## Plan

#### The United States Congress should establish a national security court with exclusive jurisdiction over indefinite detention authority

## Terror

### Uq

#### Offensive counter terror measures are inevitable- it’s just a question of effective oversight

Wittes 2013 (Benjamin Wittes, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution, March 19, 2013, “Coming at the AUMF Debate from a Different Angle,” Lawfare, http://www.lawfareblog.com/2013/03/coming-at-the-aumf-debate-from-a-different-angle/)

The spirit that animates our paper, by contrast, is the suspicion that this belief is a bit less than realistic. In my view, to sketch the alternative, whoever is president is going to continue our current counterterrorism policies for the foreseeable future. Barring a Rand Paul presidency (and it will be interesting to see if either Jen or Steve endorses that prospect in the name of peace), any president is going to feel obliged to maintain counterterrorism on offense, and Congress—whining, carping, complaining all the way both that the president is being too aggressive and that he is not being aggressive enough—will go along with it, indeed, will insist upon it. That’s just the political reality. And it’s the political reality for a very simple reason that is, at its core, not about a point of law: Americans overwhelmingly prefer killing terrorists overseas to allowing them operating wiggle-room with which to attack Americans.¶ This counterterrorism on offense will be justified, as it has been so far, by aggressive interpretation of the AUMF as covering associated forces in geographic locales far from hot battlefields. Or it will be justified by an expansive view of Article II powers. Or it will be justified by whatever other legal means may be available. The critical point, however, is that the core strategy is simply not going to be walked back, unless there is some dramatic political shift, and most fundamentally, it’s not going to be walked back because a group of lawyers think the AUMF is no longer a vital instrument—any more than the absence of a congressional action precluded the Libya operation.¶ If you buy this premise, the question before us as we contemplate the future of the AUMF is not one of continued war versus a return to peace. The question, rather, is whether you want the contours of this continuing armed conflict to be defined by the Executive Branch acting alone, or whether you want it defined by some joint action of the Executive Branch and Congress. Even recognizing that Congress may not play its role optimally, I am in the latter camp. I believe there’s a useful role for Congress to play in defining the conflict at its margins. I don’t believe that Congress has either the force or the will to decide that the nation is at peace—or that it believes anything of the kind.

#### Obama has chosen article III courts as the preferred venue to try terrorist suspects captured in the War on TerrorSUSAN CRABTREE **OCTOBER** 14, 2013High-profile terror suspect taken to N.Y. to face trialhttp://washingtonexaminer.com/high-profile-terror-suspect-taken-to-n.y.-to-face-trial/article/2537222The [**Obama**](http://washingtonexaminer.com/section/barack-obama) **administration** Monday on **transferred an alleged top** [**al Qaeda**](http://washingtonexaminer.com/section/al-qaeda) **figure** captured by U.S. special forces **to** [**New York**](http://washingtonexaminer.com/section/new-york) **to face charges in federal court.** **The move is likely to revive debate about whether suspected** [**terrorists**](http://washingtonexaminer.com/section/terrorism) **should be tried in civilian or military courts.** Abu Anas al-Libi, a suspect in the 1998 bombings of U.S. embassies in [Kenya](http://washingtonexaminer.com/section/kenya) and Tanzania that killed 224 civilians, was captured by the U.S. Army Delta Force in Tripoli, [Libya](http://washingtonexaminer.com/section/libya) on Oct. 5. He was then whisked onto a Navy ship in the in the Mediterranean Sea where he was questioned by U.S. intelligence officials. U.S. Attorney Preet Bharara, the chief federal prosecutor for Manhattan, said **the military handed al-Libi to U.S. civilian law enforcement** over the weekend **and he was brought directly to the New York area. He is expected to appear before a judge** on Tuesday. **The move is sure to draw sharp opposition from Republicans in Congress**, who believe such a high-profile terrorist suspect should be sent to the U.S. prison at [Guantanamo Bay](http://washingtonexaminer.com/section/guantanamo-bay) for indefinite interrogations and detention. Republican Sens. [Lindsey Graham](http://washingtonexaminer.com/section/lindsey-graham), S.C., [Saxby Chambliss](http://washingtonexaminer.com/section/saxby-chambliss), Ga., and Kelly Ayotte, N.H., have strongly opposed the prospect of trying al-Libi in criminal court. They argue that al-Libi, who was once a close confidant of Osama bin Laden, should be sent to Guantanamo Bay to be interrogated by military intelligence officials for as long as needed and question if his brief interrogation at sea was sufficient.

### **Convictions**

#### **Article III Courts don’t allow the introduction of classified evidence which is key to convictionsAmerican BAR** July **2009**

Due Process and Terrorism Series
Trying Terrorists in Article III Courts
Challenges and Lessons Learned A Post-Workshop Report http://www.americanbar.org/content/dam/aba/migrated/natsecurity/trying\_terrorists\_artIII\_report\_final.authcheckdam.pdf

Central to issues of trying terrorist suspects in the Article III courts are the issues associated with the use of classified and sensitive information. Congress enacted the Classified Information Procedures Act (CIPA) in 1980 to respond to the problem of “greymail”, a defense tactic that of forced the government either to disclose classified evidence or to dismiss its case altogether. In modern cases, CIPA is used to protect classified information in criminal trials generally by permitting the trial court to make pretrial judgments regarding the relevance, use, and admissibility of such information *in camera* and *ex parte*. Where the classified information is relevant to a criminal prosecution, the judge can permit the government to disclose summaries of or substitutions for the evidence in lieu of the actual evidence. Some of the most complex decisions arise when classified information is so central to a defense that a summary or substitution would be inadequate. In such situations, trial courts might preclude certain evidence from being introduced or simply dismiss certain counts of an indictment. At worst, the government may be forced to decide between either disclosing evidence to the defense or simply withdrawing its case altogether to prevent disclosure. Thus, even where CIPA applies, the government may still face a “greymail”- like situation in some cases if the classified information is highly relevant to the defense and a summary or substitution would prove inadequate.

#### Especially true for high value targetsGlenn **Sulmasy 2009** THE NATIONAL SECURITY COURT SYSTEM A NATURAL EVOLUTION OF JUSTICE IN AN AGE OF TERROR – pg 149Professor of law, commander, and judge advocate at the US Coast Guard Academy**It would be** unworkable and **unmanageable to obtain unbiased juries when prosecuting al Qaeda in the federal** district **courts.** Imagine an attorney trying to empanel a jury after an attack on the Sears Tower by Al Qaeda. How would you find jury members who have not heard of, or could sit in judgment of, one of the alleged perpetrators of such a horrific act? **A more current example would be a civilian trial of** Khalid Sheik Mohammad (**KSM**). KSM was recently arraigned in Guantanamo Bay by military commission. As is well known, **he is alleged to have been the mastermind of the** attacks of 9/11. Is it reasonable to expect an unbiased “jury of his peers” be empaneled for a man accused of coordinating the worst attack on U.S. soil since the war of 1812? **It is ludicrous to imagine someone like KSM’s “peers” being brought to the courtroom for jury duty. Such reasoning is simply illogical. An unbiased jury could never be empaneled.** Additionally, *voir dire* (**jury selection) for the lawyers on both sides would prove difficult beyond comprehension.** **Marines and soldiers** fighting in Afghanistan (or other “battlefields”) **are fighting a war. We can not possibly ask them to follow the same constitutional procedures required of a police officer** in domestic law enforcement operations **when raiding an Al Qaeda safe house and seizing computers or questioning witnesses.** Beyond the constitutional issues associated with the actual seizure of the “computer” (which is likely to provide evidence and information on the alleged al Qaeda member’s contacts and communications), the chain of custody would almost certainly be compromised. **Able defense counsel would take full advantage of such lapses in constitutional procedure.** Our Article III system is designed for police and criminal procedures- not seizures during battle or with the “fog of war.” **These evidentiary concerns are almost certain to result in acquittals for most, if not all, detainees brought before civilian courts.**

### Intel leaks

#### Article III trials will clog our federal courts and release vital intelligence information to the public and terrorist organizationsAmos N. **Guiora 9**, Professor of Law at the S.J. Quinney College of Law, University of Utah, served in the Judge Advocate General's Corps of the Israel Defense Forces where he held senior command positions related to the legal and policy aspects of operational counterterrorism, “Creating a Domestic Terror Court”, PDF

As mentioned above, this article assumes that both traditional Article III courts and international treaty-based courts are inadequate to try suspected terrorists. With respect to Article III courts, the reasons are primarily two-fold. First, constituting jury trials for thousands of detainees who have been held in detention for years awaiting trial would take an additional, substantial period of time, unnecessarily prolonging the pre-trial detention period (not to mention, all the inherent problems- if not impossibilities-of convening a "jury of your peers" for detainee trials). Second, terrorism trials necessarily involve unique and confidential intelligence information in a manner qualitatively different from that envisioned in the Classified Information Protection Act,9 and how such information is used as evidence in trial clearly affects national security concerns.10¶ To that end, as subsequently explained, the introduction of classified information -necessary to prosecuting terrorists-will be most effectively facilitated by a DTC. Although advocates of Article III courts suggest the success of previous trials proves their claims regarding the efficacy of their approach, I suggest the mere handful of cases tried (including the highly problematic Moussaoui trial) does not strengthen the argument in the least.1 Perhaps the opposite; for by highlighting the success of trials before juries in an extraordinarily limited number of cases, the proponents suggest-inadvertently-that the logistical nightmare of the sheer number of potential trials is something they have not fully internalized.¶ This was abundantly clear to me when I testified before the Senate Judiciary Committee,'12 where the proponents of Article III courts repeatedly emphasized how well the process had worked in one particular case. My response was: We are talking about thousands of trials, not one. Jury trials and traditional processes are not going to provide defendants with speedy trials, but in fact, quite the opposite. Bench trials- with judges trained in understanding and analyzing intelligence information- will much more effectively guarantee terrorism suspects their rights. That is, the traditional Article III courts will be less effective in preserving the rights and protections of thousands of detainees than the proposed DTC. I predicate this assumption on a "numbers analysis": not establishing an alternative judicial paradigm will all but ensure the continued denial of the right to trial to thousands of detainees.¶ A recent report published by Human Rights First defends traditional Article III courts' abilities to try individuals suspected of terrorism. 13 The authors demonstrate confidence in the courts' abilities to maintain a balance between upholding defendants' rights while simultaneously keeping confidential information secure.'4 Nevertheless, the report recognizes the limitations inherent in trying terrorist suspects in traditional courts as illustrated by the discussion concerning Zacarias Moussaoui's trial. 15¶ Moussaoui was brought to trial in the United States District Court for the Eastern District of Virginia after he was suspected of training with al Qaeda in preparation for the terrorist attacks of September 11, 2001.16 Although Moussaoui eventually pled guilty and admitted that he intended to fly a fifth plane into the White House, the trial itself reached a standstill when Moussaoui refused to proceed unless given access to "notorious terrorism figures who were in government custody.' 17 Because of its constitutional obligations to criminal defendants, the court was faced with an irreconcilable choice: either allow national security to be compromised or violate Moussaoui's guaranteed constitutional rights. Despite the fact that the United States Court of Appeals for the Fourth Circuit determined that "carefully crafted summaries of interviews"' 8 would satisfy constitutional requirements, the fact that the terrorist suspects in federal custody are even allowed to give deposition testimony could alone compromise security. 19¶ Regardless of the attempted solution, because of the special nature of prosecuting terrorist suspects, traditional Article III courts will always either compromise at least some national security or violate defendants' constitutional rights. My proposed DTC bridges the gap in that it allows the introduction of classified intelligence in conjunction with traditional criminal law evidence. This, then, meets Confrontation Clause requirements. The intelligence information can only be used to bolster the available evidence for conviction purposes but cannot under any circumstances-be the sole basis of conviction.

#### Those leaks are utilized by high ranking terrorists to avoid capture and undermines military operations abroad

Glenn Sulmasy 2009
THE NATIONAL SECURITY COURT SYSTEM A NATURAL EVOLUTION OF JUSTICE IN AN AGE OF TERROR – pg 151
Professor of law, commander, and judge advocate at the US Coast Guard Academy
Introduction of classified material, even if in compliance with the Classified Information Protection Act (CIPA), would be problematic in the context of an ongoing armed conflict. One has to look no further than the problems encountered by the prosecution in the “Sheik” case as part of the first world trade center bombings in the 1990’s. The judge in that case, later attorney general of the United States Michael Mukasey , has on numerous occasions spoken of the problems in this context of trying al Qaeda in a civilian courtroom. His concerns about the presumptive openness of U.S. courts are compelling. Further, the prosecutor in that case, Andy McCarthy, now a proponent of the national security court, has poignantly written on how classified information was almost immediately leaked to Osama Bin Laden himself. This fact was confirmed when U.S. forces captured copies of the witness list and other information while operating in the Afghan theater. Exposing our troops to such lapses in intelligence, during ongoing military operations, is irresponsible at best. The U.S. court system is not suited for handling the sensitive nature of war secrets- particularly while U.S. forces remain in harm’s way.

### Mission effectiveness

#### Article 3 trials cause military mission disruption in the war on terror

Jacob 2012 [Greg Jacob, a partner at O’Melveny & Myers in Washington, D.C., examine the intricacies of U.S. detention policy. Their essays are among those collected in Patriots Debate: Contemporary Issues in National Security Law, a book published by the ABA Standing Committee on Law and National Security that was edited by Harvey Rishikof, Stewart Baker and Bernard Horowitz October 1, 2012 “Detention Policies: What Role for Judicial Review?” http://www.abajournal.com/magazine/article/detention\_policies\_what\_role\_for\_judicial\_review/]

Probably the most important war on terror decision handed down by the D.C. Circuit since Boumediene was decided is Maqaleh, in which the court declined to extend the writ of habeas corpus to aliens captured abroad, designated enemy combatants and held at Bagram Air Force Base in Afghanistan. From the military’s perspective, the nightmare scenario has always been the prospect that the judiciary would assert the right to engage in a searching inquiry into the basis for every capture and detention of an alien abroad, even while active combat operations are ongoing. In World War II, such a rule could have required the government to litigate hundreds of thousands of habeas claims, costing the government significant expense and causing substantial disruption to military operations. Maqaleh puts such fears to rest.

#### Mission disruptions cause Persian Gulf hotspots to escalate which spills over globally

Kagan and O’Hanlon 2007 (Frederick Kagan, resident scholar at AEI, and Michael O’Hanlon, senior fellow in foreign policy at Brookings, April 24, 2007, “The Case for Larger Ground Forces,” http://www.aei.org/files/2007/04/24/20070424\_Kagan20070424.pdf)
We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic biparti- san view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order.¶ Let us highlight the threats and their conse- quences with a few concrete examples, emphasiz- ing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to inter-¶ national inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino- Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s noninterven- tion in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberal- ism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated.¶ And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might con- vince many Americans that the war there truly was lost—but the costs of reaching such a con- clusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing.¶ Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capa- ble of a wide range of missions—including not only deterrence of great power conflict in deal- ing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel- intensive missions such as the ones now under way in Iraq and Afghanistan.¶ Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is¶ prudent. At worst, the only potential down- side to a major program to strengthen the mil- itary is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only pru- dent, it is also badly overdue.

### Oil

#### The court’s key to getting groups like Al Qaeda and their close affiliatesGlenn **Sulmasy 2009** THE NATIONAL SECURITY COURT SYSTEM A NATURAL EVOLUTION OF JUSTICE IN AN AGE OF TERROR – pg 180-181Professor of law, commander, and judge advocate at the US Coast Guard AcademySimilarly, legislation creating the system should be clear that **persons subject to the court,** regardless of citizenship**, are those alleged to have been, or are, members of al Qaeda or affiliated groups** that engage or plan to engage in acts of international terrorism. The Congress needs to clarify that **“any terrorist” is not subject to this court but simply those who engage in international terrorism.** This removes the fear of some that the court would have jurisdiction over any group that engages in terrorism. The **limited jurisdiction** of the NSCS **would serve as a check on any arbitrary use of the court system.**

#### Yemen is the training ground for terrorism against Saudi Arabia – will attack oil facilities

Ulrichsen 2011 (Kristian Ulrichsen, Kuwait Research Fellow in the Kuwait Programme for Development, Governance and Globalisation in the Gulf States Centre for the Study of Global Governance at the London School of Economics and Political Science, "The Geopolitics of Insecurity in the Horn of Africa and the Arabian Peninsula," Middle East Policy Council, http://www.mepc.org/journal/middle-east-policy-archives/geopolitics-insecurity-horn-africa-and-arabian-peninsula?print)

The reconstitution of AQAP in January 2009, following the merger of al-Qaeda's Yemeni and Saudi wings, confirmed suspicions held by many security officials that the counterterrorism campaign in the GCC against the original AQAP organization had merely displaced the threat from terrorism to the undergoverned periphery of the peninsula.3 From the beginning, the organization featured a newer generation of radicals who displayed both the intent and, increasingly, the capability to operate transnationally. This built upon existing trends of terror suspects' infiltration and weapons smuggling across the Yemeni-Saudi boundary. In May 2008, for example, Yemen's vice president, Abd al-Rab Mansur al-Hadi, claimed that 16,000 suspected members of al-Qaeda had been expelled from Yemen since 2003. This figure included many "Arab Afghans" who had fled Afghanistan for Saudi Arabia following the overthrow of the Taliban in 2001, and subsequently moved to Yemen to avoid capture by Saudi security forces.4 Despite these arrests, plots and cells continued to be uncovered in Yemen during 2008, including a Yemeni-led cell linked to al-Qaeda that was planning to attack oil-installation facilities in the Eastern Province of Saudi Arabia.5 Reminiscent of al-Qaeda's failed attack in February 2006 at Abqaiq, this highlighted the vulnerability of Saudi Arabia's 1,800-kilometer border with Yemen.6 The coordinated attack on the U.S. embassy compound in the Yemeni capital of Sanaa on September 17, 2008, which killed 10 people, marked the beginning of the "second generation" of transnational terrorism in the peninsula. This attack melded the threats to regional security from Iraq, al-Qaeda and the growing lawlessness in Yemen itself. Three of the six suicide bombers had recently returned from Iraq; following their arrival in Yemen, they reportedly attended al-Qaeda training camps in the southern provinces of Hadramawt and Maarib.7 Yemeni security officials already suspected these camps of training an aggressive new generation of extremist leaders and jihadi footsoldiers.8 Together with the relocation of extremists from Saudi Arabia and the growing incidence of militant flows linking Yemen to the Islamist insurgents of Al-Shabaab in Somalia, they represented a deadly new threat to internal security in Yemen and regional stability in the Arabian Peninsula.9

#### Attacks on Saudi oil facilities collapse the global economy

Gartenstein-Ross 2011 (Daveed Gartenstein-Ross, Directs the Center for the Study of Terrorist Radicalization at the Foundation for the Defense of Democracies, May 23, 2013, "Osama's Oil Obsession," Foreign Policy, www.foreignpolicy.com/articles/2011/05/23/osamas\_oil\_obsession)

Bin Laden long believed that undermining the U.S. economy was central to his war against the United States -- an outlook that has permeated al Qaeda's ranks and will outlive him. Al Qaeda views attacking the oil supply as a smart strategy for good reason: America's reliance on oil for its transportation needs makes it a commodity that, if disrupted or made unaffordable, will cause the U.S. economy to collapse. The United States holds only 3 percent of conventional global oil reserves, yet uses 25 percent of the world's daily production. It imports more than 66 percent of its oil, amounting to a daily purchase of 12 million barrels of imported oil. A significant rise in the price of oil due to a terrorist attack would deal al Qaeda's main enemy a severe economic blow.¶ The threat that keeps counterterrorism officials up at night is a massive strike on Saudi oil installations, taking advantage of the limited number of production hubs to knock a significant amount of oil off the world market. The kingdom relies on its Abqaiq facility to process two-thirds of its crude oil, and on two primary terminals (Ras Tanura and Ras al-Ju'aymah) to export its oil to the world. The economic impact of a successful attack on one of these targets would be tremendous: Gal Luft and Anne Korin of the Institute for the Analysis of Global Security estimate that, if a terrorist cell hijacked a plane and crashed it into either the Abqaiq or Ras Tanura facilities in a 9/11-style attack, it could "take up to 50% of Saudi oil off the market for at least six months and with it most of the world's spare capacity, sending oil prices through the ceiling."¶ Former CIA case officer Robert Baer agrees, writing his 2004 book Sleeping with the Devil, "A single jumbo jet with a suicide bomber at the controls, hijacked during takeoff from Dubai and crashed into the heart of Ras Tanura, would be enough to bring the world's oil-addicted economies to their knees, America's along with them."¶ The prospect of a terrorist strike is so worrying because of the critical role that Saudi oil production plays in the world economy. Saudi Arabia produces almost 10 million barrels of oil per day, and is the only country able to maintain excess daily production capacity of around 1.5 million barrels per day (a "swing reserve") to keep world prices stable.Al Qaeda has certainly tried to attack the kingdom's key oil targets. The threat of terrorist attacks on Saudi oil infrastructure first became a reality in September 2005, when a 48-hour shootout with Islamic militants at a villa in the Saudi seaport of al-Dammam ended with Saudi police introducing light artillery. When police entered the compound in the aftermath of the battle, they found not only what Newsweek described as "enough weapons for a couple of platoons of guerilla fighters," but also forged documents that would have given the terrorists access to the country's key oil and gas facilities. Saudi Interior Minister Prince Nayef bin Abdul Aziz confirmed to the newspaper Okaz that the cell had planned to attack energy facilities, noting that "there isn't a place that they could reach that they didn't think about."

#### Global economic crisis causes war---strong statistical support—also causes great power transitions

Royal 10 – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-214
Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson’s (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin, 10981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Fearon, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner, 1999). Seperately, Polllins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium, and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland’s (1996,2000) theory of trade expectations suggests that ‘future expectation of trade’ is a significant variable in understanding economic conditions and security behavior of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectation of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases , as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states. Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002, p.89). Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. ‘Diversionary theory’ suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to create a ‘rally round the flag’ effect. Wang (1996), DeRouen (1995), and Blomberg, Hess and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997) Miller (1999) and Kisanganie and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak presidential popularity, are statistically linked to an increase in the use of force..

### Retal

**Extinction via retal**

**Ayson 2010** (Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability? If Washington decided to use, or decided to threaten the use of, nuclear weapons, the responses of Russia and China would be crucial to the chances of avoiding a more serious nuclear exchange. They might surmise, for example, that while the act of nuclear terrorism was especially heinous and demanded a strong response, the response simply had to remain below the nuclear threshold. It would be one thing for a non-state actor to have broken the nuclear use taboo, but an entirely different thing for a state actor, and indeed the leading state in the international system, to do so. If Russia and China felt sufficiently strongly about that prospect, there is then the question of what options would lie open to them to dissuade the United States from such action: and as has been seen over the last several decades, the central dissuader of the use of nuclear weapons by states has been the threat of nuclear retaliation. If some readers find this simply too fanciful, and perhaps even offensive to contemplate, it may be informative to reverse the tables. Russia, which possesses an arsenal of thousands of nuclear warheads and that has been one of the two most important trustees of the non-use taboo, is subjected to an attack of nuclear terrorism. In response, Moscow places its nuclear forces very visibly on a higher state of alert and declares that it is considering the use of nuclear retaliation against the group and any of its state supporters. How would Washington view such a possibility? Would it really be keen to support Russia’s use of nuclear weapons, including outside Russia’s traditional sphere of influence? And if not, which seems quite plausible, what options would Washington have to communicate that displeasure? If China had been the victim of the nuclear terrorism and seemed likely to retaliate in kind, would the United States and Russia be happy to sit back and let this occur? **In the charged** atmosphere immediately after a nuclear terrorist attack, how would the attacked country respond to pressure from other major nuclear powers not to respond in kind? The phrase “how dare they tell us what to do” immediately springs to mind. Some might even go so far as to interpret this concern as a tacit form of sympathy or support for the terrorists. This might not help the chances of nuclear restraint.

## Procedural protections advantage

### Uq

#### The United States is at war with Al Qaeda and its affiliates, only an aggressive approach outside of domestic law enforcement will succeed. The alternative is 9/11

Glenn Sulmasy 2009
THE NATIONAL SECURITY COURT SYSTEM A NATURAL EVOLUTION OF JUSTICE IN AN AGE OF TERROR – pg 137
Professor of law, commander, and judge advocate at the US Coast Guard Academy

Any new system for detention and adjudication of unlawful belligerents in the so-called war on terror must be based upon the premise that we are a nation at war against international terrorists including Al Qaeda and other like-minded and loosely associated affiliates. It needs to overtly recognize, however, that this is a unique war, one that mixes law enforcement and warfare. It is the new 21st century warfare. The experiences of traditional nation-state warfare are not pre-eminent in this international struggle; it is truly an asymmetric war. The enemy does not provide another nation to negotiate with; there is no one to engage in compromise or diplomatic measures short of war; the enemy is not a signatory to treaties such as the Geneva Conventions; and there is no regulatory framework ideally suited to conduct operations, adjudication, or detention of the Al Qaeda fighter (other than customary international law). As a result, such armed conflict can seem to more resemble criminal activity than war. But the reality is the 9/11 attacks ushered in a new way to wage war and shattered the traditional notions of how nations go to war. The president, Congress, and the United Nations all authorized the use of force in self-defense after the attacks of September 11, 2001 (hereinafter referred to as 9/11). Al Qaeda, on myriad occasions since 1996, has “declared war” on the United States. The level of attack inflicted on NYC and the Pentagon were construed by most, if not all, as an armed attack. The antiterrorist tactics employed over the past two decades, which use a law enforcement model, manifestly failed. The terrorist threats continued to gather throughout the 1990’s. The bombings in the World Trade Center in 1993, the attacks on the US embassies in Africa and Bali, the attack on the USS Cole in Yemen were all indicia of a more coordinated and destructive approach by terrorist groups. Despite the fact that Al Qaeda has declared war on the United States on numerous occasions since 1996, the country has responded in the past with only increased FBI details and other law enforcement actions. In the fall of 2001, after the attacks on 9/11, the Bush administration sought a change in the US approach. Clearly, the tactics of the enemy had changed and it was necessary to change our response to combat this new wave of terror. The administration made clear that the US response needed to be an armed one. In 2001, Al Qaeda had the resources, ability, and will to inflict damage on an enemy commensurate with those possessed by a nation-state. The administration, and many in Congress, understood this to be a new, asymmetric threat that now required military intervention, making it painfully obvious that the law enforcement model would simply not suffice to fight this new, enhanced threat. Still, there are those who continued to advocate a response to Al Qaeda by the United States and its allies that employed a law enforcement model. Based on the aggressive acts of violence by these organized terrorist groups, however, it is difficult to describe what has transpired over the last decade as anything less than a declaration of war by organized terrorists who seek nothing less than the destruction of Western Civilization. Contrary to some scholars’ assertions, the war on al Qaeda is now a three-front conflict- in Afghanistan, Iraq, and the United States.

### Constitutional protections

#### Article III terror trials will relax procedural protections and erode democratic rights across the board in civilian courtsGlenn **Sulmasy 2009** THE NATIONAL SECURITY COURT SYSTEM A NATURAL EVOLUTION OF JUSTICE IN AN AGE OF TERROR – pg 155-156 Professor of law, commander, and judge advocate at the US Coast Guard AcademyPerhaps **the greatest concern** to me (as well as many others concerned about the use of U.S. courts) **is the potential for “bleed over” from the inevitable relaxations in** traditional **constitutional expectations when trying international terrorists in civilian courts.** Some recognition by the Article III courts of **the need for different standards** (relaxed evidentiary and procedural rules) required for admitting evidence, prosecution guidelines, and other areas of procedure **when prosecuting “war criminals” could begin a “slippery slope” within traditional law enforcement prosecutions.** **The civilian Article III courts would have to make exceptions in certain areas because there would be “unique” prosecutions- brought against an enemy of the United States** that we are engaging in armed conflict and certainly in the context of a national emergency, and especially when the prosecution involves possible future attacks on the United States. Therefore, **the potential for using these new, different standards in drug prosecution or** Racketeer Influenced and Corrupt Organizations Act **(RICO) prosecutions or others would likely have some advocates claiming that these too are “national crisis” cases that also require similar relaxed rules of evidence and decreased expectations of constitutional protections.** In doing so**, society,** as well as some members of the bench and bar**, may seek to employ similar relaxations in these ordinary cases. This seemingly innocent and well intentioned relaxation of traditional standards would create the unintended consequence of erosion of the constitutional principles Americans hold as part of their citizenship.** This, above all other concerns, should be paramount to both policy makers and civil libertarians who seek to employ civilian courts. Ironically, some **proponents’ zeal to give terrorists their “day in court” would create the potential of weakening our traditional protections** held in such high regard by all U.S. citizens**. Every effort should be made to ensure that this does not occur. The best means to do so is to keep the terrorist prosecutions out of traditional courts and place them into specialized court systems. This ensures that the civilian system does not become tainted with such necessary relaxations and gives formal recognition that these international terrorists are not the average criminal- nor the average warrior.** Thus, although seemingly benign and well intentioned, the use of civilian courts to handle this threat is inappropriate. **Those who advocate this use seem interested in returning to a pre-9/11 mentality that many have asserted set the stage for the attacks of that day.** The best advice on why not to use civilian courts can be found in the hearings held by the 9/11 Commission and their report; this report details the need to recognize that the acts committed by al Qaeda are not ordinary criminal acts, or even similar to regional or national terrorists acts. Al Qaeda has declared war upon the United States and the West and we should never return to what we know has been unsuccessful.

#### Federal material witness statute makes detention without charge inevitable in the civilian court system- the plan removes this from the civilian court realm

Sudha **Setty 2010**

Comparative Perspectives On Specialized Trials For Terrorism
http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1151&context=facschol

The government also has used Article III courts proactively, to prevent planned terrorist acts from occurring and to elicit valuable counterterrorism and intelligence information as part of the interrogation, negotiation, and plea bargain process. The federal material witness statute, which empowers the government to detain and question individuals without charge has enhanced the ability of law enforcement to detain individuals with potentially relevant information for terrorism prosecutions, but it has also increased the potential for abuse of discretion and abuse of executive power. Nevertheless, the statute remains a potent tool for prosecutors within the ordinary criminal justice system. Perhaps ironically, although individual defendants and civil libertarians have objected to the scope and application of the material support and material witness statutes, the main criticism of using the criminal law to prosecute terrorism is that the tools available to prosecutors are not strong enough given the level of protections guaranteed to criminal defendants under the Constitution.

#### NSC solves the issues in the civilian system and prevents an erosion of procedural protections granted by the constitutionJack **Goldsmith**\* February 4, **2009**Long-Term Terrorist Detention and Our National Security Courthttp://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf**The national security court might also replace criminal trials by military commission,** courts martial, or even ordinary criminal trials in civilian courts. It could serve either as a trial body or an appellate body or conceivably even both. **The argument here is that a national security court might be able to achieve some of the legitimacy benefits of an Article III criminal trial while at the same time avoiding the costs of such trials.** So, for example, **Congress might be able to give a national security court somewhat more procedural flexibility in protecting classified information** than it can an ordinary civilian criminal court. It might also be able to better protect judges and jurors in such a court. And **Congress might be able to limit the court’s precedents to ensure that any adjustments to substantive and procedural criminal law**—as in Moussaui and Padilla—**do not spill over into the ordinary criminal trial processes where the government should bear ordinary burdens**.45 The question of whether the new court should expand beyond detention to trials is a large and complicated one that is beyond the scope of the present project. But at a minimum, as Benjamin Wittes and I have explained elsewhere, Congress must consider the design of a national security court in conjunction with the design of the trial system, for each has profound effects on the other’s effectiveness.

#### The blurring of the two systems of law risks extinction**2009 Andrew C. McCarthy** is Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. Alykhan Velshi is a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force.Outsourcing American Law- We Need a National Security CourtIn the constitutional license given to executive action**, a gaping chasm exists between the realms of law enforcement and national security. In law enforcement,** as former U.S. Attorney General William P. Barr explained in October 2003 testimony before the House Intelligence Committee**, government seeks to discipline an errant member of the body politic who has allegedly violated its rules. That member**, who may be a citizen, an immigrant with lawful status, or even, in certain situations, an illegal alien, **is vested with rights and protections under the U.S. Constitution.** Courts are imposed as a bulwark against suspect executive action; **presumptions exist in favor of privacy and innocence**; and **defendants and other subjects of investigation enjoy the assistance of counsel**, whose basic job is to put the government to maximum effort if it is to learn information and obtain convictions. The line drawn here is that it is preferable for the government to fail than for an innocent person to be wrongly convicted or otherwise deprived of his rights. **Not so in the realm of national security. There, government confronts a host of sovereign states and subnational entities** (particularly international terrorist organizations**) claiming the right to use force. Here the executive is not enforcing American law against a suspected criminal but exercising national defense powers to protect the nation against external threats**. **Foreign hostile operatives** acting from without and within **are generally not vested with rights under the American Constitution, and treating them as if they were can have disastrous consequences.**9 The galvanizing concern in the national security realm is to defeat the enemy, and as Barr puts it, “preserve the very foundation of all our civil liberties.” **The line drawn here is that government cannot be permitted to fail**.

### Legitimacy

#### Independently, the plan reinvigorates due process in detention

Amos N. Guiora 12, Professor of Law, S.J. Quinney College of Law, University of Utah, "Due Process and Counterterrorism", Emory International Law Review, Vol. 26, www.law.emory.edu/fileadmin/journals/eilr/26/26.1/Guiora.pdf

While the public safety exception has been recommended as applicable to counterterrorism as justification for denying Miranda protections to post-9/11 detainees, 111 the danger of trampling on individual rights outweighs information that interrogators may conceivably receive. The rule of law is at its most vulnerable in the interrogation setting; to that extent, while public safety may be perceived as beneficial to society, the possible gain is, at best, short term with long-term dangers looming in the offing.¶ V. JUDICIAL FORUMS¶ The fundamental premise is that detainees must be afforded the opportunity to be brought before a court of law for purpose of adjudication of their guilt or innocence. Whether the paradigm adopted is the criminal law or a hybrid, the guiding principle must be trial rather than the abyss of permanent indefinite detention. While various proposals and articles have been put forth, 112 resolution has eluded decision-makers. The Bush Administration’s attempt 113 to establish military commissions was roundly criticized. 114 While subsequent instructions prepared by the Department of Defense 115 were intended to mollify the chorus of criticism, the practical reality is the commissions have been widely viewed as an overwhelming failure. 116 Neither in their original inception nor subsequent tweaking were rules, procedures, and criteria adequately delineated with respect to suspect (and subsequently, defendant) rights. 117 Nevertheless, the largely acknowledged failure of the military commissions has not resulted in the establishment of a viable alternative.¶ To that end, in addition to the military commissions, there are three options for bringing individuals suspected of involvement in terrorism before a court of law: treaty-based international terror court, Article III civilian court, and a national security court. While I have advocated the establishment of the latter, the other options have also garnered significant—and justified—public support. 118 The critical question, in determining which option most effectively meets rule of law requirements, is whether the due process rights of the defendant are protected. That question, however, cannot be asked nor answered in a vacuum, nor absolutely; for the reality of terrorism/counterterrorism is that legitimate operational realities justify minimizing certain rights, otherwise protected. 119 In particular, with respect to the trial process, protecting confidential sources is an absolute state requirement, and to that end, denying the defendant the right to confront all witnesses is legitimate. 120 Although controversial and suggestive of a rights minimization regime, bringing a suspected terrorist to trial requires submitting confidential information to the court. 121¶ While introducing classified information denies the defendant the right to confront his accuser, it is a reality of operational counterterrorism. 122 Similarly, in the American criminal law paradigm, the defendant has the right to a trial by a jury of his peers. 123 While proponents of Article III courts say they are appropriate for suspected terrorists, the critical question—yet to be resolved— is whether all individuals detained post-9/11 are to be tried. To the point: while President Obama promised to close Guantanamo, the issue extends significantly beyond the detention center in Cuba. 124 According to senior military commanders, the United States, directly and indirectly, detains approximately 25,000 detainees in detention centers in Iraq and Afghanistan in addition to Guantanamo. 125¶ While some have suggested that the Iraqi and Afghan judiciaries are appropriate forums for adjudicating guilt of detainees presently detained in both countries, significant and sufficient doubt has been raised regarding objectivity and judicial fairness. 126 Precisely because the Bush Administrations have ordered the American military to engage in Iraq and Afghanistan in accordance with the Authorization to Use Military Force resolution passed by Congress, the United States bears direct responsibility for ensuring adjudication in a court of law premised on the “rule of law.” 127 Simply put: core principles of due process and fundamental fairness demand the United States ensure resolution of individual accountability.¶ While imposing American judicial norms on Iraq and Afghanistan raise legitimate international law questions regarding violations of national sovereignty, the continued denial of due process raises questions and concerns no less legitimate. History suggests there is no perfect answer to this question; similarly, both basic legal principles and fundamental moral considerations suggest that in a balancing analysis the scale must tip in favor of trial, regardless of valid sovereignty and constitutional concerns. While justice is arguably not blind, continued detention of thousands of suspects without hope of trial is a blight on society that violates core due process principles.¶ Regardless of which proposal above is adopted, the fundamental responsibility is to articulate and implement a judicial policy facilitating trial before an impartial court of law. That is the minimum due process obligation owed the detainee. ¶ VI. MOVING FORWARD¶ Due process is the essence of a proper judicial process; denial of due process, whether in interrogation or trial, violates both the Constitution and moral norms. Denying suspects and defendants due process protections results in counterterrorism measures antithetical to the essence of democracies. While threats posed by terrorism must not be ignored, there is extraordinary danger in failing to carefully distinguish between real and perceived threats. Casting an extraordinarily wide net results in denying the individual rights; similarly, there is no guarantee that such an appr oach contributes to effective operational counterterrorism. Extending constitutional privileges and protections to non- citizens does not threaten the nation-state; rather, it illustrates the already slippery slope. In proposing that due process be an inherent aspect of counterterrorism, I am in full accordance with Judge Bates’ holding. The time has come to implement his words in spirit and law alike; habeas hearings are an important beginning but do not ensure adjudication of individual accountability. Determining innocence or guilt is essential to effective counterterrorism predicated on the rule of law.

#### The legitimacy of the detention regime is key to US credibility- our courts must uphold the rule of law

Glenn Sulmasy 9, Associate Professor of Law at the United States Coast Guard Academy and was a National Security and Human Rights Fellow at the Carr Center, Harvard Kennedy School, April 13, “THE NEED FOR A NATIONAL SECURITY COURT SYSTEM”, PDF

THE WAY FORWARD¶ The President, Secretary Gates and Secretary Rice have all declared that Guantanamo must close.16 Virtually 80% of the members of Congress have also declared that Guantanamo must close. Both major presidential candidates have called for its closure.17 The problem we face, however, is what to do once we close the facility. It is easy now in hindsight to be critical of the decision initially made by the administration and the way that things are currently being handled, but America’s next true challenge is to devise a way in which to deal with these terror suspects that will garner respect and admiration both domestically and abroad. Similar to changes in military strategy to win the war in Iraq and the war against al Qaeda, where the recognition was made that this new type of conflict required new tactics, the legal approach to handling terror suspects must change as well.¶ The solution is best seen through the lens of an evolutionary process, developing over time from the period of the Revolution, through the Civil War, through the First and Second World Wars and now into the realities we face in 21st century warfare. The Order of November 13, 2001, with all it warts and hairs, was undertaken with good intentions, but was later struck down by the Supreme Court. Recognizing the importance of trying these individuals, the President went to Congress for assistance, and subsequently Congress passed the Military Commissions Act of 2006,18 with warts and hairs of its own, but again making progress. A National Security Court System seems to be the next logical step in the natural progression of this “maturity” of justice. As we are fighting hybrid warriors, in a hybrid war—a mix of law enforcement and combat—a hybrid court should be created to adjudicate the alleged war crimes committed by these hybrid warriors.¶ Obviously, the key is to balance the needs of national security and to achieve our simultaneous goal of promoting human rights. Attaining that delicate balance is certainly critical. The success of this proposed new court system will depend upon its acceptance by Congressional and administration leaders who truly want to strike a balance between security and the rule of law. Clearly, the devil will be in the details in creating such a court through statutes.¶ The political branches have tough decisions to make in the next Congress and Presidency when it comes time for the actual closing of Guantanamo and the inevitable transfer of detainees. The most practical way of detaining and adjudicating these cases is to locate the National Security Court system on a number of military bases across the country. Detention and physical security issues would still exist, but these bases would be better suited to handle these situations than courts in downtown districts in major cities within Congressional districts.¶ While the detention and trial of these suspects would take place on American military bases, the key distinction from the existing military commissions system is that military oversight of the process would be transferred to civilian control. The Department of Justice would replace the Department of Defense in this new system, and specialized Article III judges would try the cases. The Justice Department would develop a pool of litigators out of their national security division branch to prosecute the suspects. Current military JAGs would defend the suspects with funding provided by outside sources. Having the civilian Department of Justice oversee the national security court is crucial to the success of the system and would help restore America’s image abroad. The new proposed system would also remove the tainted impression that the rest of the world receives by watching U.S. military officers in a U.S. military courtroom adjudicate cases against quasi-warriors.¶ In this new system, the President would appoint the system’s judges with the advice and consent of the Senate. The judges would be life tenured Article III judges, selected for possessing specialized knowledge of the substantive law surrounding issues of terrorism and a high level of practical experience.¶ Most importantly, the new system needs to be created as an adjudicatory system rather than part of a preventative detention scheme. Others, including my friend Ben Wittes, have argued in favor of using a national security court for detention and preventative detention schemes. I oppose this completely because using a national security court in this way would only transport the familiar problems from Gitmo into the United States. Trying the detainees in a properly constructed National Security Court, within a reasonable time frame, is the best means for the U.S. to regain some moral authority in world affairs. The United States must be active in ensuring that the cases go forward. The only way that the United States is going to gain credibility within the international legal community is to demonstrate that it is dedicated to the administration of justice and to upholding the rule of law.

#### The plan’s external oversight on detention maintains heg---legitimacy is the vital internal link to global stability

Robert Knowles 9, Acting Assistant Professor, New York University School of Law, Spring, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424¶ The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429¶ In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n4 30 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.¶ The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436¶ Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438¶ At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440¶ The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige.¶ Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449¶ Conclusion¶ When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Material power’s irrelevant---lack of legitimacy makes heg ineffective

Barak Mendelsohn 10, assistant professor of political science at Haverford College and a senior fellow of FPRI. Author of Combating Jihadism: American Hegemony and Interstate Cooperation in the War on Terrorism, June 2010, “The Question of International Cooperation in the War on Terrorism”, http://www.fpri.org/enotes/201006.mendelsohn.cooperationwarterror.html

Going against common conceptions, I argue that the United States sought to advance more than what it viewed as simply its own interest. The United States stands behind multiple collaborative enterprises and should be credited for that. Nevertheless, sometimes it has overreached, sought to gain special rights other states do not have, or presented strategies that were not compatible with the general design of the war on terrorism, to which most states subscribed. When it went too far, the United States found that, while secondary powers could not stop it from taking action, they could deny it legitimacy and make the achievement of its objectives unattainable. Thus, despite the common narrative, U.S. power was successfully checked, and the United States found the limitations of its power, even under the Bush administration. Defining Hegemony Let me begin with my conception of hegemony. While the definition of hegemony is based on its material aspects—the preponderance of power—hegemony should be understood as a part of a social web comprised of states. A hegemon relates to the other states in the system not merely through the prism of power balances, but through shared norms and a system of rules providing an umbrella for interstate relations. Although interstate conflict is ubiquitous in international society and the pursuit of particularistic interests is common, the international society provides a normative framework that restricts and moderates the hegemon's actions. This normative framework accounts for the hegemon's inclination toward orderly and peaceful interstate relations and minimizes its reliance on power. A hegemon’s role in the international community relies on legitimacy. Legitimacy is associated with external recognition of the hegemon’s right of primacy, not just the fact of this primacy. States recognize the hegemon’s power, but they develop expectations that go beyond the idea that the hegemon will act as it wishes because it has the capabilities to do so. Instead, the primacy of the hegemon is manifested in the belief that, while it has special rights that other members of the international society lack, it also has a set of duties to the members of the international society. As long as the hegemon realizes its commitment to the collective, its position will be deemed legitimate. International cooperation is hard to achieve. And, in general, international relations is not a story of harmony. A state’s first inclination is to think about its own interests, and states always prefer doing less over doing more. The inclination to pass the buck or to free ride on the efforts of others is always in the background. If a hegemon is willing to lead in pursuit of collective interests and to shoulder most of the burden, it can improve the prospects of international cooperation. However, even when there is a hegemon willing to lead a collective action and when states accept that action is needed, obstacles may still arise. These difficulties can be attributed to various factors, but especially prominent is the disagreement over the particular strategy that the hegemon promotes in pursuing the general interest. When states think that the strategy and policies offered by the hegemon are not compatible with the accepted rules of “rightful conduct” and break established norms, many will disapprove and resist. Indeed, while acceptance of a hegemon’s leadership in international society may result in broad willingness to cooperate with the hegemon in pursuit of shared interests it does not guarantee immediate and unconditional compliance with all the policies the hegemon articulates. While its legitimacy does transfer to its actions and grants some leeway, that legitimacy does not justify every policy the hegemon pursues—particularly those policies that are not seen as naturally deriving from the existing order. As a result, specific policies must be legitimated before cooperation takes place. This process constrains the hegemon’s actions and prevents the uninhibited exercise of power.

#### Heg solves nuclear war and decline of American power causes it

Zhang and Shi 11 Yuhan Zhang is a researcher at the Carnegie Endowment for International Peace, Washington, D.C.; Lin Shi is from Columbia University. She also serves as an independent consultant for the Eurasia Group and a consultant for the World Bank in Washington, D.C., 1/22, “America’s decline: A harbinger of conflict and rivalry”, http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/

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

### **Alliances**

#### **Independently a National Security Court solves alliance bailing** **based on detention policy**

[STUART TAYLOR JR](http://www.theatlantic.com/stuart-taylor-jr/) FEB 27 2007
The Case for a National Security Court

For the good of the war on terrorism, the United States needs to create a National Security Court to try enemy combatants. <http://www.theatlantic.com/magazine/archive/2007/02/the-case-for-a-national-security-court/305717/>
McCarthy, who once prosecuted big terrorism cases and is now director of the Center for Law and Counterterrorism at the Foundation for Defense of Democracies, adds this: "If other nations, unwilling to prosecute and sufficiently punish terrorists themselves, become similarly unwilling to extradite them to the United States due to what they regard as a lack of fundamental fairness and independence in the prospective trial proceedings, it will be cold comfort indeed that those proceedings are perfectly adequate (even exemplary) under our Constitution and laws." He thinks the best solution is for Congress to create a new National Security Court independent of the executive branch. Other leading experts agree. They include moderate Democrat Neal Katyal, the Georgetown law professor who (much to McCarthy's regret) won the Supreme Court ruling last June that President Bush's military commissions were illegal. These and other experts disagree on the difficult details. But most agree that the new court should be staffed by already serving federal judges from around the country, to be chosen by the chief justice based on their fitness for the assignment. The judges would take time from their regular duties to review military detentions, plus any war-crimes convictions by the congressionally reconstituted military commissions. Some see the 29-year-old Foreign Intelligence Surveillance Court as a model. It hears (in secret) requests for warrants to intercept communications from or to search through the possessions of suspected international terrorists and spies. National Security Court judges would become expert in assessing the security costs of requiring various procedural protections for detainees. "Right now, these cases are heard by different courts, with different defense lawyers and different prosecuting attorneys," Katyal says. "None of them are really repeat players; none of them have the incentive to moderate their claims in order to build credibility. Creating a National Security Court, with repeat-player lawyers and judges, will change the entire dynamic, and help avoid the excessive rhetoric that has characterized both sides in the war on terror. It would also send a signal to the world that we have a serious process in place, one that we would feel comfortable applying to our own citizens." Many libertarians and human-rights activists, on the other hand, would settle for nothing less than the full panoply of protections afforded to ordinary criminal defendants. They should be careful what they wish for. As McCarthy points out: "Enemy combatants are often in a position to be killed or captured. Capturing them is the more merciful option, and making it more difficult or costly would almost certainly effect an increase in the number killed."

#### Alliances prevent nuclear war---key to burden sharing

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isolationism and the future of weapons of mass destruction, International Journal, p. lexis
Thus, an easily accessible tax base has long been available for spending much more on international security than recent governments have been willing to contemplate. ? Negotiating the landmines ban, discouraging trade in small arms, promoting the United Nations arms register are all worthwhile, popular activities that polish the national ? self-image. But they should all be supplements to, not substitutes for, a proportionately equitable commitment of resources to the management and ? prevention of international conflict – and thus the containment of the WMD threat. Future American governments will not ‘police the ? world’ alone. For almost fifty years the Soviet threat compelled disproportionate military expenditures and sacrifice by the United States. That world is gone. Only by ? enmeshing the capabilities of the United States and other leading powers in a co-operative security management regime where the ? burdens are widely shared does the world community have any plausible hope of avoiding warfare involving nuclear or other WMD

## Solvency

#### The creation of a National Security Court is crucial to restore legitimacy and rule of law in detention

David Welsh 11, J.D. from the University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf

In the context of the War on Terror, legitimacy is the critical missing element under the current U.S. detention regime. Legitimacy can be defined as “a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just.” 50 As far back as Plato and Aristotle, philosophers have recognized that influencing others merely through coercion and power is costly and inefficient. 51 Today, empirical evidence suggests that legitimacy, rather than deterrence, is primarily what causes individuals to obey the law. 52 Thus, while legal authorities may possess the immediate power to stop illegal action, long-term compliance requires that the general public perceives the law to be legitimate. 53 Terrorism is primarily an ideological war that cannot be won by technology that is more sophisticated or increased military force. 54 While nations combating terrorism must continue to address immediate threats by detaining suspected terrorists, they must also consider the prevention of future threats by analyzing how their policies are perceived by individuals throughout the world. Ultimately, in the War on Terror, “the benefits to be derived from maximizing legitimacy are too important to neglect.” 55¶ Over time, perceptions of legitimacy create a “reservoir of support” for an institution that goes beyond mere self -interest. 56 In the context of government:¶ Legitimacy is [an] endorphin of the democratic body politic; it is the substance that oils the machinery of democracy, reducing the friction that inevitably arises when people are not able to get everything they want from politics. Legitimacy is loyalty; it is a reservoir of goodwill that allows the institutions of government to go against what people may w ant at the moment without suffering debilitating consequences. 57¶ The widespread acceptance of highly controversial decisions by the U.S. Supreme Court illustrates the power of institutional legitimacy. 58 The Court itself noted that it “cannot buy support for its decisions by spending money and, except to a minor degree, it can- not independently coerce obedience to its decrees.” 59 “The Court’s power lies, rather, in its legitimacy . . . .” 60 For example, by empha- sizing “equal treatment,” “honesty and neutrality,” “gathering infor- mation before decision making,” and “making princip led, or rule based, decisions instead of political decisions,” the Court maintained legitimacy through the controversial abortion case Planned Parent- hood of Southeastern Pennsylvania v. Casey in 1992 . 61 Thus, al- though approximately half of Americans oppose abort ion, 62 the vast majority of these individuals give deference to the Court’s ruling on this issue. 63¶ In the post-World War II era, the United States built up a world- wide reservoir of support based upon four pillars: “its commitment to international law, its acceptance of consensual decision-making, its reputation for moderation, and its identification with the preservation of peace.” 64 Although some U.S. policies between 1950 and 2001 did not align with these pillars, on a whole the United States legitimized itself as a world superpower during this period. 65 In the 1980s, President Ronald Reagan spoke of America as a “shining city on a hill,” suggesting that it was a model for the nations of the world to look to. 66 While the United States received a virtually unprecedented outpouring of support from the international community following 9/11, a nation’s reservoir of support will quickly evaporate when its government overreacts. Across the globe, individuals have expressed a growing dissatisfaction with U.S. conduct in the War on Terror, and by 2006, even western allies of the Uni ted States lobbied for the immediate closure of Guantanamo Bay, callin g it “an embar- rassment.” 67 Former Secretary of State Colin Powell proclaimed that “Guantanamo has become a major, major problem . . . in the way the world perceives America and if it were up to me I would close Guantanamo not tomorrow but this afternoon . . . .” 68 Similarly, President Obama noted in his campaign that “Guantanamo has become a recruiting tool for our enemies.” 69¶ Current U.S. detention policies erode each of the four pillars on which the United States established global legitimacy. In fact, critics have argued that the “United States has assumed man y of the very features of the ‘rogue nations’ against which it has rhetorically—and sometimes literally—done battle over the years.” 70 While legitimacy cannot be regained overnight, the recent election o f President Barack Obama presents a critical opportunity for a re-articulation of U.S. detention policies. Although President Obama issued an executive order calling for the closure of Guantanamo Bay only two days after being sworn into office, 71 significant controversy remains about the kind of alternate detention system that will replace it. 72 In contrast to the current model, which has largely rendered in efficient decisions based on ad hoc policies, I argue for the establishment of a domestic terror court (DTC) created specifically to deal with the unique procedural issues created by a growing number of suspected terrorists.

#### NSC is the best solution to the detainee issue---other options fail

Anthony L. Kimery 9, Homeland Security Today's Online Editor and Online Media Division manager, draws on 30 years of experience and extensive contacts as he investigates homeland security, counterterrorism and border security, citing Glenn Sulmasy, first permanent commissioned military law professor at the Coast Guard Academy, where he is a Professor of Law teaching international, constitutional, and criminal law, "The Case For A 'National Security Court'", December 3, [www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html](http://www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html)

“The administration is now fully aware that this is a vastly complex issue – and one that requires a complex solution,” Sulmasy said.¶ “The President, in an eloquent speech at the National Archives in late May, identified there would be various options to consider for the detainees: diplomatic re-patriation, the use of military commissions, civilian Article III federal courts, and that he was still reviewing what to do with the 75-100 detainees that do not fit neatly in any of these regimes. That is where the National Security Court system provides the best, most pragmatic alternative for those difficult cases, as well as those inevitable future captures in the War on al Qaeda,” Sulmasy said.¶ Sulmasy continued: “Recent reports discuss the possibility of a hybrid court held on military bases within the US. Of course, I am delighted to hear of such ideas and progress. However, the nation needs to go further and create one court system that is best suited for this unique Al Qaeda fighter once captured. Rather than offering options to the detainees of either choosing a military commission or a civilian court, the National Security Court system provides one forum to attain the necessary balance between human rights, due process, and national security."¶ “We have to move forward, and recognize that the two existing paradigms – use of our traditional federal courts or the use of the law of war model (military commissions) – are simply jamming a square peg in a round hole. The administration now has the opportunity to statutorily create a legal system that best serves the needs of the nation, as well as the detainees.”¶ “The key distinction with my system from those now proposed by various commentators and scholars … is that the NSCS must be presumptively adjudicatory – and not used as a means of preventative detention,” Sulmasy said, noting that “the presumption should be to try, and if determined by the Commander-in-Chief and the military that such a trial would be either too risky or not possible, then as an exception such a decision can be made. This distinction is important and vital to ensure we fully support the rule of law, promote the national security, and still garner and maintain international support for our efforts.”