# 1AC

### 1AC – Plan

#### The United States federal government should grant existing Article III courts exclusive jurisdiction over the legal status of individuals indefinitely detained under the War Powers authority of the President of the United States.

### 1AC – Intel Coalitions

#### Advantage 1 is Intelligence –

#### Scenario 1 is the UK –

#### British intelligence is over-stretched in the SQ

Rogan, 1/23 (Tom, “Why Syria is Forcing British Intelligence Into Hard Choices” The American Spectator. Web, ACc 2/5/2013 <http://spectator.org/articles/57510/why-syria-forcing-british-intelligence-hard-choices>

These are busy and difficult times at [New Scotland Yard](http://en.wikipedia.org/wiki/Counter_Terrorism_Command), [Thames House](http://en.wikipedia.org/wiki/Mi5), [Vauxhall Cross](http://en.wikipedia.org/wiki/Mi6) and “[the doughnut](http://en.wikipedia.org/wiki/Government_Communications_Headquarters).” Over the last few days, British Police have separately arrested [two men](http://www.bbc.co.uk/news/uk-25788563) and [one woman](http://www.bbc.co.uk/news/uk-25768181) at London’s Heathrow Airport, [another man](http://www.bbc.co.uk/news/uk-25818880) at London’s Stansted Airport and a [further woman](http://www.bbc.co.uk/news/uk-25768181) in North London. The common theme? The suspects travel/intended travel either to or from Istanbul. It doesn’t take a genius to figure out what’s going on here. Turkey is Europe’s launching pad for the Syrian civil war. Jihadist threats from Syria are now actively threatening to spill across British borders.¶ Placed alongside recent [MI6 meetings](http://online.wsj.com/news/articles/SB10001424052702303819704579318470126721930) with the Assad regime, this rapid succession of arrests tells us something — the UK security establishment is greatly concerned. Very public counter-terrorism operations such as these aren’t the favored British way.¶ Like the U.S., the UK applies a blend of persuasion and [pressure](http://www.dailymail.co.uk/news/article-2344907/Younger-brother-Woolwich-murder-suspect-says-MI5-MI6-tried-recruit-me.html) to recruit its sources. However, where U.S. domestic counter-terrorism strategy predicates early interdiction of terrorist suspects as its key priority, the British approach is rooted in a different formula. For the UK, it’s about identifying the individual terrorist, finding the cell, developing the network picture and then constricting the larger group’s operational flexibility. Put more simply, where the U.S. likes to take people off the streets quickly, the UK prefers to keep people “in play” until the last possible moment. While each approach has merits and risks, facing al Qaeda’s 2006 Transatlantic Plot, the diverging UK/U.S. philosophies caused a [major row](http://www.tomroganthinks.com/2011/12/intelligence-relationship-between-us-uk.html).¶ So why is the situation in Syria forcing the UK to buck its counter-terrorism tradition?¶ For three reasons.¶ First, British citizens/nationals are actively fighting alongside supranational Salafi terrorist groups inside Syria. While some Britons in Syria [assert](http://www.youtube.com/watch?v=qWlopcE7kbs) that their enemy is Assad’s regime and not the UK, others are [proud](http://www.youtube.com/watch?v=vXmQPm5-vrw) to broadcast their hatred for British society. Regarding the latter individuals, the security challenge is clear. When these men and women return home from Syria, they’ll no longer just be disaffected rejectionists. Instead, they’ll be lawful British residents with the military knowledge, combat experience, and ideological desire to cause havoc on UK streets. This threat is made especially profound by the fact that [some](http://www.youtube.com/watch?v=7jD146Rx80k) British citizens have joined [ISIS](http://en.wikipedia.org/wiki/Islamic_State_of_Iraq_and_the_Levant) (the jihadist group responsible for unrestrained carnage in Iraq and Syria). As Jessica Lewis [notes](http://www.understandingwar.org/sites/default/files/JessVBIED_PartII_3Oct.pdf#page=27), ISIS has a reconstituted cadre of highly capable and strategically minded explosives experts. Some of these killers are almost certainly now training British and [other European](http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10583000/France-warns-Europe-could-be-overwhelmed-by-jihadis-returning-from-Syria.html) citizens.¶ Second, Western intelligence services lack effective penetration of terrorist groups operating inside Syria. That’s a major problem. Without physical access to a particular locale, it’s extraordinarily difficult to develop human sources. In Syria, the constantly shifting battlefield makes force protection concerns a major issue — SIS can’t simply throw teams of case officers or agents into the meat grinder of war and hope for the best. Again, the outreach by UK Intelligence to Assad further proves their concern.¶ Still, there’s another collection-related difficulty for the UK — the Syria related terrorist threat is not the same as that of Pakistan. It’s well known that the greatest terrorist menace to the UK is posed by marginal but [embedded elements](http://www.tomroganthinks.com/2013/09/zawahiri-and-aq-cores-evolving-strategy.html) of the British-Pakistani community. What’s less well known, however, is that the presence of such a large Pakistani community is also instrumental to the success of the British security services. After all, a good number of citizens from this community actively support British counter-terrorism efforts. With their cultural awareness and Pakistani roots, these individuals afford a unique “access” capability to the British state. Conversely, the British-Syrian community is far smaller and far more disconnected from foreign jihadists in Syria.¶ Third, the UK Intelligence Community is severely strained by its present operational taskings. While their budgets were [recently increased](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209036/spending-round-2013-complete.pdf#page=11), British Intelligence agencies are grappling with a vast array of adversaries. Alongside their state to state intelligence and counter-intelligence responsibilities, MI5, SIS, and GCHQ face Northern Ireland linked[splinter groups](http://www.bbc.co.uk/news/uk-scotland-glasgow-west-24640536), new crops of “[homegrown](http://www.foxnews.com/opinion/2013/05/23/video-magnifies-london-terrorists-savage-bravado/)” terrorists and of course, a multitude of homegrown-foreign [fusion cells](http://www.bbc.co.uk/news/uk-22305095). The attacks in Nairobi and Mumbai have provided another[component](http://www.bbc.co.uk/news/uk-24278644) to the threat.¶ So does Edward Snowden. These days, facing new media interest and a growing public skepticism, British Intelligence officers are finding it [much harder](http://www.tomroganthinks.com/2013/08/why-british-government-stopped.html) to stay in the shadows. Indeed, in a signal of their grudging acceptance of this changed reality, “[C](https://www.sis.gov.uk/about-us/the-chief.html)” and co. are adapting. In an unprecedented display, the UK Intelligence Chiefs recently gave [open testimony](http://www.tomroganthinks.com/2013/11/semper-occult-uk-intelligence-chiefs.html) to Parliament. It’s in this sense that Syria originating threats come at a most difficult time. In the context of limited resources and difficult organizational changes, Syria is forcing British intelligence to make precarious choices about where to allocate its capabilities.¶ From overflowing [refugee camps](http://www.bbc.co.uk/news/world-middle-east-23801200) to [incinerated playgrounds](http://www.bbc.co.uk/news/world-23892594), Syria’s tragedy is obvious for all to see. Yet, just as the wanton destruction moves most of us to anger and sadness, others see pernicious opportunity in the violence. For all the cosmopolitan virtues of British society, not all its citizens are proud supporters of secular democracy. Correspondingly, the tremors of this brutal conflict are now reverberating across British borders in deeply troubling ways. ¶

#### Britain’s foreign and domestic intelligence services are not cooperating – even the Parliament knows it

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

European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future**.**As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom.In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003.Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo.Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts.The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not.The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship**,** telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

#### Britain hates US indefinite detention – they stopped participating in joint CIA ops

Pearlstein 9, Visiting Research Scholar and Lecturer in Public and International Affairs, Woodrow Wilson School of Public and International Affairs, Princeton University, ‘9 [Deborah, “WE'RE ALL EXPERTS NOW:¶ A SECURITY CASE AGAINST SECURITY DETENTION”, Case Western Journal of International Law, Vol. 40, 2009, RSR]

articularly in the challenge of counterterrorism detention policy,¶ the United States has had to face the reality that programs it has pursued¶ principally for tactical purposes have resulted in significant strategic setbacks.¶ As one recent and striking poll of a bipartisan group of leading U.S.¶ foreign policy experts found, eighty-seven percent of experts polled believed¶ that features of the U.S. detention system had hurt more than helped¶ in the fight against Al Qaeda. 17 Indeed, detention programs have at times¶ resulted in significant tactical losses. Britain, America's close ally, pulled¶ out of planned joint counterterrorism operations with the CIA because it¶ could not obtain adequate assurances that U.S. agents would refrain from¶ rendition or cruel treatment.' 8 The costs of such trade-offs may be especially¶ acute in some circumstances-for example, if securing international cooperation¶ for the disposition of fissile material is central to a sate's strategic¶ counterterrorism plan.

#### Intelligence structures are key to the success of special ops

Ara 11 Martin J., Lieutenant, United States Navy M.S., London School of Economics, AND Thomas Brand Lieutenant, Colonel, German Army B.S., University of the German Federal Armed Forces Munich, , AND Brage Andreas Larssen, Major, Norwegian Army B.S., Norwegian Military Academy, Oslo, December 2011, “HELP A BROTHER OUT: A CASE STUDY IN MULTINATIONAL INTELLIGENCE SHARING, NATO SOF,” http://www.dtic.mil/dtic/tr/fulltext/u2/a556078.pdf\*Note: SOF = Special Operation Forces

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

#### SOF key to counter A2/AD capabilities globally---key to effective power projection and U.S. defense alliances

Jim Thomas 13, Vice President and Director of Studies at the Center for Strategic and Budgetary Assessments, and Chris Dougherty is a Research Fellow at the Center for Strategic and Budgetary Assessments, 2013, “BEYOND THE RAMPARTS THE FUTURE OF U.S. SPECIAL OPERATIONS FORCES,” http://www.csbaonline.org/wp-content/uploads/2013/05/SOF-Report-CSBA-Final.pdf

The spread of advanced military technologies, such as precision-guided munitions, is enabling a number of countries to construct A2/AD networks that could erode the United States’ ability to project military power into key regions. Nations such as China and Iran are actively seeking to acquire and field A2/AD capabilities, including precision-guided ballistic and cruise missiles, attack submarines, fast-attack craft, anti-satellite (ASAT) weapons, computer-network attack capabilities, advanced fighter aircraft, and integrated air defenses, that may challenge the U.S. military’s ability to project power. The cumulative effect of spreading A2/ AD systems is that the land, air, sea, space, and cyberspace domains will be far less permissive for U.S. military operations. In the face of growing A2/AD threats, the value of low-signature forces capable of operating independently and far forward in denied areas is likely to increase substantially. SOF may offer the most viable ground-force option in future A2/AD environments, either executing direct action against key targets or working by, with, and through partner forces to conduct peripheral campaigns (i.e., operations designed to impose costs and conducted beyond the territory or reach of the enemy). Prior to hostilities, SOF could carry out preparation of the environment (PE) and special reconnaissance (SR) missions. At the outset of hostilities, SOF might serve as an early-entry force to ~~blind~~ or disrupt enemy command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR) networks, thereby enabling higher-signature conventional forces to penetrate A2/AD networks. Inserting or extracting SOF from denied environments, and supporting them once there, will challenge SOF aviation and undersea capabilities. Accordingly, SOF will need stealthy means of insertion from the air and sea. SOF may also need to conduct foreign external defense (FED) missions in states to build their capacity to repel foreign military aggression. This could entail helping key partners to create their own versions of A2/AD networks.¶ The proliferation of WMD and A2/AD capabilities will erode the conventional power-projection capability of not only the United States, but of other countries as well. In the future, states may therefore avoid direct confrontations and be more inclined to use unconventional methods and measures short of war to gain influence and achieve their foreign policy goals. States may also turn to third-party proxies to maintain plausible deniability for their actions. States could engage in influence campaigns and proxy competitions to achieve objectives such as: imposing costs on major competitors, foreclosing opportunities for other countries or non-state actors to gain a foothold in a region, “peeling away” allies or partners from competitors, diverting the attention and resources of competitors (misdirection), conducting cross-border operations against a major power with less risk of confrontation, or controlling (or denying) critical resources and trade routes. SOF will be critical to success in persistent influence campaigns and pro􀁛y competitions. They will need exquisite, local-area expertise and language skills, along with deep, longstanding relationships with key local actors built over time by embedding and living with foreign partner forces. Though SOF already operate in smaller units than GPF, the breadth, specificity, and need to minimize the visibility of these operations will place an emphasis on even smaller SOF teams and single operators working in close collaboration with other government agencies. These four security challenges􀂲coming to the fore during a time of 􀂿scal austerity in the United States and global economic uncertainty􀂲are likely to dominate the national security agenda for decades to come. These challenges are not mutually e􀁛clusive and, in almost every case, the challenges are intertwined with opportunities for SOF to impose costs on U.S. adversaries. Given their global nature, and recognizing the interrelationship between the various challenges and opportunities, SOF are uniquely suited to address them asymmetrically.

#### Solves a laundry list of nuclear conflicts

Mackenzie Eaglen 11, research fellow for national security – Heritage, and Bryan McGrath, former naval officer and director – Delex Consulting, Studies and Analysis, “Thinking About a Day Without Sea Power: Implications for U.S. Defense Policy,” Heritage Foundation

Global Implications. Under a scenario of dramatically reduced naval power, the United States would cease to be active in any international alliances. While it is reasonable to assume that land and air forces would be similarly reduced in this scenario, the lack of credible maritime capability to move their bulk and establish forward bases would render these forces irrelevant, even if the Army and Air Force were retained at today’s levels. In Iraq and Afghanistan today, 90 percent of material arrives by sea, although material bound for Afghanistan must then make a laborious journey by land into theater. China’s claims on the South China Sea, previously disputed by virtually all nations in the region and routinely contested by U.S. and partner naval forces, are accepted as a fait accompli, effectively turning the region into a “Chinese lake.” China establishes expansive oil and gas exploration with new deepwater drilling technology and secures its local sea lanes from intervention. Korea, unified in 2017 after the implosion of the North, signs a mutual defense treaty with China and solidifies their relationship. Japan is increasingly isolated and in 2020–2025 executes long-rumored plans to create an indigenous nuclear weapons capability.[11] By 2025, Japan has 25 mobile nuclear-armed missiles ostensibly targeting China, toward which Japan’s historical animus remains strong. China’s entente with Russia leaves the Eurasian landmass dominated by Russia looking west and China looking east and south. Each cedes a sphere of dominance to the other and remains largely unconcerned with the events in the other’s sphere. Worldwide, trade in foodstuffs collapses. Expanding populations in the Middle East increase pressure on their governments, which are already stressed as the breakdown in world trade disproportionately affects food importers. Piracy increases worldwide, driving food transportation costs even higher. In the Arctic, Russia aggressively asserts its dominance and effectively shoulders out other nations with legitimate claims to seabed resources. No naval power exists to counter Russia’s claims. India, recognizing that its previous role as a balancer to China has lost relevance with the retrenchment of the Americans, agrees to supplement Chinese naval power in the Indian Ocean and Persian Gulf to protect the flow of oil to Southeast Asia. In exchange, China agrees to exercise increased influence on its client state Pakistan. The great typhoon of 2023 strikes Bangladesh, killing 23,000 people initially, and 200,000 more die in the subsequent weeks and months as the international community provides little humanitarian relief. Cholera and malaria are epidemic. Iran dominates the Persian Gulf and is a nuclear power. Its navy aggressively patrols the Gulf while the Revolutionary Guard Navy harasses shipping and oil infrastructure to force Gulf Cooperation Council (GCC) countries into Tehran’s orbit. Russia supplies Iran with a steady flow of military technology and nuclear industry expertise. Lacking a regional threat, the Iranians happily control the flow of oil from the Gulf and benefit economically from the “protection” provided to other GCC nations. In Egypt, the decade-long experiment in participatory democracy ends with the ascendance of the Muslim Brotherhood in a violent seizure of power. The United States is identified closely with the previous coalition government, and riots break out at the U.S. embassy. Americans in Egypt are left to their own devices because the U.S. has no forces in the Mediterranean capable of performing a noncombatant evacuation when the government closes major airports. Led by Iran, a coalition of Egypt, Syria, Jordan, and Iraq attacks Israel. Over 300,000 die in six months of fighting that includes a limited nuclear exchange between Iran and Israel. Israel is defeated, and the State of Palestine is declared in its place. Massive “refugee” camps are created to house the internally displaced Israelis, but a humanitarian nightmare ensues from the inability of conquering forces to support them. The NATO alliance is shattered. The security of European nations depends increasingly on the lack of external threats and the nuclear capability of France, Britain, and Germany, which overcame its reticence to military capability in light of America’s retrenchment. Europe depends for its energy security on Russia and Iran, which control the main supply lines and sources of oil and gas to Europe. Major European nations stand down their militaries and instead make limited contributions to a new EU military constabulary force. No European nation maintains the ability to conduct significant out-of-area operations, and Europe as a whole maintains little airlift capacity. Implications for America’s Economy. If the United States slashed its Navy and ended its mission as a guarantor of the free flow of transoceanic goods and trade, globalized world trade would decrease substantially. As early as 1890, noted U.S. naval officer and historian Alfred Thayer Mahan described the world’s oceans as a “great highway…a wide common,” underscoring the long-running importance of the seas to trade.[12] Geographically organized trading blocs develop as the maritime highways suffer from insecurity and rising fuel prices. Asia prospers thanks to internal trade and Middle Eastern oil, Europe muddles along on the largesse of Russia and Iran, and the Western Hemisphere declines to a “new normal” with the exception of energy-independent Brazil. For America, Venezuelan oil grows in importance as other supplies decline. Mexico runs out of oil—as predicted—when it fails to take advantage of Western oil technology and investment. Nigerian output, which for five years had been secured through a partnership of the U.S. Navy and Nigerian maritime forces, is decimated by the bloody civil war of 2021. Canadian exports, which a decade earlier had been strong as a result of the oil shale industry, decline as a result of environmental concerns in Canada and elsewhere about the “fracking” (hydraulic fracturing) process used to free oil from shale. State and non-state actors increase the hazards to seaborne shipping, which are compounded by the necessity of traversing key chokepoints that are easily targeted by those who wish to restrict trade. These chokepoints include the Strait of Hormuz, which Iran could quickly close to trade if it wishes. More than half of the world’s oil is transported by sea. “From 1970 to 2006, the amount of goods transported via the oceans of the world…increased from 2.6 billion tons to 7.4 billion tons, an increase of over 284%.”[13] In 2010, “$40 billion dollars [sic] worth of oil passes through the world’s geographic ‘chokepoints’ on a daily basis…not to mention $3.2 trillion…annually in commerce that moves underwater on transoceanic cables.”[14] These quantities of goods simply cannot be moved by any other means. Thus, a reduction of sea trade reduces overall international trade. U.S. consumers face a greatly diminished selection of goods because domestic production largely disappeared in the decades before the global depression. As countries increasingly focus on regional rather than global trade, costs rise and Americans are forced to accept a much lower standard of living. Some domestic manufacturing improves, but at significant cost. In addition, shippers avoid U.S. ports due to the onerous container inspection regime implemented after investigators discover that the second dirty bomb was smuggled into the U.S. in a shipping container on an innocuous Panamanian-flagged freighter. As a result, American consumers bear higher shipping costs. The market also constrains the variety of goods available to the U.S. consumer and increases their cost. A Congressional Budget Office (CBO) report makes this abundantly clear. A one-week shutdown of the Los Angeles and Long Beach ports would lead to production losses of $65 million to $150 million (in 2006 dollars) per day. A three-year closure would cost $45 billion to $70 billion per year ($125 million to $200 million per day). Perhaps even more shocking, the simulation estimated that employment would shrink by approximately 1 million jobs.[15] These estimates demonstrate the effects of closing only the Los Angeles and Long Beach ports. On a national scale, such a shutdown would be catastrophic. The Government Accountability Office notes that: [O]ver 95 percent of U.S. international trade is transported by water[;] thus, the safety and economic security of the United States depends in large part on the secure use of the world’s seaports and waterways. A successful attack on a major seaport could potentially result in a dramatic slowdown in the international supply chain with impacts in the billions of dollars.[16]

**Special ops key to solve bioterror**

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Although nuclear weapons tend to dominate public discourse about WMD threats, bioterrorism also presents a threat that could have consequences on a massive scale. Further, the barriers to developing a bio-weapons capability may be lower. As former Secretary of the Navy Richard Danzig has argued, relative to nuclear programs and materials, biological materials are easier to obtain, conceal, and transport. Biological weapons development programs are also much harder to detect. 202 The indiscriminate mass effects of bio-weapons would have great appeal for many terrorist groups, who may be far less concerned over the prospect of blowback than state actors. Additionally, while traditional chemical weapons are less suited for mass casualty attacks than either nuclear or biological weapons, legacy chemical weapon stockpiles in unstable countries like Syria and Libya pose the danger that desperate rulers will use these capabilities in a last-ditch attempt to save their regime, or that the weapons will fall into the hands of rebel forces, including VENs.203 SOF can contribute to counter-WMD e􀌆orts across every line of operation. ¶ The global CT network SOF have built over the last decade could be repurposed over the ne􀁛t decade to become a global counter-WMD network, applying the same logic that it takes a network to defeat a network. SOF could also have critical responsibilities in the detection and disruption of WMD programs.20􀀗 SOF’s traditional special reconnaissance (SR) skills could help locate or probe suspected WMD sites. Given the e􀁛traordinary measures states and terrorist organizations will take to conceal their WMD programs from traditional overhead intelligence collection systems and international inspectors, clandestine or covert SR would o􀌆er one of the most e􀌆ective means of detecting a program or assessing its maturity. Operating under the authorities of other agencies, SOF could conduct preventive direct-action missions to disrupt development programs, help gain access to an enemy’s military communications networks, or infiltrate heavily guarded WMD facilities. During a con􀃀ict, SOF could conduct surgical strikes against WMD facilities and delivery systems in concert with precision airpower. SOF could also work by, with, and through partner forces to conduct these missions, as foreign nationals may have greater access to target facilities.

**Extinction**

**Mhyrvold 13** Nathan, Began college at age 14, BS and Masters from UCLA, Masters and PhD, Princeton “Strategic Terrorism: A Call to Action,” Working Draft, The Lawfare Research Paper Series

Research paper NO . 2 – 2013

As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 19**70s** **technology** because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances**, utterly transforming the field** in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. **Tomorrow’s terrorists will have vastly more deadly bugs to choose from.** Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. A team of researchers at Saint Louis University led by Mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too. Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done. This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14 **Biotechnology** is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact **would be vastly more devastating than HIV** . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, **terrorists may not have to develop it themselves: some scientist may do so first and publish the details.** Given the rate at which biologists are making discoveries about viruses and the immune system, at some point **in the near future**, **someone may create artificial pathogens that could drive the human race to extinction.** Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. **Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race**— **or at least** of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—**will be available to anybody with a solid background in biology, terrorists included.**

#### Scenario 2 is Germany –

#### Active German-US cooperation is critical to shared databases, surveillance and travel tracking – solves recruitment, funds, logistics, and training

Miko 4 Francis T. Miko, Specialist in International Relations, Foreign Affairs, Defense, and Trade Division, CRS Report for Congress, Received through the CRS Web, Order Code RL32710, 12-27

U.S.-German cooperation in the area of information sharing mostly occurs on a case-by-case basis and is not based on formal governmental agreements. Some question whether this is adequate. Given the way that transnational terrorist networks operate, some argue that it is necessary to target the entire terrorist infrastructure (e.g., recruitment, fund raising, logistics, and training).63 A shared database containing all available information regarding the most threatening persons might allow both countries to better track terrorist suspects, to harmonize surveillance activities, and to target travel by terrorists (as was recommended by the U.S. 9/11 Commission). Apparently the only databases of such dangerous persons accessible to both governments are the lists of Islamic terrorist organizations and persons maintained by the UN and the EU. 64 Sharply different perspectives on the death penalty have also hampered bilateral cooperation in some cases. Germany, like all EU member countries, has abolished the death penalty. German law does not allow extradition of a person wanted by another country if there is a possibility that the person might be executed if found guilty. In previous cases, Germany extradited suspects only after it had received assurances that the death penalty would not be imposed. In 1998, Germany arrested and extradited a key suspect in the 1998 U.S. Embassy bombings in Africa, after U.S. prosecutors agreed to waive the death penalty. Germany has interpreted its laws to forbid even provision of evidence relating to such a case, if that information might lead to the imposition of a death sentence. This became an issue when the United States sought to obtain documents from Germany related to the case of Zacarias Moussaoui, the so-called 20th hijacker. The information was eventually supplied based on the understanding that the United States would agree not to seek the death penalty solely based on the evidence gained from Germany.65 Still, the death penalty issue remains a potential impediment to cooperation in specific cases. Germany and the United States also differ on the question of the status of prisoners, particularly the Al Qaeda and Taliban detainees in Guantánamo Bay. Germany’s Foreign Minister Joschka Fischer and other politicians have argued that all detainees should be granted formal status as prisoners of war. Germans, like other Europeans, have also criticized U.S. plans to use military tribunals to try at least some of the terrorist suspects. Such tribunals are seen as unnecessary and counterproductive by German officials. Some question has been raised whether terrorist suspects would be extradited by Germany and other EU countries, if they were likely to face a military tribunal.66 In the German view, conduct of the fight against global terrorism requires multilateral cooperation, formally sanctioned by the relevant international organizations. Germans argue that most unilateral measures are illegitimate and ineffective. In this context, German officials are hoping that the second Bush Administration will place greater emphasis on multilateralism to strengthen international support for U.S. counterterrorism initiatives. From Germany’s perspective, joint action on counterterrorism is also tied closely to joint decision making.67 The U.S. Administration rejects any absolute commitment to multilateralism in terms of waiting for UN approval for any military action. Such a policy would be seen in the United States as a dangerous and unacceptable recipe for paralysis. Some criticize the German approach as too wedded to process over results, especially when dealing with “rogue” states and weapons of mass destruction. While Germany has declared WMD non-proliferation a core element of its national security strategy, the German approach has been criticized by some for relying almost exclusively on positive engagement and avoiding conflict, an approach that might not be very successful in influencing certain regimes or potential terrorists. Some observers believe that the German stance reflects the reality that the country presently lacks the military means or the political will to confront WMD states with anything other than “soft power” instruments (such as diplomacy and economic levers). Some see a complementarity in the differing U.S. and German approaches. The U.S. has extensive military capabilities to deal with threats of terrorism, while Germany views its strengths in conflict prevention and reconstruction. This could mean, for instance, that Germany might be better positioned to take on a greater role in long-term reconstruction efforts in countries like Afghanistan. Some argue that with a better understanding of the potential complementary roles the two countries can play based on the strengths and advantages of each, new opportunities for enhanced cooperation in the global war on terrorism might be found. The final report of the U.S. 9/11 Commission suggests that long-term success in the war against terrorism demands the use of all elements of national power, including “soft power” instruments such as diplomacy, intelligence, and foreign aid. A key question is to what degree differences are likely to hamper U.S.-German cooperation against terrorism. It could be argued that U.S. and German security in the near and mid-term are likely to be affected far more by what Germany does to cooperate with the United States in terms of domestic security and bilaterally than by Germany’s stance on other international issues. Lapses in German domestic surveillance or other shortcomings in German domestic policy could directly threaten U.S. security. For example, according to statements from the BND, some dozen or so Islamic militants capable of carrying out assaults may have left Germany for Iraq not too long ago.68 Therefore, many question whether the United States and Germany can afford the risk of allowing international policy differences to lead to declining cooperation within the crucial arena of domestic security. The United States and Germany may see security threats through different lenses, and responses to those threats are shaped by different national interests, practices, and historical experiences.69 Ultimately, understanding and accepting these differences (agreeing to disagree), in the minds of some observers, may be the best approach to enhancing future U.S.-German cooperation in the global war on terrorism. Close bilateral cooperation with the United States is important for Germany’s own global interests. For the United States, as well, German cooperation against terrorism is likely to remain significant in light of Germany’s importance as a European and world actor, as a key hub for the transnational flow of persons and goods especially to the United States, and as a country whose soil has been used by terrorist to target the United States.

#### Allies won’t extradite terror suspects to the US over due process concerns – causes release and safe havens

Kris 11 (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 help us obtain important¶ cooperation from other countries. That cooperation may be necessary if we¶ want to detain suspected terrorists or otherwise accomplish our national¶ security objectives. Our federal courts are well-respected internationally.¶ There are well-established, formal legal mechanisms that allow the transfer¶ of terrorism suspects to the United States for trial in federal court, and for¶ the provision of information to assist in law enforcement investigations –¶ i.e., extradition and mutual legal assistance treaties (MLATs). Our allies¶ around the world are comfortable with these mechanisms, as well as with¶ more informal procedures that are often used to provide assistance to the¶ United States in law enforcement matters, whether relating to terrorism or¶ other types of cases. Such cooperation can be critical to the success of a¶ prosecution, and in some cases can be the only way in which we will gain custody of a suspected terrorist who has broken our laws.184¶ In contrast, many of our key allies around the world are not willing to¶ cooperate with or support our efforts to hold suspected terrorists in law of¶ war detention or to prosecute them in military commissions. While we hope that over time they will grow more supportive of these legal¶ mechanisms, at present many countries would not extradite individuals to¶ the United States for military commission proceedings or law of war¶ detention. Indeed, some of our extradition treaties explicitly forbid¶ extradition to the United States where the person will be tried in a forum¶ other than a criminal court. For example, our treaties with Germany¶ (Article 13)185 and with Sweden (Article V(3))186 expressly forbid extradition¶ when the defendant will be tried in an “extraordinary” court, and the¶ understanding of the Indian government pursuant to its treaty with the¶ United States is that extradition is available only for proceedings under the¶ ordinary criminal laws of the requesting state.187 More generally, the¶ doctrine of dual criminality – under which extradition is available only for¶ offenses made criminal in both countries – and the relatively common¶ exclusion of extradition for military offenses not also punishable in civilian¶ court may also limit extradition outside the criminal justice system.188 Apart¶ from extradition, even where we already have the terrorist in custody, many¶ countries will not provide testimony, other information, or assistance in¶ support of law of war detention or a military prosecution, either as a matter¶ of national public policy or under other provisions of some of our¶ MLATs.18 These concerns are not hypothetical. During the last Administration,¶ the United States was obliged to give assurances against the use of military¶ commissions in order to obtain extradition of several terrorism suspects to¶ the United States.190 There are a number of terror suspects currently in foreign custody who likely would not be extradited to the United States by foreign nations if they faced military tribunals.191 In some of these cases, it might be necessary for the foreign nation to release these suspects if they cannot be extradited because they do not face charges pending in the¶ foreign nation.

#### US-German intelligence coalitions are too ad hoc and must be expanded

Zelikow 13 Philip, professor at the University of Virginia and was executive director of the 9/11 Commission, Financial Times, 11-8, http://www.ft.com/intl/cms/s/0/b9e95818-4715-11e3-b4d3-0014...

The uproar over US intelligence collection in friendly countries may be just the jolt that is needed to persuade leaders on both sides of the Atlantic to think again about the way their intelligence and security services co-operate. Rather than recoiling in horror, they should be discussing sharing more. There is, at the moment, a special intelligence relationship between the US, the UK, Australia, Canada and New Zealand – the so-called “five eyes”. But it is more a product of history than of deliberate policy selection. They should reconsider the coalition that has, somewhat serendipitously, been organised to help governments understand 21st-century dangers and opportunities. In peace and in war, allies matter. Coalitions matter. Well-built coalitions can be powerfully effective. Many in the US took it for granted when an entire armoured corps was moved from Germany to Saudi Arabia to help defeat Iraq in 1991. They did not appreciate the machinery of coalition co-operation behind that and other triumphs in that war. Nor do many people appreciate the way that long-term planning with countries from Canada to Australia has enhanced the fundamental capabilities that protect the US and those nations alike. Mere ad hoc operational co-operation does not allow for deliberate planning, discussions of common purpose or development of combined capabilities. That is why concerned governments, such as those of the US and Germany, will be able to settle for only limited understandings out of this crisis: “Don’t collect on this” or “Leave that politician alone.” They will be merely reactive, and will pass up a significant opportunity. When I served in government during the 2000s, I advocated a much-stronger intelligence partnership between Washington and Berlin. Each side should deliberate on the costs and benefits. There are vital common interests. Though they support rival companies, the two governments are rarely at cross purposes. Each side can contribute critical information or analysis. US intelligence about Islamist extremists in Europe, even in Germany itself, may have saved lives – perhaps in Germany too. German experts were often as good, sometimes better, than any in the US not only on matters in Europe, but also on matters further afield – such as Afghanistan. And deepening habits of common work can improve the quality of strategic thought and analysis on both sides with profound importance over time.

#### That’s key to joint CT and arms trade ops

Blome 14 NIKOLAUS, Spiegel, 1-20, http://www.spiegel.de/international/europe/nsa-syping-scandal-a-944415-2.html

Furthermore, German intelligence officials are concerned that an open conflict could result in the reduction in the amount of information the US is willing to share. In recent years, German intelligence has broadened its cooperation with the US and would like to intensify it even further. Intelligence officials have made it clear they are concerned about aggravating Washington so as not to endanger joint operations, such as those aimed at counterterrorism or the illicit arms trade. "They could simply shut off the faucet," says one high-ranking intelligence official. That could also make it more difficult to keep an eye on Islamists who may be planning attacks on German soil.

#### Plan is a key concession for shared access to databases

IISS 6 *Strategic Comments, the International Institute for Strategic Studies, The International Institute for Strategic Studies*, is a London-based independent think-tank, 6-11, http://www.worldsecuritynetwork.com/Other/no\_author/Cooperative-Intelligence

Consequently, there is a growing realisation within the US intelligence community that the checks and balances afforded by intelligence sharing would stand to upgrade the quality of actionable intelligence. Recently confirmed CIA Director General Michael Hayden has said that the CIA should make it a ‘top priority’ to nurture information exchanges with its foreign counterparts on threats of mutual concern. He advocates more routine exchanges of documents and shared access to databases – a departure from the CIA’s tradition of ‘transactional’ sharing only at the specific request of partners in favour of a ‘common knowledge’ model. In addition, Hayden believes that the timely sharing of raw information would perforce improve intelligence analysis by testing the plausibility of information before a wider and more critical audience. Though a US Air Force general, Hayden also wants to expand the role of civilian agencies and shrink that of the DoD in the collection and analysis of information. This attitude will probably sit fairly well with allies and partners that are deeply suspicious of the US military’s judgement, influence and conduct in the counter-terrorism and non-proliferation fields. Inaugural Director of National Intelligence John Negroponte – to whom Hayden was principal deputy – is charged by statute with asserting greater civilian control over US intelligence activities. Now, therefore, two strong institutional presences exist to balance the DoD, which, along with the difficulties it has experienced in Iraq, suggests that its bureaucratic power over those activities may be palpably diminished. While Hayden’s association with domestic electronic surveillance as National Security Agency director may give some partners pause, they associate mainly the Pentagon with Iraq and procedural excesses. Hayden’s clear-eyed preoccupation with maintaining the high tempo of intelligence collection on emerging threats while simultaneously improving intelligence analysis, coupled with his premium on intelligence sharing, suggests tangible movement within the US national security system in the direction of greater operational interdependence with respect to intelligence matters. This development too is likely to reassure partners who have been leery of unilateral US intrusion in the broader security arena. The US and its partners may be settling into a new epoch of collegiality in the intelligence realm. But for it to survive popular political opposition – particularly in Europe – operational collaborations like renditions and covert detentions will have to be kept discreet and infrequent.

#### European safe havens are the most likely avenue for WMD terrorism – both attacks on nuclear plants and trafficking of HEU

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 nuclear terror, at least one terrorist network - al Qaeda - has expressed strong interest in acquiring weapons of mass destruction. Al Qaeda operatives and their brethren in like-minded organizations have spread their web across numerous countries. According to a January report by The Observer , Islamic militants have built up an extensive network in Europe since 11 September 2001, using Great Britain as a logistical hub and nerve center. In recent years, Islamic extremists have expanded eastward into Bulgaria, the Czech Republic, Poland, and Romania. Terrorist cells have become rooted in Austria, France, and Germany and have recruited new members in these and other countries. Intelligence officials have warned that labeling all of these groups as al Qaeda misses the complexity behind the terrorist network. While most of the cells follow a similar agenda as al Qaeda, few directly hold their allegiance to this organization. The current focus on Islamic extremist groups should not blind us from seeing other terrorist organizations that would covet nuclear means of destruction. For example, Aum Shinrikyo, an apocalyptic cult with no ties to Islamic extremism, sought out nuclear weapons and released deadly sarin gas in a 1995 chemical attack in the Tokyo subway system. Despite the growth of terrorist cells in Europe, one must not assume that they will ultimately go nuclear. Climbing the escalation ladder to acts of nuclear terror requires leaping over several barriers. Regardless of the nuclear terror act under consideration, the terrorist group must be motivated to conduct extreme levels of violence and to venture into unconventional methods of attack. While a terrorist organization with a well-defined constituency would most likely not want to alienate its constituency with a nuclear act, groups that have weak or non-existent ties to constituencies would not face as many moral or political constraints. For example, the Chechen rebels, a national-separatist group, depend strongly on their supporters within Chechnya. In contrast, the character and agenda of al Qaeda, a political-religious terrorist network, make this organization apparently less concerned about directly harming constituents. The final barriers for a terrorist group to cross are technical in nature. The group would have to acquire the nuclear assets. If the group decided to attack a nuclear power plant, it would have to identify a vulnerable nuclear facility. The organization would have to develop or hire the skills needed to build and detonate a weapon or to sabotage a nuclear facility. Finally, the group would have to be able to deliver the attack without being detected during the development or completion phase. Vulnerable Nuclear and Radiological Assets in Europe Tactical nuclear weapons: Though intact nuclear weapons tend to be well-guarded, some are more susceptible than others to falling into the hands of terrorists. Most experts believe that portable so-called tactical nuclear weapons (TNWs) are more vulnerable to terrorist seizure than are strategic nuclear weapons. TNWs are designed for nuclear-war fighting or battlefield use. As such, they tend to be more portable than their strategic cousins. In Europe, concerns over loose nuclear weapons have focused on the thousands of Russian TNWs that are in various physical conditions and under varying security storage and use. The United States also maintains about 150-180 TNWs in about six NATO countries. While European politicians want to keep the issue of NATO's nuclear weapons out of public view, they need to take steps to reassure Russia that nuclear arms will not be deployed in new NATO-member states. This confidence building measure could serve as a way toward achieving more openness about how to improve the security of Russian TNWs. Uranium: Of the two types of weapons-usable nuclear material, highly enriched uranium (HEU) poses the greatest concern, because it can be used in the simplest nuclear bomb - a gun-type device - to produce a high-yield explosion. Most weapons experts agree that a well-funded terrorist group could build a gun-type bomb, which simply slams two pieces of HEU together inside a gun barrel. The major barrier to stopping construction of such a device is access to HEU. Research sites in Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Yugoslavia have HEU, supplied mostly from Russia. Over the past several years, experts have warned that HEU from these sites could find its way to terrorists. The December 1994 seizure of almost three kilograms of weapons-usable HEU in the Czech Republic highlighted this danger. Since the fall of the Soviet Union, there have been many incidents of illicit trafficking of nuclear and radiological materials in Central and Eastern Europe and the newly independent states. Many more incidents could be happening than are being detected. Fortunately, efforts to secure and repatriate HEU from vulnerable sites in this region have begun. Since the summer of 2002, the United States, Russia, the International Atomic Energy Agency (IAEA), partner governments, and non-governmental organizations, such as the Nuclear Threat Initiative, have conducted three successful missions - Belgrade, Romania and Bulgaria - to secure HEU at research sites and to repatriate it to Russia. But more needs to be done, since about 20 additional research sites, each containing enough Russian-origin HEU for at least one bomb, still exist. Some of these sites are located in Central and Eastern Europe. Radiation: Within the past few years, the European Union has commissioned two studies to determine the effectiveness of the existing regulatory practices concerning the life cycle of radioactive sources. The first study examined the controls within the EU itself and found that radioactive materials management varied across the EU. The report underscored the risk posed by some 30,000 disused sources that are in danger of becoming orphaned, that is, of falling outside of regulatory controls. On the heels of that study, the EU investigated the regulatory practices in the Czech Republic, Estonia, Hungary, Poland, and Slovenia, states that were being considered for early admission to the EU. The EU study concluded that these states have regulatory controls that meet the general standards found throughout the EU. While the results of these pre-11 September reports are by and large encouraging, it should be noted that they focused on safety considerations and did not examine details of security procedures. Nuclear power plants: Well-designed nuclear power plants employ defense-in-depth safety features. To release radioactivity from a nuclear plant, terrorists would have to destroy or disable multiple safety systems. Unfortunately, Central and Eastern Europe contain many Soviet-designed nuclear power plants that do not meet Western safety standards. For example, early Soviet-designed models lack an adequate emergency core cooling system and containment structure, and have an inadequate fire protection system. Such reactors operate in Bulgaria, Slovenia, the Czech Republic, Hungary and Slovakia and Lithuania. While these reactors have engendered discussion regarding safety and security, attacks and sabotage against research centers - where security procedures tend to be less rigorous than at commercial plants - have been overlooked. Many research reactors are located at universities in or near major urban areas. While the inventory of radioactivity in a typical research reactor pales in comparison to the large quantities of lethal fission products within a commercial reactor, release of radioactivity from research sites could suit nuclear terrorists' purposes.

#### The threat of cross border terrorism is high – coop key to monitoring early phases of radicalization

Renard 14 Thomas, senior research fellow at Egmont – Royal Institute for International Relations, an independent Brussels-based think tank, and ESPO project leader at Egmont. EUROPEAN STRATEGIC PARTNERSHIPS OBSERVATORY, Confidential partnerships? The EU, its strategic partners and international terrorism, working paper n.4 January

Overall, terrorist activities (approximated by measuring attacks and arrests) are in steady decline in Europe, but the threat remains high. 3 A total of 219 attacks in 2012 is a non-negligible number. These attacks originate from a broad spectrum of terrorist groups – mostly ethno-separatist movements – many of which operate across national borders, making it more difficult to monitor and mitigate them. If international religiously-inspired groups have carried out very few attacks in the past years (six in 2012 and none in 2011), the threat is nonetheless considered to be serious and these groups to be active, as indicated by the important number of related investigations and arrests. The radical Islamist terrorist threat is evolving as well. The profile of violent activists is gradually changing, with an increase in self-radicalised and lone-wolf terrorists. This complicates the counter-terrorism challenge since these individuals are particularly difficult to spot early in the radicalisation process. It also requires more monitoring of online activities, opening a whole new front in the cyber-world. 4 The threat is evolving in geographical terms as well. As Afghanistan loses its appeal for jihadi fighters, there is a danger that some of them, and particularly European jihadists, might come back to Europe and start plotting an attack. Afghanistan and Pakistan – known as the AfPak region – are already being replaced by the Sahel region and Syria as the new hotbed for international terrorism, thereby moving the core of the threat closer to Europe’s borders. Mirroring the trend in terrorist activities, the popular perception of terrorism as a major threat to Europe is eroding. In all EU member states, citizens ranked terrorism as a major concern in the aftermath of 9/11. Their threat perception has evolved and terrorism is no longer the major preoccupation of citizens, although it remains seen as an important security challenge. 5 The challenge in Europe today is thus one of facing an evolving, multi-dimensional and multifaceted threat while popular support is waning and other challenges are taking over attention and resources. The end of the terrorism frenzy and the return to a certain normality is probably a good thing, but a growing sense of ‘counter-terrorism fatigue’ 6 is not. European governments and societies must learn the right lessons from the past decade and continue to develop more effective means of cooperation, including at the European level, to reduce the risk and the impact of a future terrorist attack. This is the reason why the EU should pursue its efforts on counter-terrorism, at the regional and global levels.

#### Terrorists can fly an airplane into a nuclear power plant

White and Santoro 14 “The potential for the sabotage of research reactors and nuclear power plants by terrorist groups” Special Report by the Australian Strategic Policy Institute. Web, Acc at https://www.aspi.org.au/publications/preventing-nuclear-terrorism-australias-leadership-role/SR63\_prevent\_nuclear\_terrorism.pdf

The potential for the sabotage of research reactors and ¶ nuclear power plants by terrorist groups also must be taken ¶ seriously. Saboteurs could crash an airplane into a nuclear ¶ power station, use truck bombs, conduct commando attacks ¶ by land or water or mount cyberattacks, and rely on insider ¶ assistance for such deeds. Some of these scenarios might ¶ seem far-fetched, but the 9/11 attacks demonstrated that a ¶ determined terrorist organisation is capable of employing ¶ sophisticated terror tactics. Failure of imagination is not an ¶ option: the world must prepare for nuclear ‘black swans’.1¶ ¶ Significantly, according to the 9/11 Commission Report, ¶ Mohammed Atta, one of the cell leaders of the 9/11 attacks, ¶ had expressed interest to the al-Qaeda leadership in crashing ¶ an aeroplane into a nuclear power plant.

#### Europe’s reactors aren’t built to withstand this

Edwards, 6 (Rob, “Europe's new nuclear reactors will not be 9/11-proof” New Scientist. Web, Acc http://www.newscientist.com/article/dn9191-europes-new-nuclear-reactors-will-not-be-911proof.html#.UvHGcWRDvNA

¶ New nuclear reactors planned to be built across Europe are not designed to withstand a 9/11-style aircraft attack by terrorists, a leaked report has revealed.¶ The European pressurised water reactor (EPR) is capable of resisting an accidental crash by a five-tonne military fighter, says the French nuclear power company y, EDF. But only by extrapolation does it argue that the reactor will also withstand the impact of a 250-tonne commercial airliner flown deliberately into it.¶ This assumption, according to independent nuclear engineer, John Large, is "entirely unjustified". This "reflects what seems to be an almost total lack of preparation to defend against the inevitability of terrorist attack," he says.¶ Europe's first EPR, seen by the nuclear industry as the forerunner of a new generation of nuclear power plants, is under construction at Olkiluoto in Finland. It is the most likely type of reactor to be built in the UK, now that the Prime Minister, Tony Blair, has put nuclear power "back on the agenda with a vengeance".¶ The leaked document is a 2003 report from a senior EDF official, Bruno Lescoeur, to the French nuclear safety regulator, IRSN. It attempts to show that the post-9/11 risks of planes crashing into an EPR are low.¶ Act of war¶ Because the reactors are designed to withstand a military jet crash, the report contends, they will also withstand the hardest parts of a passenger airline - its engines. It also claims that terrorists would have difficulty steering an aircraft towards a reactor at a low enough angle.¶ But EDF does not give any absolute guarantees. "EDF does not envisage assuring a capacity to resist every act of war or every foreseeable act of terrorism," writes Lescoeur. "The hypotheses relating to an impact must cover a 'reasonable risk', and cannot pretend to include all the possibilities."¶ EDF's assessment is dismissed as "extremely inadequate" by Large, who was commissioned by the environmental campaign group Greenpeace to evaluate the leaked report. He points out that the newly released footage of the attack on the Pentagon on 9/11 showed that trained terrorists could fly low and on target.¶ A similar attack on a reactor would cause "a total calamity", with the release of large amounts of radioactivity, Large claims. The only way to protect the reactors would be to cover them with a specially hardened concrete superstructure, or to build them underground.¶ The leaking of the document has provoked a fierce controversy in France, one of the world's biggest users of nuclear electricity. A French anti-nuclear activist, Stephane Lhomme of Sortir du Nucléaire, was detained by police for 14 hours on 16 May in connection with the leaked report.¶ The French green movement responded by distributing the document as widely as possible, making it available on a dozen websites. So far, EDF has declined to comment.

#### Instantly kills millions

Lean 3 (Geoffrey, “Attack on nuclear plan ‘could kill 3.5 m” The Independent. Web, Acc 2/24/2014) http://www.independent.co.uk/environment/attack-on-nuclear-plant-could-kill-35m-9085908.html

More than three and a half million people could be killed by a terrorist attack on a British nuclear plant, concludes a series of three reports so alarming that even Greenpeace – which commissioned them – is unwilling to publish them.¶ The reports – whose findings the Government has also sought to suppress – show that terrorists could identify the most dangerous parts of the plants from publicly available information and crash aircraft into them, releasing vast amounts of radioactivity.¶ Now MPs and peers have launched an investigation by the Parliamentary Office of Science and Technology into the revelations as part of a formal inquiry into "the possible risks and consequences of a terrorist attack at a nuclear facility in the UK". They decided to set up the inquiry last month – at the urging of the House of Commons Defence Select Committee – drawing on the reports and other material, even though ministers warned that much of the information they needed was secret and would not be made available to them.¶ The reports show that Britain could face a far greater threat than the danger of ricin, constantly quoted by ministers, or the warnings of a rocket attack on an aircraft that led to last week's deployment of tanks at Heathrow. Yet one of their authors – John Large, an independent nuclear expert – says that the Government has reacted to it with "staggering indolence".¶ The three reports, commissioned by Greenpeace after the 11 September attacks, cover the vulnerability of Britain's nuclear installations, the possibility of an attack from the air and the consequences of the resulting disaster. They were completed at the end of 2001, but the pressure group has sat on them for over a year, unable to decide what to do with them. They are still being kept a closely guarded secret.¶ The first, by Dr Large, concludes that Britain's nuclear plants are "almost totally ill-prepared" for an airborne terrorist attack. The second, by an aviation expert, suggests that it would only take four minutes for an airliner to divert from its regular flight path to attack the most dangerous target of all, the Sellafield nuclear complex in Cumbria. And the third, by leading scientist Dr Frank Barnaby, estimates that, at worst, 3.6 million people could die as a result.¶ Dr Large said last night that he had found it "astonishingly easy" to get information on targets at Sellafield and other nuclear plants, and that he had been sent official reports identifying them without any attempt to check on his bona fides.¶ He said: "A terrorist cell charged with attacking Sellafield could readily obtain sufficient information from publicly available documents to identify highly hazardous and vulnerable targets for which there exists little defence in depth."¶ Dr Barnaby – a former Aldermaston scientist, who was for 10 years director of the Stockholm International Peace Research Institute – concludes that a jumbo jet crashing into Sellafield could cause a fireball over a mile high.¶ He says that 25 times as much radioactivity as was emitted by the Chernobyl disaster in 1986 would be likely to be released, eventually killing 1.1 million people from cancer. In the worst case scenario, the number of deaths could reach 3.6 million.¶ Dr Large was so alarmed by his findings that he asked Greenpeace not to publish his report, and stamped the words "Not for Open Publication" on every page.¶ Greenpeace, for its part, has been paralysed by indecision by the reports, unable to decide even to disclose their findings to ministers or officials to try to get them to act on the vulnerabilities they identified.¶ The pressure group is highly sensitive about this, and has only now decided – after repeated questioning by The Independent on Sunday – "to seek to stimulate this debate within government over the next months".¶ Shaun Birnie, a nuclear campaigner for Greenpeace International, said last week that there had been "months of debate" inside the organisation about what to do with the reports, with some activists fearing that the Government might take action against it.¶ He admitted: "We never got round to agreeing how to use this report" but threatened that any suggestion in this article that Greenpeace had sat on the report would damage relations with the IoS.¶ Challenged to explain the organisation's lack of urgency at a time of an increasing terrorist threat, he said: "There is no reason to rush this. A year is a very, very short time in the half life of plutonium."

#### Also causes retaliatory escalation and extinction

Morgan, Professor of Foreign Studies at Hankuk University, ‘9 (Dennis Ray, December, “World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race” Futures, Vol 41 Issue 10, p 683-693, ScienceDirect)

In a remarkable website on nuclear war, Carol Moore asks the question "Is Nuclear War Inevitable??" [10].4 In Section 1, Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they've figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian "dead hand" system, "where regional nuclear commanders would be given full powers should Moscow be destroyed," it is likely that any attack would be blamed on the United States" [10]. Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal "Samson option" against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even "anti-Semitic" European cities [10]. In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment

### 1AC – Leadership

#### Advantage 2 is Leadership

#### US leadership is uncertain in the SQ

Roberts 14 Williams, AL JAZEERA, 1-29, http://www.aljazeera.com/indepth/features/2014/01/obama-calls-shift-from-war-diplomacy-20141296833617321.html

Obama has pulled the US back from the world, even as he prosecuted a covert war on terror through drone strikes and targeted military operations. As a result, he has been criticised by elements on both the left and right for pursuing what they say is a risky new isolationism. His supporters, though, view his policy as realism. "The Democratic liberal interventionists and neo-conservatives hate his policies. He has proven to be remarkably risk-averse, not risk-ready when it comes to adventures abroad," said Aaron David Miller, a distinguished scholar at the Washington-based Woodrow Wilson International Center, a think-tank. Today, the US faces challenges not just in Afghanistan and Iraq, but also in Libya, Egypt, Yemen, Jordan and Bahrain because of civil unrest and democratisation movements. Syria's grinding civil war threatens to destabilise its neighbours. Peace talks between Israel and the Palestinians appear fraught. Obama's announced strategic rebalancing to the Pacific hasn't materialised. North Korea's new leader is erratic and regional tensions are rising between China and its neighbours, notably US ally Japan. 'An extraordinarily bad hand' "The whole situation is very difficult,'' said Ron Neumann, a former ambassador to Afghanistan and president of the American Academy of Diplomacy, who faults Obama for not acting sooner in Syria. "Obama has been dealt an extraordinarily bad hand. In most of these cases, there are no good policies. It's a choice between really bad ones, and ones that might work, or might not." Americans hope Obama quells economic woes Obama and his White House advisers are nothing if not politically astute and, as the president's speech reflected, Americans today are focused more on challenges at home - healthcare, jobs, wages and immigration. A Pew poll in November showed, for the first time since 1974, a growing majority of Americans believe US prestige is in decline. Despite vexing foreign policy problems, most Americans want the US to mind its own business abroad and confront problems at home - 63 percent want to see the US less involved in Middle East politics. "We floundered in Syria. We seem a little too cynical in Egypt. There is a collective sense that you have this disengagement and if he furthers that with a withdrawal from Afghanistan, then you will have questions raised," said Michael O'Hanlon, senior fellow at Brookings Institution, a Washington think-tank. There are presently 38,000 American troops in Afghanistan. Many observers believe Afghanistan's fragile progress would be lost if the US were to leave abruptly at the end of this year without a bilateral security agreement in place. Karzai has raised objections to a security agreement, notably refusing to grant US forces the right to enter private homes unannounced. Administration officials have said in recent weeks that without an agreement, the US would withdraw all troops. "If you go, things will get much worse, quickly," said Neumann. "If you stay and remain relevant and take appropriate action at the right times, you have a chance to make things better." Criticism from Gates Former US Defence Secretary Robert Gates wrote in his new book, Duty: Memoirs of a Secretary at War, that the president appeared to lack conviction about the outcome of the war in Afghanistan. Gates concluded that Obama "doesn't believe in his own strategy, and doesn't consider the war to be his. For him, it's all about getting out." Concern about the pace of US withdrawal extends beyond Afghanistan. In the US Senate, Republican foreign policy leaders fear that Obama, through decisions on many fronts, has sharply backed away from the US' traditional post-World War II role as the leader of global democratic alliances, according to a senior aide. "The picture the president painted of the security situation in the Middle East is not even remotely connected to the world as I see it,'' Senator Lindsey Graham, a South Carolina Republican, said on C-SPAN after the speech. "Syria is a humanitarian disaster. The King of Jordan is under siege. He forgot to tell us that Iraq is falling apart and al-Qaeda is on the rise." In Syria, Obama ignored the Syrian rebels at first, only to promise military aid that never fully materialised. When Obama threatened a US missile strike, Russia's intercession with a plan to dispose of Syria's chemical weapons saved the American president from the probable embarrassment of a congressional vote of disapproval. Meanwhile, Assad's forces are continuing the siege of the restive city of Homs, as troubled UN-sponsored peace talks get under way in Switzerland. For the sake of our national security, we must give diplomacy [with Iran] a chance to succeed. - US President Barack Obama "Syria is a moral, strategic and international humanitarian disaster. The question is whether it is our disaster," said Miller, who expects peace talks to muddle indefinitely and the war to continue. But in Obama's policy of disengagement, Syria is not the US' problem, Miller argued. Iraq is sliding back into sectarian warfare amid renewed infiltration by al-Qaeda. The US did not reach a security agreement with Iraqi Prime Minister Nouri al-Maliki's government that would have provided for a troop presence after 2011. Maliki's Shia-led party has failed to assimilate the country's Sunni population into a coalition government. Al-Qaeda-affiliated fighters in Anbar province briefly took control of key towns, including Fallujah, where the US Marines had fought a costly and bloody hand-to-hand battle during the Iraq war. "There is a cost of inaction," said Gayle Tzemach Lemmon, a senior fellow at the Council on Foreign Relations. "There is a danger in thinking the American people don't desire engagement. It leaves out the leadership role. Whether we like it or not, we do not just get to focus on domestic issues and forget our role in the world. We are not a country that has that luxury." Iran rapprochement? To be sure, there's hope for Obama's legacy, Lemmon said. Nuclear negotiations with Iran could lead to a restoration of diplomatic relations with the US within the next three years. "If Iran's leaders do seize the chance, then Iran could take an important step to rejoin the community of nations, and we will have resolved one of the leading security challenges of our time without the risks of war," Obama said. Reflecting scepticism that Iran is serious about making concessions, lawmakers in both the House and Senate have put forward new sanctions legislation they intend to pass should the talks with Iran fail. Obama said he would veto a new Iran sanctions bill. "For the sake of our national security, we must give diplomacy a chance to succeed," he said. The prospect of the West reducing sanctions on Iran has raised tensions between the US and Israel, where the renewal of peace talks with the Palestinians has been met with scepticism. Two weeks ago, Israeli Defence Minister Moshe Ya'alon was forced to apologise after private comments surfaced in which he called US Secretary of State John Kerry "messianic" and "obsessive" and said the security plan the US had put forward was "not worth the paper it's written on". The world has become more unstable and the US' role more uncertain in the past year, the Brookings Institution foreign policy analysts Robert Kagan and Ted Piccone wrote in a report last week. Obama needs to "reassert American leadership in a rules-based international system in which norms are not only articulated but also, wherever possible, enforced", they said.

#### A new global push is attempting to rein in indefinite detention – November’s UN negotiations prove

Lynch 11-4 Colum, Foreign Policy, Global Push to Rein in U.S. Moves from Spying to Gitmo, http://thecable.foreignpolicy.com/posts/2013/11/04/un\_usa\_nsa\_gitmo

"There is an effort to push back by the international community," Juan Mendez, an independent U.N. human rights watchdog and former Argentine political prisoner who endured torture during that country's "Dirty War," told Foreign Policy. "I think many governments, Europeans in particular, are moving backwards from their blind support for whatever the United States did after 9/11. As a result of this, they are asserting a need to go back to basics and reinforce international human rights standards and international humanitarian law standards." Mendez, who currently serves as a U.N. special rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, is seeking to update the rules for the treatment of detainees. He has drafted a proposal to revise a code of conduct written in the 1950s -- known as the Standard Minimum Rules on the Treatment of Prisoners -- to reflect the evolution of international law over the past 60-plus years. The measures include new restrictions on the use of solitary confinement, and applies standard international guidelines for humanely treating incarcerated criminals to prisoners of war, immigrants, and patients of mental health facilities. European governments, led by Denmark and Switzerland, have pressed this week for a U.N. General Assembly resolution that would condemn the use of torture and endorse Mendez's plans. But they have faced resistance from the United States, which maintains that applying the rules beyond the criminal justice system would go beyond the scope of Mendez's mandate. In closed-door negotiations, the United States has sought to scrub language that would apply the rules to place like Guantanamo. "With respect to detention pursuant to the law of armed conflict, existing international instruments already govern the field," U.S. State Department lawyer Julianna Bentes told the committee. "Extending SMRs [Standard Minimum Rules] to cover additional categories would lead to confusion in both fields, and ultimately undermine state support for the U.N. standards for crime prevention and criminal justice." The United States still wields enormous influence at the United Nations, leading efforts in the Security Council to combat terrorism around the world. Since 9/11, the U.N. Security Council has created a raft of resolutions requiring governments to pass and enforce anti-terror laws, and imposed sanctions on individuals and entities suspected of having links to al Qaeda. Prosecuting the war on terror is one of the few things the U.N.'s five major powers -- Britain, China, France, Russia, and the United States -- consistently agree on. They have backed international peacekeeping efforts in Somalia and Mali that target Islamist militants linked to al Qaeda. But many smaller governments are increasingly reluctant to follow Washington's lead. Other rising powers, including Brazil and Germany, are seeking to take the initiative, promoting a raft of U.N. resolutions and rules that would curtail America's powers. America's go-it-alone strategy has fueled anxiety beyond the current controversy over spying. Brazil's Patriota voiced concerns about the United States's use of drones to target suspected terrorists, saying that it "indirectly encourages others to do the same." For the time being, there has not been a major push by governments at the U.N. to impose legal constraints on America's use of armed drones in foreign lands. But the matter has become the subject of an ongoing investigation by Ben Emmerson, the U.N. special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and Christof Heyns, the U.N. special rapporteur on extrajudicial, summary, or arbitrary executions. "Although drones are not illegal weapons, they can make it easier for States to deploy deadly and targeted force on the territories of other States," Heyns wrote. "If the right to life is to be secured, it is imperative that the limitations posed by international law on the use of force are not weakened by broad justifications of drone strikes." Navi Pillay, the U.N. high commissioner for human rights, said she is also "seriously concerned about human rights implications for the protection of civilians of armed drone strikes carried out in the context of counter-terrorism and military operations" by the United States and Israel. During a debate on protection of civilians in August, Pillay urged countries to "clarify the legal basis for such strikes," noting that "the current lack of transparency surrounding their use creates an accountability vacuum and affects the ability of victims to seek redress." In May, Pillay offered a broader critique of America's respond to terrorism in a speech to the Human Rights Council. "The objective of the global struggle against terrorism is the defense of the rule of law and a society characterized by values of freedom, equality, dignity, and justice," she said. "Yet time and again, my office has received allegations of very grave violations of human rights that have taken place in the context of counter-terrorist and counter-insurgency operations. Such practices are self-defeating. Measures that violate human rights do not uproot terrorism: they nurture it." Pillay said the "injustice embodied" in the Guantanamo detention center -- where many individuals are subject to "indefinite" and "arbitrary" detention in "breach of international law"-- has become an ideal recruitment tool for terrorists. Some of the push back is posturing by governments seeking to take advantage of the world's lone superpower being on the defensive. For example, China -- a country with a reputation for engaging in extensive online espionage of foreigners and ruthlessly cracking down on dissent at home -- urged the U.N. to curtail what it sees as American excesses. At a U.N. meeting last month dealing with online communications, Xie Xiaowu, a Chinese diplomat, called on member states to confront a "certain country [that] is abusing their technological advantages to spy on other countries, steal information from organizations or individuals of other countries, and violate people's privacy." It is imperative to establish "multilateral, democratic and transparent" international norms that are "fair, equitable and efficient" and that "respect the information sovereignty of all states and protect the fundamental rights of all citizens," he added. "Hegemony in the field of ICT [Information and Communications Technology] must be rejected." For years, China and Russia have been pushing for a U.N. code of conduct for cyber-security. The United States and other Western governments harbored suspicions that the Chinese and Russian effort was largely aimed at kneecapping America's technical advantage online -- and reinforcing states' rights to curb freedom of expression online. Other states expressing concern about American practices are doing so in part to shift blame away from themselves, U.N. experts say. Some of the nations complaining the most loudly also partnered with the NSA in its spying operations. The Brazilians have been embarrassed by the disclosure of an NSA listening station in Brasilia, right under the government's nose, said Bruce Jones, the director of New York University Center on International Cooperation. "In domestic terms, they have to create some distance" from the United States, he said. Germany, Jones noted, is seriously offended by the revelations that the NSA listened in on German Chancellor Angela Merkel's cell phone conversations. But what they really want is to develop a closer relationship with American intelligence agencies.

#### That ruins the Western alliance – US-EU partnership critical to global stability

Daul 13 Joseph, Chairman of the largest political group in the European Parliament - EPP Group, Huffington Post, 5-16

In today's multilateral, multipolar world, Europe and America can and should work together in a partnership for global stability and the enlightened values both sides hold dear. Our Trans-Atlantic partnership guaranteed peace and prosperity in the 20th century. This strong relationship helped bring about the end of not only the first and second world wars but also the cold war. It allowed for democracy and freedom to extend to countries which for too long were not free. Moreover, it brought about the longest period of prosperity in our shared history. I believe that in the 21st century we cannot rest on our past successes. Instead, we have to move forward and embrace this visionary and challenging agenda. We have to ask ourselves a crucial question: what can we do, as Europeans and Americans working together, to make the world a better, safer and more prosperous place for all? Today, the House Ways and Means Trade Subcommittee will hold a hearing on negotiations of the US-EU trade and investment partnership agreement. We look forward to hearing our colleagues' views on this long awaited agreement. On our side, the developments are clear: the renewal of our special relationship has to be made on the basis of a partnership of equals. The European Parliament has actively pushed for the formation of a High Level Group for Jobs and Growth and will continue to play an active role in promoting and supporting an EU-US Free Trade Agreement. On both sides of the Atlantic, as legislators, we have a crucial role to play in these negotiations. Our determination today will pave the way for a better present and future. Our relationship is already very strong -- we have the biggest economic flows in the world. In parallel, 95% of our trade is 'problem free'. Our combined gross domestic product (GDP) represents more than half of global GDP. We, two partners have the world's strongest bilateral trade and investment partnership, accounting for more than 30% of world trade. Each day, $2.7 billion of goods and services are traded bilaterally, supporting millions of jobs in both our economies. Although our relationship has enormous potential, this is far from being fully realised. Latest estimates show that a comprehensive and ambitious agreement between the EU and the US could bring overall annual gains of 0.4% in GDP for the US and 0.5% for the EU by 2027. Direct investment by the United States and the EU in each other's markets totals more than $3.7 trillion. Europe is by far the largest destination for US outbound investment, with Europe accounting for a roughly equal amount of US outbound investment. We do have some issues on specific areas of legislation and regulation. But we have to think bigger than that. We need to set ourselves a more ambitious challenge. By 2020, we need to implement a genuine transatlantic single market, based on the four freedoms which already exist in Europe - the free movement of goods, services, capital and people. In the aftermath of the financial crisis, we are rethinking market regulation. We should be bold and work towards a harmonized regulatory framework that would make such a transatlantic market a reality. Instead of pre-empting the outcome of the negotiations and building up a sense of fear we should invest in developing a culture of trust. This will facilitate dialogue among all stakeholders -- business, in particular small business, and the Research and Innovation sectors -- as well as providing the framework for long-term legal certainty. Some may say that we are rushing. Others may say that we are too late. I believe that we should be honest with ourselves and answer the obvious questions: are we ready to negotiate as fast as possible, having the easy deals done as they could enter into force early and then get into more complicated negotiations later? Alternatively, do we put all the issues on the table and hope that the negotiations will end any time sooner rather than later? For us, the prospect for negotiations are much better between the US and EU than for those with other countries. Why? Because in this negotiation, there should be little fear of social dumping on either side. For example, one can always argue that car regulations in the US and in the EU aim at achieving more or less the same goals although methods may vary. If it is good enough for us it should be good enough for the US and vice versa. In turn, these imply difficult political decisions and structural changes in the way domestic systems function on both sides. More than ever, the European Union needs to act as a political union, rising above national divisions. Equally, the United States must show that its new multilateral approach can translate into concrete political action being more open. On both sides, the important goal of a partnership agreement is subject to certain conditions, being a challenge for both the American administration and EU leaders. Our relationship goes further than a trade agreement. We need to use the Euro-Atlantic partnership to change the way global governance functions. The United States and Europe can and must take a leadership role in defining the principles and structures of this new multipolar, multilateral world. We all know the difficult challenges we face today: economic insecurity, energy independence, climate change, migration and terrorism. Common action on these fronts is essential. Additionally, in addressing these issues, we need to find ways to bring on board Russia, China, India, Brazil and other new regional powers. We are home to the world's most successful democracies. I firmly believe we need to use this partnership to put in place the right policies and right institutions on a world-wide scale. The US and Europe are similar to an old couple in the family of nations. If they get on well, the rest of the world benefits. Conversely, if they disagree or fall out, the world suffers accordingly. I am convinced that only a strong America with a strong Europe as its partner can guarantee peace and prosperity in this century. The goodwill has long been there. Now, more than ever, we need to translate this into action.

#### US needs permanent monitoring and search capability to prevent nuclear theft in Pakistan

Sanger and Schmitt 14 DAVID E. SANGER and ERIC SCHMITT, NYT, 1-26

The risk that President Obama may be forced to pull all American troops out of Afghanistan by the end of the year has set off concerns inside the American intelligence agencies that they could lose their air bases used for drone strikes against Al Qaeda in Pakistan and for responding to a nuclear crisis in the region. Until now, the debate here and in Kabul about the size and duration of an American-led allied force in Afghanistan after 2014 had focused on that country’s long-term security. But these new concerns also reflect how troop levels in Afghanistan directly affect long-term American security interests in neighboring Pakistan, according to administration, military and intelligence officials. The concern has become serious enough that the Obama administration has organized a team of intelligence, military and policy specialists to devise alternatives to mitigate the damage if a final security deal cannot be struck with the Afghan president, Hamid Karzai, who has declined to enact an agreement that American officials thought was completed last year. If Mr. Obama ultimately withdrew all American troops from Afghanistan, the C.I.A.’s drone bases in the country would have to be closed, according to administration officials, because it could no longer be protected. Their concern is that the nearest alternative bases are too far away for drones to reach the mountainous territory in Pakistan where the remnants of Al Qaeda’s central command are hiding. Those bases would also be too distant to monitor and respond as quickly as American forces can today if there were a crisis in the region, such as missing nuclear material or weapons in Pakistan and India. A senior administration official, asked about the preparations, responded by email on Sunday that as the possibility of a pullout “has grown in Afghanistan, we have been undertaking a methodical review of any U.S. capabilities that may be affected and developing strategies to mitigate impacts.” The official added that the administration was determined to find alternatives, if necessary. “We will be forced to adapt,” the official said, “and while perhaps less than most efficient, the United States will find ways necessary to protect our interests.” The issue is coming to the fore after the Pentagon recently presented Mr. Obama with two options for the end of the year. One option calls for a presence through the end of Mr. Obama’s term of 10,000 American troops who could train Afghan troops, conduct counterterrorism raids and protect the American facilities, including those in eastern Afghanistan where drones and nuclear monitoring are based. Under the other, so-called zero option, no American troops would remain. The United States has said that if it is unable to reach a final security arrangement with Mr. Karzai, it is prepared, reluctantly, to pull out completely, as it did in Iraq in 2011. Mr. Obama has made “no decisions” on troop levels, said Caitlin M. Hayden, the spokeswoman for the National Security Council. “We will be weighing inputs from our military commanders, as well as the intelligence community, our diplomats and development experts, as we make decisions about our-post 2014 presence in Afghanistan,” she said. In his State of the Union address on Tuesday night, however, Mr. Obama is expected to say that by the end of this year the Afghan war will be over — at least for Americans — slightly more than 13 years after it began, making it the longest in American history. Mr. Obama’s hope is to keep 8,000 to 12,000 troops — most of them Americans, some from allies — in Afghanistan after the NATO combat mission ends this year. The resurgence of Al Qaeda’s affiliate in Iraq, combining with insurgents in Syria, has offered a sobering reminder of the consequences of the American decision to withdraw all its troops from Iraq. Mr. Karzai seems to be betting that the damage that a withdrawal would do to American intelligence operations is so great that he may be able to strike a better deal. Even though the zero option has few supporters in the administration, the idea has gained renewed credence with each day that Mr. Karzai delays signing the security accord and poses new demands to the United States. “Karzai has believed for some time that he has this leverage — that we need him and his bases more than he needs us,” said Daniel Markey, a former State Department official and the author of “No Exit From Pakistan,” published last year. Secretary of State John Kerry is to meet Pakistan’s foreign and national security policy adviser, Sartaj Aziz, here on Monday, and counterterrorism operations are to be a major subject of discussion, a senior State Department official said Sunday. Talking with Pakistan about its nuclear program is especially delicate. In recent years the country has accelerated its drive to build small tactical nuclear weapons — similar to what the United States placed in Europe during the Cold War — that could be used to repel an invasion from India. But those weapons are considered more vulnerable to theft or use by a rogue commander, and they are one reason that American intelligence agencies have invested so heavily in monitoring the Pakistani arsenal. A scare in 2009, when the United States feared that nuclear materials or a weapon was missing in Pakistan, led Mr. Obama to order the basing of a permanent monitoring and search capability in the region. But the complexities of bringing those capabilities to an end are forcing the intelligence agencies, which run the covert strikes into Pakistan and monitor nuclear events around the world, to scramble. Their base inside Pakistan was closed after a shooting involving a C.I.A. security contractor, Raymond Davis, and the raid into Pakistani territory that killed Osama bin Laden, both in 2011. Crucial to the surveillance of Bin Laden’s house in Abbottabad was the use of an RQ-170 drone. Pakistani officials talked openly in the weeks after that raid about their fear that the unmanned aircraft was also being used to monitor their nuclear arsenal, now believed to be the fastest growing in the world. The raid, and those drones, came out of American facilities just over the Afghan border. “You hear about the president’s decision of the ‘zero option’ in the context of the future of Afghanistan, but this is really more about Pakistan,” said one former senior intelligence official who has consulted with the Pentagon and intelligence agencies about the problem. “That’s where the biggest problem is.” The C.I.A.’s drone bases in Afghanistan, including one in the eastern part of the country, allow operators to respond quickly to fresh intelligence. The proximity to Pakistan’s tribal areas also allows the Predator drones and their larger, faster cousin, the Reaper, to fly longer missions without having to return to base. “There certainly is an interdependence between the military and the intelligence community in Afghanistan,” one senior administration official said. The Reapers, the newest, largest and most capable of the unmanned armed vehicles, have a range of up to 1,100 miles. That puts Pakistan’s tribal areas within range of some bases the American military has flown from, especially in Kyrgyzstan, where for more than a decade the Pentagon has conducted air operations, include cargo and troop flights, out of a base at Manas. But the United States said last fall that it would pull out of that base in July. Other allied countries are within the Reaper’s range — in the Persian Gulf, for example. But the distances would be too great to carry out drone operations effectively, officials said, and it is very unlikely that any of those nations would approve launching the diplomatically sensitive strikes missions from their soil. “There’s no easy alternative to Afghanistan,” one former senior American counterterrorism official said.

**Global nuclear war**

William Pitt 9, NYT best selling author on international affairs, "Unstable Pakistan Threatens the World," ARAB AMERICAN NEWS, 5--8--09, www.arabamericannews.com/news/index.php?mod=article&cat=commentary&article=2183

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But a suicide bomber in Pakistan rammed a car packed with explosives into a jeep filled with troops today, killing five and wounding as many as 21, including several children who were waiting for a ride to school. Residents of the region where the attack took place are fleeing in terror as gunfire rings out around them, and government forces have been unable to quell the violence. Two regional government officials were beheaded by militants in retaliation for the killing of other militants by government forces. As familiar as this sounds, it did not take place where we have come to expect such terrible events. This, unfortunately, is a whole new ballgame. It is part of another conflict that is brewing, one which puts what is happening in Iraq and Afghanistan in deep shade, and which represents a grave and growing threat to us all.Pakistan is now trembling on the edge of violent chaos, and is doing so with nuclear weapons in its hip pocket,right in the middle of one of the most dangerous neighborhoods in the world.The situation in brief: Pakistan for years has been a nation in turmoil, run by a shaky government supported by a corrupted system, dominated by a blatantly criminal security service, and threatened by a large fundamentalist Islamic population with deep ties to the Taliban in Afghanistan. All this is piled atop an ongoing standoff with neighboring India that has been the center of political gravity in the region for more than half a century. The fact that Pakistan, and India, and Russia, and China all possess nuclear weapons and share the same space means any ongoing or escalating violence over there has the real potential to crack open the very gates of Hellitself. Recently, the Taliban made a military push into the northwest Pakistani region around the Swat Valley. According to a recent Reuters report: The (Pakistani) army deployed troops in Swat in October 2007 and used artillery and gunship helicopters to reassert control. But insecurity mounted after a civilian government came to power last year and tried to reach a negotiated settlement. A peace accord fell apart in May 2008. After that, hundreds — including soldiers, militants and civilians — died in battles. Militants unleashed a reign of terror, killing and beheading politicians, singers, soldiers and opponents. They banned female education and destroyed nearly 200 girls' schools.About 1,200 people were killed since late 2007 and 250,000 to 500,000 fled, leaving the militants in virtual control. Pakistan offered on February 16 to introduce Islamic law in the Swat valley and neighboring areas in a bid to take the steam out of the insurgency. The militants announced an indefinite cease-fire after the army said it was halting operations in the region. President Asif Ali Zardari signed a regulation imposing sharia in the area last month. But the Taliban refused to give up their guns and pushed into Buner and another district adjacent to Swat, intent on spreading their rule. The United States, already embroiled in a war against Taliban forces in Afghanistan, must now face the possibility that Pakistan could collapse under the mounting threat of Taliban forces there. Military and diplomatic advisers to President Obama, uncertain how best to proceed, now face one of the great nightmare scenarios of our time. "Recent militant gains in Pakistan," reported The New York Times on Monday, "have so alarmed the White House that the national security adviser, Gen. James L. Jones, described the situation as 'one of the very most serious problems we face.'" "Security was deteriorating rapidly," reported The Washington Post on Monday, "particularly in the mountains along the Afghan border that harbor al-Qaeda and the Taliban, intelligence chiefs reported, and there were signs that those groups were working with indigenous extremists in Pakistan's populous Punjabi heartland. The Pakistani government was mired in political bickering. The army, still fixated on its historical adversary India, remained ill-equipped and unwilling to throw its full weight into the counterinsurgency fight. But despite the threat the intelligence conveyed, Obama has only limited options for dealing with it. Anti-American feeling in Pakistan is high, and a U.S. combat presence is prohibited. The United States is fighting Pakistan-based extremists by proxy, through an army over which it has little control, in alliance with a government in which it has little confidence." It is believedPakistan is currently in possession of between 60 and 100 nuclear weapons. Because Pakistan's stability is threatened by the wide swath of its population that shares ethnic, cultural and religious connections to the fundamentalist Islamic populace of Afghanistan, fears over what could happen to those nuclear weapons if the Pakistani government collapses are very real. "As the insurgency of the Taliban and Al Qaeda spreads in Pakistan," reported the Times last week, "senior American officials say they are increasingly concerned about new vulnerabilities for Pakistan's nuclear arsenal, including the potential for militants to snatch a weapon in transport or to insert sympathizers into laboratories or fuel-production facilities. In public, the administration has only hinted at those concerns, repeating the formulation that the Bush administration used: that it has faith in the Pakistani Army. But that cooperation, according to officials who would not speak for attribution because of the sensitivity surrounding the exchanges between Washington and Islamabad, has been sharply limited when the subject has turned to the vulnerabilities in the Pakistani nuclear infrastructure." "The prospect of turmoil in Pakistan sends shivers up the spinesof those U.S. officials charged with keeping tabs on foreign nuclear weapons," reported Time Magazine last month. "Pakistan is thought to possess about 100 — the U.S. isn't sure of the total, and may not know where all of them are. Still, if Pakistan collapses, the U.S. military is primed to enter the country and secure as many of those weapons as it can, according to U.S. officials. Pakistani officials insist their personnel safeguards are stringent, but a sleeper cell could cause big trouble, U.S. officials say." In other words, a shaky Pakistan spells trouble for everyone, especially if America loses the footrace to secure those weapons in the event of the worst-case scenario. If Pakistani militants ever succeed in toppling the government, several very dangerous events could happen at once. Nuclear-armed India could be galvanized into military actionof some kind,as could nuclear-armed China or nuclear-armed Russia.If the Pakistani government does fall, and all those Pakistani nukes are not immediately accounted for and secured,the specter (or reality) o**f** loose nukes falling into the hands of terrorist organizations could place the entire world on a collision course with unimaginable disaster.We have all been paying a great deal of attention to Iraq and Afghanistan, and rightly so. The developing situation in Pakistan, however, needs to be placed immediately on the front burner. The Obama administration appears to be gravely serious about addressing the situation. So should we all.

#### There’s a unique risk of al Qaeda reemergence in 2014 due to poor reconstruction

Grare 12-27 December Frederic, CNN, 12-27, http://globalpublicsquare.blogs.cnn.com/category/afghanistan/

In parallel, the temptation in Washington to blame the Europeans for the coalition failures in Afghanistan grew as it became increasingly clear that, despite the official rhetoric, the United States had achieved none of its objectives. If al Qaeda has been weakened, none of its local affiliates has been eradicated and its reemergence remains a possibility in 2014 and beyond – the reality is that the Afghan state that is emerging from the reconstruction effort is in no position to prevent this happening on its own once U.S. forces have withdrawn next year. Ironically the impending exit from Afghanistan has only exacerbated ill feelings on both sides of the Atlantic. In spite of the principle “in together, out together,” Washington decided unilaterally to withdraw, but felt let down when some of its partners decided to anticipate its own departure.

#### Post-drawdown Afghan state collapse leads to nuclear war

Cronin 13 (Audrey Kurth Cronin is Professor of Public Policy at George Mason University and author of How Terrorism Ends and Great Power Politics and the Struggle over Austria. Thinking Long on Afghanistan: Could it be Neutralized? Center for Strategic and International Studies The Washington Quarterly • 36:1 pp. 55\_72 [http://dx.doi.org/10.1080/0163660X.2013.751650](http://dx.doi.org/10.1080/0163660X.2013.751650%22%20%5Ct%20%22_blank))

With ISAF withdrawal inevitable, a sea change is already underway: the question is whether the United States will be ahead of the curve or behind it. Under current circumstances, key actions within Afghanistan by any one state are perceived to have a deleterious effect on the interests of other competing states, so the only feasible solution is to discourage all of them from interfering in a neutralized state. As the United States draws down over the next two years, yielding to regional anarchy would be irresponsible. Allowing neighbors to rely on bilateral measures, jockey for relative position, and pursue conflicting national interests without regard for dangerous regional dynamics will result in a repeat of the pattern that has played out in Afghanistan for the past thirty years\_/except this time the outcome could be not just terrorism but nuclear war.

#### Enhancing US-German cooperation is critical to greater German involvement in Afghanistan reconstruction.

Miko 4 Francis T. Miko, Specialist in International Relations, Foreign Affairs, Defense, and Trade Division, CRS Report for Congress, Received through the CRS Web, Order Code RL32710, 12-27

This could mean, for instance, that Germany might be better positioned to take on a greater role in long-term reconstruction efforts in countries like Afghanistan. Some argue that with a better understanding of the potential complementary roles the two countries can play based on the strengths and advantages of each, new opportunities for enhanced cooperation in the global war on terrorism might be found. The final report of the U.S. 9/11 Commission suggests that long-term success in the war against terrorism demands the use of all elements of national power, including “soft power” instruments such as diplomacy, intelligence, and foreign aid. A key question is to what degree differences are likely to hamper U.S.-German cooperation against terrorism. It could be argued that U.S. and German security in the near and mid-term are likely to be affected far more by what Germany does to cooperate with the United States in terms of domestic security and bilaterally than by Germany’s stance on other international issues.

### 1AC – Solvency

#### Contention 2 is Solvency

#### Article III Trials have already been tried for high profile suspects with no serious ramifications

Bruinius, 3/25 (“Osama bin Laden’s son-in-law ‘uneventful.” That’s a big deal. Yahoo News, Web, Acc 3/25/2014 <http://news.yahoo.com/trial-osama-bin-ladens-son-law-uneventful-why-214237150.html>

A Manhattan jury began to deliberate the fate of Osama bin Laden’s son-in-law Tuesday, ending nearly three weeks of testimony in the most high-profile civilian case brought against a 9/11 terror suspect.¶ Federal prosecutors have argued that Sulaiman Abu Ghaith, the Kuwaiti-born Muslim cleric married to Mr. bin Laden’s oldest daughter, Fatima, since 2008, was the fiery spokesman for Al Qaeda, conspiring and providing material support to kill Americans as a member of the inner circle of the global terror network.¶ The defense, in its closing statements Monday, argued that while the evidence shows Mr. Abu Ghaith did have an association with the organization and its leader, this does not amount to conspiracy to kill Americans or provide material support for terror, the charges for which he faces life in prison.¶ RECOMMENDED: [Quiz: How much do you know about terrorism?](http://www.csmonitor.com/World/Global-Issues/2012/0719/Quiz-How-much-do-you-know-about-terrorism)¶ The trial could carry important implications for how terror suspects held by the US are tried. For a decade, government officials and legal experts have debated whether such terror suspects should be tried in a secret military tribunal or an open civilian court. The Abu Ghaith trail could buttress the arguments of those who say civilian courts can do the job.¶ “It’s a very important case for creating viability for the federal court system with these kinds of cases,” says Karen Greenberg, director of the Center on National Security at Fordham University in New York.¶ “There was always the worry that a trial would become a circus if anybody brought one of these terrorism defendants in,” says Ms. Greenberg, who attended each day of the trial’s proceedings. “But that just wasn’t the case.”¶ “Even though the defendant took the stand …the trial itself was rather uneventful,” she continues. “Most of what happened amounted to procedural litigation, just like other criminal justice trials – in a way, that’s what you want in a case like this.”¶ Critics have argued that the rights and privileges for defendants in civilian courts are not appropriate for terror cases, which should be handled by war-time rather than criminal rules of procedure. And such cases often bring up matters of national security, experts say, which must be kept from public view.¶ A year ago, Republican members of Congress criticized the Obama administration for bringing the case to the federal court system rather than referring it to a military tribunal. And in 2011, the Obama administration did bow to intense pressure from lawmakers and victims families, backtracking on its plan to try the mastermind behind the 9/11 attacks, Khalid Sheikh Mohammed, in a Manhattan federal court.¶ But the Abu Ghaith trial did not end up being a circus, though it did have dramatic moments, observers say.¶ Many believe the case hinges not only on Abu Ghaith’s testimony, but also on dramatic Al Qaeda videos, which prosecutors say were used as propaganda to recruit new fighters. In one of these, Abu Ghaith can be heard preaching as images of the planes fly into the World Trade Center and explode.¶

#### Prosecution in federal courts solves best—multiple reasons, experts agree

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

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

#### 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 Thursday when he called on Congress to remove restrictions on transferring prisoners to the U.S., announced the Defense Department will establish a domestic site for holding military commissions, defended the idea of trying alleged terrorists on U.S. soil, and lifted the ban on transferring Guantánamo prisoners to Yemen, which could greatly reduce the prisoner population in Guantánamo.¶ By announcing these steps, Obama is calling on the public to support his contention that the prison can be closed safely, in order to put pressure on Congress to change its tune, experts said.¶ “It looks like he’s learned some lessons from the last go-round,” said Ken Gude, chief of staff at the Center for American Progress, the think tank founded by former Clinton chief of staff John Podesta. “Starting by designating a site on a military base to hold commissions is a great first step. What is Congress going to say to the Defense Department? That it doesn’t think it can secure a U.S. military base inside the United States from potential attack by terrorists?”

#### Restrictions inevitable---only a question of whether they are deliberate or haphazard

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several years.

**Comparatively, criminal courts better for legitimacy**

**Glazier 09** (David, Professor of Law, Loyola Law School, December 2009, "PLAYING BY THE RULES: COMBATING AL QAEDA WITHIN THE LAW OF WAR" William and Mary Law Review, Lexis)

Preventive detention of al Qaeda personnel should be lawful until the earlier of the time that they no longer pose an individual threat or the WAQT reaches an end. Nevertheless, detention based on a criminal conviction and sentence should be preferable for several reasons. First, "hard-core" individuals might remainwilling to use violenceagainst U.S. interests even after al Qaeda has ceased to exist as a recognizable entity or pose a credible threat**.** The sentence of a detainee convicted during an armed conflict is unaffected by the end of hostilities, n541 so trial for serious offenses can provide more reliable long-term incapacitation than mere preventive detention. Many Americans consider detainee living conditions mandated by the law of war too good for terrorists and strongly prefer actual [\*1045] imprisonment. n542 A guilty verdict also attaches substantial moral culpability to the detainee and may help bring closure to victims of terrorist violence. Conviction following a criminal trial meeting internationally recognized standards of justice should result in the widest possible acceptance of the validity of any detainee's continued detention**.** Criminal trials applying standard American constitutional criminal procedure standards should thus be employed whenever adequate admissible evidence exists to support a good faith conviction. Federal trials not only enjoy thegreatest legitimacy, but they also allow application of the broadest scope of possible charges, including specialized offenses such as providing material support to terrorism and the full range of inchoate offenses recognized under Anglo- American law. n543 Detainees classified as either civilians or unlawful combatants are subject to prosecution under the full scope of U.S. domestic criminal law, whereas those classified as lawful combatants should at least be subject to trial for violations of the War Crimes Act. n544 For those cases involving either offenses committed in captivity that are properly triable under the UCMJ, or any violations of the law of war that fall outside the scope of crimes triable under the War Crimes Act, trial by regularly convened generalcourts-martial should be used**.** n545 Contrary to frequent public assertions by officials who really should know better, n546 American military justice is no longer the "gold standard." A number of democracies have abolished separate military trials entirely, n547 whereas other heirs of the [\*1046] British military justice system, the U.K. and Canada, have had to eliminate the multiple roles still allowed the convening authority under U.S. practice. n548 Nevertheless, the fact that trials under national military justice arespecifically authorized by GenevaIII should effectively mute criticism of detainee trials by actual courts-martial**.** But the fact that U.S. military justice no longer measures up to the standards of other leading democracies highlights the desirability of trials by actual federal courts whenever possible. Although the MCA 2009 authorizes the President to try suspected terrorists before military commissions, nothing in the statute requires him to do so. n549 While their early history shows that military commissions can be used to provide "full and fair" trials, the history of their use in the "war on terror" is irreparably flawed, and they should be abandoned. The Executive Branch has all the authority necessary to try any person over whom statutory jurisdiction can be obtained, either by regular Article III courts or courts-martial.

#### 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 law does not preclude legislative override where necessary. The last-in-time doctrine enables the political branches to supersede international law through the passage of contradictory federal legislation.71 The formal incorporation of Congress through such a process fosters public debate both domestically and internationally, and also provides incentive for the legislature to come off the sideline to place preferred policies on solid legal footing. Regardless of its success or failure, the process of forming legislation and engaging in the political machinations that surround prospective legislation encourages a broader public dialogue as well as a focal \*502 point for discussion of policy issues upon which debate can unfold. The focal points of such debates tend to revolve around legislation that sparks the greatest public concern and reflects positions centered on popular understanding of the “most important” points surrounding the issue. Invitation for public debate in the policy-making process enables dissenting views to voice opinions and air grievances. More broadly, incorporating the public into the debate acts as a functional and productive way to curb the vitriol of dissent–which perceives itself as unduly marginalized and unjustly silenced in affecting the actions and direction of government. Public inclusion in the broader policy judgments of war and armed conflict not only enables public opinion an outlet and opportunity for enhanced focus but also encourages public investment in the policy outcome that is ultimately embraced at the conclusion of the process, even if that outcome 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 Regulations¶ International law provides a substantive framework for many of the types of legal difficulties that occur frequently among nations but are typically under-examined in the domestic legal context. In such circumstances, international law can provide the structural design to move the executive toward consensus building through constraints that guard against the intrinsic temptation of the executive branch to maximize its own power at the potential cost of losing its credibility. Where norm vacuums exist in sorting out the law as a domestic matter, international law often provides a basic substantive framework around which more extensive law can be built domestically.¶ These structural and touchstone characteristics of international law assist the public in assessing, and accepting, final provisions of law carried out in policy. Specifically, incorporating international law in the domestic process (1) promotes international and domestic political dialogue; (2) encourages the executive branch to engage in formal and informal justification of its policies; and (3) incentivizes transparency through public disclosure.¶ The importance of structural limitations surrounding executive action is demonstrable in the discussion surrounding the treatment of prisoners at Guantanamo Bay. Addressing the issue of the standard of treatment of U.S. detainees, President Bush asserted that the U.S. would treat detainees “humanely \*503 and, to the extent appropriate and consistent with military necessity . . . .”72 The power of this statement as a force of legitimation, is compromised by the fact that “it was very vague, it was not effectively operationalized into concrete standards of conduct, and it left all of the hard issues about ‘humane’ and ‘appropriate’ treatment to the discretion of unknown officials.”73

#### The US Court of Appeals decision in Al Maqeleh v. Gates created a legal black hole for detainees in an active theater of war

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 prisoner abuses at Bagram Airfield since late 2001, thrusting the base into the national spotlight as the New York Times and other media outlets began to investigate the abuses at Bagram. 6 In the wake of this increased international scrutiny and the United States Supreme Court's decision opening federal courts to detainee habeas challenges from Guantanamo Bay Naval Base in Boumediene v. Bush, 7 detainees at Bagram filed habeas suits in federal court to seek release. 8 The United States District Court for the District of Columbia ("District Court") consolidated these cases into a single action, Al Maqaleh v. Gates, and held in August 2009 that the Bagram detainees could indeed seek habeas relief in domestic courts. 9 However, the United States Court of Appeals for the District of Columbia ("D.C. Circuit") reversed this decision in May 2010 because the detainees' location in an active "theater of war" precluded their access to federal courts under Boumediene. 10 The D.C. Circuit's reversal revealed a fundamental paradox in the government's approach to the Afghan conflict and the "war on terror." 11 Presidents Obama and Bush have insisted the nation cannot be at "war" with al Qaeda and therefore the protections of the Geneva Conventions and other international law [\*445] do not apply to nor protect captured persons. 12 When the Bagram detainees challenged the legality of their detentions, the D.C. Circuit deferred to the executive's judgment and denied habeas relief because Bagram was in an "active theater of war in a territory under neither the de facto nor the de jure sovereignty of the United States." 13 This paradox puts Bagram detainees in a legal "black hole" 14 where they cannot obtain relief through traditional military justice (like Geneva-governed military commissions) and domestic courts refuse to hear their habeas claims.

# 2AC

## Leadership

#### Heg solves china rise and deters war

Glaser, 11 **–** (John, November 17, 2011, “US Seeks to Maintain Hegemony in Asia-Pacific,” <http://news.antiwar.com/2011/11/17/us-seeks-to-maintain-hegemony-in-asia-pacific/>)

“The U.S. sees a growing threat to its hegemony from China. Therefore, America’s strategic move east is aimed in practical terms at pinning down and containing China and counterbalancing China’s development,” the official Xinhua News Agency said in a commentary.¶ But maintaining U.S. military and economic hegemony in Asia-Pacific has been a rising concern of the national security establishment for some time now. The U.S. currently has key military bases in South Korea, Japan, the Philippines, Thailand, Singapore, Guam, and now Australia.¶ In Singapore last June, former Defense Secretary Robert Gates spoke at an International Institute for Strategic Studies meeting and argued for “sustaining a robust [U.S.] military presence in Asia.”¶ He spoke of overcoming “anti-access and area denial scenarios” that the U.S. military faces in Asia, which threatens America’s access to strategic markets and resources. Predominantly, Gates explained, U.S. military presence in Asia-Pacific is important in “deterring, and if necessary defeating, potential adversaries.”¶ This articulation of U.S. foreign policy is consistent with grand strategy in the past. As was reiterated in the 2002 National Security Strategy, it was of foremost importance that “our forces will be strong enough to dissuade potential adversaries from pursuing a military build-up in hopes of surpassing, or equaling, the power of the United States.”

#### INEVITABLE PURSUIT - Legitimacy’s the fundamental internal link to effective hegemony---power distributions perceived as illegitimate are the most likely causes of great power war

Martha Finnemore 9, professor of political science and international affairs at George Washington University, January 2009, “Legitimacy, Hypocrisy, and the Social Structure of Unipolarity: Why Being a Unipole Isn’t All It’s Cracked Up to Be,” World Politics, Volume 61, Number 1

Legitimacy is, by its nature, a social and relational phenomenon. One’s position or power cannot be legitimate in a vacuum. The concept only has meaning in a particular social context. Actors, even unipoles, cannot create legitimacy unilaterally. Legitimacy can only be given by others. It is conferred either by peers, as when great powers accept or reject the actions of another power, or by those upon whom power is exercised. Reasons to confer legitimacy have varied throughout history. Tradition, blood, and claims of divine right have all provided reasons to confer legitimacy, although in contemporary politics conformity with [End Page 61] international norms and law is more influential in determining which actors and actions will be accepted as legitimate. 9¶ Recognizing the legitimacy of power does not mean these others necessarily like the powerful or their policies, but it implies at least tacit acceptance of the social structure in which power is exercised. One may not like the inequalities of global capitalism but still believe that markets are the only realistic or likely way to organize successful economic growth. One may not like the P5 vetoes of the Security Council but still understand that the United Nations cannot exist without this concession to power asymmetries. We can see the importance of legitimacy by thinking about its absence. Active rejection of social structures and the withdrawal of recognition of their legitimacy create a crisis. In domestic politics, regimes suffering legitimacy crises face resistance, whether passive or active and armed. Internationally, systems suffering legitimacy crises tend to be violent and noncooperative. Post-Reformation Europe might be an example of such a system. Without at least tacit acceptance of power’s legitimacy, the wheels of international social life get derailed. Material force alone remains to impose order, and order creation or maintenance by that means is difficult, even under unipolarity. Successful and stable orders require the grease of some legitimation structure to persist and prosper.10¶ The social and relational character of legitimacy thus strongly colors the nature of any unipolar order and the kinds of orders a unipole can construct. Yes, unipoles can impose their will, but only to an extent. The willingness of others to recognize the legitimacy of a unipole’s actions and defer to its wishes or judgment shapes the character of the order that will emerge. Unipolar power without any underlying legitimacy will have a very particular character. The unipole’s policies will meet with resistance, either active or passive, at every turn. Cooperation will be induced only through material quid pro quo payoffs. Trust will be thin to nonexistent. This is obviously an expensive system to run and few unipoles have tried to do so.

## Solvency

#### Ending the assumption of guilt wakes up the public and causes them to pay attention to the prison industrial complex – backlash of Afghan citizens to US abuses proves it’s possible.

Glenn Greenwald, theguardian.com, September 18, 2012, “Unlike Afghan leaders, Obama fights for power of indefinite military detention” http://www.theguardian.com/commentisfree/2012/sep/18/obama-appeals-ndaa-detention-law

A US official confirmed that the transfer of detainees had paused because of the dispute."

Is that not amazing? On the very same day that the Obama DOJ fights vigorously in US courts for the right to imprison people without charges, the Afghan government fights just as vigorously for basic due process.¶ Remember: the US, we're frequently told, is in Afghanistan to bring democracy to the Afghan people and to teach them about freedom. But the Afghan government is refusing the US demand to imprison people without charges on the ground that such lawless detention violates their conceptions of basic freedom. Maybe Afghanistan should invade the US in order to teach Americans about freedom.¶ This is not the first time this has happened. In 2009, the Obama administration decided that it wanted to target certain Afghan citizens for due process-free assassinations on the ground that the targets to be executed were drug "kingpins". They were to be killed based solely on US accusations, with no trial, just as the Obama administration does with its own citizens. But again, that plan ran into a roadblock: Afghan leaders were horrified by the notion that their citizens would be extrajudicially executed based on unproven suspicions [my emphasis]:¶ "A US military hit list of about 50 suspected drug kingpins is drawing fierce opposition from Afghan officials, who say it could undermine their fragile justice system and trigger a backlash against foreign troops.¶ "The US military and Nato officials have authorized their forces to kill or capture individuals on the list, which was drafted within the past year as part of Nato's new strategy to combat drug operations that finance the Taliban …¶ "General Mohammad Daud Daud, Afghanistan's deputy interior minister for counternarcotics efforts, praised US and British special forces for their help recently in destroying drug labs and stashes of opium. But he said he worried that foreign troops would now act on their own to kill suspected drug lords, based on secret evidence, instead of handing them over for trial.¶ "'They should respect our law, our constitution and our legal codes,' Daud said. 'We have a commitment to arrest these people on our own' …¶ "There is a constitutional problem here. A person is innocent unless proven guilty," [former Afghan interior minister Ali Ahmad Jalali] said. "If you go off to kill or capture them, how do you prove that they are really guilty in terms of legal process?"¶ In other words, the Obama administration has received far more resistance to its due process-free imprisonments and assassinations from Afghans than it has from its own citizens in the US. If only more Americans, including progressives, were willing to point out the most basic truths in response to these Obama power seizures, such as: "If you go off to kill or capture them, how do you prove that they are really guilty in terms of legal process?"¶ Instead, many Americans, particularly in the age of Obama, are content to assume that anyone whom the US government accuses of being a terrorist should, for that reason alone, be assumed to be guilty, and as a result, any punishment the president decides to dole out – indefinite imprisonment, summary execution – is warranted and just; no bothersome, obsolete procedures such as "trials" or "indictments" are necessary.¶ It is that mindset that will ensure that Obama's vigorous fight to preserve the power of indefinite detention will provoke so little objection: among Americans, that is – though obviously not among Afghans, who seem to have an actual understanding of, and appreciation for, the value of due process.

## K

#### This debate isn’t about who has a better idea – this debate is about producing actualizeable politics affirmative should defend the 1AC vs an alternative with a mechanism that can be actualized

#### Key to fairness -- impossible for the aff to win against a world without cycles of violence the aff should get offense against the means used to achieve \_\_\_\_\_\_\_\_\_\_ – they should be held accountable for solvency, resistance and uniqueness concerns

#### Plan focus is key – A) it’s the only stable and predictable point for offense B) its key to fairness because any other framework moots the 1ac.

#### Even if their knowledge production is better, judge the debate by its effects – great ideas that go nowhere are worse

#### Peacefully refusing will not create trials or solve EXTINCTION - we won’t be able to coexist with nature when terrorists destroy the world

#### Permutaiton

#### The plan will not create violence because the action is defensive securitization, not offensive.

Montgomery 6 (Evan, Research Fellow at Center for Strategic and Budgetary Assessments, International Security, Vol. 31, No. 2, pp. 151-185)

Defensive realists also rely on two particular variables—the offense-defense balance and offense-defense differentiation—to explain when states can and will reveal their motives.10 Specifically, when defense is distinguishable from and more effective than offense, benign states can adopt military postures that provide for their security without threatening others. Combining both variables yields six ideal-type conditions, yet only one—offense-defense differentiation and a neutral offense-defense balance—clearly allows security seekers to communicate their motives without increasing their vulnerability. Offense- defense differentiation is a necessary condition for reassurance without vulnerability, as benign and greedy states will each be able to choose military postures that visibly reflect their preferences.

**No prior questions**

David **Owen** Professor of Social & Political Philosophy and Deputy Director, Centre for Philosophy and Value, University of Southhampton, “Re-Orientating International Relations: On Pragmatism, Pluralism and Practical Reasoning” MILLENIUM: JOURNAL OF INTERNATIONAL STUDIES, 20**02**, p. 655-7.

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for **words like “epistemology” and “ontology” often signals this philosophical turn’**, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. **The first danger with** the philosophical turn **is that it** has a**n inbuilt** tendency to prioritise **issues of** ontology **and epistemology** over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while **the explanatory and/or interpretive power of a theoretical account is** not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is **by no means** clear that it is, in contrast, wholly **dependent on these philosophical commitments**. Thus, for example, one need not be sympathetic to rational choice theoryto recognise **that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons** in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that**, for a certain class of problems,** rational choice theory may provide the best account available **to us.** In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology **and epistemology** promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, **this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity.** The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology **and epistemology** stimulates the idea that there can only be one theoretical approach which gets things right, namely, the **theoretical** approach that gets it**s ontology and epistemology** right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### **Evaluate consequences**

Isaac 2 (Jeffrey Isaac, Professor of political science at Indiana University, Ph.D Yale, Director of Center for Study of Democracy and Public Life, Spring 2002, “End, Means, and Politics,” Dissent Magazinze, vol. 49, no. 2)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness

#### Transforming institutional structures is always a work in progress. Using the norms of relationality and criticisms of instrumentalization – are critical to building a new politics that subverts the logic of security

Burke 7, University of New South Wales, (Anthony, BORDERLANDS VOLUME 6 NUMBER 2)

44. But can this balance be struck so easily? Is the lure of violence and control, the temptation to preserve unjust and exploitative structures through coercive means, too great? The necessity then is not merely to encourage relationship and reciprocity, but **to continually critique and transform the institutional structures**, technologies and powers of mediation that shape and condition encounters, and that limit and channel the possibilities for life—especially when they do so violently and coercively. Patriotism, identity, social role and the desire for acquisition are such powerful technologies of being that the conditions under which it is made possible to exist and relate must always be subject to critique. A politics that can enable a more creative and ethical exercise of individual and social agency must be combined with one that ethically transforms the overarching structures of power and political enclosure, corporate, administrative and social, within which life takes form. If security is a 'political double-bind' that works at simultaneously individualising and totalising levels, it must be undone and transformed at both. 45. This essay has sought to think and negotiate two fundamental paradoxes in modern inter-national life. While the nation-state—as the normative and legal core of the global system and an entrenched form of social organisation and governance—is not going to disappear, and may well constitute a source of hope for oppressed and marginalised communities like the East Timorese or the Palestinians, it is fundamentally janus-faced and ambivalent (Nimni, 2003: 120). In the face of globalisation and proliferating transnational problems such as refugees, terrorism, economic crisis or climate change its function as an exclusive container for identity and moral community is becoming ever more ethically suspect and practically ineffective. It is becoming just as clear that the dual basis of modern security—the indivisibly sovereign body-politic and the 'rational' exercise of coercion and violence against its others—fails to eliminate threats but tends, in practice, to constitute and worsen them; to wager national identity and survival on the permanence of insecurity and violence. 46. Such is the contemporary global politics of being. It is neither natural, inevitable nor bearable, especially for those who are its daily victims. Against this I have sought to illuminate a path beyond our current politics of security, by combining a series of theoretical arguments that advance the need to challenge and rethink the ways we are made into subjects, to reject images of being based on separation and mastery, and to privilege relations of reciprocity and responsibility over instrumental forms of life that reduce humans to things and politics to an endless struggle for hierarchy and control. In short, I have sought to outline a set of normative, ethical and political intuitions that can assist in building a new politics—if not exhaustively prescribe its forms. I am suggesting transformation at both the local and trans-national levels: transformations in the meaning and practice of 'statecraft' and strategic policy, in narratives and practices of identity, and in the way trans-national movements of 'democratic citizens' organise and act to support and negotiate the diversity of identities at stake in the path to peace. Ultimately, I hope that such a model of trans-national responsibility, ethics and agency will work as a profound subversion of the modern architectonic of security that might—and this is no paradox—in turn hold out a promise of genuine and sustainable security in which no one is sacrificed, and in which there are no permanent victims. 47. It is important to restate that such an ethics does not mean a totalising rejection of the state, but it does demand its transformation.

#### Alt fails - abandoning security impossible

Kavka ’87 (Gregory S., Prof – UC Irvine, Moral Paradoxes of Nuclear Deterrence, p. 86-87)

The lesson of the kidney case seems to be that one can, at most, actively impose substantially lesser risks or harms on other innocent people to protect oneself. Can this lesson be applied to national as well as individual self-defense? One might contend that it cannot be, appealing for support to the hallowed ought-implies-can principle. According to that principle agents, including nations, can only be obligated to act in ways they are capable of acting. But, it may be suggested, nations are **literally incapable** of refraining from taking steps believed to be necessary for national defense, even if these impose horrible risks or harms on outside innocents. For any government that failed to undertake the requisite defensive actions (e.g., any government that abandoned nuclear deterrence) would be quickly ousted and replaced by a government willing to under take them.

Securitization norms are only effective if there’s an audience to accept it.

Hartkorn 9 Siris, Lunds University Department of Political Science - Peace and Conflict Studies, In search for strength, A case study of regime (in)security in Yemen

#### Securitization is therefore the next level after politicization and it legitimizes breaking of the normal rules (Buzan, Wæver and Wilde 1998, pp. 23-25). The question then arises if anyone can securitize any issue and of course that is not the case. The securitization of an issue is only successful when the audience accepts it and thereby legitimizes the extraordinary measures, which the securitization demands (Buzan, Wæver and Wilde 1998, pp. 25). The acceptance from the audience does not necessarily have to rely on a free choice, it can be forced as well, but without any sign of acceptance among the audience, there will not be securitization but only a securitizing move (Buzan, Wæver and Wilde 1998, pp. 25).

#### Violence is at its lowest level in history ---best statistical studies prove

John M. Owen 11, Professor of Politics at University of Virginia PhD from Harvard "DON’T DISCOUNT HEGEMONY" Feb 11 www.cato-unbound.org/2011/02/11/john-owen/dont-discount-hegemony/

Andrew Mack and his colleagues at the Human Security Report Project are to be congratulated. Not only do they present a study with a striking conclusion, driven by data, free of theoretical or ideological bias, but they also do something quite unfashionable: they bear good news. Social scientists really are not supposed to do that. Our job is, if not to be Malthusians, then at least to point out disturbing trends, looming catastrophes, and the imbecility and mendacity of policy makers. And then it is to say why, if people listen to us, things will get better. We do this as if our careers depended upon it, and perhaps they do; for if all is going to be well, what need then for us?¶ Our colleagues at Simon Fraser University are brave indeed. That may sound like a setup, but it is not. I shall challenge neither the data nor the general conclusion that violent conflict around the world has been decreasing in fits and starts since the Second World War. When it comes to violent conflict among and within countries, **things have been getting better**. (The trends have not been linear—Figure 1.1 actually shows that the frequency of interstate wars peaked in the 1980s—but the 65-year movement is clear.) Instead I shall accept that Mack et al. are correct on the macro-trends, and focus on their explanations they advance for these remarkable trends. With apologies to any readers of this forum who recoil from academic debates, this might get mildly theoretical and even more mildly methodological.¶ Concerning international wars, one version of the “nuclear-peace” theory is not in fact laid to rest by the data. It is certainly true that nuclear-armed states have been involved in many wars. They have even been attacked (think of Israel), which falsifies the simple claim of “assured destruction”—that any nuclear country A will deter any kind of attack by any country B because B fears a retaliatory nuclear strike from A.¶ But the most important “nuclear-peace” claim has been about mutually assured destruction, which obtains between two robustly nuclear-armed states. The claim is that (1) rational states having second-strike capabilities—enough deliverable nuclear weaponry to survive a nuclear first strike by an enemy—will have an overwhelming incentive not to attack one another; and (2) we can safely assume that nuclear-armed states are rational. It follows that states with a second-strike capability will not fight one another.¶ Their colossal atomic arsenals neither kept the United States at peace with North Vietnam during the Cold War nor the Soviet Union at peace with Afghanistan. But the argument remains strong that those arsenals did help keep the United States and Soviet Union at peace with each other. Why non-nuclear states are not deterred from fighting nuclear states is an important and open question. But in a time when calls to ban the Bomb are being heard from more and more quarters, we must be clear about precisely what the broad trends toward peace can and cannot tell us. They may tell us nothing about why we have had no World War III, and little about the wisdom of banning the Bomb now.¶ Regarding the **downward trend in international war**, Professor Mack is friendlier to more palatable theories such as the “**democratic peace**” (democracies do not fight one another, and the proportion of democracies has increased, hence less war); the interdependence or “**commercial peace**” (states with extensive economic ties find it irrational to fight one another, and interdependence has increased, hence less war); and the notion that people around the world are more anti-war than their forebears were. Concerning the downward trend in civil wars, he favors theories of economic growth (where commerce is enriching enough people, violence is less appealing—a logic similar to that of the “commercial peace” thesis that applies among nations) and the end of the Cold War (which end reduced superpower support for rival rebel factions in so many Third-World countries).¶ These are all **plausible mechanisms for peace**. What is more, none of them excludes any other; all could be working toward the same end. That would be somewhat puzzling, however. Is the world just lucky these days? How is it that an array of peace-inducing factors happens to be working coincidentally in our time, when such a magical array was absent in the past? The answer may be that one or more of these mechanisms reinforces some of the others, or perhaps some of them are mutually reinforcing. Some scholars, for example, have been focusing on whether economic growth might support democracy and vice versa, and whether both might support international cooperation, including to end civil wars.¶ We would still need to explain how this charmed circle of causes got started, however. And here let me raise another factor, perhaps even less appealing than the “nuclear peace” thesis, at least outside of the United States. That factor is what international relations scholars call hegemony—specifically **American hegemony**.¶ A theory that many regard as discredited, but that refuses to go away, is called hegemonic stability theory. The theory emerged in the 1970s in the realm of international political economy. It asserts that **for the global economy to remain open**—for countries to keep barriers to trade and investment low—**one powerful country must take the lead**. Depending on the theorist we consult, “taking the lead” entails paying for global public goods (keeping the sea lanes open, providing liquidity to the international economy), coercion (threatening to raise trade barriers or withdraw military protection from countries that cheat on the rules), or both. The theory is skeptical that international cooperation in economic matters can emerge or endure absent a hegemon. The distastefulness of such claims is self-evident: they imply that it is good for everyone the world over if one country has more wealth and power than others. More precisely, they imply that it has been good for the world that the United States has been so predominant.¶ There is no obvious reason why hegemonic stability theory could not apply to other areas of international cooperation, including in security affairs, human rights, international law, peacekeeping (UN or otherwise), and so on. What I want to suggest here—suggest, not test—is that **American hegemony might just be a deep cause of the steady decline of political deaths in the world**.¶ How could that be? After all, the report states that United States is the third most war-prone country since 1945. Many of the deaths depicted in Figure 10.4 were in wars that involved the United States (the Vietnam War being the leading one). Notwithstanding politicians’ claims to the contrary, a candid look at U.S. foreign policy reveals that the country is as ruthlessly self-interested as any other great power in history.¶ The answer is that U.S. hegemony might just be a **deeper cause of the proximate causes** outlined by Professor Mack. Consider economic growth and openness to foreign trade and investment, which (so say some theories) **render violence irrational**. American power and policies may be responsible for these in two related ways. First, at least since the 1940s Washington has **prodded other countries to embrace the market capitalism** that entails economic openness and produces **sustainable economic growth**. The United States promotes capitalism for selfish reasons, of course: its own domestic system depends upon growth, which in turn depends upon the efficiency gains from economic interaction with foreign countries, and the more the better. During the Cold War most of its allies accepted some degree of market-driven growth.¶ Second, the U.S.-led western victory in the Cold War damaged the credibility of alternative paths to development—communism and import-substituting industrialization being the two leading ones—and **left market capitalism the best model**. The end of the Cold War also involved an end to the billions of rubles in Soviet material support for regimes that tried to make these alternative models work. (It also, as Professor Mack notes, **eliminated the superpowers’ incentives to feed civil violence** in the Third World.) What we call **globalization** is **caused in part by the emergence of the United States as the global hegemon**.¶ The same case can be made, with somewhat more difficulty, concerning the **spread of democracy**. Washington has supported democracy only under certain conditions—the chief one being the absence of a popular anti-American movement in the target state—but those conditions have become much more widespread following the collapse of communism. Thus in the 1980s the Reagan administration—the most anti-communist government America ever had—began to dump America’s old dictator friends, starting in the Philippines. Today Islamists tend to be anti-American, and so the Obama administration is skittish about democracy in Egypt and other authoritarian Muslim countries. But general U.S. material and moral support for liberal democracy remains strong.

#### The law is indeterminate and is no means perfect, but the alternative is worse—we should recognize the constraints of the law and use that to construct better legal strategies

Margulies and Metcalf 11, Clinical Professor of Law

(“Terrorizing Academia” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf, Joseph Margulies is a Clinical Professor, Northwestern University School of Law. He was counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren. He now is counsel of record for Abu Zubaydah, for whose torture (termed harsh interrogation by some) Bush Administration officials John Yoo and Jay Bybee wrote authorizing legal opinions. Earlier versions of this paper were presented at workshops at the American Bar Foundation and the 2010 Law and Society Association Conference in Chicago. Margulies expresses his thanks in particular to Sid Tarrow, AzizHuq, BaherAzmy, Hadi Nicholas Deeb, Beth Mertz, Bonnie Honig, and Vicki Jackson.Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. She has written numerous amicus briefs in support of petitioners in suits against the government arising out of counterterrorism policies, including in Munaf v. Geren and Boumediene v. Bush. Metcalf expresses her thanks to Muneer Ahmad, Stella Burch Elias, Margot Mendelson, Jean Koh Peters, and Judith Resnik for their feedback, as well as to co-teachers Jonathan Freiman, RamziKassem, Harold HongjuKoh and Michael Wishnie, whose dedication to clients, students and justice continues to inspire., Journal of Legal Education, Volume 60, Number 3 (February 2011))

V. Conclusions and Implications

From the vantage of 2010, it appears the interventionist position—our position—has failed. As we see it, it failed because it was premised upon a legalistic view of rights that simply cannot be squared with the reality of the American political experience. Yet the interventionist stance holds an undeniable attraction. Of all the positions advanced since 9/11, it holds out the best promise of preserving the pluralist ideals of a liberal democracy. The challenge going forward, therefore, is to re-imagine the interventionist intellectual endeavor. To retain relevance, we must translate the lessons of the social sciences into the language of the law, which likely requires that we knock law from its lofty perch. As a beginning, scholarship should be more attuned to the limitations of the judiciary, and mindful of the complicated tendency of narratives to generate backlash and counter-narratives. But there is another tendency we must resist, and that is the impulse to nihilism—to throw up our hands in despair, with the lament that nothing works and repression is inevitable. Just how to integrate the political and the ideal is, of course, a problem that is at least as old as legal realism itself and one we do not purport to solve in this essay.154 Still, we are heartened by the creative work undertaken in other arenas, ranging from poverty law to gay rights, that explores how, done properly, lawyering (and even litigation) can make real differences in the lives of marginalized people.155 We hope that the next decade of reflections on the policies undertaken in the name of national security will follow their lead in probing not just what the law should be, but how it functions and whom it serves. We close this essay on a personal note. Margulies was counsel of record in Rasul v. Bush. He and his colleagues at the Center for Constitutional Rights began work on that litigation in November, 2001, not long after Alan Dershowitz first started to press his proposal for “torture warrants.” By the time this essay appears, Margulies’ uninterrupted involvement in these issues will have lasted more than nine years, with no sign of ending anytime soon. He vividly recalls the state of play when Rasul was filed in February, 2002, and when one of his co-counsel received a death threat at his home in New Orleans. With considerable regret, Margulies now looks back on Rasul as a failure. But in 2002, there was no other choice. The Bush Administration had created a prison beyond the law, Congress was a stony monolith, and the parents and family of lost prisoners pleaded that their loved ones not be abandoned. At that moment, there was no choice but to litigate. He would do it again tomorrow, were the circumstances the same. His mistake, for which he takes sole responsibility, was to believe that law, in an intensely legalistic society, was enough.

#### Complexity theory’s generality de-motivates the public. Context specific modes of analysis – like the aff – are critical to altering public consciousness

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Well-intentioned efforts to develop unifying theoretical foundations for environmental regulatory reform are destined to fail. Holling, Gunderson, and Ludwig's straightforward confessions n421 provide rare insight into the human fascination with discovering a solution to all unanswered questions. Perhaps only great minds have the capacity to challenge the world's disparate and often inexplicable phenomena with "unifying" theories. Unfortunately, this approach leads to the "pitfall of overstretched generality" n422 and necessary retreat to humble positions honoring human limitations. Retreat in this instance need not signal defeat. The goal to improve the human condition through the design of a just environmental regulatory system is actually furthered by such noble, but ill-fated, efforts. We benefit even in the absence of a unifying theory that explains phenomena in the environmental regulatory system. Our responsibility now is to direct our attention to incremental, context-specific strategies designed to usher in a renaissance of environmental law. Contextual strategies have the potential to induce changes in public consciousness and promote [\*632] regulatory reform. A renaissance in environmental law and policy will begin with seemingly insignificant, small victories motivated by fundamental democratic principles. Complexity theory served a useful purpose, but it is time to stop diverting time and energy to the dream of a "unifying" theory. Complexity theory will never succeed where all others have failed--attempting to reduce norms to facts, rules to generalizations, and justifications to explanations. n423 In the context of the sociolegal system, complexity theory may survive the charge of "substance-based" reductionism, but "conceptual reductionism?" That's another story.

**Alt sets the bar too high – even if our predictions aren’t perfect, they’re good enough to act upon**

Cowen 4 - Professor of Economics – George Mason University

Tyler, “The Epistemic Problem Does Not Refute Consequentialism”, 11-2, http://www.gmu.edu/jbc/Tyler/Epistemic2.pdf, p. 14-15

The epistemic critique relies heavily on a complete lack of information about initial circumstances. This is not a plausible general assumption, although it may sometimes be true. The critique may give the impression of relying more heavily on a more plausible assumption, namely a high variance for the probability distribution of our estimates concerning the future. But simply increasing the level of variance or uncertainty does not add much force to the epistemic argument. To see this more clearly, consider another case of a high upfront benefit. Assume that the United States has been hit with a bioterror attack and one million children have contracted smallpox. We also have two new experimental remedies, both of which offer some chance of curing smallpox and restoring the children to perfect health. If we know for sure which remedy works, obviously we should apply that remedy. But imagine now that we are uncertain as to which remedy works. The uncertainty is so extreme that each remedy may cure somewhere between three hundred thousand and six hundred thousand children. Nonetheless we have a slight idea that one remedy is better than the other. That is, one remedy is slightly more likely to cure more children, with no other apparent offsetting negative effects or considerations. Despite the greater uncertainty, we still have the intuition that we should try to save as many children as possible. We should apply the remedy that is more likely to cure more children. We do not say: “We are now so uncertain about what will happen. We should pursue some goal other than trying to cure as many children as possible.” Nor would we cite greater uncertainty about longer-run events as an argument against curing the children. We have a definite good in the present (more cured children), balanced against a radical remixing of the future on both sides of the equation. The definite upfront good still stands firm. Alternatively, let us assume that our broader future suddenly became less predictable (perhaps genetic engineering is invented, which creates new and difficult-to-forecast possibilities). That still would not diminish the force of our reason for saving more children. The variance of forecast becomes larger on both sides of the equation – whether we save the children or not – and the value of the upfront lives remains. A higher variance of forecast might increase the required size of the upfront benefit (to overcome the Principle of Roughness), but it would not refute the relevance of consequences more generally. We could increase the uncertainty more, but consequentialism still will not appear counterintuitive. The remedies, rather than curing somewhere in the range of three to six hundred thousand children, might cure in the broader range of zero to all one million of the children. By all classical statistical standards, this new cure scenario involves more uncertainty than the previous case, such as by having a higher variance of possible outcomes. Yet this higher uncertainty lends little support for the view that curing the children becomes less important. We still have an imperative to apply the remedy that appears best, and is expected the cure the greater number of children. This example may appear excessively simple, but it points our attention to the non-generality of the epistemic critique. The critique appears strongest only when we have absolutely no idea about the future; this is a special rather than a general case. Simply boosting the degree of background generic uncertainty should not stop us from pursuing large upfront benefits of obvious importance.

Complexity theory causes worse decision-making—means we don’t examine proximate cause

Clemens 1 – Professor of Political Science @ Boston

Walter, Europe’s New Security Challenges, p. 64-66

Economic security. What if the main threat to Europe is thought to be eco-nomic stagnation? Complexity theory cannot tell Europeans whether they should continue to give high priority to social welfare or do more to enhance industrial competitiveness. If welfare gets priority, local policies may be best suited to the task. But if Europeans want to strengthen their industry, com-plexity theory cannot say whether more or less integration is optimal. Some planners will say that a more integrated Europe could better tap disparate strengths, bolster critical industries, and promote their exports to foreign mar-kets. But the merits of a Japanese-style industrial and trade policy are unclear. Honda succeeded in making world-class autos against the advice of Japan's central policy planners. The United States, with far less industrial or trade pol-icy than Japan or Europe, set the pace in high-technology research and devel-opment in the 1990s.¶ Whose economic fitness should have priority? Should any European country subsidize its farmers? Switzerland does so to keep them in business and to uphold the country's self-reliance. But these subsidies increase the cost of food for most Swiss. Subsidies also distort trade within Europe and glob-ally, overriding complementary strengths. What is good for some Swiss may be bad for Europe as a whole; it may also be bad for most Swiss—unless a global crisis limits food imports.¶ There is an apparent contradiction in Kauffman's writing about the rela-tive merits of individualism and unity. Kauffman's analysis of "patches" sug-gests that reducing tensions between parts may promote the health of the¶ ¶ whole. But Kauffman's more general thesis is that diversity begets more diversity and growth—in economics and in other spheres.16¶ Contrary to the patch thesis, a whole whose parts are all pointing in the same direction could be weaker than one whose parts are not integrated. In peacetime, economic integration based on complementary specialization and trade can be beneficial, but in times of crisis the units with local self-suffi-ciency could have better survival prospects. Even in peace, local self-suffi-ciency can be a plus. The interdependent Soviet city concentrated on produc-ing tractors or TV monitors had less capacity for innovation and growth than a European city such as London with many products. London, of course, has long been linked to the entire world, but its diversity generates strength in times of stability and of crisis.¶ A resolution to the problem may be that Kauffman's patch analysis deals with what is present; his broader thesis concerns what could be created. A whole with few tensions is likely to be less creative than one alive with thesis and antithesis—compare, for example, Japan with the United States. But cre-ativity requires a blend of order and freedom. The Soviet Union was even more heterogeneous than the United States, but the Soviet system failed to tap the potential of diversity; instead it repressed diversity through top-down directives. The fitness of the United States is more at risk from the other extreme—centrifugal cultural chaos.¶ ¶ Cultural security. What if the most salient threat to Europe is thought to be cul-tural—the homogenizing forces of McDonald's and MTV? Cultural diversity may hold some inherent advantage akin to biodiversity or genetic diversity in humans.17 Surely there are special forms of wisdom, beauty, and other values in the many cultures at risk from homogenization. The pressures for McWorld expediency may push Europeans to march in lockstep toward American or EuroEnglish, thus eroding other languages.18 But many Catalans, Scots, and other minorities believe that their cultural autonomy will be better served by pan-European institutions than by the nation-state in which they are a minority.¶ Still, if Europeans are more closely wedded to their local cultures than to European culture, if most prefer a local language that few others know (Catalan, Danish, Finnish), then European unity may be a distant dream. Many analysts see the common tongue and shared cultural aspirations of most Americans as a source of U.S. fitness. If a growing percentage of Americans regards English as its second language, U.S. fitness will probably suffer.¶ On these topics, complexity theory can articulate neither an appropriate strategy nor tactics. It cannot say whether fitness will be better served pro-moting cultural diversity or by cultivating a common tongue and culture.¶ Multiple conflicting priorities. We could ignore minority interests and assert that the basic criterion for policy should be the well-being of the largest¶ ¶ number of Europeans. Even then, complexity theory cannot say what policy is appropriate except to avoid the poles of rigid order and of chaos. The capac¬ity to deal with complexity may lie between these poles—but where? Is overall fitness best promoted at the local, regional, pan-European, transatlantic, or global level? Should Western Europeans—for their own good or the good of Europe—admit Eastern Europeans to the EU? For policy guidance, should Europeans look to the governments of their distinct homelands, to bureaucrats in Brussels, or to bankers in Frankfurt? For defense, should Europeans culti-vate the Western European Union or NATO or the OSCE? Should they inte-grate national aerospace companies to compete with a few merged U.S. giants or try to maintain national vitality? For example, should British Aerospace align closer with Airbus Industrie or with Lockheed or go it alone? For envi-ronmental fitness, should Europeans follow the lead of their governments, IGOs, or transnational Green movements? Should Europeans try to perfect the EU, a transatlantic union, or the United Nations? Complexity theory does not say whose fitness should be promoted or how.¶ Some tasks can probably be done more effectively at one level than another. We can speculate that an integrating Europe will be better able to cope with terrorism and environmental threats than a continent of self-cen¬tered homelands influenced by the logic of collective action. Europe's indus¬trial competitiveness—for example, in defense and aerospace—probably requires large markets and limits on the number of producers.¶ But more unity is not necessarily better for all forms of fitness. Border con-trols may be stricter when state sovereignty is kept strong. (If common borders prevail, the costs of lax controls are shared like a collective good.) On many issues it is difficult even to speculate: Would Germany and Greece be better able to generate jobs by unilateral actions or by cooperation in an integrating Europe? Time frames are important: Long-term gains might require short- and medium-term sacrifices; social scientists may think of long-term horizons, but politicians focus on the next elections and CEOs on quarterly balance sheets.¶ Realism and neorealism also give little guidance on how to juggle multi-ple priorities. An arch realpolitiker might say that power maximization should be the criterion—either for single states or for Europe as a superstate. But this answer is almost as general as the recommendation to pursue fitness. And it may not be politically feasible, because many goals—welfare, cultural, envi-ronmental—compete with power maximization.¶ ¶ The Power to Predict¶ Complexity theory has little ability to predict the future of European security. Kauffman tells us that self-organization generates "order for free." But if this quality is available to all humans, we must wonder: Why are large hunks of humanity entombed in rigid order while others suffer from virtual anarchy?¶ In retrospect we see that certain regions have lost fitness while others have gained. Chinese, Islamic, Aztec, Incan, and other civilizations have declined relative to the West since 1500. Centers of fitness and creativity have been concentrated in Western Europe and North America, joined in the last century by Japan and, intermittently, by Russia.¶ Chinese and Islamic civilizations suffered from too much order or too much chaos. Since all humans have approximately the same genetic endow-ment, differential fitness must be partly explained by culture and luck. Geography is important but rarely decisive. (North America is rich in resources, Japan poor; Europe is between America and Japan; the Soviet Union, however, had a wider resource base even than the United States.) The key to the riddle lies elsewhere. Culture has been the matrix. The distinct cul-tures of the West and of Japan have permitted and encouraged autonomous economic and other activities; in the West they also encouraged democracy— probably the least-bad form of government.19¶ Looking back we divine that freedom to innovate helped Westerners become more fit. But in 1500 the content of an optimal fitness policy was not clear. The Ottomans, for example, took Constantinople in 1453 and besieged the disorganized Europeans for more than two centuries before they were driven back from Vienna in 1683; the undemocratic Russian Empire was a major actor in nineteenth-century politics; the totalitarian dictatorships of Mussolini, Stalin, Hitler, and Japan looked quite formidable for many years. Only in retrospect do we know that authoritarians started and lost most major wars of the twentieth century.20¶ Complexity theory expects punctuated equilibrium but cannot predict whether Europe will surge toward greater unity or remain at a given level for long periods. Complexity theory implies that freedom to innovate is a vital ingredient in fitness. But complexity theory cannot anticipate whether a uni-fied Europe will nurture or throttle innovation.¶ ¶ COMPLEXITY PLUS OTHER THEORIES¶ Though deficient in some respects, complexity theory may gain from and enrich other theories relevant to European security. More than two centuries ago Immanuel Kant forecast that the synergy of representative government, a spirit of trade, the growth of law and international organization, and hospital-ity to diverse cultures would generate peace. Without using the term, Kant portrayed peace as an emergent property. Kant's prognosis has spurred a lib-eral peace theory with much prescriptive and predictive power.21 But the sam-ple size for the theory and its relatively brief historical basis may be too nar-row to form solid inferences. The theory may omit other variables that could explain the outcome, such as simple satisfaction with the status quo. Finally, the theory does not tell status quo countries how to cope with aggressive revisionists except to push them toward democracy – seldom an option for urgent problems.¶ The model of complex interdependence developed by Robert Keohane and Joseph Nye overlaps with complexity theory and Kantian synergy. Interdependence, these authors say, amounts to mutual vulnerability. But when states are linked by complex interdependence, the threat of force is almost excluded from their interactions. Such states have many issues on their shared agenda, but none is so important that it overwhelms all others and justifies a resort to arms. These states do not just have summit meetings; their societies interact on many levels – governmental, economic, scientific and cultural. US ties with Canada and Australia approach this model; so do those linking Western Europeans. Washington and Moscow have long been dependent on the other’s strategic restraint; in other realms, however, Russia depends far more on the US than vice versa.

#### Multiple condo is a voting issue—aff can’t read their best offense because the neg can just kick their argument and can cross-apply offense, kills competitive equity—they can advocate contradictory positions, kills education and advocacy skills—one condo solves their offense—if they win condo is good we should get to advocate perms

## Court CP

### 2AC ReDo

Interpretation: Counterplans that use a different agent than the plan are illegitimate.

1. Doesn’t cause critical thinking outside of debate- personal decisions aren’t made by finding a different agent than ourselves

2. no literature compares it- discussions are only valuable if they are informed with real information

3. Promotes abdication of responsibility – they teach debaters to wish someone else would act instead of how to persuade someone to act

4. Forces us to debate ourselves- any of our solvency deficits can be applied to the aff as reasons why the executive will ignore the plan

Voter for fairness and education

Voter for fairness and education

#### Permutation do both

#### Net benefit is Court Creation DA – The courts cannot give jurisdiction – ony congress can

Schuck, Lecturer at Yale Law School, ‘4

[Peter, “Terrorism Cases Demand New Hybrid Courts”, LA Times, 7-9-2004,

<http://articles.latimes.com/2004/jul/09/opinion/oe-schuck9>, RSR]

The Supreme Court in its recent rulings has given U.S. citizens who are captives in the war on terror, as well as noncitizen Guantanamo detainees, the right to hearings. Now comes the hard part: what kinds of hearings, in what courts, by what process?¶ The court wisely refrained from answering these questions in detail. Arguments on the specifics had not been presented to the court, and the limited guidance that the justices did offer was more intuitive than analytical. Wisdom aside, this sort of self-restraint is constitutionally required: Article 1, Section 8, Clause 14 gives Congress -- not the judicial or the executive branch -- the authority to make rules for the armed forces, including the initial design of hearings for the prisoners.

#### Also shields the link to politics

Perine, 6/12/2008 (Katherine – staff at CQ politics, Congress unlikely to try to counter Supreme Court detainee ruling, CQ Politics, p. http://www.cqpolitics.com/wmspage.cfm?docID=news-000002896528&cpage=2)

Thursday’s decision, from a Supreme Court dominated by Republican appointees, gives Democrats further cover against GOP sniping. “This is something that the court has decided, and very often the court gives political cover to Congress,” said Ross K. Baker, a Rutgers University political science professor. “You can simply point to a Supreme Court decision and say, ‘The devil made me do it.’ ”

#### Doesn’t solve the aff

#### The plan is another chapter in the story of Congressional stripping of judicial rulings increasing the rights of detainees

#### A) Overturned the first two Supreme Court cases that attempted to limit indefinite detention

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The first challenges to the detention program came in the form of Rasul and Hamdi, both decisions handed down on June 28, 2004, by the Supreme Court.93 Sixteen detainees—two British, two Australian, and twelve Kuwaiti citizens—brought the Rasul action, seeking a writ of habeas corpus in federal court.94 In the 6 to 3 Rasul decision, the Supreme Court held Guant´anamo prisoners could challenge the lawfulness of their detention in federal court because Cuba’s “ultimate sovereignty” over the base did not preclude access.95 On the other hand, in Hamdi, a plurality of the Court found the government could detain an American citizen as an enemy combatant pursuant to the AUMF, but had to offer him the opportunity to challenge the factual basis for his detention with the benefit of a fair hearing before a neutral tribunal and access to counsel.96 Justice O’Connor’s plurality opinion warned “a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens.”97 O’Connor thought the war against the Taliban closely resembled wars of the past, and the president’s traditional war powers likely did not apply in the war against al Qaeda or in conflicts against other non-state actors.98 Furthermore, as critical as the Government’s interest may have been in addressing immediate threats to national security, “history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.”99 O’Connor concluded enemy combatant proceedings should be carefully tailored to alleviate “their uncommon potential to burden the Executive at a time of ongoing military conflict.”100 Therefore, the Court attempted to strike a balance in Rasul and Hamdi: although the president could detain unlawful combatants, the administration needed to provide basic due process for captured persons. In response to the Rasul and Hamdi decisions, the government responded twofold to limit due process for Guant´anamo detainees: first with the Combatant Status Review Tribunal (“CSRT”)101 and then with the Detainee Treatment Act of 2005 (“DTA”).102 A mere nine days after the Rasul and Hamdi decisions, allowed Guant´anamo detainees to contest their designations as enemy combatants. 103 The CSRT allowed the detainees to consult a “personal representative” (a military officer “with the appropriate security clearance”) to review “any reasonably available information” possessed by the Department of Defense regarding the detainee’s classification.104 After a preparation and consultation period of thirty days, the Department of Defense would convene a tribunal, composed of three neutral commissioned military officers, to review the detainee’s status.105 However, the rules of evidence did not apply and the tribunal allowed admission of hearsay.106 The detainee could only call “reasonably available” witnesses and the memo created a rebuttable presumption in favor of the government’s evidence.107 Therefore, although the executive branch complied with the Court’s mandate for a neutral tribunal before which detainees could challenge their classifications as “enemy combatants,” the limited due process protections led to criticism that the CSRTs were not in place to discover the truth about the detainees, but rather to prolong their detentions.108 Anticipating more judicial challenges from Guant´anamo detainees due to the shortcomings of the CSRT process, Congress finally entered the fray on December 30, 2005, by passing the Detainee Treatment Act.109 The Act amended 28 U.S.C § 2241, the federal habeas statute, and stripped federal courts of their jurisdiction to hear habeas petitions filed by detainees.110 Couched in language about prohibiting “cruel, inhuman, or degrading treatment” of persons in the United States’ custody,111 the Act codified Wolfowitz’s CSRT memo112 and provided, “no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guant´anamo Bay, Cuba.”113

#### Stripping guts solvency and destroys judicial legitimacy

Andrew D. Martin 1, Prof of Political Science at Washington University. 2001. Statuatory Battles and Constitutional Wars: Congress and the Supreme Court

But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even irrevocably harm its reputation, credibility, and legitimacy. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as scott v. sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other members of government did of course, unsuccessfully at least in terms of the ruling’s impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the court, the effects of which the justices may feel in the not-so-distant future.

#### Even if the courts act, procedural and jurisdictional hurdles prove implementation won’t be successful – individual-rights claims are also more important than separation-of-powers in foreign policy

Nzelibe 6—Assistant Professor of Law, Northwestern University Law School [Jide Nzelibe, A Positive Theory of the War-Powers Constitution, Iowa Law Review, March, 2006, 91 Iowa L. Rev. 993]

B. Why the Courts Are Unlikely to Tip the Balance of War powers in Congress's Favor Congress has, for prudent political reasons, often declined to use its formal powers to constrain the President in war-powers issues. But even if members of Congress seem to face significant domestic-audience constraints in participating in war-powers issues, one might ask why the courts do not intervene to level the policy-making playing field. Indeed, one oft-cited antidote to the perceived "imperial" actions of the President in the war-powers realm is judicial intervention. n291 Judicial intervention, it is commonly argued, will tip the institutional balance of powers in Congress's favor and encourage it to exercise its war-powers prerogative. n292 There are two compelling reasons why courts have resisted, and will likely continue to resist, intervening in war-powers disputes. First, due to the political calculus that many members of Congress face, the courts usually assume that it is unlikely that there is a genuine confrontation between the two political branches on war-powers disputes. Second, the courts are probably reluctant to intervene in inter-branch disputes in a sphere where they might have low institutional authoritativeness. On the first point, the courts have been generally reluctant to protect legislative prerogatives in war powers when members of Congress have failed to do so. Indeed, many members of Congress often have political incentives not to confront the President on war-powers controversies. As such, many of the disputes regarding the division of **war power**s that come before the courts routinely involve what are essentially intra-legislative disputes, where a segment of Congress (often a minority) seems to disagree with the majority's decision. In most such cases, a majority of Congress has either explicitly accepted the President's national-security agenda or has implicitly acquiesced to the agenda without taking formal legislative action. In other words, in those cases there has not been a genuine constitutional impasse that might appropriately trigger court scrutiny. Courts, probably anticipating the political spoils at stake, decline to participate in a "political pass the [\*1060] blame" game by insisting that the courts will not do what Congress refuses to do for itself. n293 Where members of Congress are unwilling to constrain executive-branch authority through legislation, courts understandably recognize that judicial intervention might prove to be meaningless. First, where there is insufficient congressional support for a court decision that favors congressional intervention in war powers, members of Congress will very likely lack the political will to implement such a decision. In other words, members of Congress who fear that greater congressional intervention will expose them to electoral risks will have every incentive to sidestep a judicial ruling that awards them more powers in national-security affairs. Second, courts will often lack the opportunity to effectively monitor the successful implementation of a bright-line judicial rule regarding the allocation of war powers. Judicial monitoring will often be difficult because there are so many procedural and jurisdictional hurdles to bringing a legal challenge to the allocation of war powers. Since most citizens will lack standing to bring the lawsuit, most such lawsuits will probably have to come from members of Congress. Even if disaffected members of Congress are able to overcome significant standing obstacles of their own, n294 they are still likely to face a slew of other procedural obstacles, including ripeness, n295 mootness, n296 and the political-question doctrine. n297 Furthermore, the risk of non-compliance with judicial decisions also implicates the institutional legitimacy of the courts to adjudicate on war-powers claims. As some commentators have observed, courts seem to be especially wary about intervening in separation-of-powers issues in foreign affairs, because the popular legitimacy that underlies judicial resolution of domestic constitutional disputes does not tend to extend to foreign-affairs [\*1061] disputes. n298 In other words, when issues involve the adjudication of individual-rights claims or domestic separation-of-powers disputes, courts can often tap into the popular acceptance of their role in resolving such disputes. n299 In disputes regarding the allocation of war powers, however, it is unlikely that the judicial branch will be able to draw on the popular underpinnings of its legitimacy to secure political-branch compliance with its decisions. This is because there does not seem to be much of a public appetite for increased judicial involvement in foreign-affairs disputes. n300 Moreover, unlike in the domestic realm where the courts play a key legitimating function in separation-of-powers disputes, the political branches have very little incentive to embrace a more active judicial role in disputes over the allocation of war powers. n301 In any event, even if greater judicial intervention in war-powers disputes were politically feasible, it is not clear that such intervention would compel Congress to play a more active role on war-powers issues. In other words, members of Congress are not likely to embrace a war-powers role that has significant electoral risks simply because such a role has been judicially sanctioned. Indeed, not only will members of Congress lack an incentive to comply with such judicial decisions, but judicial monitoring of legislative compliance will often prove very difficult to carry out. At most, if compelled to take on a more active role by a judicial decision when it is not in their political interest to do so, members of Congress will likely substitute legislative rubberstamping for silent acquiescence as the preferred response to the President's use-of-force initiatives. In sum, if greater political accountability for use-of-force decisions is the end goal, there is little evidence that judicially prompted congressional intervention will change the current war-powers landscape.

# 1AR

Special ops are critical to smaller footprints and more contained violence.

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JSOC has been tasked with leading the way in the new iteration of the Global War on Terror, and every request it sends for increased operating capabilities is a reflection of its attempt to enact popular policies that ideally lead to smaller footprints and more contained violence. Indeed, the wide-ranging Operational Preparation of the Environment actions JSOC undertakes are to avoid becoming embroiled in the larger, more serious conflicts that non-JSOC military-led counterterrorism campaigns might require. The desire not to be sent in blind or become embroiled in another Iraq or Afghanistan is one of the crucial factors behind JSOC’s global strategic moves. Indeed, rather than militating for more war, a serious concern might be that JSOC would frustrate or resist the executive’s desires for another “big war.” General McChrystal, for example, has made critical remarks about the Iraq war’s effect on the overall war on terror and also negatively assessed American preparation and assessment of the environment in Afghanistan. If anything, JSOC could become an obstacle to wider military action. A powerful and more influential JSOC would be better able to resist executive desires for expanding U.S. military presence in some theaters beyond their preferred levels. This would be a civil-military problem in its own right, but it is not automatically safe to assume that JSOC wants to use its status to militate for high-tempo combat campaigns everywhere. Because JSOC is not a massed force, it indeed cannot take on the burden of conducting all-out wars. Some commentators are concerned that an increased reliance on an elite force for waging covert or small wars necessarily means the US will lose its ability to conduct large, nation-building type wars.