's the biggest threat to world peace right now? Despite the horror, it's not chemical weapons in Syria. It's not even, for the moment, an Iranian nuclear weapon. Instead, it's the possibility of a wave of sectarian strife building across the Middle East. The Syrian civil conflict is both a proxy war and a combustion point for spreading waves of violence. This didn't start out as a religious war. But both Sunni and Shiite power players are seizing on religious symbols and sowing sectarian passions that are rippling across the region. The Saudi and Iranian powers hover in the background fueling each side. As the death toll in Syria rises to Rwanda-like proportions, images of mass killings draw holy warriors from countries near and far. The radical groups are the most effective fighters and control the tempo of events. The Syrian opposition groups are themselves split violently along sectarian lines so the country seems to face a choice between anarchy and atrocity. Meanwhile, the strife appears to be spreading. Sunni-Shiite violence in Iraq is spiking upward. Reports in The New York Times and elsewhere have said many Iraqis fear their country is sliding back to the worst of the chaos experienced in the past decade. Even Turkey, Pakistan, Bahrain and Kuwait could be infected. "It could become a regional religious war similar to that witnessed in Iraq 2006-2008, but far wider and without the moderating influence of American forces," wrote Gary Grappo, a retired senior Foreign Service officer with long experience in the region. "It has become clear over the last year that the upheavals in the Islamic and Arab world have become a clash within a civilization rather than a clash between civilizations," Anthony Cordesman of the Center for Strategic and International Studies wrote recently. "The Sunni versus Alawite civil war in Syria is increasingly interacting with the Sunni versus Shiite tensions in the Gulf that are edging Iraq back toward civil war. They also interact with the Sunni-Shiite, Maronite and other confessional struggles in Lebanon." Some experts even say we are seeing the emergence of a single big conflict that could be part of a generation-long devolution, which could end up toppling regimes and redrawing the national borders that were established after World War I. The forces ripping people into polarized groups seem stronger than the forces bringing them together.

### a2 it works

**The Israeli-Palestinian conflict exacerbates water wars and drags in other countries**

**Ferragina,** Senior Researcher at the Institute of Studies on Mediterranean Society 2007 (Eugenia, “The Effects of the Irsaeli-Palestinian Conflict on Water Resources in the Jordan River Basin”, <http://www.globalenvironment.it/ferragina.pdf>, accessed 7/13, J.Y.)

**An emblematic case** of the connection **between security and the ¶ environment** in the Mediterranean **is the Israeli-Palestinian conflict.** Here we find both competition **for land and water** – the one ¶ inseparable from the other – **and the devastating effects of prolonged ¶ conflict on the environment and natural resources.** A historical ¶ reconstruction of the water dispute in the Middle East shows that ¶ a situation of prolonged political instability has led Israel to follow ¶ a politics of appropriation of the main surface and underground ¶ resources of the Jordan basin**. This politics, aimed at guaranteeing ¶ the country’s hydraulic security in a hostile regional context, has ¶ legitimized a race for the exploitation of water resources** among the ¶ other countries along the lower course of the Jordan (Jordan and the ¶ Palestinian Territories); a race that has shoved into the background ¶ the issue of saving and protecting water resources.¶ Today, the **effects of** global problems such as **climatic change tend ¶ to be amplified at the regional scale**. This is because the ancient war ¶ for water now takes place within an environmental context subjected ¶ to strong anthropic pressure and gradual parching of the soil. **Water** thus **becomes a strategic bone of contention, capable of influencing ¶ peace and regional securities**.¶ Thus, the connection between security and the environment is ¶ increasingly influenced by current global dynamics; a challenge that ¶ would call for an environmental management at the global scale that ¶ our weak international institutions are incapable of providing. We ¶ hear many declarations of principles, but there is no consensus on ¶ the strategies to be followed to face environmental crises and their ¶ political and economic effects. The water of discord¶ **The environmental context of the geopolitics of water in the ¶ Middle East – that is, the political rivalry between the countries of ¶ the Jordan basin as regards the parceling out of the river’s water** and ¶ the exploitation of underground hydrogeological resources – **is one ¶ of aridity and scarce precipitation** resulting in low-flow and highly ¶ saline watercourses.¶ The Jordan basin extends from Mount Hermon in the north to ¶ the Dead Sea in the south. It lies within the territories of five states: ¶ Syria, Israel, Palestine, Lebanon, and Jordan. I will mainly focus, ¶ however, on the countries along the lower course of the Jordan, viz., ¶ **Israel, Jordan, and the Palestinian Territories** of Gaza and West Bank, ¶ which **appear to be more dependent on the water of the Jordan river** ¶ and more exposed to water scarcity.¶ The Jordan originates from the slopes of Mount Hermon. It ¶ receives three tributaries along its upper course: the Hasbani, the ¶ Dan, and the Banyas. The river then runs across northern Israel, ¶ through Lake Tiberias, and then southward. About 6.5 kilometers ¶ from Lake Tiberias it receives its main tributary, the Yarmuk, which ¶ marks the boundary between Syria and Jordan and then that between ¶ Israel and Jordan. Immediately after its confluence with the Yarmuk, ¶ the Jordan runs in its homonymous valley for about 110 kilometers. ¶ This stretch marks the boundary between Jordan and Israel, and then ¶ that between Jordan and West Bank. The river finally flows into the ¶ Dead Sea, over 400 meters below sea level. The flow of the Jordan is subject to frequent seasonal and interannual variations. It is about ¶ 1500 millions of cubic meters per year, so a mere 2% of that of the ¶ Nile and 6% of that of the Euphrates (Fig. 1).¶ **The dispute over the Jordan basin waters precedes the Arab Israel conflict, but it intensified in the years immediately following ¶ the birth of the state of Israel**, especially since 1953, when Israel ¶ began the construction of the “National Water Carrier”. This great ¶ aqueduct, destined to convey the waters of the Jordan stored in Lake ¶ Tiberias along the Mediterranean coast all the way to the distant ¶ and arid Negev, diverts the course of the river outside of its basin, ¶ de facto snatching it from the control of the other countries of the ¶ basin (Lebanon, Syria, and Jordan).3

**Collapsing global water supplies cause extinction.**

**Marlow,** National Chairperson of the Council of Canadians and IFG Committee on the Globalization of Water **2001** (Maude, Spring, “BLUE GOLD: The Global Water Crisis and the Commodification of the World's Water Supply,” http://www.ratical.org/co-globalize/BlueGold.pdf.

Perhaps the most devastating analysis of the global water crisis comes from hydrological engineer Michal Kravèík and his team of scientists at the Slovakia non-governmental organization (NGO) People and Water. Kravèík, who has a distinguished career with the Slovak Academy of Sciences, has studied the effect of urbanization, industrial agriculture, deforestation, dam construction, and infrastructure and paving on water systems in Slovakia and surrounding countries and has come up with an alarming finding. **Destroying water's natural habitat not only creates a supply crisis for people and animals, it also dramatically diminishes the amount of available fresh water on the planet.** Kravèík describes the hydrologic cycle of a drop of water. It must first evaporate from a plant, earth surface, swamp, river, lake or the sea, then fall back down to earth as precipitation. If the drop of water falls back onto a forest, lake, blade of grass, meadow or field, it cooperates with nature to return to the hydrologic cycle. "Right of domicile of a drop is one of the basic rights, a more serious right than human rights," says Kravèík. However, if the earth's surface is paved over, denuded of forests and meadows, and drained of natural springs and creeks, the drop will not form part of river basins and continental watersheds, where it is needed by people and animals, but head out to sea, where it will be stored. It is like rain falling onto a huge roof, or umbrella; everything underneath stays dry and the water runs off to the perimeter. **The consequent reduction in continental water basins results in reduced water evaporation from the earth's surface, and becomes a net loss, while the seas begin to rise**. In Slovakia, the scientists found, for every 1 percent of roofing, paving, car parks and highways constructed, water supplies decrease in volume by more than 100 billion meters per year. Kravèík issues a dire warning about **the growing number of what he calls the earth's "hot stains"—places already drained of water. The "drying out" of the earth will cause massive global warming, with the attendant extreme**s in weather: **drought, decreased protection from the** atmosphere, increased solar radiation, **decreased biodiversity, melting of the polar icecaps, submersion of vast territories, massive continental desertification and, eventually, "global collapse."**

**Democracy 2NC**

**The peace process is necessary to demonstrate a commitment to democracy in the region**

**Asmus et. al 5**

Ronald D., Larry, Mark, and Michael, A Transatlatnic Strategy to Promote Democratic Development in the Broader Middle East, Washington Quarterly, http://www.twq.com/05spring/docs/05spring\_asmus.pdf

A resolution of the Israeli-Palestinian conflict would clearly produce real benefits for democratic development in the region. Ending the conflict would remove a painful issue that crowds the region’s political agenda and absorbs energies that otherwise could be devoted to internal reform. Autocratic Arab governments could no longer hide behind or use this conflict to deflect domestic pressures for change, and terrorists across the region could no longer exploit the situation for their recruitment efforts. The West would no longer require the cooperation of a dictatorial regime in Syria or be deterred from pushing for reform in autocratic allies such as Egypt because of their critical role in peace negotiations. Israel certainly has its own interest in the transformation of the region into a set of more democratic societies in which the forces of radicalism and terrorism are marginalized.

Many today in the Arab world see a Western and especially a U.S. commitment to the peace process as a litmus test of our intentions in the Arab world more broadly, including on democracy. To them, our credibility on questions of democracy are tied to support for Palestinian political self-determination.

**Democracy in Middle East prevents nuclear war**

**Muravchick**-resident scholar at ADI 2001(Joshua, Presented before the NPEC/IGCC Summer Faculty Seminar July 11-14, 20**01**, University of California, San Diego)

The fall of Communism not only ended the Cold War; it also ended the only universalist ideological challenge to democracy. Radical Islam may still offer an alternative to democracy in parts of the world, but it appeals by definition only to Moslems and has not even won the assent of a majority of these. And Iranian President Khatami's second landslide election victory in 2001 suggests that even in the cradle of radical Islam the yearning for democracy is waxing. That Freedom House could count 120 freely elected governments by early 2001 (out of a total of 192 independent states) bespeaks a vast transformation in human governance within the span of 225 years. In 1775, the number of democracies was zero. In 1776, the birth of the United States of America brought the total up to one. Since then, democracy has spread at an accelerating pace, most of the growth having occurred within the twentieth century, with greatest momentum since 1974. That this momentum has slackened somewhat since its pinnacle in 1989, destined to be remembered as one of the most revolutionary years in all history, was inevitable. So many peoples were swept up in the democratic tide that there was certain to be some backsliding. Most countries' democratic evolution has included some fits and starts rather than a smooth progression. So it must be for the world as a whole. Nonetheless, the overall trend remains powerful and clear. Despite the backsliding, the number and proportion of democracies stands higher today than ever before. This progress offers a source of hope for enduring nuclear peace. The danger of nuclear war was radically reduced almost overnight when Russia abandoned Communism and turned to democracy. For other ominous corners of the world, we may be in a kind of race between the emergence or growth of nuclear arsenals and the advent of democratization. If this is so, the greatest cause for worry may rest with the Moslem Middle East where nuclear arsenals do not yet exist but where the prospects for democracy may be still more remote.

**Iran Prolif 2NC**

#### Israeli-Palestine conflict leads to Iran prolif

Jeganaathan 12 [J Jeganaathan - Researcher at the Institute of Peace and Conflict Studies (IPCS), New Delhi. He has a PhD in European Studies from School of International Studies. Fellow at Centre for Transnational Relations, Foreign and Security Policy. IPCS, “The IPCSNuclear Security Programme Quarterly”; September 2012 - Accessed July 16th; http://www.ipcs.org/Nuclear\_Quarterly-Oct-Dec\_2012.pdf --- Leis]

For Iran, political instability in the Middle East region particularly neighbouring states like Iraq, and the Israel‐Palestine conflict could have led to a nuclear weapons option. Supporting this is TV Paul’s argument that nuclear choices of potential proliferators are likely to be greatly influenced by the security environment and conflict level of its region. However, he does not deny the role of great power in shaping the regional power equation by active involvement in the regional conflicts between emerging regional powers and its inferior adversaries. Thus a great power active in a region could be part of the security complex, most often by imposing, but sometimes by receiving, negative and positive security externalities. For example, the US is an active member of the regional security complex of both the Middle East and East Asia. The US preponderance in the Middle East particularly its support to Israel and its foreign policy irks other states that are hostile towards Israel. This would definitely alter the regional power equation in Middle East. It was reported that Iran’s nuclear expansion programme involves obtaining technology to produce HEU. Iran has benefitted from AQ Khan’s nuclear black market where it is alleged to have acquired enrichment technology violating international nuclear norms.

#### Iran prolif causes nuclear war

Kroenig 12 (Matthew, assistant professor of Government at Georgetown University and Stanton Nuclear Security Fellow at the Council on Foreign Relations, January/February 2012, “Time to Attack Iran - Why a Strike Is the Least Bad Option” Foreign Affairs) http://www.foreignaffairs.com/articles/136917/matthew-kroenig/time-to-attack-iran

Some states in the region are doubting U.S. resolve to stop the program and are shifting their allegiances to Tehran. Others have begun to discuss launching their own nuclear initiatives to counter a possible Iranian bomb. For those nations and the United States itself, the threat will only continue to grow as Tehran moves closer to its goal. A nuclear-armed Iran would immediately limit U.S. freedom of action in the Middle East. With atomic power behind it, Iran could threaten any U.S. political or military initiative in the Middle East with nuclear war, forcing Washington to think twice before acting in the region. Iran’s regional rivals, such as Saudi Arabia, would likely decide to acquire their own nuclear arsenals, sparking an arms race. To constrain its geopolitical rivals, Iran could choose to spur proliferation by transferring nuclear technology to its allies -- other countries and terrorist groups alike. Having the bomb would give Iran greater cover for conventional aggression and coercive diplomacy, and the battles between its terrorist proxies and Israel, for example, could escalate. And Iran and Israel lack nearly all the safeguards that helped the United States and the Soviet Union avoid a nuclear exchange during the Cold War -- secure second-strike capabilities, clear lines of communication, long flight times for ballistic missiles from one country to the other, and experience managing nuclear arsenals. To be sure, a nuclear-armed Iran would not intentionally launch a suicidal nuclear war. But the volatile nuclear balance between Iran and Israel could easily spiral out of control as a crisis unfolds, resulting in a nuclear exchange between the two countries that could draw the United States in, as well.

**Hamas [Iran] 2NC**

**Kerry’s departure would signal the end of peace negotiations, which drives new members to Hamas**

**JPost, 7-13**

(Jerusalem Post, 7-13, “Nablus mayor: If talks fail, Palestinians will take to streets,” <http://www.jpost.com/Diplomacy-and-Politics/Nablus-mayor-If-Kerry-peace-bid-fails-Palestinians-will-take-to-streets-319695>, accessed 7-13-13, EB)

Israel and the Palestinians are headed toward another round of street clashes if peace efforts spearheaded by US Secretary of State John Kerry fail, the mayor of Nablus told Israel Radio on Saturday. Ghassan Shaka'a, who has also served as a veteran functionary in the Palestine Liberation Organization, told Israel Radio that Palestinians in the West Bank will take to the streets and demonstrate against Israel if the peace process remains stalled. "[Kerry] is a man for peace," the Nablus mayor said. "Give him the chance to succeed. By sticking to this course, we may end up losers, but we won't be the only losers." Shaka'a told Israel Radio that in the event street demonstrations do take place, the Palestinian Authority is likely to join in. He said that the combination of a stalled diplomatic process and the slowdown in the Palestinian economy will lead to confrontation. "We are losing popularity," Shaka'a said. "We have always offered the people a diplomatic horizon, but now we are operating solely by dint of orders we receive from [Palestinian Authority President Mahmoud Abbas]." The Nablus mayor warned that the lack of progress on the peace front is boosting Hamas' popularity in the West Bank. "Their power depends on the Israeli activities," the Nablus mayor told Israel Radio. "As long as the Israeli side says "no" to peace negotiations, then it is telling the moderate people, 'Go to [Hamas'] side'."

**Expansion of Hamas’ sphere of influence motivates Israel to counterstrike Iran**

**Rubin, 2012**

(Michael, 11-19-12, Commentary Magazine, “Is this How the Israel-Iran War Begins?” <http://www.commentarymagazine.com/2012/11/19/is-this-how-the-israel-iran-war-begins/>, accessed 7-12-13, EB)

Experts and defense analysts agree that Iran would respond to any Israeli strike on its nuclear facilities by proxy, specifically by Hamas and Hezbollah rocketry launched at Israeli towns and cities. Indeed, this is one of the reasons beyond sheer ideological spite that the Iranian leadership has gone to such great lengths to arm both Hamas and Hezbollah. The Iranian leadership may be coming very close to forcing Israel’s hand. If Hezbollah seeks to open a second front against Israel, then Israel could find itself in a two-front war with terrorist entities. Make no mistake, Israel would achieve its objective of destroying the majority of the longest-range and most lethal missiles supplied to Hamas and Hezbollah by Iran, Syria, and perhaps even North Korea. This might reduce the costs to Israel of undertaking a strike on Iran’s nuclear facilities. After all, if Hamas and Hezbollah are temporarily neutered and if the Israeli government concludes that the elements of the Islamic Revolutionary Guard Corps who would have command and control over any Iranian nuclear arsenal would pose an existential threat, then the Israelis may decide that their window of opportunity would never be so favorable as the present. After all, Iran’s air defense is only going to get more sophisticated with time, and its missile program is advancing steadily, and so time is otherwise not on Israel’s side.

**Kerry’s departure would signal the end of peace negotiations, which drives new members to Hamas**

**JPost, 7-13**

(Jerusalem Post, 7-13, “Nablus mayor: If talks fail, Palestinians will take to streets,” <http://www.jpost.com/Diplomacy-and-Politics/Nablus-mayor-If-Kerry-peace-bid-fails-Palestinians-will-take-to-streets-319695>, accessed 7-13-13, EB)

Israel and the Palestinians are headed toward another round of street clashes if peace efforts spearheaded by US Secretary of State John Kerry fail, the mayor of Nablus told Israel Radio on Saturday. Ghassan Shaka'a, who has also served as a veteran functionary in the Palestine Liberation Organization, told Israel Radio that Palestinians in the West Bank will take to the streets and demonstrate against Israel if the peace process remains stalled. "[Kerry] is a man for peace," the Nablus mayor said. "Give him the chance to succeed. By sticking to this course, we may end up losers, but we won't be the only losers." Shaka'a told Israel Radio that in the event street demonstrations do take place, the Palestinian Authority is likely to join in. He said that the combination of a stalled diplomatic process and the slowdown in the Palestinian economy will lead to confrontation. "We are losing popularity," Shaka'a said. "We have always offered the people a diplomatic horizon, but now we are operating solely by dint of orders we receive from [Palestinian Authority President Mahmoud Abbas]." The Nablus mayor warned that the lack of progress on the peace front is boosting Hamas' popularity in the West Bank. "Their power depends on the Israeli activities," the Nablus mayor told Israel Radio. "As long as the Israeli side says "no" to peace negotiations, then it is telling the moderate people, 'Go to [Hamas'] side'."

**Hamas is a focal point of conflict with the Muslim world; the alternative is all-out Holy War**

**Aysha, Professor at American University in Cairo, 2006**

(Emad El-Din, Summer, “The Hamas Victory and the New Politics that May Come,” New Politics, Vol.: 11, <http://newpol.org/content/hamas-victory-and-new-politics-may-come>, EB)

Hamas could very well become the rallying point for Mideast Islamist activity. The Arab regimes by and large have reacted positively to the election results and seem adamant to hold Washington to task on its commitment to democracy in the region -- you made your bed, now you have to sleep in it. Much has been made of the U.S. and European decision, taken rather hastily, to punish the Palestinian people for exercising their democratic right. The message coming out of the (state-owned or supervised) mosques certainly has taken this latest development onboard as part of their anti- American, anti-Western propaganda campaign -- where are the human rights of the Iraqis, Afghanis and Palestinians for you to call on us to respect human rights in our countries? More than just this the very animating concepts underlying the Arab-Israeli conflict may change, resulting in an Islamicization of the confrontation between Israel and the Arabs. Helen Rizzo, a sociologist who specializes in political and social movements in the Middle East, is of this opinion, believing that what could also come about is a pragmatic awareness that religion is a factor that can be utilized in the Israeli-Palestinian conflict, much as the secularist Zionist movement itself employed religion. Ideological and sectarian concerns -- many of the Marxists who set up the Palestinian factions were Christians -- always got in the way in the past, gaining sustenance from the secularism of Nasserism, Baathism, and the whole Communist bloc. They forcefully de- Islamicized the original pan-Islamic nature of the confrontation at the time of th

e Palestinian Hajj Amin Al-Husayni, Egyptian Hassan Al-Banna and Syrian Sheikh Abd Al-Karim Qassam.[5] The nationalist rhetoric that this is a war for national independence between the colonial West, embodied in Israel, and the Third Worlders known as Arabs will increasingly succumb to the notion that there is a religious war with a Zionist-Crusader West, to quote a bin Laden characterization verbatim. I mean, haven't the nationalists tried and failed because they were co-opted by the very Western imperialist enemy they claimed to fight against? Isn't the Al-Aqsa mosque, the third most holy mosque in Islam, under threat from Jewish extremists? Wasn't Palestine the focal point of the Vatican-launched Crusades? Arab nationalism has been in a nosedive since the 1967 war and in many ways Arafat himself was the last of that secularist, Palestine is above-any-particular-religion generation. Not to forget that we all have Samuel Huntington to thank for convincing a goodly portion of "the Rest" of the world that "the West" is in a civilizational confrontation with it. From this point onward the trials and tribulations of Hamas and the Palestinian people will be seen and presented to the Arab and Muslim worlds in religious terms, with Islam triumphing for divinely ordained reasons whenever Hamas has a victory, while failures will be understood as the result of an anti- Islamic conspiracy. This will also have a democratizing effect since the argument that democracy cannot be attained without achieving national sovereignty and autonomy first will no longer hold. Opposition parties and the attentive public will be on the move, transforming large sectors of the Arab population into readymade audiences. A propaganda war, then, is in the offing and the first rounds have already been fired and from the most unlikely corner.