### 1AC – Terrorism

#### Advantage \_\_ is Terrorism –

#### The risk of a nuclear terrorist attack is high – top UN officials concede

Sturdee, AFP, 7-1 [Simon, “UN atomic agency sounds warning on 'nuclear terrorism'”, Fox News, 7-1-13,

<http://www.foxnews.com/world/2013/07/01/un-atomic-agency-sounds-warning-on-nuclear-terrorism/>, RSR]

VIENNA (AFP) – The head of the…seen as easy to steal.¶

#### That breaks the nuclear taboo – leads to nuclear war.

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

The nuclear taboo is a kind of international… thereby reduce the danger of a nuclear war.

#### Extinction

Ayson 10 (Robert, Professor of Strategic Studies, Director of Strategic Studies: New Zealand, Senior Research Associate with Oxford’s Centre for International Studies. “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects. Studies in Conflict and Terrorism, Volume 33, Issue 7, July 2010, pages 571-593)

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 … still meet with a wdevastating response.

#### Risk of terror only goes one way – comparative studies prove that indefinite detention can only increase terrorism, not prevent it.

Roberts, Associate Professor of Philosophy at East Carolina University, ‘11

[Rodney, “Utilitarianism and the Morality of Indefinite Detention”, Criminal Justice Ethics, Vol. 30, No. 1, RSR]

Finally, ‘‘there is no evidence that¶ preventive … the likelihood of future attacks.31

#### We’ll isolate 3 internal links –

#### Scenario 1 is Resentment –

#### Current trial process breeds distrust with local populations and causes resentment – that kills effective counter-terror operations

Hathaway Et. Al, 2013, (Oona Hathaway is the Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School. Samuel Adelsberg, Spencer Amdur, and Freya Pitts are J.D. candidates at Yale Law School. Philip Levitz and Sirine Shebaya received their J.D.s from Yale Law School in 2012. We are grateful for the assistance of Julia Spiegel, Haley Nix, Celia Choy, Samir Deger-Sen, John Paredes, and Sally Pei. “The Power To Detain: Detention of Terrorism Suspects After 9/11” The Yale Journal of International Law. Lexis Nexis. Winter, 2013.)

2. Legitimacy Federal courts are also … Department of Defense and the White House. 251

#### Cooperation increases legitimacy of US action and solves the root cause of terrorism – comparatively outweighs military responses

Picco et. Al, 6 **–** (Giandomenico Picco Chairman and Chief Executive, Graham E. Fuller Adjunct Professor of History, Simon Fraser University, Alistair Millar Director, Center on Global Counter-Terrorism Cooperation, Robert Trager Assistant Professor of Political Science, University of California Los Angeles, Dessislava P. Zagorcheva Ph.D. Candidate, Columbia University, Panel Discussion with Stanley Foundation, “Effective Counterterrorism in a Globalized World:

Reclaiming the Edge of Legitimacy,” <http://secure.stanleyfoundation.org/registration/securityconference/panels/counterterrorism.php>)

Tactical terrorists use …with others to address its root issues.

#### Empirics prove – backlash from local populations over indefinite detention increases the threat of terrorism.

Tyler, et al, ’10 [Tom (Macklin Fleming Professor of Law and Professor of Psychology at Yale Law School); Stephen Schulhofer (Robert B. McKay Professor of Law at New York University School of Law); and Aziz Z. Huq (Assistant Professor of Law and Herbert and Marjorie Fried Teaching Scholar at the University of Chicago School of Law), “Legitimacy and Deterrence Effects in¶ Counterterrorism Policing: A Study of Muslim¶ Americans”, Law and Society Review, RSR]

A countervailing view in the terrorism literature, … determining future levels of¶ violence (Kilcullen 2009; McCauley 2006; Sharp 1973).

#### Scenario 2 is Intelligence –

#### Indefinite detention destroys intel sharing with Europe

Hathaway, et al, ’13 Oona (Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School); Samuel Adelsberg (J.D. candidate at Yale Law School); Spencer Amdur (J.D. candidate at Yale Law School); Freya Pitts (J.D. candidate at Yale Law School); Philip Levitz (J.D. from Yale Law School); and Sirine Shebaya (J.D. from Yale Law School), “The Power To Detain: Detention of Terrorism Suspects After 9/11”, The Yale Journal of International Law, Vol. 38, 2013, RSR]

Many key U.S. allies have been … such as the sharing of testimony and evidence.

#### European intelligence cooperation is key to create a global framework to solve terrorism- US Short of international law derails it

Pleschinger, 11 – (Stefanie, graduate of the International Relations Masters program at Yale University, “Allied Against Terror:

Transatlantic Intelligence

Cooperation,” http://yalejournal.org/wp-content/uploads/2011/01/062106pleschinger.pdf)

Disagreements between EU … require closer cooperation at an accelerated pace

#### The threat of terrorism in the UK is highest now – intelligence cooperation is key

Lister et al, 9/26 (Paul, Tim, and Nic, “Evidence suggests that Al-Shabaab is shifting focus to ‘soft’ targets” CNN. http://www.cnn.com/2013/09/26/world/london-bombing-plot-qaeda/index.html

(CNN) -- "Our objectives are to strike London … al Qaeda to front-page news around the world.

#### Scenario 3 is Extradition –

#### Allies won’t extradite terror suspects to the US over due process concerns – destroys intel gathering and causes suspects to be released – plan is key

Kris, 2011 (David, Assistant Attorney General for National Security at the U.S. Department of Justice from March 2009 to March 2011 “Law Enforcement as a Counter Terrorism Tool” 6/15/2011 acc at http://jnslp.com//wp-content/uploads/2011/06/01\_David-Kris.pdf

Finally, the criminal justice system may … not face charges pending in the¶ foreign nation.

#### This will make Europe a safe-haven for terrorism

Sharfstein, 2 - Associate, Strumwasser & Woocher, Santa Monica, California. Law Clerk to the Honorable Dorothy W. Nelson, United States Court of Appeals for the Ninth Circuit, 2000-2001. A.B., Harvard College, 1994; J.D., Yale Law School, 2000 (Daniel, “European Courts, American Rights: Extradition and Prison Conditions” 67 Brooklyn L. Rev. 719, Spring, lexis)

A. The Increasing Importance of Extradition

The "vast majority" of people suspected … the broadest possible extradition obligations . . . ." n23

#### European safe havens are the most likely avenue for WMD terrorism

Ferguson, 4 - scientist-in-residence based in the Washington DC office of the Center for Nonproliferation Studies, Monterey Institute of International Studies (Charles, “The threat of nuclear terrorism in Europe” 2/6, <http://www.eurozine.com/articles/2004-06-02-ferguson-en.html>)

While most terrorist groups are not motivated to unleash … from research sites could suit nuclear terrorists' purposes.

### 1AC – Credibility

#### Advantage \_\_ is Credibility –

#### Current handling of trials threatens to destroy the transatlantic alliance – specifically harms military cooperation with Germany and Britain.

Parker ‘12 Tom Parker, formerly policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service, “U.S. Tactics Threaten NATO” 9-17-12, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>, 8-03-13

A growing chasm in operational practice … and it may just be the Atlantic alliance.

#### Lack of trials destroys US credibility the MOST – legitimacy is key because terrorism is not a conventional threat

Welsh ’11 David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

The Global War on Terror n1 …legitimacy in the context of detention.

#### Legislation is key to persuade allies – AUMF proves

Chesney et al 13 Robert Chesney, American lawyer and Professor of Law at Texas School of Law, Jack Goldsmith, Matthew Waxman, Benjamin Wittes, Real Clear Politics, 2-25, http://www.realclearpolitics.com/articles/2013/02/25/is\_the\_war\_on\_terror\_lawful\_117146.html

Third are the international costs of a renewed AUMF. … in persuading allies that the U.S. position is a reasonable one.

#### Britain and Germany are critical to NATO’s success and American engagement

Aronsson and Keller, 2012 (Lisa is a Transatlantic Security Studies, Royal United Services Institute and Patrick is a coordinator at the Royal United Services Institute for Defence and Security Studies and the Konrad-Adenauer-Stiftung, “British-German Defense Co-Operation in NATO” May 2012. Konrad Adenauer Stiftunt, RUSI Institute. Web, Acc at http://www.rusi.org/downloads/assets/OP\_201205\_Aronsson\_and\_Keller.pdf

NATO is central to both British and … to hold onto its ambition to shape global affairs in partnership with the US.

#### Transatlantic cohesion is key to solve multiple nuclear threats

Brzezinski ‘9 former U.S. National Security Adviser, 09 (Zbigniew, “An Agenda for NATO” Toward a Global Security Web September/October 2009),

NATO's potential is not primarily military. Although NATO is a … United States and the West more generally.

#### Second impact is hard power –

#### Legitimacy makes deterrence effective

Welsh ’11 David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

In February 2006, the United Nations … without suffering debilitating consequences

#### Only leadership through legitimacy cements the right kind of US power and creates world peace- the alternative is mass chaos and apolarity

Kromah ’09 [Lamii Moivi Kromah, Dept IR University of the Witwatersrand, February 2009, “The Institutional Nature of U.S. Hegemony: Post 9/11,” <http://wiredspace.wits.ac.za/bitstream/handle/10539/7301/MARR%2009.pdf>]

A final major gain to the United States … provide a part of the necessary explanation.

### 1AC – Plan

#### Plan: The United States federal government should create a domestic terror court to resolve the legal status of persons detained in an Active Theater of War.

### 1AC – Solvency

#### Contention 2 is Solvency

#### The US Court of Appeals decision in Al Maqeleh v. Gates created a legal black hole for detainees in an “active theater of war,” barring them from habeas protections under the Geneva Conventions

Nikkel 12, 2012, J.D. Candidate, 2012, William S. Boyd School of Law, Las Vegas; B.A., 2009, University of Nevada, Reno. Nevada Law Journal. Spring 2012. The Author would like to thank Professor Christopher L. Blakesley, Professor Terrill Pollman, and the Nevada Law Journal staff for helping with the research and writing of this Note.) Web, Lexis Nexis.

Dilawar's horrific death was one of many … domestic courts refuse to hear their habeas claims.

#### This decision left executive power open ended to detain without due process

Nikkel 12, 2012, J.D. Candidate, 2012, William S. Boyd School of Law, Las Vegas; B.A., 2009, University of Nevada, Reno. Nevada Law Journal. Spring 2012. The Author would like to thank Professor Christopher L. Blakesley, Professor Terrill Pollman, and the Nevada Law Journal staff for helping with the research and writing of this Note.) Web, Lexis Nexis.

In this age of terrorism and moral relativism, …, staining it instead with the mark of War.

#### Obama’s speech has called on Congress to remove restrictions on detainment

Josh Rogin 13, senior correspondent for national security & politics for Newsweek and The Daily Beast, May 23, 2013, “How Obama Bungled the Guantánamo Closing” <http://www.thedailybeast.com/articles/2013/05/23/how-obama-bungled-the-guantanamo-closing.html>

.¶ Obama took that issue head-on … United States from potential attack by terrorists?”

#### Revisiting Geneva is necessary – it’s modeled.

De Nevers, 2006 (Renee is an assistant professor of public administration at the Maxwell School at Syracure Univeristy. “Modernizing the Geneva Conventions.” The Center for Strategic and International Studies and the Massachusetts Institute of Technology.” The Washington Quarterly. <http://www.supportgenevaconventions.org/library/modernizing_the_geneva_conventions.pdf>)

¶ With its new variants and actors, the … of war, sustaining their precedent.¶

#### Terror courts are key – separates powers.

Pariseault, 2005 (John is a JD Candidate at the university of California, Hastings College of the Law. “Applying the Rule of Law in the War on Terror: An Examination of Guantanamo Bya Through the Lens of the US Constitution and the Geneva Congentions” Spring 2005. 28 Hastings Int’l & Comp. L. Rev. 481)

Specialized, Congressionally-authorized … Executive branch and the Legislature to the rule of law. [n123](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.973149.8694205014&target=results_DocumentContent&returnToKey=20_T17974679647&parent=docview&rand=1376676759880&reloadEntirePage=true#n123)

#### Incorporating procedural justice into a Domestic Terror Court is key- treatment of each individual detainee influences perception of the United States.

David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

V. The Importance of Procedural Justice¶ In the …how these rules could be implemented in a DTC model.

#### All branches are key – allowing one branch to dominate skews the process and destroys solvency.

David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

Under the current detention regime, …roadblock to reaching accurate decisions is cleared.

#### The legislative process increases public awareness and debate which is key to resolving the contentious nature of Obama’s demands- even if stakeholders don’t agree with the proposal, the aff’s process ensures embrace, not backlash.

Sillivana, 2009 (Assistant Professor of Law, Paul M. Herbert Law Center, Louisiana State University.“Lincoln’s Constitutionalism in Time of War: Lessons for the War on Terror?” Article: “INTERNATIONAL LAW AND DOMESTIC LEGITIMACY: REMARKS PREPARED FOR LINCOLN’S CONSTITUTIONALISM IN TIME OF WAR: LESSONS FOR THE CURRENT WAR ON TERROR? Chapman Law Review. Spring 2009. Web, Acc 8/14/2013 at <http://www.chapmanlawreview.com/?p=1514>)

Moreover, the incorporation of international … reflects a decision against the passage of any legislation.

#### It’s a sequencing question- Congressional action to affirm international law provides the proper framework for legitimate executive action. Gitmo proves structural limitations are a prerequisite to executive action.

Sillivana, 2009 (Assistant Professor of Law, Paul M. Herbert Law Center, Louisiana State University.“Lincoln’s Constitutionalism in Time of War: Lessons for the War on Terror?” Article: “INTERNATIONAL LAW AND DOMESTIC LEGITIMACY: REMARKS PREPARED FOR LINCOLN’S CONSTITUTIONALISM IN TIME OF WAR: LESSONS FOR THE CURRENT WAR ON TERROR? Chapman Law Review. Spring 2009. Web, Acc 8/14/2013 at <http://www.chapmanlawreview.com/?p=1514>)

B. Extra-Executive Structural …discretion of unknown officials.”73

#### A DTC keeps both fairness and efficiency in view, but refuses to sacrifice rights in the name of effectiveness.

David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

VII. Balancing Fairness, Effectiveness, and Efficiency¶ Although enhancing procedural justice is critical to U.S. success in the War on Terror, fairness is not an absolute and …long-term effectiveness in the War on Terror.

#### Studies quantify a decline in American legitimacy due to indefinite detention policy

David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

Similarly, the U.S. military … notion of innocent until proven guilty.

#### President’s authority to detain until the end of hostilities comes from the AUMF.

Hammond, 2012, (J.D. Candidate 2013, University of Southern California Gould School of Law; B.S. Environmental Economics & Policy 2009, University of California, Berkeley. Southern California Interdisciplinary Law Journal. 22 S. Cal. Interdis. L.J. 193 “NOTE: THE NATIONAL DEFENSE AUTHORIZATION ACT AND THE UNBOUND AUTHORITY TO DETAIN: A CALL TO CONGRESS” Lexis.

n5.

One week after the terrorist attacks on …States there." Id. at 516-19 (internal quotations omitted).