# **1NC**

## 1

#### By executive order, the President of the United States should commit the Solicitor General & White House Counsel’s Office to advance consultation with the Office of Legal Counsel and require written publication of Office of Legal Counsel opinions over current law regarding the National Defense Authorization Act and the 2001 Authorization for Use of Military Force. The President should publicly pledge to act consistent with these opinions.

#### The Office of Legal Counsel should opine that:

#### The best interpretation of current law requires an interpretation of the NDAA to provide assurances to the European Union, including safe haven rules which account for states with functioning governments or popular support, and

#### All extradited terror suspects will defend their case in regularly constituted courts and will be detained in civilian criminal facilities without threat of the death penalty.

#### CP competes on ‘authority’ but solves – OLC rulings are binding as settled law, but crafting reduces links to net benefits

Trevor W. Morrison, October 2010 Columbia Law Professor

“STARE DECISIS IN THE OFFICE OF LEGAL COUNSEL,” Columbia Law Review, 110 Colum. L. Rev. 1448.

On the other hand, an OLC that says "yes" too often is not in the client's long-run interest. n49 Virtually all of OLC's clients have their own legal staffs, including the White House Counsel's Office in the White House and the general counsel's offices in other departments and agencies. Those offices are capable of answering many of the day-to-day issues that arise in those components. They typically turn to OLC when the issue is sufficiently controversial or complex (especially on constitutional questions) that some external validation holds special value. n50 For example, when a department confronts a difficult or delicate constitutional question in the course of preparing to embark upon a new program or course of action that raises difficult or politically sensitive legal questions, it has an interest in being able to point to a credible source affirming the [\*1462] legality of its actions. n51 The in-house legal advice of the agency's general counsel is unlikely to carry the same weight. n52 Thus, even though those offices might possess the expertise necessary to answer at least many of the questions they currently send to OLC, in some contexts they will not take that course because a "yes" from the in-house legal staff is not as valuable as a "yes" from OLC. But that value depends on OLC maintaining its reputation for serious, evenhanded analysis, not mere advocacy. n53 The risk, however, is that OLC's clients will not internalize the long-run costs of taxing OLC's integrity. This is in part because the full measure of those costs will be spread across all of OLC's clients, not just the client agency now before it. The program whose legality the client wants OLC to review, in contrast, is likely to be something in which the client has an immediate and palpable stake. Moreover, the very fact that the agency has come to OLC for legal advice will often mean it thinks there is [\*1463] at least a plausible argument that the program is lawful. In that circumstance, the agency is unlikely to see any problem in a "yes" from OLC. Still, it would be an overstatement to say that OLC risks losing its client base every time it contemplates saying "no." One reason is custom. In some areas, there is a longstanding tradition - rising to the level of an expectation - that certain executive actions or decisions will not be taken without seeking OLC's advice. One example is OLC's bill comment practice, in which it reviews legislation pending in Congress for potential constitutional concerns. If it finds any serious problems, it writes them up and forwards them to the Office of Management and Budget, which combines OLC's comments with other offices' policy reactions to the legislation and generates a coordinated administration position on the legislation. n54 That position is then typically communicated to Congress, either formally or informally. While no statute or regulation mandates OLC's part in this process, it is a deeply entrenched, broadly accepted practice. Thus, although some within the Executive Branch might find it frustrating when OLC raises constitutional concerns in bills the administration wants to support as a policy matter, and although the precise terms in which OLC's constitutional concerns are passed along to Congress are not entirely in OLC's control, there is no realistic prospect that OLC would ever be cut out of the bill comment process entirely. Entrenched practice, then, provides OLC with some measure of protection from the pressure to please its clients. But there are limits to that protection. Most formal OLC opinions do not arise out of its bill comment practice, which means most are the product of a more truly voluntary choice by the client to seek OLC's advice. And as suggested above, although the Executive Branch at large has an interest in OLC's credibility and integrity, the preservation of those virtues generally falls to OLC itself. OLC's nonlitigating function makes this all the more true. Whereas, for example, the Solicitor General's aim of prevailing before the Supreme Court limits the extent to which she can profitably pursue an extreme agenda inconsistent with current doctrine, OLC faces no such immediate constraint. Whether OLC honors its oft-asserted commitment to legal advice based on its best view of the law depends largely on its own self-restraint. 2. Formal Requests, Binding Answers, and Lawful Alternatives. - Over time, OLC has developed practices and policies that help maintain its independence and credibility. First, before it provides a written opinion, n55 OLC typically requires that the request be in writing from the head or general counsel of the requesting agency, that the request be as specific and concrete as possible, and that the agency provide its own written [\*1464] views on the issue as part of its request. n56 These requirements help constrain the requesting agency. Asking a high-ranking member of the agency to commit the agency's views to writing, and to present legal arguments in favor of those views, makes it more difficult for the agency to press extreme positions. Second, as noted in the Introduction, n57 OLC's legal advice is treated as binding within the Executive Branch until withdrawn or overruled. n58 As a formal matter, the bindingness of the Attorney General's (or, in the modern era, OLC's) legal advice has long been uncertain. n59 The issue has never required formal resolution, however, because by longstanding tradition the advice is treated as binding. n60 OLC protects that tradition today by generally refusing to provide advice if there is any doubt about whether the requesting entity will follow it. n61 This guards against "advice-shopping by entities willing to abide only by advice they like." n62 More broadly, it helps ensure that OLC's answers matter. An agency displeased with OLC's advice cannot simply ignore the advice. The agency might [\*1465] construe any ambiguity in OLC's advice to its liking, and in some cases might even ask OLC to reconsider its advice. n63 But the settled practice of treating OLC's advice as binding ensures it is not simply ignored. In theory, the very bindingness of OLC's opinions creates a risk that agencies will avoid going to OLC in the first place, relying either on their general counsels or even other executive branch offices to the extent they are perceived as more likely to provide welcome answers. This is only a modest risk in practice, however. As noted above, legal advice obtained from an office other than OLC - especially an agency's own general counsel - is unlikely to command the same respect as OLC advice. n64 Indeed, because OLC is widely viewed as "the executive branch's chief legal advisor," n65 an agency's decision not to seek OLC's advice is likely to be viewed by outside observers with skepticism, especially if the in-house advice approves a program or initiative of doubtful legality. OLC has also developed certain practices to soften the blow of legal advice not to a client's liking. Most significantly, after concluding that a client's proposed course of action is unlawful, OLC frequently works with the client to find a lawful way to pursue its desired ends. n66 As the OLC Guidelines put it, "when OLC concludes that an administration proposal is impermissible, it is appropriate for OLC to go on to suggest modifications that would cure the defect, and OLC should stand ready to work with the administration to craft lawful alternatives." n67 This is a critical component of OLC's work, and distinguishes it sharply from the courts. In addition to "providing a means by which the executive branch lawyer can contribute to the ability of the popularly-elected President and his administration to achieve important policy goals," n68 in more instrumental terms the practice can also reduce the risk of gaming by OLC's clients. And that, in turn, helps preserve the bindingness of OLC's opinions. n69 [\*1466] To be sure, OLC's opinions are treated as binding only to the extent they are not displaced by a higher authority. A subsequent judicial decision directly on point will generally be taken to supersede OLC's work, and always if it is from the Supreme Court. OLC's opinions are also subject to "reversal" by the President or the Attorney General. n70 Such reversals are rare, however. As a formal matter, Dawn Johnsen has argued that "the President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds." n71 Solely is a key word here, especially for the President. Although his oath of office obliges him to uphold the Constitution, n72 it is not obvious he would violate that oath by pursuing policies that he thinks are plausibly constitutional even if he has not concluded they fit his best view of the law. It is not clear, in other words, that the President's oath commits him to seeking and adhering to a single best view of the law, as opposed to any reasonable or plausible view held in good faith. Yet even assuming the President has some space here, it is hard to see how his oath permits him to reject OLC's advice solely on policy grounds if he concludes that doing so is indefensible as a legal matter. n73 So the President needs at least a plausible legal basis for [\*1467] disagreeing with OLC's advice, which itself would likely require some other source of legal advice for him to rely upon. The White House Counsel's Office might seem like an obvious candidate. But despite recent speculation that the size of that office during the Obama Administration might reflect an intention to use it in this fashion, n74 it continues to be virtually unheard of for the White House to reverse OLC's legal analysis. For one thing, even a deeply staffed White House Counsel's Office typically does not have the time to perform the kind of research and analysis necessary to produce a credible basis for reversing an OLC opinion. n75 For another, as with attempts to rely in the first place on in-house advice in lieu of OLC, any reversal of OLC by the White House Counsel is likely to be viewed with great skepticism by outside observers. If, for example, a congressional committee demands to know why the Executive Branch thinks a particular program is lawful, a response that relies on the conclusions of the White House Counsel is unlikely to suffice if the committee knows that OLC had earlier concluded otherwise. Rightly or wrongly, the White House Counsel's analysis is likely to be treated as an exercise of political will, not dispassionate legal analysis. Put another way, the same reasons that lead the White House to seek OLC's legal advice in the first place - its reputation for [\*1468] providing candid, independent legal advice based on its best view of the law - make an outright reversal highly unlikely. n76 Of course, the White House Counsel's Office may well be in frequent contact with OLC on an issue OLC has been asked to analyze, and in many cases is likely to make it abundantly clear what outcome the White House prefers. n77 But that is a matter of presenting arguments to OLC in support of a particular position, not discarding OLC's conclusion when it comes out the other way. n78The White House is not just any other client, and so the nature of - and risks posed by - communications between it and OLC on issues OLC is analyzing deserve special attention. I take that up in Part III. n79 My point at this stage is simply that the prospect of literal reversal by the White House is remote and does not meaningfully threaten the effective bindingness of OLC's decisions.

#### OLC can resolve WPA questions quickly and effectively

Cornelia Pillard Feb 2005 Supreme Court Inst, G-town U Law, former DOJ Deputy Asst Att Gen

<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1190&context=facpub>

Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758

Just as the SG is the federal government's chief litigator, the head of the Office of Legal Counsel is the executive branch's chief legal advisor. The Attorney General has formally delegated the legal-advice-giving part of his statutory responsibility to OLC.104 OLC has no enforcement or litigation responsibilities, and is devoted exclusively to giving legal advice. OLC's role within the executive branch has evolved over the years, with tasks calling for legal and, especially, constitutional judgment migrating to OLC, while more politicized tasks, like OLC's short involvement in vetting potential judicial nominees, being reassigned elsewhere.105 OLC's core work is to provide written and oral legal opinions to others within the executive branch, including the president, the Attorney General, and heads of other departments. In practice, the White House and the Attorney General are by far the most frequent requesters, often asking complex, momentous questions, frequently on short notice. OLC clients may seek opinions on matters such as the sustainability of a claim of executive privilege, or the lawfulness in a particular circumstance of a quarantine, detention, or use of military force. OLC has been consulted when troops have been sent abroad and when international criminals were arrested overseas.106 Much of OLC's work is more quotidian, including topics such as the constitutionality under the Appointments Clause of various boards and commissions, or the scope of an agency's statutory authority to alter a regulation or settle a case in a particular way. Its opinions "involve domestic problems, international issues, pet plans of bureaucrats, the application of the Constitution and the laws to administrative policies and procedures, the powers and jurisdictions of departments and agencies, the advisability of contemplated actions, [and various mundane and] momentous matters." 107 OLC traditionally requires that requests for advice come from the head or general counsel of the requesting agency, that advice-seekers submit their own view of the question to OLC, and that independent agencies (not already presumptively bound) agree in advance to abide by the advice - even oral advice - that OLC delivers.108 The agreement to be bound forestalls opportunistic advice-shopping by entities willing to abide only by advice they like, and it preserves the resources and authority of OLC against being treated merely as an extra source of legal research on issues that other lawyers or officials will ultimately resolve for themselves.109

#### Assurances key—their 1AC solvency ev

Stacy K. **Hayes**. J.D. Candidate Wayne State University, “INTERPRETING THE NEW LANGUAGE OF THE NATIONAL DEFENSE AUTHORIZATION ACT: A POTENTIAL BARRIER TO THE EXTRADITION OF HIGH VALUE TERROR SUSPECTS”, 58 Wayne L. Rev. 567, Summer 20**12**

The right to a fair trial is one of the most expansive and complicated of all the human rights protected under international law.138 And even though individual countries bear the burden to defend their citizenry against terrorism, “in cases where action is being taken against terrorism, states must ensure that international human rights norms are respected. The foremost role of international human rights in cases involving terrorists is the protection of the accused terrorist’s human rights.”139 With this in mind, the United States should interpret the NDAA to provide assurances to the U.K. and her European allies that all extradited terror suspects will defend their case in regularly constituted courts and will be detained in civilian criminal facilities without threat of the death penalty. In doing so, the United States will signify support for the rule of law as it seeks to defeat terrorism. Moreover, and perhaps equally important, this continuation of assurances will demonstrate that the United States stands with her allies in the protracted struggle against terrorism.

## 2

#### 4GW is the most accurate description of modern war- escalation is likely if uncontained- executive authority is key to counter these threats

Li 2009 [Zheyoa Li Winter, 2009 The Georgetown Journal of Law Public Policy 7 Geo. J.L. & Pub. Pol'y 373 “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare” lexis]

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

#### **War powers are inevitable in the long-term—restrictions destroy flexibility**

Posner & Vermeule, 2010 (Eric Posner, Professor of Law at the University of Chicago, Adrian Vermeule, Professor of Law at Harvard University, “The Executive Unbound” p.41-45)

In the precrisis state, legislatures mired in partisan conflict about ordinary politics lack the motivation to address long-term problems. Legislators at this point act from behind a veil of uncertainty about the future, and may thus prove relatively impartial; at least high uncertainty obscures the distributive effects of legislation for the future, and thus reduces partisan opposition. However, by virtue of these very facts, there is no strong partisan support for legislation, and no bloc of legislators has powerful incentives to push legislation onto the crowded agenda. The very impartiality that makes ex ante legislation relatively attractive, from a Madisonian perspective, also reduces the motivation to enact it. This point is related to, but distinct from, Schmitt’s more famous claim about the “norm” and the “exception.” In a modern rendition, that claim holds that ex ante legal rules cannot regulate crises in advance, because unanticipated events will invariably arise. Legislatures therefore either decline to regulate in advance or enact emergency statutes with vague standards that defy judicial enforcement ex post. Here, however, a different point is at issue: even if ex ante legal rules could perfectly anticipate all future events, legislatures will often lack the incentive to adopt them in advance. Occasionally, when a high-water mark of public outrage against the executive is reached, legislatures do adopt framework statutes that attempt to regulate executive behavior ex ante; several statutes of this kind were adopted after Watergate. The problem is that new presidents arrive, the political coalitions that produced the framework statute come apart as new issues emerge, and public outrage against executive abuses cools. Congress soon relapses into passivity and cannot sustain the will to enforce, ex post, the rules set out in the framework statutes. As we will discuss more fully in chapter 3, the post-Watergate framework statutes have thus, for the most part, proven to impose little constraint on executive action in crisis, in large part because Congress lacks the motivation to enforce them. DURING THE CRISIS The other horn of the dilemma arises after the crisis has begun to unfold. Because of their numerous memberships, elaborate procedures, and internal structures, such as bicameralism and the committee system, and internal problems of collective action, legislatures can rarely act swiftly and decisively as events unfold. The very complexity and diversity that make legislatures the best deliberators, from a Madisonian perspective, also raise the opportunity costs of deliberation during crises and disable legislatures from decisively managing rapidly changing conditions. After 9/11, everyone realized that another attack might be imminent; only an immediate, massive response could forestall it. In September 2008, the financial markets needed immediate reassurance: only credible announcements from government agencies that they would provide massive liquidity could supply such reassurance. Indeed, though commentators unanimously urged Congress to take its time, within weeks the Bush administration was being criticized for not acting quickly enough. In such circumstances, legislatures are constrained to a reactive role, at most modifying the executive’s response at the margins, but not themselves making basic policy choices. Liberal legalists sometimes urge that the executive, too, is large and unwieldy; we pointed out in the introduction that the scale of executive institutions dwarfs that of legislative and judicial institutions. On this view, the executive has no systematic advantages in speed and decisiveness. Yet this is fatally noncomparative. The executive is internally complex, but it is structured in a far more hierarchical fashion than is Congress, especially the Senate, where standard procedure requires the unanimous consent of a hundred barons, each of whom must be cosseted and appeased. In all the main cases we consider here, the executive proved capable of acting with dispatch and power, while Congress fretted, fumed, and delayed. The main implication of this contrast is that crises in the administrative state tend to follow a similar pattern. In the first stage, there is an unanticipated event requiring immediate action. Executive and administrative officials will necessarily take responsibility for the front-line response; typically, when asked to cite their legal authority for doing so, they will either resort to vague claims of inherent power or will offer creative readings of old statutes. Because legislatures come too late to the scene, old statutes enacted in different circumstances, and for different reasons, are typically all that administrators have to work with in the initial stages of a crisis. “Over time, the size and complexity of the economy will outgrow the sophistication of static financial safety buffers”54—a comment that can also be made about static security safety buffers, which the advance of weapons technology renders obsolete. In this sense, administrators also “come too late”—they are forced to “base decisions about the complex, ever-changing dynamics of contemporary economic [and, we add, security] conditions on legal relics from an oftentimes distant past.”55 Thus Franklin Roosevelt regulated banks, in 1933, by offering a creative reading of the Trading with the Enemy Act of 1917, a statute that needless to say was enacted with different problems in mind. Likewise, when in 2008 it became apparent on short notice that the insurance giant AIG had to be bailed out, lest a systemwide meltdown occur, the Treasury and Federal Reserve had to proceed through a strained reading of a hoary 1932 statute. While the statute authorized “loans,” it did not authorize government to purchase private firms; administrators structured a transaction that in effect accomplished a purchase in the form of a loan. Ad hoc “regulation by deal,”56 especially in the first phase of the financial crisis, was accomplished under the vague authority of old statutes. The pattern holds for security matters as well as economic issues, and for issues at the intersection of the two domains. Thus after 9/11, the Bush administration’s attempts to choke off Al Qaeda’s funding initially proceeded in part under provisions of the International Emergency Economic Powers Act, a 1977 statute whose purpose, when enacted, was actually to restrict the president’s power to seize property in times of crisis.57

#### Most likely nuclear escalation

Richards 2005 (Dr. Chet Richards, J. Addams & Partners July 12, 2005, “Dear Mr. & Ms. 1RP: Welcome to the 21st Century” http://www.zmetro.com/pdf/2005/07/welcome\_21st\_century\_v4.pdf)

Beginning with Mao Tse-Tung, and continuing to the present day, insurgency and other forms of non-state warfare have become more potent and much more dangerous in at least two ways: Groups other than states – that is, multinational organizations ranging from alQa’ida to the narcotrafficking cartels – are beginning to acquire high levels of sophistication in organization and in the information technologies that allow them to plan and conduct operations while widely dispersed.4 These same groups increasingly have the financial wherewithal to acquire virtually any type of weapon, from small arms to chemical and biological to nuclear, that they need to carry out operations. The only exceptions are conventional weapons such as tanks, combat aircraft, and fighting ships that require large facilities to support them, but are primarily of use only against other military forces armed with the same types of weapons. They are using their new capabilities not only to fight local governments, as was the case with traditional insurgencies, but to attack distant superpowers as well. Because they can’t field sizable amounts of conventional military hardware, fourth generation (4GW) forces will never try to achieve victory by defeating the military forces of a state in stand-up battles. Instead, they will try to convince their state opponent that it is simply not worth it to continue the fight. Successful 4GWcampaigns in modern times would include those against the French in Algeria, the US in Vietnam and the Soviet Union in Afghanistan, where the insurgents never defeated the foreign armies in any major battle, but eventually persuaded the governments back home to withdraw them. In a well run 4GW campaign, everything the 4GW forces do – including fighting and usually losing the occasional major battle – will support this goal. Persuading governments to withdraw forces, rather than defeating them on the battlefield, is an “information age” goal.6 To achieve the necessary level of persuasion, practitioners of 4GWwill use every information tool they can find to spread their messages to the enemy population and decision makers: Our cause is just and no threat to you There’s nothing here worth your effort and sacrifice Your troops are becoming brutal and your tactics ineffective If you keep it up, you’re going to bleed for a very long time So why not just leave now? As we enter the 21st Century, 4GWorganizations are becoming adept at spreading such messages through new channels, such as global news services (CNN, Al Jazeerah) and of course, web sites, blogs, and mass e-mailings. What you may not be aware of is that 4GWorganizations are also using the latest information tools to communicate with each other and to share information, particularly about what is and is not working (what the military calls “lessons learned.”)7Messages may be encrypted, or sent using code phrases, or even hidden in web site images, a practice called steganography. As with so many information age techniques, instructions for encryption and steganography are floating all over the Internet. Information age techniques are ideal for loose networks of highly motivated individuals, which is a typical form of organization for 4GW groups. Modern information warfare places a higher premium on creativity and innovation than it does on things 4GW organizations typically don’t have, like massive forces, volumes of regulations, and expensive hardware.8 By emphasizing speed and innovation, 4GWgroups can often invent new techniques faster than more structured and bureaucratic organizations such as the Pentagon.9 First responder organizations themselves may be targets of information warfare operations. The information systems of 1RP organizations, including operational systems as well as payroll and administrative, might make attractive targets in coordination with a physical attack. This is a real threat: Many members of al-Qa’ida and affiliated groups are from the educated classes in their countries, were technically trained (Osama bin Laden is a civil engineer), studied and lived in the West, and are capable of conceiving and managing such attacks. There are other advantages to the non-state player from operating in a loose social network. Obviously a social network is harder to find than an organization that requires a fixed infrastructure and wears uniforms. But perhaps most significant in wars of the weak against the strong, networks are highly resilient, so killing their leaders and destroying portions of the network can leave the rest to regenerate under new leadership in different locations.1112 So long as enough of the network survives to pass along the ideology and culture, along with lessons learned, the new network will likely be more dangerous and more resilient than its predecessor, much like the more resistant forms of bacteria that can emerge as a result of mis-use of antibiotics. In fact, the European resistance movements during World War II exhibited just this kind of toughness and survivability. In addition to its networked structure, there are other attributes of 4GW that should concern the 1RP (editor’s note: First Responder) community. The first is its transnational nature. An operation can be approved in Afghanistan, planned in Germany, funded in the Middle East, and carried out in the United States, as was the 9/11 attack. There is no one state we can retaliate against, nor one nationality we can profile against. Further, because it is transnational, it can involve networks of networks, such as alQa’ida attempting to cooperate with narco-trafficking organizations in Latin America to trade access to potential base areas and help in infiltrating the US for assistance in distributing narcotics.13 The upshot is that the lack of identifiable 4GW activity may not be an indication that an attack is not in the works, if the su4rveillance is being conducted by someone else. One of the more unpleasant aspects of insurgencies that will likely carry over to 4GWis their use of disguise, camouflage, and the other tools of deception. Because they are militarily weak, 4GW groups survive not by confronting superior firepower but by staying out of its sights. Those that have survived have become masters of concealment and deception, making it even more difficult to pick up early warning signals. This is why simple ethnic or national profiling will not work – 4GWteams will go to great lengths not to be identified as members of the groups in question. Skin color, eye color, and hair color are trivially easy to change, and the criminal infrastructure that already exists in most developed countries makes it simple to get drivers licenses or other means of identification (as any victim of identity theft can attest.) In a pinch, one can always recruit a member of a non-targeted group, such as the “shoe bomber,” Richard Reid, and it would be a mistake to assume the next batch will be as poorly trained. If we’re going to let Icelanders (or grandmothers or parents with toddlers, or whoever) through with less security screening than Saudis or Pakistanis or Jordanians, see if you can guess what the next aircraft hijacker will look like. Another unpleasant fact of 4GW is that like insurgency from whence it sprang, 4GW will be a protracted struggle.14 As Henry Kissinger once noted, if the guerillas don’t lose, they win, so they have all the motivation they need to keep going for as long as they think it will take.15 First responders should not draw comfort from what seems like a pause in attacks – operational cycles can stretch over several years, and a fourth generation war can span decades.16 But the most unpleasant fact of 4GW is that in it, we have finally reached the level of total war.17 In the eyes of the 4GW attacker, there are no civilians and no noncombatants. A concern for public relations offers the only reason for limiting the scope or violence of the attacks. What seems like “terrorism” to us, or senseless, random violence, may appear to the 4GW network as a legitimate way to persuade the foreign state government to withdraw, that is to stop the war. Such a strategy is nothing new. It was what Sherman had in mind during his marches through the South after the fall of Vicksburg (July 1863).18 In its local areas, the 4GW organization will spread the message that the foreign state has killed many civilians, which in a war of an advanced state versus a Third World country will often be true and will always be believed. What this means is that when a 4GW group decides to directly attack the United States or another state involved in “their” struggle, no level of violence, even nuclear, is ruled out. They may calculate that the message they are sending to the state government, to the state’s population, to undecided elements in other parts of the world, and to their own members is worth any backlash from the scenes of horror and brutality that ensue.

## 3

#### Obama’s pressuring the GOP with a strong display of Presidential strength and staying on message – the GOP will cave

**Dovere, 10/1/13** (Edward, Politico, “Government shutdown: President Obama holds the line”

<http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=f3>)

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency. All it took was a government shutdown. This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no. For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal. After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress. Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk. “If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?” The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding. This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.” Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.” “The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics. Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations. “They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.” While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu. White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything. “It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.” Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing. Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend. “He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.” The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans. The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is. If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### Plan’s unpopular—Republicans will argue it incentivizes terrorists to come into the US & will tie it to Boston & Benghazi for political gain

McAuliff 6/15

(Michael, covers Congress and politics for The Huffington Post, “Indefinite Detention Of Americans Survives House Vote,” June 15, 2013, http://www.informationclearinghouse.info/article35289.htm)

June 15, 2013 "Information Clearing House - WASHINGTON -- The U.S. House of Representatives voted again Thursday to allow the indefinite military detention of Americans, blocking an amendment that would have barred the possibility. Congress wrote that authority into law in the National Defense Authorization Act two years ago, prompting outrage from civil libertarians on the left and right. President Barack Obama signed the measure, but insisted his administration would never use it. Supporters of detention argue that the nation needs to be able to arrest and jail suspected terrorists without trial, including Americans on U.S. soil, for as long as there is a war on terror. Their argument won, and the measure was defeated by a vote of 200 to 226. But opponents, among them the Rep. Adam Smith (D-Wash.), who offered the amendment to end that authority, argued that such detention is a stain on the Constitution that unnecessarily militarizes U.S. law enforcement. "It is a dangerous step toward executive and military power to allow things like indefinite detention under military control within the U.S.," Smith said. "That's the heart and essence of this issue." Smith's amendment, which also had Republican sponsors including Reps. Chris Gibson (N.Y.) and Justin Amash (Mich.), would guarantee that anyone arrested in the United States gets a trial. Republican opponents argued that such a move would just invite terrorists to come to the United States, citing the recent Boston bombings and the consulate attacks in Benghazi, Libya, as evidence that terrorists were determined to harm the U.S. They said that applying the Constitution on U.S. soil amounted to a free pass to people bent on trying to destroy the country. Rep. Tom Cotton (R-Ark.), compared ending indefinite detention to giving someone a free pass in a game of hide-and-seek. "There was a phrase in that game called 'olly olly oxen free' -- meant you could come out, you were safe, you no longer had to hide," Cotton argued. "This amendment is the olly olly oxen free amendment of the war on terrorism. It invites Al Qaeda and associated forces to send terrorists to the Untied States and recruit terrorists on U.S. soil."

#### That takes Obama off-message – it undermines his constant pressure on the GOP

**Milbank, 9/27/13** – Washington Post Opinion Writer (Dana, “Obama should pivot to Dubya’s playbook” Washington Post, <http://www.washingtonpost.com/opinions/dana-milbank-obama-should-try-pivoting-to-george-bushs-playbook/2013/09/27/c72469f0-278a-11e3-ad0d-b7c8d2a594b9_story.html>)

If President Obama can stick to his guns, he will win his October standoff with Republicans. That’s an awfully big “if.” This president has been consistently inconsistent, predictably unpredictable and reliably erratic. Consider the events of Thursday morning: Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd. But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered. Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone. Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions. But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare. To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after. Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note. In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently. The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.” This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers. Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator. Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### All of his political capital key to dem unity and debt ceiling

**Lillis, 9/7/13** (Mike, The Hill, “Fears of wounding Obama weigh heavily on Democrats ahead of vote”

Read more: http://thehill.com/homenews/house/320829-fears-of-wounding-obama-weigh-heavily-on-democrats#ixzz2gWiT9H8u

The prospect of wounding President Obama is weighing heavily on Democratic lawmakers as they decide their votes on Syria. Obama needs all the political capital he can muster heading into bruising battles with the GOP over fiscal spending and the debt ceiling. Democrats want Obama to use his popularity to reverse automatic spending cuts already in effect and pay for new economic stimulus measures through higher taxes on the wealthy and on multinational companies. But if the request for authorization for Syria military strikes is rebuffed, some fear it could limit Obama's power in those high-stakes fights. That has left Democrats with an agonizing decision: vote "no" on Syria and possibly encourage more chemical attacks while weakening their president, or vote "yes" and risk another war in the Middle East. “I’m sure a lot of people are focused on the political ramifications,” a House Democratic aide said. Rep. Jim Moran (D-Va.), a veteran appropriator, said the failure of the Syria resolution would diminish Obama's leverage in the fiscal battles. "It doesn't help him," Moran said Friday by phone. "We need a maximally strong president to get us through this fiscal thicket. These are going to be very difficult votes."

#### Failure to quickly raise the debt ceiling ensures collapse of the global economy, U.S. economic leadership, and free trade

Davidson 9/10

Adam, co-founder of NPR’s “Planet Money,” a podcast and blog, “Our Debt to Society”, <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&_r=0>, MCR

**If the debt ceiling isn’t lifted** again this fall, some **serious financial decisions will have to be made**. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually **the big-ticket items**, like **Social Security and Medicare, will have to be cut**. At some point, **the government won’t be able to pay interest on its bonds and will enter** what’s known as **sovereign default**, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). **In the case of the U**nited **S**tates, though, **it won’t be** an **isolated** national crisis. **If the American government can’t stand behind the dollar, the world’s benchmark currency**, then **the global financial system will** very likely **enter a new era in which there is much less trade and** much less **economic growth. It would be**, by most accounts, **the largest self-imposed financial disaster in history**.¶ **Nearly everyone** involved **predicts** that **someone will blink before this disaster occurs. Yet a small number of House Republicans** (one political analyst told me it’s no more than 20) **appear willing to see what happens if the debt ceiling isn’t raised** — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.¶ Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, **the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds**. **The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing** — **which would effectively put a clamp on all trade and spending. The U.S. economy would collapse** far worse **than anything we’ve seen in the past several years**.¶ Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.¶ While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that **while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable**. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, **the U.S. would lose its unique role in the global economy**.¶ The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, **the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters**. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, **the entire global economy becomes riskier and costlier**.

#### Econ collapse = extinction

Kemp 10 Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

## Terrorism

### 1NC US-China War

#### No US/China war—It’s in neither country’s best interest

Ackerman 2011 (Robert Ackerman, May 10, 2011, “War Between China, U.S. Not Likely,” http://www.afcea.org/signal/signalscape/index.php/2011/05/10/11510/)

The United States and China are not likely to go to war with each other because neither country wants it and it would run counter to both nations’ best interests. That was the conclusion of a plenary panel session hosted by former Good Morning America host David Hartman at the 2011 Joint Warfighting Conference in Virginia Beach. Adm. Timothy J. Keating, USN (Ret.), former head of the U.S. Pacific Command, noted that China actually wants the United States to remain active in the Asia-Pacific region as a hedge against any other country’s adventurism. And, most of the other countries in that region want the United States to remain active as a hedge against China. Among areas of concern for China is North Korea. Wallace “Chip” Gregson, former assistant secretary of Defense for Asian and Pacific Security Affairs, said that above all China fears instability, and a North Korean collapse or war could send millions of refugees streaming into Manchuria, which has economic problems of its own.

#### Leadship wouldn’t risk war

Ross 2009 (Robert S. Ross is Professor of Political Science at Boston College and Associate of the John King Fairbank Center for East Asian Research at Harvard University, September 2009 “Myth The Great Debate” http://nationalinterest.org/greatdebate/dragons/myth-3819)

Professor Friedberg's concluding suggestion that China's illiberal political system exacerbates the China threat fails to grasp that Beijing's authoritarian system is its greatest vulnerability. The Chinese leadership dares not risk war; it is acutely aware of its vulnerability to the will of its people and the necessity to minimize strategic adventurism and the risk of military defeat, lest it be the cause of its own demise. A balanced rather than an ideological assessment of the Sino-American dynamic offers the United States the confidence to compete with China and secure U.S. interests, and simultaneously promote U.S.-China cooperation.

#### And, redundant checks to prevent crisis

Yang 2004 (Jiemian Yang, visiting fellow with the UCLA Center for Chinese Studies,"Crisis Managementa and US China Relations." 2004, http://www.international.ucla.edu/article.asp?parentid=6171)

In recent years the two sides have been trying to match up better in crisis management. The two countries have learned a lesson in the past two decades of crises and have decided to strive for better crisis management. The two governments are working at better communication and more frequent interaction between the two governments during crises. Moreover, they are increasingly stressing their mutual and common interests, especially in strategic areas like anti-terrorism and non-proliferation. Besides, both China and the United States have become more careful and have adopted preventive measures in sensitive situations that might lead to a crisis. In addition to official communication, there has been an increase in semi-official and non-official efforts. Various kinds of second and third track talks are indeed contributing to preventing and controlling crises. And some farsighted experts and scholars are studying how to gear up the crisis management systems in the two countries.

## NATO

#### EU won’t break relations over post 9/11 policy disagreements

US-EU Relations.com. "2004 Apolitical Overview of US-EU Relations." 2004. http://www.useurelations.com/index2.html

Despite centuries of transatlantic disputes, Americans and Europeans have not been torn apart by any subject, including Iraq in 2002 and 2003. US-European relations were not at risk of being severed even at the worst moments of animosity between Americans and Europeans during the US – “Old Europe” War-of-Words over Iraq. Both the US and the EU are children of the same 18th Century Enlightenment and, like siblings, define themselves in part by the values and actions of the other. But unlike siblings that may walk away from each other producing descendants that never meet, each successive generation of Americans and Europeans rediscovers the other side of the Atlantic and its inhabitants with a youthful excitement and interest.

#### Internal differences make NATO collapse inevitable

Rajan **Menon**, Professor of International Relations at Lehigh University, 2007 “The End of Alliances”, Pg. 96-97

Europeans, for their part, will resent what they see as an American habit of defining solidarity as reflexive agreement. And if the United States decides, as a matter of policy, to threaten and punish allies who have the temerity to dissent, NATO will be less an alliance than a bad marriage. Changes in the leadership of European NATO members (the departure of a Chirac or a Schroeder), redefinitions of NATO's objectives, and the fear of America's wrath will not banish the basic problem, which is that an alliance that succeeded so magnificently cannot long survive the disappearance of the strategic conditions that enabled its magnificent success. NATO may remain in form for a number of years, but long before that it will, slowly but surely, cease to matter in substance.

#### Individual cooperation solves the impacts

Christopher Layne, visiting fellow in foreign policy studies at the Cato Institute, “Cato Handbook on Policy” 6th edition, 2005

Chapter 53: Transatlantic Relations. <http://www.cato.org/pubs/handbook/hb109/hb\_109-53.pdf>

It is true that after 9/11 the alliance invoked the collective defense provision of Article V for the first time. Certainly, individual members of the alliance have effectively cooperated with the United States on the anti-terror campaign (through intelligence sharing, tracking down terrorist cells operating on their own national territories, and going after the terrorists’ sources of financial support). Britain and Canada contributed small contingents to fight against the Taliban and Al Qaeda, and Germany and Turkey have stepped forward to help to stabilize postwar Afghanistan. And the British, of course, have contributed a substantial military contingent to fight alongside U.S. forces in Iraq. All of those contributions, however, have been made on an individual (that is, national) basis, not through the alliance. And a strong case can be made that even if there were no NATO, Washington would have been able to assemble the same limited ‘‘coalition of the willing.’’

#### NATO irrelevance spurs European sufficiency

Leslie S. Lebl, former U.S. Foreign Service officer with particular expertise in European political and defense

issues, June 24, 2004, “European Union Defense Policy An American Perspective” <http://www.cato.org/pubs/pas/pa516.pdf>

So, if the status quo is not likely to last, what should we do? If the Europeans are serious, we should reach new arrangements in which the Europeans and the EU assume greater responsibility for European defense issues. That is what the current head of the EU Military Committee, Gen. Gustav Hagglund, recently proposed, as he looked at the coming decade: “The American and the European pillars (of NATO) would be responsible for their respective territorial defenses, and would together engage in crisis management outside their own territories.”47 The EU is a far-from-perfect organization, and all the long-standing questions of European political will and military capabilities remain on the table. It is not clear that the EU will be able to meet the challenge of defending itself, but it makes no sense not to see if it can do so. To encourage continued progress toward European self-sufficiency, as well as to meet its own strategic objectives, the United States should seek the “lightest footprint” possible, including substantial troop reductions throughout Europe. Such changes will also require significant institutional changes to NATO.

#### Key to solving case in the long term – avoids US abandonment over burden sharing

Daalder and Goldgeier 2001 IVO and James, Survival, spring

It is likely that the incoming administration will share many of its predecessor's doubts about these European defence efforts.22 These doubts, however, are misguided. The United States should show clear support for ESDP for two main reasons. First, as Condoleezza Rice has rightly argued, 'the greater danger is that European militaries will not do enough, not that they’'ll do too much'.23 Anything that improves Europe's capacity to act, especially in the military sphere, should therefore be welcomed. As for fears that a stronger Europe would also be a more independent Europe, that is likely to be true, but ought not to concern the United States too much. On the major issues, the United States and Europe will probably see eye-to-eye, while in any situation demanding the use of significant military force, European governments will want Washington's full participation. Finally, most European allies will remain committed to sound transatlantic relations and will successfully oppose the presumed efforts of countries like France to weaken that relationship. Washington would do well, therefore, to trust London, Berlin, the Hague, Copenhagen and others to ensure that ESDP evolves in ways that are consistent with NATO's continued importance. Another reason for supporting the recent European defence efforts is that a future US-European strategic partnership depends on ESDP's success. Only a stronger Europe can share with the US the burden of maintaining international order. A more capable Europe will invariably have a greater voice in decisionmaking councils - be it NATO or elsewhere - and this greater influence implies that Washington may well find itself more often on the losing side of an argument. However, this is a price that the US should be willing to pay for having partners that are better able to stand together in meeting global challenges.

#### Turns outweigh the links

Conry ’95 (Barbara, Foreign Policy Analyst – Cato, Cato Policy Analysis, “The Western European Union as NATO’s Successor”, 9-18, http://www.cato.org/pubs/pas/pa-239.html)

Europe after NATO: Bogus Nightmare Scenarios It is inaccurate to suggest, as NATO partisans often do, that the only alternative to Atlanticism is a return to the dark ages of the interwar era: nationalized European defenses, American isolationism, xenophobia, demagoguery, and the other evils associated with the rise of Hitler and World War II. Former U.S. senator Malcolm Wallop (R-Wyo.) warns that weakening NATO will have dire consequences. "As we have thrice before in this dreadful century, [we will] set in motion an instability that can only lead to war, shed blood, and lost treasure. Pray that we are wiser."(4) Lawrence di Rita of the Heritage Foundation similarly defends NATO as an "insurance policy" against a future world war. "If keeping 65,000 young Americans in Europe will prevent 10 times that many new headstones in Arlington cemetery once the Europeans turn on themselves again--as they have twice this century--then it's a small price to pay."(5) Such alarmism underestimates the significance of 50 years of economic and political cooperation among the West European powers and the role of pan-European institutions such as the Organization for Security and Cooperation in Europe. It also ignores the fact that a viable institutional alternative to NATO--the Western European Union--already exists. With the proper resources and recognition on the part of Washington and the Europeans that an independent European defense is essential in the post-Cold War era, the WEU is a promising alternative to Atlanticism. Far from being a lame second choice to NATO or defense on the cheap, a robust WEU would be superior to NATO in many ways, better suited in the long run to protecting European and, indirectly, American interests.

# 2NC

## OLC CP

### Solvency

#### All their extraditions ev is about military tribunals—only the CP resolves this issue

#### Constraints through executive coordination solves signaling

POSNER & VERMEULE 2006 --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

IV. Executive Signaling: Law and Mechanisms

We suggest that the executive’s credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involve executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.**¶** This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by “government” or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by “the people” to bind “themselves” against their own future decisionmaking pathologies, or relatedly that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations.71 Whether or not this picture is coherent,72 it is not the question we examine here, although some of the relevant considerations are similar.73 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government.¶ Furthermore, our question is subconstitutional; it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling to generate public trust. Accordingly we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations; in general, the solution is to engage in actions that are less costly for good types than for bad types.¶ We begin with some relevant law; then examine a set of possible mechanisms, emphasizing both the conditions under which they might succeed and the conditions under which they might not; and then examine the costs of credibility.¶ A. A Preliminary Note on Law and Self-Binding¶ Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.74 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is “yes, at least to the same extent that a legislature can.” Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.75 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future**.** A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies.**¶** More schematically, we may speak of formal and informal means of self-binding:¶ (1) The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.¶ (2) The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.76 However, there may be large political costs to repealing the order. This effect does not depend on the courts’ willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.¶ In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president’s own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.¶ B. Mechanisms¶ What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators and judges that his policies rest on judgments about the public interest, rather than on power-maximization, partisanship or other nefarious motives? Intrabranch separation of powers. In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels “internal separation of powers” within the executive branch.77 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger civil-service protections and internal adjudication of executive controversies by insulated “executive” decisionmakers who resemble judges in many ways.78Katyal’s argument is relevant because the mechanisms he discusses might be understood as signaling devices, but his overall approach is conceptually flawed, on two grounds. First, the assumption that second-best constraints on the executive should reproduce the Madisonian separation of powers within the executive branch is never defended. The idea seems to be that this is as close as we can get to the first-best, while holding constant everything else in our constitutional order. But the general theory of second-best states that approaching as closely as possible to the first-best will not necessarily be the preferred strategy;79 the best approach may be to adjust matters on other margins as well, in potentially unpredictable ways. If the Madisonian system has failed in the ways Katyal suggests, the best compensating adjustment might be, for all we know, to switch to a parliamentary system. (We assume that no large-scale changes of this sort are possible, whereas Katyal seemingly assumes that they are, or at least does not make clear his assumptions in this regard). Overall, Katyal’s view has a kind of fractal quality – each branch should reproduce within itself the very same separation of powers structure that also describes the whole system – but it is not explained why the constitutional order should be fractal.¶ Second, Katyal’s proposals for internal separation of powers are self-defeating: the motivations that Katyal ascribes to the executive are inconsistent with the executive adopting or respecting the prescriptions Katyal recommends.80 Katyal never quite says so explicitly, but he clearly envisions the executive as a power-maximizing actor, in the sense that the president seeks to remove all constraints on his current choices.81 Such an executive would not adopt or enforce the internal separation of powers to check himself. Executive signaling is not, even in principle, a solution to the lack of constraints on a power-maximizing executive in the sense Katyal implicitly intends. Although an illmotivated executive might bind himself to enhance his strategic credibility, as explained above, he would not do so in order to restore the balance of powers. Nor is it possible, given Katyal’s premise of legislative passivity or abdication, that Congress would force the internal separation of powers on the executive. In what follows, we limit ourselves to proposals that are consistent with the motivations, beliefs, and political opportunities that we ascribe to the well-motivated executive, to whom the proposals are addressed. This limitation ensures that the proposals are not self-defeating, whatever their costs.¶ The contrast here must not be drawn too simply. A well-motivated executive, in our sense, might well attempt to increase his power. The very point of demonstrating credibility is to encourage voters and legislators to increase the discretionary authority of the executive, where all will be made better off by doing so. Scholars such as Katyal who implicitly distrust the executive, however, do not subscribe to this picture of executive motivations. Rather, they see the executive as an unfaithful agent of the voters; the executive attempts to maximize his power even where fully-informed voters would prefer otherwise. An actor of that sort will have no incentive to adopt proposals intended to constrain that sort of actor.¶ Independent commissions. We now turn to some conceptually coherent mechanisms of executive signaling. Somewhat analogously to Katyal’s idea of the internal separation of powers, a well-motivated executive might establish independent commissions to review policy decisions, either before or after the fact. Presidents do this routinely, especially after a policy has had disastrous outcomes, but sometimes beforehand as well. Independent commissions are typically blue-ribbon and bipartisan.82¶ We add to this familiar process the idea that the President might gain credibility by publicly committing or binding himself to give the commission authority on some dimension. The president might publicly promise to follow the recommendations of such a commission, or to allow the commission to exercise de facto veto power over a policy decision before it is made, or might promise before the policy is chosen that the commission will be given power to review its success after the fact. To be sure, there will always be some wiggle room in the terms of the promise, but that is true of almost all commitments, which raise the costs of wiggling out even if they do not completely prevent it.¶ Consider whether George W. Bush’s credibility would have been enhanced had he appointed a blue-ribbon commission to examine the evidence for weapons of mass destruction in Iraq before the 2003 invasion, and publicly promised not to invade unless the commission found substantial evidence of their existence. Bush would have retained his preexisting legal authority to order the invasion even if the commission found the evidence inadequate, but the political costs of doing so would have been large. Knowing this, and knowing that Bush shared that knowledge, the public could have inferred that Bush’s professed motive – elimination of weapons of mass destruction – was also his real motive. Public promises that inflict reputational costs on badly motivated behavior help the well-motivated executive to credibly distinguish himself from the ill-motivated one.¶ The more common version of this tactic is to appoint commissions after the relevant event, as George W. Bush did to investigate the faulty reports by intelligence agencies that Iraq possessed weapons of mass destruction.83 If the president appoints after-the-fact commissions, the commissions can enhance his credibility for the next event—by showing that he will be willing, after that event, to subject his statements to scrutiny by public experts. Here, however, the demonstration of credibility is weaker, because there is no commitment to appoint any after-the-fact commissions in the future – merely a plausible inference that the president’s future behavior will track his past behavior.¶ Bipartisan appointments. In examples of the sort just mentioned, the signaling arises from public position-taking. The well-motivated executive might produce similar effects through appointments to office.84 A number of statutes require partisan balance on multimember commissions; although these statutes are outside the scope of our discussion, we note that presidents might approve them because they allow the president to commit to a policy that legislators favor, thus encouraging legislators to increase the scope of the delegation in the first place.85 For similar reasons, presidents may consent to restrictions on the removal of agency officials, because the restriction enables the president to commit to giving the agency some autonomy from the president’s preferences.86¶ Similar mechanisms can work even where no statutes are in the picture. As previously mentioned, during World War II, FDR appointed Republicans to important cabinet positions, making Stimson his Secretary of War. Clinton appointed William Cohen, a moderate Republican, as Secretary of Defense in order to shore up his credibility on security issues. Bipartisanship of this sort might improve the deliberation that precedes decisions, by impeding various forms of herding, cascades and groupthink;87 however, we focus on its credibility-generating effects. By (1) expanding the circle of those who share the president’s privileged access to information, (2) ensuring that policy is partly controlled by officials with preferences that differ from the president’s, and (3) inviting a potential whistleblower into the tent, bipartisanship helps to dispel the suspicion that policy decisions rest on partisan motives or extreme preferences, which in turn encourages broader delegations of discretion from the public and Congress.¶ A commitment to bipartisanship is only one way in which appointments can generate credibility. Presidents might simply appoint a person with a reputation for integrity, as when President Nixon appointed Archibald Cox as special prosecutor (although plausibly Nixon did so because he was forced to do so by political constraints, rather than as a tactic for generating credibility). A person with well-known preferences on a particular issue, even if not of the other party or widely respected for impartiality, can serve as a credible whistleblower on that issue. Thus presidents routinely award cabinet posts to leaders of subsets of the president’s own party, leaders whose preferences are known to diverge from the president’s on the subject; one point of this is to credibly assure the relevant interest groups that the president will not deviate (too far) from their preferences.¶ The Independent Counsel Statute institutionalized the special prosecutor and strengthened it. But the statute proved unpopular and was allowed to lapse in 1999.88 This experience raises two interesting questions. First, why have presidents confined themselves to appointing lawyers to investigate allegations of wrongdoing; why have they not appointed, say, independent policy experts to investigate allegations of policy failure? Second, why did the Independent Counsel Statute fail? Briefly, the statute failed because it was too difficult to control the behavior of the prosecutor, who was not given any incentive to keep his investigation within reasonable bounds.89 Not surprisingly, policy investigators would be even less constrained since they would not be confined by the law, and at the same time, without legal powers they would probably be ignored on partisan grounds. A commission composed of members with diverse viewpoints is harder to ignore, if the members agree with each other.¶ More generally, the decision by presidents to bring into their administrations members of other parties, or persons with a reputation for bipartisanship and integrity, illustrates the formation of domestic coalitions of the willing. Presidents can informally bargain around the formal separation of powers90 by employing subsets of Congress, or of the opposing party, to generate credibility while maintaining a measure of institutional control. FDR was willing to appoint Knox and Stimson, but not to give the Republicans in Congress a veto. Truman was willing to ally with Arthur Vandenbergh but not with all the Republicans; Clinton was willing to appoint William Cohen but not Newt Gingrich. George W. Bush likewise made a gesture towards credibility by briefing members of the Senate Intelligence Committee – including Democrats – on the administration’s secret surveillance program(s), which provided a useful talking point when the existence of the program(s) was revealed to the public.¶ Counter-partisanship. Related to bipartisanship is what might be called counterpartisanship: presidents have greater credibility when they choose policies that cut against the grain of their party’s platform or their own presumed preferences.91 Only Nixon could go to China, and only Clinton could engineer welfare reform. Voters and publics rationally employ a political heuristic: the relevant policy, which voters are incapable of directly assessing, must be highly beneficial if it is chosen by a president who is predisposed against it by convictions or partisan loyalty.92 Accordingly, those who wish to move U.S. terrorism policy towards greater security and less liberty might do well to support the election of a Democrat.93 By the same logic, George W. Bush is widely suspected of nefarious motives when he rounds up alleged enemy combatants, but not when he creates a massive prescription drug benefit.¶ Counter-partisanship can powerfully enhance the president’s credibility, but it depends heavily on a lucky alignment of political stars. A peace-loving president has credibility when he declares a military emergency but not when he appeases; a belligerent president has credibility when he offers peace but not when he advocates military solutions. A lucky nation has a well-motivated president with a belligerent reputation when international tensions diminish (Ronald Reagan) and a president with a pacific reputation when they grow (Abraham Lincoln, who opposed the Mexican War). But a nation is not always lucky.¶ Transparency. The well-motivated executive might commit to transparency, as a way to reduce the costs to outsiders of monitoring his actions.94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive’s decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.**¶** Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political preferences opposite to those of the president. Thus George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking, and perhaps even to classified intelligence,95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency – no one expects meetings of the National Security Council to appear on CSPAN – but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.**¶** There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong.96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts—especially journalists who might reward presidents who give them access by portraying their decisionmaking in a favorable light.97¶ We will take up the costs of credibility shortly.98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well-motivated, precisely because the existence of costs would have given an ill-motivated executive an excuse not to use those mechanisms.

#### Executive solves

Stacy K. **Hayes**. J.D. Candidate Wayne State University, “INTERPRETING THE NEW LANGUAGE OF THE NATIONAL DEFENSE AUTHORIZATION ACT: A POTENTIAL BARRIER TO THE EXTRADITION OF HIGH VALUE TERROR SUSPECTS”, 58 Wayne L. Rev. 567, Summer 20**12**

On the surface, the new statutory language in the NDAA does not pose any problems to the United States continuing to provide assurances to her European allies that terror suspects will receive humane treatment and a fair trial. But it remains imperative that the current and future administrations understand that affording anything less than a fair trial to these terror suspects in the federal justice system will likely result in terrorists evading justice altogether. The U.S. government should not underestimate its allies’ doubt regarding the fairness of the military tribunal system, substantiated or not, when evaluating whether to provide and uphold assurances that terror suspects will go to trial in regularly constituted courts to ensure their extradition. It is clear that the European approach to human rights, even as it affects extradition, includes the right to a fair trial that does not include trial by military tribunal.131 As history demonstrates, “[t]he right to a fair trial is one of the most litigated of all human rights. It is also perhaps one of the most important because without it a violation of a human right is unlikely to be remedied in domestic procedures.”132 Moreover, many international cases have highlighted “[t]he importance of independence and impartiality” as a key feature of a fair trial.133 For instance, the European Court in Weeks v. United Kingdom noted that the most important, fundamental feature of court is the “independence of the executive and of the parties involved.”134 As one scholar noted in Lamy v. Belgium, “the European Court of Human Rights noted that a fair hearing is not possible when detainees are denied access to those documents in the investigation file which are essential to effectively challenge the lawfulness of [one’s] detention.”135 And more recently, the U.K. House of Lords stated in A. v. Secretary of State for the Home Department that “neither the common law . . . nor international human rights law allows indefinite detention at the behest of the executive, however well-intentioned.”136 Thus, the hotly contested and highly publicized deficiencies within the military commission process certainly create, at the minimum, the appearance that a fair trial by an independent and impartial tribunal will be incredibly difficult to obtain for any terror suspect extradited to the United States without the assurance of trial by a civilian court. Additionally, the promise of indefinite detention until the end of hostilities will likely bolster claims of Article 3 violations and add to the likelihood of Article 6 claims. Either one can work to the disadvantage of the United States as it seeks to bring to justice those terror suspects who await extradition from the U.K. and Europe. Thus, the current administration should set a strict plan to execute the waiver in all cases regarding extradition from America’s European allies. Doing so will make the waiver the norm rather than the exception. Regular use of the waiver will override the presumption in favor of military trials that Section 1022137 creates and take the political aspect out of any future executive decision to provide a waiver.

### Perm

The CP is mutually exclusive because it interprets the same authority that the plan restricts – perms should be presumed illegit unless proven legitimate.

The plan text as written and explained in speeches, CX, and affirmative cards is the point of stasis for the round – otherwise counterplans don’t have to compete and they get NO perms. If the plan is stasis then perms which sever any text or functionality shift the point of stasis, meaning they already conceded the 1ac plan should be rejected in favor of the perm.

Also, allowing sever perms means neg can’t ever win because our arguments would just become friendly modifications to the plan. Reject intrinsic perms because intrinsicness without advocacy undermines all ADVs and Das so neg always wins on presumption.

If they win the CP isn’t mutually exclusive, we have external disads to Congressional action – politics (and pres powers) as well as a plan flaw because the plan and any legit perm writes the phrase “and/or” into the law – this disrupts the CP interpretation under any perm by exempting detainee who the government claims was arrested OR captured but NOT both – only the CP alone solves ANYTHING.

#### And/or means “both” in the detention context

**Words & Phrases, 2007** (Permanent Edition, 2007, vol 3A, p.220)

N.D.Cal. 1942. Under livestock transit policy covering livestock while stopped in transit at feeding station to comply with the law, but not while "stoppage and/or detention" are pursuant to direction of insured or his representative, and rider limiting liability for loss of lambs to period of 12 hours after arrival for feeding in transit yards, insurer was not liable for loss of lambs by fire in feeding in transit yard 25 hours after they were unloaded and after consignee changed their destination, on ground that it was necessary that the word "and" alone should be read into the phrase "and/or" and the "or" excluded. —McPherrin v. Hartford Fire Ins. Co., 44 F.Supp. 674.—Insurance 2160(3).

#### Their Chesney card means arrest is law enforcement and capture is military – plan and perm solvency are precisely ZERO unless there was simultaneous law enforcement arrest and military capture – the odds of that are less than the chances of the football Spartans going undefeated 10 years in a row

Robert M. Chesney, Nonresident Senior Fellow, Governance Studies @ Brookings and Benjamin Wittes, Senior Fellow, Governance Studies @ Brookings, “Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Testimony To Congress, May 22nd 2013, http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes (BJN)

We would like to make four major points today, points which lead to a single recommendation: First, a review of the relevant case law suggests that the Supreme Court as currently aligned would probably not approve the use of long-term military detention under color of the Authorization for the Use of Military force (AUMF) with respect to a United States citizen detainee who was arrested by law enforcement authorities within the United States. Whether it would approve detention for a non-citizen captured within the United States is also in doubt, though the matter is less clear in that setting. Second, current criminal justice authorities provide ample grounds for ensuring the incapacitation of such persons in most foreseeable instances. There is little if anything to be gained for the executive branch in gambling with the domestic military detention option, which would carry significant litigation risk and guarantee divisive political friction. Third, although the Bush administration did use military detention for domestic captures in two instances—one involving a citizen, another a non-citizen—it typically relied on the criminal justice system instead. Indeed, in the case of the citizen detainee, it eventually backed away in the face of a looming judicial reversal. The Obama administration has stayed this course, taking similar action with respect to the domestic non-citizen detainee in military custody. Today it is highly unlikely that an administration of either party would attempt to use these authorities again. Fourth, because these options nonetheless have not formally been foreclosed in law, there are periodic surges of interest in them by both political supporters and opponents. Supporters demand their use in cases like that of the Boston Marathon bombing. Opponents, meanwhile, have gone to court to seek injunctive relief against law of war detention authorities based on speculative fears of military detentions that will not take place. All of this is disruptive, undesirable, and unnecessary. Based on these observations, we therefore recommend that Congress codify in statute today’s practical status quo. That is, Congress should state explicitly that detention authority under the AUMF and the NDAA does not extend to any persons captured within the territory of the United States. We provide a more expansive discussion of these points below, in two parts. The first part outlines the legal context against which these issues arise today. The second discusses the practical and policy consequences of leaving the current status quo uncodified in statute and explains our recommendation for legislation.

#### We also impact turn their solvency deficits and have 2 internal net benefits

#### 1 The CP ALONE is the ONLY hope to solve the aff – executive circumvention is an internal net benefit – answers ALL solvency deficits

Harvard Law Review 2012 (Unsigned)

Presidential Power and the Office of Legal Counsel, 125 Harv. L. Rev. 2090

The President relies on OLC to issue written opinions that explain the bounds of his constitutional authority and help him to fulfill his duty to faithfully execute the laws. The threat to national security posed by the war on terror in the past decade has led to increased pressure on OLC to give the President the tools that he needs in order to protect the country. Each of the examples discussed in this Part reveals the need for OLC not only to adhere to its own internal guidelines but also to strengthen them in order to protect its independence and legitimacy. This approach would ensure that the White House receives the best possible legal advice on controversial subjects and would give the President the option to use its opinions as a form of executive self-binding. Given the apparent atrophy of external constraints from the other branches, an internal constraint of this kind may offer the best chance of meaningfully containing executive power. Such a constraint, however, requires the influence of public opinion, as in the case of signing statements, and only time will tell whether public opinion will have a similar impact in the context of OLC.

#### 2 Safe Havens – the CP relies on the same authority they restrict to improve the definition of safe haven, so the plan and perm cannot access international spill over, which solves European safe-haven better—this is their author

Julia C. Whitehair, Master of Arts in Security Studies graduate thesis, “A PLACE TO HIDE: POPULAR SUPPORT AND TERRORIST SAFE HAVENS”, Nov 19th 2010, http://repository.library.georgetown.edu/bitstream/handle/10822/553428/WhitehairJuliaC.pdf?sequence=1

This research has important conceptual implications for U.S. national security policy. **The definition of a safe haven commonly used in U.S. policy documents should expand to include the notion of safe havens in functioning states and the role popular support plays in creating a permissive environment for terrorist groups. An updated definition of safe haven would help change the accepted notion of safe haven**. It should also **impact government formulae for prioritizing areas as potential safe havens**, which should not focus exclusively on weak governance.199 **An expanded definition would also change the standards by which the U.S. government measures the effectiveness of its efforts to deny terrorist groups their safe havens**.200 This research points to the importance of addressing the underlying causes or grievances that might lead a population to support terrorism. **The importance of identifying and engaging isolated communities to deny terrorist groups possible recruits is recognized; this understanding should also include the knowledge that these isolated communities can also become sources of organizational support**. The RAF case study in particular points to the need for law enforcement to consider carefully its messaging and community engagement strategies when initiating an operation against a domestically-based terrorist group. **Law enforcement agencies should monitor popular response to ensure the campaign has a positive effect on counterterrorism efforts, and** they should **re-evaluate the campaign periodically in light of public response**. **Redefinition of the notion of a safe haven ought to have a cascading effect on U.S. foreign policy mechanisms designed to enhance partner countries’ counterterrorism capabilities**. Guidance to law enforcement in other countries should reflect the ways in which a safe haven could develop in a well-governed state or area. **Law enforcement in particular should be aware of the implications of counterterrorism measures for increasing or diminishing popular support for terrorists. U.S. mechanisms should devote resources not only to institutions improving governance, but also to those that bolster civil society and increase participation in the political process.**

#### 3 Executive Constitutionalism - The perm changes the legal reasoning of the CP – only the CP alone operates from executive SELF restraint, creating EXEC constitutionalism

Cornelia Pillard Feb 2005 Supreme Court Inst, G-town U Law, former DOJ Deputy Asst Att Gen

<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1190&context=facpub>

Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758

V. ENABLING EXECUTIVE CONSTITUTIONALISM The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain. One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208 The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is transformative potential in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive. A. Correcting the Bias Against Constitutional Constraint As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights. 1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension § Marked 12:11 § his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° When the president takes a stand for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so. If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, acting as a spur to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

#### Executive constitutionalism solves the aff, key to robust democracy

Pillard 2005 – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

\*NOTE: SG = Solicitor General; OLC = Office of Legal Counsel

The executive, in my view, has failed fully to meet the challenges of interpreting and applying the Constitution on its own. My focus here is on questions of individual rights that evade judicial review. As the Office of Legal Counsel's "torture memos" illustrate, there are substantial risks associated with executive decisionmaking on fundamental questions of executive power and individual rights.' My basic analysis is also relevant to the executive's approach to federalism and separation of powers, but the principal focus here is on how the executive understands and fulfills its constitutional obligations with respect to individuals.2 This Article builds on two bodies of literature that, thus far, have not significantly engaged one another: writings about executive-branch legal processes, and about the Department of Justice's Solicitor General ("SG") and Office of Legal Counsel ("OLC") in particular (the institutional literature), and a recent round of theoretical scholarship about extrajudicial constitutionalism (the theoretical literature). The institutional literature typically projects confidence that the SG and OLC provide the highest quality legal advice and representation to the executive, and that they scrupulously protect the Constitution against executive officials distorting the law to advance personal, partisan, or institutionally parochial agendas. These writings routinely point to the special character and traditions of those offices in representing not only the president and the executive branch, but also the United States and its people. The descriptions seem at first blush to support the enthusiasm of the extrajudicial constitutionalists, inasmuch as they highlight offices within the executive branch dedicated to high-quality constitutional analysis. Meanwhile, the theoretical literature on extrajudicial constitutionalism suggests that the political branches have the capacity to effectuate the Constitution in ways quite distinct from the familiar, judicial version, and that, in part because of that distinctiveness, extrajudicial constitutionalism provides a normatively attractive supplement to or substitute for judicial doctrines. Scholars have pinned on the political branches hopes for a more democratic, less crabbed and formalistic constitutionalism, and one that reflects the political branches' distinctive capacities. Larry Sager, for example, sees the gap between the Constitution's normative commands and their judicial enforcement as enabling "robust participation by popular political institutions in the constitutional project of identifying and implementing the elements of political justice."3 Robin West identifies congressional constitutionalism as potentially enabling the "the democratization - long overdue - of the Constitution itself," and as promising a less legalistic approach Robert Post and Reva Siegel contend that "[q]uestions of constitutional law involve profound issues of national identity that cannot be resolved merely by judicial decree," and that, therefore, "a legitimate and vibrant system of constitutional law requires institutional structures that will ground it in the constitutional culture of the nation."5 Larry Kramer unearths an American historical tradition of popular constitutionalism that embraces "the democratic pedigree and superior evaluative capacities of the political branches" and that is resistant to the notion that the Constitution is mere ordinary law, formalistic and legalized to such an extent that only courts can be trusted with it.6 Bruce Peabody believes "a deeper consensus" could result from greater engagement by nonjudicial actors in constitutional interpretation Mark Tushnet champions a "populist constitutional law," wrested from the courts' unduly formalistic reliance on text, structure and history, and interpreted instead in light of "all-things-considered, more practical judgment."' As Christopher Eisgruber has explained, "[e]xperience and responsibility are invaluable teachers in the art of governance, and there may be times when Congress or the Executive, by virtue of their connection to the people or their knowledge of what government can do, have the best insight into how the Constitution balances competing principles."9 Certain features stand out as normatively attractive to proponents of political-branch constitutionalism. As applied to the executive, the theoretical literature highlights the importance of democratic responsiveness and distinctive institutional capacities (e.g., the executive's ability to investigate facts and take positive action) in shaping a constitutionalism that differs substantially from what the courts devise. Also central for those theorists, although often implicit, is a commitment to constitutional - as distinct from merely political - guidance for decisions left to political actors. The Constitution in the executive's hands could be a counterweight both to a monopoly over constitutional meaning in the hands of judicial elites that is stunted by the courts' limited practical capacities, and to a politics of raw competition among self-promoting interests divorced from the public-regarding underpinning our fundamental law provides. Viewed in this way, executive constitutionalism holds untapped potential as a more democratically engaged and institutionally versatile way of keeping the American polity true to its best self.

#### Extinction & access to Ayson, Tarpley, Stivachtis, Brzezinski

G John Ikenberry 1999 U Penn Political Science Prof

“Why Export Democracy” Wilson Quarterly, Spring

We led the struggle for democracy because the larger the pool of democracies, the greater our own security and prosperity. Democracies, we know, are less likely to make war on us or on other nations. They tend not to abuse the rights of their people. They make for more reliable trading partners. And each new democracy is a potential ally in the struggle against the challenges of our time-containing ethnic and religious conflict; reducing the nuclear threat; combating terrorism and organized crime; overcoming environmental degradation.

### Politics link

#### Won’t be seen as politicized b/c of SG—he’s working in conjunction w/ the White House Counsel’s Office and the OLC

### Rollback

#### CP solves RB—

#### No rollback—executive restraints are comparatively more binding than the aff

Bradley & Morrison, 2012 (Curtis A. Bradley, William Van Alstyne Professor of Law, Duke Law School, Trevor W. Morrison, Isidor and Seville Sulzbacher Professor of Law, Columbia Law School, published in the Harvard Law Review Volume 126 Number 2, “HISTORICAL GLOSS AND THE SEPARATION OF POWERS “ http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5176&context=faculty\_scholarship)

3. Internal Reliance by the Executive Branch. — A separate point is that, especially on matters unlikely to come before the courts, the executive branch in particular is liable to privilege past executive prac-tices and legal interpretations even when they diverge from the views of Congress. This tendency is evident in the work of OLC. Although OLC sometimes stresses the acquiescence idea, on other occasions it places special weight on executive branch precedents and practices even in the face of repeated congressional disagreement.198 Whereas the former approach seeks to identify converging constitutional understandings between the political branches, the latter approach may be best understood as an exercise in institutional self-defense. As discussed above, such self-defense is an important aspect of OLC’s bill comment practice.199 There are a number of areas where OLC has consistently resisted congressional attempts to legislate, on the ground that the legislation would intrude unconstitutionally upon executive prerogatives. In the foreign affairs area, for example, Congress has at various points over the last few decades contemplated legislation that would direct or otherwise limit how the executive branch conducts diplomacy. OLC has repeatedly resisted such legislation, and in so doing has invoked its own consistent stance on these issues.200 The fact that Congress has repeatedly contemplated such provisions and that the executive branch has consistently resisted them underscores the lack of acquiescence from either branch in this area. Still, OLC evidently regards its own precedents and other past executive practices as important resources for resisting what it deems to be impermissible legislative intrusions on executive power.201

#### The CP includes the Solicitor General – united fronts solve

Cornelia Pillard Feb 2005 Supreme Court Inst, G-town U Law, former DOJ Deputy Asst Att Gen

<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1190&context=facpub>

Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758

One such difference is that all of the OLC deputies are politically appointed, whereas in the SG's Office, three out of the four deputies are career employees. A more politically led office seems less likely to make impartial, arms-length constitutional decisions, but the political pedigree of OLC's leadership may give it credibility with the political leadership of client entities by helping them to trust that OLC will not use constitutional objections as a back-door way to stop or limit policies with which it simply disagrees. Only when clients are willing to abide by its advice can OLC play a client-checking role. Another difference between the two offices is that, whereas only one deputy reviews each matter in the SG's office, OLC customarily follows a "two-deputy rule," permitting advice on behalf of the office only after review and approval by two deputies. Without the immediate threat of an adverse court judgment against an agency that fails to follow its advice, OLC's clout depends more on support from other sources. Presenting a "united front," rather than lone authors more readily questioned as idiosyncratic, may enhance OLC's authority with its clients.125

# 4GW

## 4GW

### Overview

#### 4GW outweighs—deterrence means conventional wars like US-China won’t escalate—conceded Li warrant—the only risk of nuclear conflict is through terrorism

#### Nuclear terrorism breaks the taboo- causes escalation

Bin ‘9 (5-22-09 About the Authors Prof. Li Bin is a leading Chinese expert on arms control and is currently the director of Arms Control Program at the Institute of International Studies, Tsinghua University. He received his Bachelor and Master Degrees in Physics from Peking University before joining China Academy of Engineering Physics (CAEP) to pursue a doctorate in the technical aspects of arms control. He served as a part-time assistant on arms control for the Committee of Science, Technology and Industry for National Defense (COSTIND).Upon graduation Dr. Li entered the Institute of Applied Physics and Computational Mathematics (IAPCM) as a research fellow and joined the COSTIND technical group supporting Chinese negotiation team on Comprehensive Test Ban Treaty (CTBT). He attended the final round of CTBT negotiations as a technical advisor to the Chinese negotiating team. Nie Hongyi is an officer in the People’s Liberation Army with an MA from China’s National Defense University and a Ph.D. in International Studies from Tsinghua University, which he completed in 2009 under Prof. Li Bin. )

**The nuclear taboo is a** kind **of international norm and this type of norm is supported by the promotion of the norm through international social exchange.** **But at present the increased threat of nuclear terrorism has lowered people’s confidence that nuclear weapons will not be used**. **China and the United States have a broad common interest in combating nuclear terrorism.** **Using technical and institutional measures to break the foundation of nuclear terrorism and lessen the possibility of a nuclear terrorist attack can not only weaken the danger of nuclear terrorism itself but also** strengthen people’s confidence in the nuclear taboo**, and in this way preserve an international environment beneficial to both China and the United States.** **In this way even if there is crisis in China-U.S. relations caused by conflict, the nuclear taboo can also help both countries reduce suspicions about the nuclear weapons problem, avoid miscalculation and thereby reduce the** danger of a nuclear war**.**

### Link

#### \*\*\*Speed of decisionmaking is key to 4GW- executive power is essential

Li 2009 [Zheyoa Li Winter, 2009 The Georgetown Journal of Law Public Policy 7 Geo. J.L. & Pub. Pol'y 373 “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare” lexis]

By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme.¶ As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should [\*399] consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 144 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police." 146 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision-making. § Marked 12:15 § [\*400] In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute.¶ In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourth-generational opponents.

# 1NR

## NATO

#### Western European Union solves your advantage

Conry ’95 (Barbara, Foreign Policy Analyst – Cato, Cato Policy Analysis, “The Western European Union as NATO’s Successor”, 9-18, http://www.cato.org/pubs/pas/pa-239.html)

Europe after NATO: Bogus Nightmare Scenarios It is inaccurate to suggest, as NATO partisans often do, that the only alternative to Atlanticism is a return to the dark ages of the interwar era: nationalized European defenses, American isolationism, xenophobia, demagoguery, and the other evils associated with the rise of Hitler and World War II. Former U.S. senator Malcolm Wallop (R-Wyo.) warns that weakening NATO will have dire consequences. "As we have thrice before in this dreadful century, [we will] set in motion an instability that can only lead to war, shed blood, and lost treasure. Pray that we are wiser."(4) Lawrence di Rita of the Heritage Foundation similarly defends NATO as an "insurance policy" against a future world war. "If keeping 65,000 young Americans in Europe will prevent 10 times that many new headstones in Arlington cemetery once the Europeans turn on themselves again--as they have twice this century--then it's a small price to pay."(5) Such alarmism underestimates the significance of 50 years of economic and political cooperation among the West European powers and the role of pan-European institutions such as the Organization for Security and Cooperation in Europe. It also ignores the fact that a viable institutional alternative to NATO--the Western European Union--already exists. With the proper resources and recognition on the part of Washington and the Europeans that an independent European defense is essential in the post-Cold War era, the WEU is a promising alternative to Atlanticism. Far from being a lame second choice to NATO or defense on the cheap, a robust WEU would be superior to NATO in many ways, better suited in the long run to protecting European and, indirectly, American interests.

#### The key to accessing the combined global might of the EU’s economic clout and the US military clout isn’t reinvigorating NATO but European Security integration OUTSIDE of the NATO context which is critical for burden sharing to keep the US strong over time.

1. E. Wayne Merry ‘08, former State Department and Pentagon official and now a Senior Associate of the American Foreign Policy Council, Spring 2008 “An Obsolete Alliance” Journal of International Security Affairs Number 14 http://www.securityaffairs.org/issues/2008/14/merry.php
2. The transatlantic relationship (“relationship,” not “alliance”) will doubtless remain of immense importance to the United States. Europe and North America are linked by a dense web of economic and other ties which remain robust and are likely to thrive for generations to come. Together we constitute something like half the global economy and most of the developed world. However, economic relationships do not require military ties to flourish. To believe they do is Cold War thinking, not supported by either American or European history. No other country defines its external economics as inexorably linked to military deployments and alliance obligations. America need not and should not do so. Whether superpower or hyperpower, the United States does not possess limitless power. We need not maintain a foreign obligation just because we did so in a very different past. It is often noted that America possesses much more of the world’s wealth than our share of its population, but rarely is the liability side of the ledger shown. Today, the asymmetry of America’s global security obligations in comparison with those of other centers of wealth and power is striking. Our commitments are excessive, both when gauged against our capacities and the benefits accrued to the Republic. Obviously, some global burdens come with a global role, but there must be reasonable limits based on a sober assessment of national interest and of the capacities of other countries. After almost a century of carrying Europe’s water, it is time to stop. The Washington Treatyinter obligated this country to NATO for 20 years (Article XIII); thus, for almost four decades our role has exceeded our commitment. Europe is more than capable of looking out for itself and maintaining security in surrounding areas, including the Mediterranean and Black Seas plus much of Africa. Europe has the institutions, talent, technology and finances to manage the security of its corner of the planet. If (as seems likely) Europe does not choose to play a broader global security role, that is probably just as well. A provincial Europe is not a bad thing. What is not sustainable is that a restored Europe should remain a security protectorate of the United States. Security is the most fundamental aspect of public affairs, and European unity can never become fully mature until Europeans provide it for themselves. NATO is not a vehicle for European security integration; it is an impediment to it. America remains the global leader in many fields including military power, but that is a national asset better husbanded than expended. Our armed forces need replenishment and a wiser choice of commitments. European security is one military burden America can and should lay down.

TERROR

#### China won’t attack – diplomat assurances and geostrategic interests

Malik, Asia-pacific center for security studies, 2003, Malik, Mohan, frmr prof. of defense studies, Deakin University in Australia, "The China Factor in the India-Pakistan Conflict," http://www.thefreelibrary.com/The+China+factor+in+the+India-Pakistan+conflict.-a099233026)

These scenarios put Beijing on the horns of a dilemma. Some Chinese strategists see in the current South Asian crisis an opportunity to recover lost ground and thwart India's ambitions to challenge China's future economic and military primacy in Asia. Should another war between India and Pakistan break out, New Delhi's high hopes of an India-US alliance to counter China may never materialize, a welcome development from China's perspective. Some hawks in the PLA see China even benefiting from an India-Pakistani nuclear war. Hideaki Kase, a former special advisor to Japanese Premiers Takeo Fukuda and Yasuhiro Nakasone, believes that "China wants an Indo-Pakistan war, possibly a nuclear conflict, to weaken India." (53) At the time of the 1999 Kargil War, one Chinese military official had reportedly told a Western diplomat that "should India and Pakistan destroy themselves in a nuclear war, there would be peace along China's southwestern frontiers for at least three decades, and Beijing needs 20 to 30 years to consolidate its hold over restive Tibet and Xinjiang provinces." (54) However, this remains a minority viewpoint, as a nuclear war would have worldwide repercussions in terms of global economic depression, humanitarian crises, WMD proliferation, and China's developmental priorities. Most Chinese analysts and policymakers believe that Beijing should have absolutely minimum involvement in a situation where there can be no clear winners. Some argue that Beijing should seize the opportunity to coordinate its South Asia policy with Washington as it is in the interests of both countries to avert the world's first nuclear exchange and to use India-Pakistan tensions to strengthen Sino-US ties. While the Pakistanis are confident that if war comes with India, China will throw its weight behind Pakistan, diplomatically as well as militarily, (55) the Indians remain adamant that the Chinese would not do so for fear of India playing "the Taiwan and Tibet cards." (56) Interestingly, on 31 May 2002, the day Pakistan's new UN Ambassador, Munir Akram, issued an explicit nuclear warning to India, a Chinese Foreign Ministry spokesman denied a Times of India report that Chinese President Jiang Zemin had assured a US congressional delegation that China would not favor Pakistan in the existing tensions, and claimed that the report was "not based on facts." (57) A Chinese South Asia analyst at Fudan University in Shanghai, Shen Dingli, told The Wall Street Journal: "China needs to send a message: For my own security I will intervene." (58) Though Beijing may not overtly intervene in a limited war, China's geopolitical imperative requires it to come to Pakistan's defense if the latter's existence as a nation-state is threatened by India. Clearly, there is a great deal more to the Chinese role in South Asia than meets the eye. In the final analysis, Beijing's response to the next India-Pakistan war will be shaped by its desire to protect Chinese national interests, no matter what the cost. Geostrategic concerns require China to covertly side with Pakistan, while publicly calling for restraint by both sides and appearing to be even-handed. In the triangular power balance game, the South Asian military balance of power is neither pro-India nor pro-Pakistan, it has always been pro-China. And Beijing will take all means possible, including war, to ensure that the regional power balance does not tilt in India's favor. Even in the absence of a war, Pakistan hopes to continue to reap significant military and economic payoffs not only from the intensifying Sino-Indian geopolitical rivalry in southern Asia but also from what many believe is the coming showdown between China and the United States, which will further increase the significance of China's strategic ties with Pakistan. (59) In the meantime, a major consolation for Beijing is tha t a stronger Pakistan aided by the United States, Western Europe, Japan, and international financial institutions would be better able to balance and contain rival India.

#### No chance of US – Sino war

#### A. no incentive for China

Bremmer, 10 – president of Eurasia Group and author (Ian Bremmer, “China vs. America: Fight of the Century,” Prospect, March 22, 2010, http://www.prospectmagazine.co.uk/2010/03/china-vs-america-fight-of-the-century/)

China will not mount a military challenge to the US any time soon. Its economy and living standards have grown so quickly over the past two decades that it’s hard to imagine the kind of catastrophic event that could push its leadership to risk it all. Beijing knows that no US government will support Taiwanese independence, and China need not invade an island that it has largely co-opted already by offering Taiwan’s business elite privileged investment opportunities.