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**Contention 1 – Extraditions**

**Scenario 1 – Terrorism**

***Initially note – the President will never choose to use detention authority for domestic captures – but keeping the option available ensures confusion and the misperception that it is a realistic option***

Robert M. **Chesney**, Nonresident Senior Fellow, Governance Studies @ Brookings and Benjamin Wittes, Senior Fellow, Governance Studies @ Brookings, “Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Testimony To Congress, May 22nd 20**13**, http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes (BJN)

In our view, **Congress should put this issue to rest at last by clarifying that neither the AUMF nor the NDAA** FY’12 **should be read to confer detention authority over persons captured in the** U**nited** S**tates** (regardless of citizenship). **The benefits of keeping the option open in theory are slim, while the offsetting costs are substantial. We say the benefits are slim chiefly because the executive branch has** ***so little interest in using detention authority domestically.*** **The Bush administration had little appetite for** military detention in **such cases** all along, **preferring in almost all instances involving al Qaeda suspects in the United States to stick with the civilian criminal justice system**. **The experiment of military detention with Padilla and al-Marri did little to encourage a different course, given the legal uncertainty** the cases exposed. **That uncertainty has, in turn, created** ***an enormous disincentive for any administration***—of whatever political stripe—**to attempt this sort of detention again. A de facto policy thus developed in favor of using the criminal justice apparatus whenever humanly possible for terrorist suspects apprehended in the United States. *And whenever humanly possible turned out to mean always***; **while military detention may remain potentially available as a theoretical matter**, ***it is not functionally available for the simple reasons that*** (i) **executive branch lawyers are not adequately confident that the Supreme Court would affirm its legality and** (ii) in any event, **they have a viable and far-more-reliable alternative in the criminal justice apparatus.** In September 2010, **the Obama administration made this unstated policy official, announcing that it would use the criminal justice system exclusively both for domestic captures and for citizens captured anywhere in the world**. In a speech at the Harvard Law School, then-White House official **John Brennan stated: it is the firm position of the Obama Administration that suspected terrorists arrested inside the United States will—in keeping with long-standing tradition—be processed through our Article III courts. As they should be.** Our military does not patrol our streets or enforce our laws—nor should it. . . . Similarly, when it comes to U.S. citizens involved in terrorist-related activity, whether they are captured overseas or at home, we will prosecute them in our criminal justice system. **To put the matter simply**, **military detention for citizens or for terrorist suspects captured domestically, was tried** a handful of times early in the Bush administration; **the strategy was abandoned;** **it has been many years since there was any appetite in the executive branch**—under the control of either party—**for trying it again; and it has** for some time ***been the stated policy of the executive branch not to attempt it under any circumstances. We do not expect any administration of either party to break blithely with the consensus that has developed absent some dramatically changed circumstance***. **The litigation risk is simply too great, and the criminal justice system’s performance has been too strong to warrant assuming this risk. But ironically, even as this *strong executive norm*** **against military detention of domestic captures** and citizens **has developed, a *fierce commitment to this type of detention has also developed*** in some quarters. ***The fact that the norm against detention is not currently written into law has helped fuel this commitment***, **enabling the persistent** ***perception that there is greater policy latitude than functionally exists.*** The result is that **every time a major terrorist suspect has been taken into custody** domestically in recent years—**the arrest of Djokhar Tsarnaev is only the most recent example**—***the country explodes in the exact same unproductive and divisive political debate.*** **To caricature it only slightly, one side argues that the suspect should have been held in military custody, instead of being processed through the criminal justice system; it decries the reading of the suspect his Miranda rights; and it criticizes the administration, more generally, for a supposed return to a pre-9/11 law enforcement paradigm. The other side, meanwhile, defends the civilian justice system, while also demanding the closure of Guantánamo and attacking the performance of military commissions for good measure. This kabuki dance of a debate is not merely a matter of rhetoric**. Separate and apart from the U.S. citizen detention language we described above, ***in the course of producing the 2012 NDAA Congress also explored the option of mandating military detention for suspects*** (citizen or not) taken into custody within the United States. The administration resisted these efforts, and the resulting language in conference committee ultimately stopped far short of requiring military detention. The administration further softened the effects of that language, moreover, through its subsequent interpretation of the new language. All of ***which brings us back to our point: there is a big gulf between the real, functional state of play*** (**in which the criminal justice system provides the exclusive means of processing terrorist suspects captured within the United States**) **and the** ***perception*** in some quarters **that military detention remains a viable option, perhaps even a norm, for domestic and citizen terrorist captures. *That gulf has real costs***. **Most obviously, it generates significant political friction every time a major terrorist arrest happens in the United States**. It increases the apparent political polarization of an area that should be above politics—and in which the counterterrorism reality is far less polarized than the inter-branch relations over the issue would suggest. ***And it reinforces the perception that domestic military detention remains a viable option***, ***needlessly alarming those who fear it*** and needlessly misleading those who wish to see it. **The resulting confusion fuels sharp debate over something that is no longer meaningfully an option in functional terms.** That debate even spills over at times into litigation, most notably—and disruptively—in the context of the Hedges case in New York (in which journalists and activists persuaded a district judge to enjoin enforcement of detention authority, despite the utter implausibility of the claim that they might be subjected to it).

***This perception results in real consequences - The threat that the US is willing to violate article 6 of the US-EU Extradition treaty vis-à-vis the NDAA guarantees terror suspects won’t be extradited to the United States – undermining the ability of the US to bring them to justice***

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

**Article 6** most **closely parallels U.S. Constitutional Amendment V in providing for the right to a fair trial and due process of law for the criminally charged**. n42 Article 6 includes inter alia the right to a fair trial [\*574] by an independent and impartial tribunal, the presumption of innocence, that legal assistance will be provided in the event the accused cannot afford to defend himself, and the right to examine the evidence against him. n43 Modern extradition cases demonstrate that the American view on capital punishment, and whether such punishment amounts to inhuman and degrading (or cruel and unusual) punishment, differs greatly from the European view so much so that it is a barrier to extradition. **To date, Article 6 and whether or not American courts provide a fair trial has not proven to be a barrier to extradition because European courts are persuaded that American courts offer more than adequate due process for those on trial**. n44 ***Military tribunals however, present a different concern.*** **Tribunals pose a threat to extradition in that terror suspects may claim Article 6 violations, arguing that a trial by military tribunal deprives them of due process and denies them a right to a fair trial.** D. Do Military Commissions Violate Article 6? **The past decade highlighted the difficulties of achieving success within the military commission process and cast a dark shadow of doubt** [\*575] **as to their efficacy**. n45 **The examples of al-Fawwaz and the other terror suspects currently fighting extradition demonstrate that the European community expects assurances that the** U**nited** S**tates will try these suspects in regularly constituted courts and not by military commissions.** n46 **The past ten years have produced *no evidence*** **that the European community will now be more comfortable with trial by military commission than it was before**. n47 It is safe to assume that **if the United States wants to extradite these terror suspects, it will** ***have to provide*** the same **assurances, namely a promise of trial by regularly constituted courts** with no prospect of the death penalty ***and avoidance of detention by the military***. Military commissions have a long history in the United States, reemerging at the forefront of the political landscape after the September 11th terrorist attacks when President George W. Bush deemed terror suspects enemy combatants to be tried by military tribunals instead of in civilian courts. n48 The prosecution of these cases was soon mired in protracted legal challenges, and in 2006, President Bush signed the Military Commissions Act (MCA) to authorize and establish procedures for military tribunals in response to the Supreme Court decision in Hamdan v. Rumsfeld. n49 Following Hamdan, pro-military tribunal advocates fought hard to pass legislation limiting terror suspects solely to military tribunals, arguing inter alia that federal law enforcement and criminal procedures were inadequate to garner much needed intelligence from detained suspects and that the American public would not stand for terrorist trials in civilian courts that are essentially in their own backyards. n50 Those opposed to limiting terror suspects to military [\*576] tribunals encompassed a wide variety of groups including law enforcement officials, human rights advocates, academics, and legal professionals. n51 Law enforcement argued primarily that such a limitation would burden the United States unnecessarily in the fight against terrorism; a fight that should use all available assets, including the FBI and intelligence agencies. n52 Human rights advocates, academics, and legal professionals argued that in fighting the war on terror, it was critical the United States abide by its long-standing commitments to due process of law and to international humanitarian law, such as the Geneva Conventions. n53 In 2009, President Barack Obama signed into law a revised version of the MCA intended to address concerns that the 2006 MCA ran afoul of the Geneva Conventions and the U.S. Constitution. n54 However, even with these revisions, the 2009 MCA failed to bring the military tribunal system into compliance with international human rights law. n55 For instance, the 2009 MCA did nothing to revise the controversial Section 7 of the 2006 MCA, which means Section 7 continues to strip the federal court system of its capacity to review petitions for writs of habeas corpus. n56 Unsatisfied that the 2006 and 2009 MCAs went far enough, and despite the U.S. Supreme Court's ruling in Hamdan, some conservative members of Congress continued to fight to limit trials of terror suspects exclusively to military tribunals, thereby cutting the judiciary entirely out of the terror suspect trial loop. n57 Meanwhile, the federal courts spent the [\*577] past decade successfully trying and convicting hundreds of suspects, n58 perhaps demonstrating the irrational fear of the pro-military tribunal advocates that those who have their day in court may not be convicted. In addition to these convictions, the Supreme Court granted certiorari to four Guantanamo cases, subsequently finding in favor of the detainees, n59 thereby demonstrating the full range of the federal court system. On December 31, 2011, these failed attempts to limit trials to military tribunals finally met measured success when President Obama signed the NDAA into law. n60 **Subtitle D of the NDAA, entitled "Counterterrorism" includes long-sought-after provisions designed to limit terror suspect trials to military tribunals, effectively by-passing the federal court system**. n61 **In particular, Sections 1021 and 1022 address the authority and action required by the U.S. military to detain terror suspects indefinitely pending disposition under the law of war.** n62 Even with the success of passage, **these provisions were modified enough from their original hard-lined proposals to result in merely codifying existing practices under the 2001 Authorization for Use of Military Force** (AUMF) and the 2006 and 2009 MCAs. n63 As this Note reveals, **these modifications are crucial because they allow the United *States to continue to provide assurances necessary to secure the extradition of known terrorists***. Viewed another way, **this codification greatly hampers both federal law enforcement and the Obama Administration in their respective roles in the fight against terrorism**, ***making it more difficult for the United States to treat terror suspects on a case-by-case basis.*** **In order to bring some of the most sought-after terrorists to justice, the** U**nited** S**tates must continue to provide and uphold** ***assurances*** **to her European allies that the terror suspects being extradited to the United States will not be subjected to inhuman or degrading treatment and will be given a fair and impartial trial.** **Without these assurances, the U.K. and Europe will not likely** [\*578] **extradite the currently detained high-value terror suspects to the United States.** 1. The Procedural Shortcomings Amount to a Lack of Due Process, and the 2009 MCA Falls Short in Correcting Deficiencies As mentioned earlier, the Obama Administration sought many changes to the highly criticized 2006 MCA. But even with the 2009 modifications, the use of military tribunals under the MCA and AUMF still fails to meet international human rights standards for a fair and impartial trial, most notably because of the lack of independence and impartiality. n64 The importance of a tribunal being independent and [\*579] impartial is such that it "requires that judges be both de facto impartial and independent as well as appear to be impartial and independent." n65 Two more glaring deficiencies in military tribunals include the lack of the presumption of innocence and denial of access to the writ of habeas corpus. In Combatant Status Review Tribunals (CSRT), which are precursors to a detainee's trial by military commission, instead of a presumption of innocence favoring the defendant, there is a rebuttable presumption in favor of the government's evidence. n66 CSRTs provide a rebuttable presumption that the government's evidence submitted to determine whether the detainee is an enemy combatant is genuine and accurate. n67 To date, detained persons held in the United States have relied on habeas corpus to show that their detention is not in accord with due process, n68 but this important check still does not exist for detainees held under U.S. control outside of the United States. n69 Other procedural deficiencies with the military commission process include deprivation of the right to counsel (particularly in the beginning stages), the right to be informed (with most restrictions to information surrounding classified information, with classification being determined by the prosecution), the right to be present (the prosecution may exclude the detainee from his own hearing for reasons of national security, as determined by the prosecution), the requirement for equality (detainees are usually denied requests to call witnesses and in 89% "of the tribunals, no evidence whatsoever was presented on the detainee's behalf"), and the admittance of coerced evidence. n70 The 2009 MCA made slight improvements to some of these deficiencies by stating that "the defense shall have a reasonable opportunity to obtain witnesses and evidence," and by entirely barring the "use of statements obtained through cruel, inhuman or degrading treatment." n71 However, the new witness and evidence requirements of the 2009 MCA fall short of meeting the requirements of equal opportunity among the parties. In addition, the bar to improperly obtained statements [\*580] does not apply to former CSRTs. n72 Ensuring due process, access to counsel, and access to all proceedings and all evidence are critical guarantees that must be provided to offer a fair trial. n73 As it stands, military commissions, despite some marked improvements, are not likely to meet the standards necessary to establish the right to a fair trial as set forth in Article 6 of the Convention. 2. European Court Insight on Article 6 Compliance What are the expectations of the European Court relative to Article 6 compliance? In twenty-two years of jurisprudence handed down from the European Court since Soering, the court never found an expulsion, until 2012, that violated Article 6 despite the claim's repeated assertion. n74 As Soering established, the European Court demands a showing of a "real risk of a flagrant denial of justice" to invoke a claim under Article 6. n75 This means that the claimant must meet a higher burden under Article 6 than Article 3; but in "assessing whether this test has been met, the Court considers that the same standard and burden of proof should apply as in Article 3 expulsion cases." n76 The court stated that the Article 6 test is a "stringent test of unfairness" and that a "flagrant denial of justice goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State itself." n77 In defining flagrant denial of justice, the court noted that it is: Synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein. Although it has not yet been required to define the term in more precise terms, the Court has nonetheless indicated that certain forms of unfairness could amount to a flagrant denial of justice. These have included: conviction in absentia with no possibility subsequently to obtain a fresh determination of the merits of the charge; [\*581] a trial which is summary in nature and conducted with a total disregard for the rights of the defence; detention without any access to an independent and impartial tribunal to have the legality of the detention reviewed; and deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country. n78 On January 17, 2012 in Othman (Abu Qatada), the court determined that evidence obtained by torture would amount to a flagrant denial of justice invoking Article 6. n79 The court went further to state that similar considerations may apply in a case that presented evidence obtained by other forms of ill-treatment that fall short of torture as well. n80 In addition to the guidelines for Article 6 that Othman now provides, the European Court previously made clear that the guarantees of a right to a fair trial apply to all types of judicial proceedings, even those deemed administrative. n81 Moreover, the court has stated that special proceedings, such as military court-martial, may "be subject to Article 6 scrutiny because of the serious criminal nature of the crime with which the defendant had been accused." n82 Thus, it is safe to assume that military tribunals, as well as their administrative precursors, CSRTs, are very likely to amount to a flagrant denial of justice under Article 6. III. Analysis of How the NDAA Affects Extradition **Understanding how the European Court views Article 6 compliance and the current perceptions of the U.S. military tribunal system, one can surmise that the European Court is** ***likely to block extradition*** if a suspect will face trials in a military tribunal. Current cases demonstrate how [\*582] **terror suspects** have **successfully employed Article 3 to deter extradition**, and **forecast the future use of Article 6**. n83 These cases indicate that **it would be wise for the United States to** continue to **grant assurances that terror suspects will not be at risk of** the death penalty, **military detention, or trial by military commission**. **How the U.S. government interprets and applies the language of the NDAA, specifically Sections 1021 and 1022**, n84 ***will prove pivotal*** **in the fight to win extradition of these known terror suspects and ultimately bring them to justice.** A. Recent Extradition Cases Recent cases of terror suspects invoking Article 3 to fight extradition to the United States exemplify how the European Court may respond to Article 6 claims. These cases provide insight into how the United States should proceed with regard to statutory interpretation of the NDAA, particularly when requesting extradition of terror suspects. 1. Al-Fawwaz, Bary, and Eidarous Have Successfully Thwarted Extradition Since 1998 Using Article 3 Three terror suspects, who were arrested in London in the late 1990s, have successfully fought extradition for over a decade using Article 3. Khalid al-Fawwaz, alleged not only to be an al-Qaeda member, but also one of Osama bin Laden's key lieutenants, n85 was indicted for the 1998 U.S. embassy bombings in East Africa which killed 224 people and injured more than 4,500. n86 Adel Abdel Bary and Ibrahim Eidarous, both alleged members of Egyptian Islamic Jihad, operated alongside al-Fawwaz in the London al-Qaeda cell, n87 and were subsequently arrested "on an extradition warrant following a request from the United States" in 1999 for their involvement in the bombings. n88 For several years, al-Fawwaz, Bary, and Eidarous successfully fought extradition through a [\*583] series of appeals within the U.K. n89 In 2008, the U.K. Secretary of State issued warrants for their extradition to the United States, finding that the U.S. government met the prima facie case and provided reliable assurances. n90 Thus, the men would not be at "risk of the death penalty, indefinite detention or trial by a military commission." n91 Eidarous was diagnosed with advanced cancer, put on house-arrest, and subsequently died in 2008. n92 In 2009, al-Fawwaz and Bary began their final appeal against the 2008 findings of the Secretary of State, with the British High Court of Justice finding no breach of Article 3, and al-Fawwaz's claim for breach of Article 6 unsubstantiated. n93 They soon appealed to the European Court and the case is still pending. n94 [\*584] **If the United States does not uphold** the original **assurances provided in 2004, the European Court could deny extradition of** these **long-sought-after terror suspects, destroying an otherwise perfect record of honoring the assurances the United States has provided to the U.K. and her European allies**. **The implications would disrupt the ultimate goal of bringing wanted terrorists to justice*. It is imperative*** **that the** U**nited** S**tates maintain the assurances** as provided in 2004 **and *demonstrate*** **that the new statutory language of the NDAA does not impede the President from dealing with each terror suspect case on an individual basis** **and as necessary to continue to effectively fight the war on terrorism.**

***The threat is not hyperbole – the EU has already denied extradition on the basis of indefinite detention***

Peter **Margulies** of the Roger Williams School of Law, “Peter Margulies on the NDAA and Extradition”, December 20**11**, http://www.lawfareblog.com/2011/12/peter-margulies-on-the-ndaa-and-extradition/ (BJN)

Even more seriously, **making military prosecution the rule** and Article III courts the exception **would ramp up anti-extradition efforts in Europe and elsewhere**. **Extradition** to face criminal charges in Article III courts **already faces severe obstacles, as the United Kingdom case of Abu Hamza demonstrates. Abu Hamza,** whom the US has charged with recruiting terrorists for Al Qaeda, has **argued that the United States would impose a prison term disproportionate to his crimes** and that confinement in a supermax facility would violate the European Convention on Human Rights’ bar on inhuman and degrading treatment. In Babar Ahmad v. UK, the European Court of Human Rights held that Abu Hamza and others had raised “serious questions” on the legality of their extradition. Even after significant procedural reforms and the recent installation of the widely respected General Mark Martins as head of the prosecution office at the commissions, **transnational tribunals will** probably **view military commissions as offering fewer procedural rights and stiffer sentences than Article III courts. This will make extradition an even tougher sell in those tribunals,** whose jurisprudence has developed as a push-back against Bush administration policies such as coercive interrogation implemented in the immediate aftermath of September 11. **Particular countries, such as Germany, go even further, expressly barring extradition when the defendant faces trial in an “extraordinary” court or for a “purely military” offense.** **Arguments that military commission jurisdiction fell within either or both of these bars may take years to resolve.** Moreover, **advocates for these detainees and others have mobilized substantial political support in Britain against extradition.** Opposing extradition is already the cause du jour for some European celebrities. **Political opposition will strengthen** if military commissions became the rule, rather than the exception.In some cases, **American investigators may not even be able to get their foot in the door of the cell of a detainee held abroad** when military commissions are the norm. As Assistant Attorney General Monaco suggested at last week’s ABA conference, **the specter of military commissions may shut off access to suspected terrorists, and may hinder real-time information- sharing by our allies. Prompt detection and investigation of terrorist plots *could be the NDAA’s unintended first casualty.***

***Countries would literally have to let these terror suspects go***

David S. **Kris**, Assistant Attorney General for National Security at the U.S. Department of Justice

from March 2009 to March 2011, “Law Enforcement as a Counterterrorism Tool”, 6/15/20**11** http://jnslp.com//wp-content/uploads/2011/06/01\_David-Kris.pdf (BJN)

***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.**

***This will make Europe a safe-haven for terrorist operations***

Daniel J. **Sharfstein**, Associate, Strumwasser & Woocher, Santa Monica, California, “European Courts, American Rights: Extradition and Prison Conditions”, 67 Brooklyn L. Rev. 719, Spring 20**02** (BJN)

A. The Increasing Importance of Extradition **The *"vast majority"*** **of people suspected of involvement in the September 11 terrorist attacks have been arrested or are being sought overseas**. n13 Although the United States has [\*725] actively bypassed formal extradition with secret, informal procedures in numerous cases of suspected terrorists, n14 **the war on terrorism shows *unequivocally*** **what has become increasingly true over the past two decades**: that ***extradition is an essential tool for prosecutors in the United States***. **The rising tide of people and goods across borders and the ascendance of global technologies** such as the Internet **have blurred the line between domestic and international criminal enforcement. From terrorism to drug trafficking** to price fixing, multinational conspiracies have taken root in the fertile soil of an ever-smaller world. n15 For technology-driven crimes such as telemarketing fraud, **international boundaries often separate** [\*726] **perpetrators and victims**. n16 Even when criminals live in the same country as their victims, more **fugitives from justice have managed to flee across national borders.** n17 Since the Department of Justice's Office of International Affairs was created in 1979 to facilitate and rationalize extradition procedures, n18 the number of extradition requests made and received by the United States has skyrocketed. n19 Well before September 11, **American policy makers had emphasized the rising threat of international crime and the *crucial role* of extradition in fighting it.** n20 In October 1995, President Bill **Clinton issued Presidential Decision Directive 42**, ordering U.S. government agencies to intensify international crime-fighting efforts, and in a speech to the United Nations General Assembly, **he urged "every country" to endorse "a declaration which would first include a no sanctuary pledge, so that we could say together to organized criminals, terrorists, drug traffickers and smugglers, you have nowhere to** [\*727] **run and nowhere to hide**." n21 In an October 1997 memorandum to all U.S. Attorneys, Attorney General Janet Reno praised federal prosecutors for "going the extra mile" to obtain **the** international extradition of fugitives. "Your **need to obtain the international extradition of fugitives [is] more important than ever**," she wrote. n22 Six months later, a report developed by the Departments of Justice, State, and Treasury outlined a comprehensive strategy to fight international crime. In a chapter entitled "Denying Safe Haven to International Criminals," the report described how the Departments of State and Justice were aggressively renegotiating extradition treaties to "seek[] the broadest possible extradition obligations . . . ." n23

***European prosecution will be the root cause***

David B. **Rivkin**, Jr., Associate Fellow of The Nixon Center and Lee A. Casey, partner in the Washington, DC office of Baker & Hostetler LLP., “A House Divided? War, Extradition, and the Atlantic Alliance, PART II”, The National Interest, October 9th 20**02**, http://nationalinterest.org/article/a-house-divided-war-extradition-and-the-atlantic-alliance-part-ii-2137?page=1 (BJN)

Indeed, one can argue that, given the nature of this conflict, law enforcement operations have become just another version of low-intensity warfare. **The current** idiosyncratic **European attitudes do more than just impede the U.S. ability to successfully prosecute this conflict; they pose** ***a major threat to European security*** as well. **To the extent that European attitudes towards extradition remain unchanged** while the U.S. continues to uproot various terrorist support structures around the world, ***Europe might well become a magnet for Al-Qaeda***, the Taliban **and its terrorist allies**. **This is, in fact, a perennial feature of warfare**; when a success by one side on a particular front causes the enemy to shift his resources to the less well defended areas. Unrealistic **European law-enforcement attitudes may well make European capitals more attractive to terrorists than the warrens of Mogadishu or the slums of Sudan**. In fact, **recent investigations by German and Dutch authorities have already uncovered dozens of Al-Qaeda cells and demonstrated that many of the September 11 operatives spent considerable amounts of time in Europe.**

***A European safe-haven allows terrorists to target the United States***

Julia C. **Whitehair**, Master of Arts in Security Studies graduate thesis, “A PLACE TO HIDE: POPULAR SUPPORT AND TERRORIST SAFE HAVENS”, Nov 19th 20**10**, http://repository.library.georgetown.edu/bitstream/handle/10822/553428/WhitehairJuliaC.pdf?sequence=1 (BJN)

Given U.S. efforts to shut down traditional safe havens and the attention given in recent years to homegrown terrorist cells in the **United States** and Europe, **policymakers likely will have to confront questions about safe havens within healthy states**. **Terrorism experts** and policymakers with counterterrorism portfolios **have already raised Europe as a persistent source of terrorism *targeting the United States*. Michael Scheuer** in his testimony before members of Congress **called the European Union “the earth’s single largest terrorist safe haven” and “a major, consistent, and invulnerable source of terrorist threat to the United States**.”5 Former Director of Central Intelligence Porter Goss in 2005 and former U.S. Coordinator for **Counterterrorism Ambassador Harry A. Crumpton** in 2006 **testified about the persistent threat to the United States from terrorists based in Europe**.6 Senators Lieberman and Collins of the Senate Committee on Homeland Security and Governmental Affairs spoke of an increase in homegrown terror cells and attacks with roots in the United States.7

***European terrorist attacks on American targets ensure massive retaliation – generic neg defense doesn’t apply***

**VOA** (Voice of America), “US Concerned with Islamic Extremism in Europe”, October 31st 20**09**, http://www.voanews.com/articleprintview/319848.html (BJN)

The State Department's coordinator for counter-terrorism, Henry Crumpton, told the Senate Foreign Relations Committee, **Washington has good reason to worry about Islamic extremism in Europe**, following the Sept. 11, 2001 terrorist attacks on the United States. "**The terrorist cell that conducted the 9/11 attacks did much of its planning from a base in Europe**," said Henry Crumpton. "Five years later, and despite many counter-terrorism successes, **violent Islamic extremism in Europe continues to pose a threat to the national security of the United States and our allies**." Recent incidents in Europe linked to Muslim extremists include bombings in Madrid and London. In his testimony, Assistant Secretary of State Daniel Fried said the majority of Western Europe's more than 15 million Muslims are moderate. But he said he believes Muslims in Europe find Islamic extremism increasingly attractive because they are alienated from European societies in which they live. "Many marginalized Muslims, who cross the threshold into extremism, seem to be driven by a sense of spiritual alienation," said Daniel Fried. "They're less concerned than were their parents with economic survival in Europe. Many of Europe's second and third generation Muslims seem to long for spiritual fulfillment." Disaffected Muslims, especially young people, showed their numbers in protests last year in France. Fried adds that he believes many of Europe's Muslims who feel marginalized do not find their needs met in local, mainstream institutions. "Foreign financiers and religious activists, often from abroad, fill this spiritual vacuum, by building local mosques, and supplying them with extremist imams," he said. "Disconnected from often tolerant traditions of their families' original homelands, these Muslims are susceptible to foreign propaganda, and sermons that preach narrow and hateful interpretations of Islam." Although these officials devoted most of their testimony to discussing integration problems that exist in Europe, Senator George Allen indicated one reason why this is also an important issue for the United States. "While it may not be so obvious, though, **there are implications for the United States**," said Senator Allen. "**The United States and Europe enjoy an open travel arrangement, making it simple for anyone carrying a European country's passport to come to the United States on a day's notice. Thus, how Europe handles this issue is important for our own homeland security**." Robin Niblett, of the Center for Strategic and International Studies, a public policy organization, said **terrorists do not have to come to the United States to do damage to U.S. interests**. "Muslims, extremists, do not need to travel to the United States to be able to undertake attacks," said Robin Niblett. "**They can take on American targets in Europe**. They can take American targets in Iraq. In essence, **they are getting their fill of attacking America, and proving they can, without having to come over here**." Meanwhile, Niblett says, he is worried that the level of frustration and alienation in many of the Muslim communities in Europe is still strong and, therefore, dangerous. "**The risk of another terrorist attack is real,"** he noted. **"If another attack happens**, ***the backlash will be severe***. Even without another attack, levels of alienation are going to continue, and removing them will be a long process." Niblett says he believes this process of dealing with Islamic extremism in Europe is just beginning. And, he adds, Western governments are not, in his words, "totally in control of the agenda to try to resolve it."

***And, an attack on the EU spurs NATO strikes against Pakistan***

Tony **Karon**, Wednesday, Oct. 06, 20**10**, Why a Terrorist Strike on Europe Risks Geopolitical Meltdown, [http://content.time.com/time/world/article/0,8599,2023847,00.html](http://content.time.com/time/world/article/0%2C8599%2C2023847%2C00.html), jj

Why a ***Terrorist Strike on Europe Risks Geopolitical Meltdown***

**Bad as they are, right now, relations between the U.S. and Pakistan could get a whole lot worse if a feared Mumbai-style terrorist plot materializes in Europe**. One reason for the fraying of ties is the dramatic escalation in the Obama Administration's drone war in Pakistan's tribal areas. September saw more missiles fired from drone aircraft than any month on record, purportedly aimed at disrupting possible terrorist attacks planned for European cities — fear of which has also prompted travel alerts by the U.S. and allied governments. And the campaign has not relented. Pakistani officials claim that eight suspected militants of German citizenship were killed in a drone strike on a Waziristan mosque on Monday. The drone attacks have fueled outrage on Pakistan's streets, and presumably within its armed forces too. The anger has only grown with news of Pakistani soldiers killed as the U.S. pursues Afghan Taliban fighters fleeing into Pakistan (last Thursday, such a chase resulted in the death of three Pakistani soldiers). Pakistani authorities appeared to be sending out a warning by closing their Khyber Pass border with Pakistan, choking off the main supply line to the NATO mission in Afghanistan. And militants kept up their own retaliation on Wednesday by destroying NATO-contracted fuel trucks for the sixth time in a week. But **tensions could rise from both ends, should a successful attack be staged in Europe**. Explaining the recent terrorism-threat alerts and travel advisories announced for European cities, security **officials have been widely quoted in the media suggesting that intelligence points to a coordinated attack, originating in Pakistan, that would see gunmen deployed to wreak havoc on the streets of major European cities in the way that they did in the Indian city of Mumbai two years ago**. Drone attacks have reportedly been stepped up in the hope of disrupting that plot, allegedly revealed by a captured German of Afghan descent. **Following the Mumbai massacre**, carried out by the Pakistan-based jihadist group Lashkar-e-Taiba, **the U.S. had to work hard to restrain India from retaliating by bombing facilities in Pakistan used by the various Kashmir jihadist groups long cultivated by Pakistani intelligence — mindful of the danger that such an action could provoke a war between the nuclear-armed neighbors**. **But if Western cities were the target of a successful strike, it would be NATO that would be under pressure to respond**. Indeed, according to Bob Woodward's book Obama's Wars, Obama's National Security Adviser General Jim Jones told Pakistan's President Asif Ali Zardari that if Faisal Shahzad (the Pakistani-American sentenced to life imprisonment in New York City on Tuesday) had succeeded in his attempt to bomb Times Square last year, **the U.S. "would [have] been forced to do things Pakistan would not like**." Woodward wrote that retribution would entail the bombing of "up to 150 known terrorist safe havens inside Pakistan." If Jones' warning, as reported by Woodward, is to be taken seriously, **it's not hard to deduce that a series of attacks in Europe that emanate from Pakistan would force a similar response.**

***Causes US China War***

Webster G. **Tarpley 11**, Ph.D., US, Pakistan Near Open War; Chinese Ultimatum Warns Washington Against Attack, <http://tarpley.net/2011/05/21/us-pakistan-near-open-war-chinese-ultimatum-warns-washington-against-attack/>

**China has officially put the United States on notice that Washington’s planned attack on Pakistan will be interpreted as an act of aggression against Beijing**. **This blunt warning represents the first known strategic ultimatum received by the United States in half a century**, going back to Soviet warnings during the Berlin crisis of 1958-1961, **and indicates the grave danger of general war growing out of the US-Pakistan confrontation**. “**Any Attack on Pakistan Would be Construed as an Attack on China**” Responding to reports that China has asked the US to respect Pakistan’s sovereignty in the aftermath of the Bin Laden operation, Chinese Foreign Ministry spokesperson Jiang Yu used a May 19 press briefing to state Beijing’s categorical demand that the “sovereignty and territorial integrity of Pakistan must be respected.” According to Pakistani diplomatic sources cited by the Times of India, **China has “warned in unequivocal terms that any attack on Pakistan would be construed as an attack on China**.” This ultimatum was reportedly delivered at the May 9 China-US strategic dialogue and economic talks in Washington, where the Chinese delegation was led by Vice Prime Minister Wang Qishan and State Councilor Dai Bingguo.1 **Chinese warnings are implicitly backed up by that nation’s nuclear missiles, including an estimated 66 ICBMs, some capable of striking the United States, plus 118 intermediate-range missiles, 36 submarine-launched missiles, and numerous shorter-range systems**. Support from China is seen by regional observers as critically important for Pakistan, which is otherwise caught in a pincers between the US and India: “If US and Indian pressure continues, Pakistan can say ‘China is behind us. **Don’t think we are isolated, we have a potential superpower with us,’” Talat Masood, a political analyst and retired Pakistani general, told AFP**.2

***Global nuclear war***

**Hunkovic, 09** – American Military University (Lee, “The Chinese-Taiwanese Conflict,” <http://www.lamp-method.org/eCommons/Hunkovic.pdf>)

A war between China, Taiwan and the United States has the potential to escalate into a nuclear conflict and a third world war, therefore, many countries other than the primary actors could be affected by such a conflict, including Japan, both Koreas, Russia, Australia, India and Great Britain, if they were drawn into the war, as well as all other countries in the world that participate in the global economy, in which the United States and China are the two most dominant members. If China were able to successfully annex Taiwan, the possibility exists that they could then plan to attack Japan and begin a policy of aggressive expansionism in East and Southeast Asia, as well as the Pacific and even into India, which could in turn create an international standoff and deployment of military forces to contain the threat. In any case, if China and the United States engage in a full-scale conflict, there are few countries in the world that will not be economically and/or militarily affected by it. However, China, Taiwan and United States are the primary actors in this scenario, whose actions will determine its eventual outcome, therefore, other countries will not be considered in this study.

***Independently – Europe is a prime location for terror cells to construct a nuclear weapon – multiple reasons***

Charles **Ferguson**, scientist-in-residence based in the Washington DC office of the Center for Nonproliferation Studies, Monterey Institute of International Studies, “The threat of nuclear terrorism in Europe”, 02-06-20**04**, http://www.eurozine.com/articles/2004-06-02-ferguson-en.html (BJN)

**A nuclear terrorist act anywhere is a nuclear terrorist act everywhere**. In particular, a terrorist-detonated nuclear weapon in a European city will impact on American security. Conversely, a terrorist-constructed crude nuclear bomb exploded in an American city will have repercussions for European security. Nuclear weapon explosions are the most devastating form, or face, of nuclear terrorism. **The four recognized faces of nuclear terrorism are**: **Terrorists could seize an intact nuclear weapon** and bypass its security features, thus activating it. **Terrorists could acquire,** through theft, purchase, or diversion, weapons-**usable fissile material** (either highly enriched uranium or plutonium) and build a crude nuclear weapon, or improvised nuclear device (IND). **Terrorists could attack or sabotage nuclear facilities**, such as commercial nuclear power plants or research reactors, to cause a release of radioactivity. **Terrorists could acquire and release radioactive materials**, such as commercial radioactive sources used in medicine, research, and industry, to fuel radiological dispersal devices (RDDs) – one type of which is popularly known as a "dirty bomb," or release radiation through other mechanisms, such as radiation emission devices. Understanding Nuclear Terrorists **While most terrorist groups are not motivated to unleash nuclear terror**, at least one terrorist network **- al Qaeda - has expressed strong interest in acquiring *w*eapons of *m*ass *d*estruction**. 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.**

***This ensures great power wars that culminate into extinction***

Robert **Ayson**, July **2010**, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Vol. 33, Issue 7, InformaWorld

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

**Scenario 2 - Relations**

***Extradition fights ensure the irrelevance of NATO***

David B. **Rivkin**, Jr., Associate Fellow of The Nixon Center and Lee A. Casey, partner in the Washington, DC office of Baker & Hostetler LLP., “A House Divided? War, Extradition, and the Atlantic Alliance, PART II”, The National Interest, October 9th 20**02**, http://nationalinterest.org/article/a-house-divided-war-extradition-and-the-atlantic-alliance-part-ii-2137?page=1 (BJN)

Since the end of the Cold War, **many questions have been asked about the long-term viability of the U.S.-European partnership**. By leading the NATO intervention in Bosnia and Kosovo - a venture where no vital U.S. interests were implicated, but where the Europeans strongly clamored for joint U.S.-European involvement - **the U.S. has demonstrated that maintaining NATO solidarity remained a key American policy priority. Europe has yet to respond in kind. The best argument of the die-hard Atlanticists has been to claim that the current discord is attributable to the lack of any serious threat facing this partnership in general,** and NATO in particular. **By implication, if and when such a threat arose, Cold War levels of solidarity would reemerge. The events of September 11 certainly qualify as such a threat**, but whether that solidarity will reappear remains to be seen. **At this time**, however, **the only major contribution most of the European governments are likely to be asked for will be law enforcement cooperation, including the arrest and extradition of suspects to the United States. If Europe cannot do this much**, even when there are no insurmountable legal obstacles, ***then the Atlantic Alliance has been already beset with irreconcilable differences***. Even if it endures, **it would become more of an irrelevant debating club than the West's premier security instrument. Our European allies should grasp what is at stake here;** the U.S., for its part, should appreciate the fact that the fundamental issues of principle are implicated, rather than just a series of specific narrow policy disputes, and therefore speak clearly and forthrightly to the European elites and publics. Candor and sustained engagement, rather than diplomatic politesse, offers the only hope of closing this rift.

***These fights will supersede durability and alt-causes***

David B. **Rivkin**, Jr., Associate Fellow of The Nixon Center and Lee A. Casey, partner in the Washington, DC office of Baker & Hostetler LLP., “A House Divided? War, Extradition, and the Atlantic Alliance, PART II”, The National Interest, October 9th 20**02**, http://nationalinterest.org/article/a-house-divided-war-extradition-and-the-atlantic-alliance-part-ii-2137?page=1 (BJN)

**In past extradition-related disputes with the United States, Europe's leaders have generally gotten their way. American prosecutors have agreed**, in individual cases**, not to seek the death penalty. But** such **agreements are highly unlikely (almost unthinkable) with respect to Al-Qaeda's leadership.** (If Osama bin Laden surrendered to one of the European police authorities tomorrow, the ensuing extradition fight would be bitter and cause enormous damage to the Alliance.) **Although few ordinary Americans care much about the issues that regularly bedevil trans-Atlantic relations, such as banana imports, anti-trust issues, or global climate change, virtually all care deeply and passionately about the war on terrorism.** By more than a two-thirds majority, they support the use of military commissions and capital punishment. The Bush Administration is serious about winning the war on terrorism and making Lincoln's words come true again. **The value to the United States of allies who coddle**, even based on sincerely held beliefs, **unlawful combatants who seek to destroy this country will be eventually questioned.**

***History is on our side – past extradition fights have tanked relations – the impact will only grow larger in terrorism cases***

Kyle M. **Medley**, associate in the New York office of Barger & Wolen. Mr. Medley is a litigator with experience before numerous state and federal courts, “RESPONSIBILITY AND BLAME: PSYCHOLOGICAL AND LEGAL PERSPECTIVES: THE WIDENING OF THE ATLANTIC: EXTRADITION PRACTICES BETWEEN THE UNITED STATES AND EUROPE\*”, 68 Brooklyn L. Rev. 1213, Summer 20**03** (BJN)

Finally, **extradition helps countries avoid international tension and** ***diplomatic crisis***. n42 One case in particular exhibits how **the extradition battle over fugitives can cause foreign relations between the U.S. and other nations to** ***deteriorate***. **In 1997, Benjamin Sheinbein** was suspected of the killing and gruesome dismemberment of an acquaintance in Maryland. n43 [\*1221] Sheinbein **fled to Israel** three days after the body was found. n44 Because Israeli law forbids extradition of any of its citizens for any crime, Sheinbein argued that he was an Israeli citizen. n45 Although Sheinbein claimed Israeli citizenship through his father who was in fact an American citizen, n46 **Israeli courts** nonetheless **refused to grant his extradition** to the U.S. n47 The American government fiercely responded to the extradition refusal. Robert **Livingston, Chair to the U.S. House of Representatives Appropriations Committee**, for instance, **threatened to cut off Israel's $ 3 billion American aid package** unless Sheinbein was extradited to the U.S. n48 Secretary of State Madeleine Albright personally contacted Israeli Prime Minister Benjamin Netanyahu and asked for his "maximum cooperation" with extraditing Sheinbein. n49 **These efforts were for the murder of a single person. In the wake of the thousands of people murdered in the World Trade Center** and Pentagon terrorist attacks, **tensions will** ***undoubtedly increase* between the U.S. and nations reluctant to extradite.**

***NATO solves nuclear war***

**Brzezinski 09** [ZBIGNIEW BRZEZINSKI, 2009, U.S. National Security Adviser from 1977 to 1981. His most recent book is Second Chance: Three Presidents and the Crisis of American Superpower, September 2009 - October 2009, (Foreign Affairs, SECTION: Pg. 2 Vol. 88 No. 5, HEADLINE: An Agenda for NATO Subtitle: Toward a Global Security Web, p. Lexis)]

ADJUSTING TO A TRANSFORMED WORLD

AND YET, it is fair to ask: Is nato living up to its extraordinary potential? **Nato today is without a doubt the most powerful military and political alliance in the world.** **Its 28 members come from the globe's two most productive, technologically advanced, socially modem, economically prosperous, and politically democratic regions**. Its member states' 900 million people account for only 13 percent of the world's population but 45 percent of global gdp. NATO'S potential is not primarily military. Although nato is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. **Nato's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight** (and occasionally some limited European military forces). Together, **that combination makes nato globally significant**. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. **The basic challenge that nato now confronts is that** **there are historically unprecedented risks to global security.** Today's world is threatened neither by the militant fanaticism 0^ a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansrve imperial power. The paradox of our time is that **the world, increasingly connected and economically interdependent** for the first time in its entire history, **is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of** **w**eapons of **m**ass **d**estruction - **not just to states but also**, potentially**, to extremist religious and political movements.** Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous pop- ulist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nation- alist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, televisión, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where nato is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And **of the currently leading global powers** - the United States, the eu, China, Japan, Russia, and India - at least two, or perhaps even **three, are revisionist in their orientation**. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), **they all desire a change in the global pecking order**. **The future conduct of and relationship among these** three still relatively cautious revisionist powers **will further intensify the strategic uncertainty. Visible on the horizon** but not as powerful **are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing** (apparently successfully) **its own nuclear weapons - and also by profiting from their dissemination**. At some point, **its unpredictability could precipitate the first use of nuclear weapons in anger since 1945**. **Iran,** in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far **has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability.** These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. **The combination of Washington's arrogant unilateralism** in Iraq and its demagogic Islamophobic sloganeering **weakened the unity of nato and focused aroused Muslim resentments on the United States and the West more generally.**

***Even post Cold-War, NATO checks a laundry list of existential risks***

**Burns ’12**, R. Nicholas Burns, former U.S. ambassador to NATO, was under secretary of state for political affairs from 2005-2008 and now is director of the Future of Diplomacy Project at the Belfer Center for Science and International Affairs at Harvard Kennedy School. David Manning, former British ambassador to NATO, also served as foreign policy adviser to the British prime minister and as British ambassador to the United States. May 17, 2012, New York Times, NATO: When I’m Sixty-Four, <http://www.nytimes.com/2012/05/18/opinion/nato-when-im-sixty-four.html>

**Can they afford not to?** The international landscape is barely recognizable compared with that of 1949 when the alliance was founded to safeguard the fragile democracies of a shattered post-war Western Europe. But although the Cold War ended with the disintegration of the Soviet Union 20 years ago, **the international environment remains unstable and uncertain**.¶ **The NATO partners must now confront a range of elusive and complex global threats from rogue and failing states to terrorism, piracy and cyberattacks**. **They must also adapt to global power relationships that are changing rapidly and bringing new challenges**. **China’s** economic miracle is fueling a **military buildup** that **may well lead to increased tensions and an accelerating arms race in Asia**.¶ The prospect of **a nuclear Iran is provoking fears of a new war in the Middle East and doubts about the durability of the** Nuclear ***N***on***p***roliferation ***T***reaty. **If Iran gets the bomb will others in the volatile Middle East be far behind?** As NATO’s efforts to construct an anti-ballistic missile shield recognize, **Europe could before long find itself next to a Middle East of nuclear armed states**.¶ The **NATO** corridors and council table are where the 28 members can daily discuss these and other security challenges with a familiarity that, most of the time, **allows them to forge common positions and policies. NATO still guarantees Europe’s security and the security of America’s close partners**.¶ As both of us can testify, having worked closely together in NATO a decade ago, talking the talk is an essential prerequisite for an alliance that can walk the walk.¶ The consultative and cooperative reflex that has developed within NATO is rare in international relations. It brings many benefits. Small as well as large countries air their security concerns and enjoy the guarantee that comes from belonging to an alliance in which all members are committed to one another. This has greatly reassured the East European and Baltic countries as they have tackled the enormous task of rebuilding themselves following their liberation from Communism and the collapse of the Warsaw Pact.¶ **NATO not only plays a valuable role in helping to stabilize relations between its members and awkward and uncertain neighbors, but acts as a dispute resolution mechanism between members themselves**.¶ **We take it for granted that cooperation, not conflict, is Europe’s default mode, but the suicidal first half of the 20th century, and the mayhem that followed the collapse of Yugoslavia, are reminders that we should beware of pushing our luck.** Investment in an alliance that in large measure denationalizes defense, and contains or resolves old antagonisms through family arguments around NATO’s kitchen table, provides a remarkable rate of return.¶ **The alliance is good at talking to others as well as itself. We both remember when NATO stopped the wars in Bosnia and Kosovo and played a vital role in averting civil war in Macedonia**.¶ When preventive diplomacy succeeds it gets few headlines and is quickly forgotten. But **NATO’s engagement averted what might easily have become another Balkan war**. One lesson from Macedonia is how powerful NATO and the European Union can be when working together, a relationship the trans-Atlantic community might exploit more energetically as it navigates the uncertainties of an emerging multi-polar world.¶ “**Will you still need me when I’m sixty-four?” sang the Beatles. NATO is now in its 64th year, and in our view the answer is an unequivocal yes.** **The alliance still underwrites our security and underpins our prosperity. It gives us a global voice that no member state would enjoy individually. And if “it’s good to talk” in a dangerous world, there is no better trans-Atlantic forum.**

***And independently US-EU relations access every impact***

**Stivachtis 10** – Director of International Studies Program @ Virginia Polytechnic Institute [Dr. Yannis. A. Stivachtis (Professor of Poli Sci @ Virginia Polytechnic Institute & Ph.D. in Politics & International Relations from Lancaster University), THE IMPERATIVE FOR TRANSATLANTIC COOPERATION,” The Research Institute for European and American Studies, 2010, pg. <http://www.rieas.gr/research-areas/global-issues/transatlantic-studies/78.html>]

**There is no doubt that US-European relations are in a period of transition**, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations. The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, **international terrorism**, **the nuclearization of North Korea and especially Iran, the proliferation of** weapons of mass destruction (**WMD), the transformation of Russia** into a stable and cooperative member of the international community, **the growing power of China, the political and economic transformation and integration of the Caucasian and Central Asian states, the integration and stabilization of the Balkan countries, the promotion of peace and stability in the Middle East, poverty, climate change, AIDS and other emergent problems and situations require further cooperation** among countries at the regional, global and institutional levels. Therefore, **cooperation between the U.S. and Europe is more imperative than ever to deal effectively with these problems**. It is fair to say that **the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global.** The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense. Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements. There are two reasons for concern regarding the transatlantic rift. First, **if European leaders conclude that Europe must become counterweight to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires**. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations. If both sides would actively work to heal the breach, a new opportunity could be created. **A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment.** There are strong reasons to believe that the security challenges facing the U.S. and Europe are more shared than divergent. The most dramatic case is terrorism. Closely related is the common interest in halting the spread of weapons of mass destruction and the nuclearization of Iran and North Korea. This commonality of threats is clearly perceived by publics on both sides of the Atlantic.

### Plan

#### The United States Congress should restrict the indefinite detention authority in the area prescribed by the 2001 Authorization for Use of Military Force and the (2012/2013) National Defense Authorization Act to cases involving persons arrested and/or captured outside the territory of the United States.

**Contention 2 - Solvency**

***Plan is a no-cost option for Congress – The Executive won’t use the detention war power for domestic captures – but keeping the option legal makes the perception of its use alive***

Robert M. **Chesney**, Nonresident Senior Fellow, Governance Studies @ Brookings and Benjamin Wittes, Senior Fellow, Governance Studies @ Brookings, “Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Testimony To Congress, May 22nd 20**13**, http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes (BJN)

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

***Interpreting the NDAA to exclude domestic captures is critical to extraditions***

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

C. **Assurances that Include a Guarantee of a Right to Fair Trial Are** ***Key*** **to Achieving Extradition On the surface, the new statutory language in the NDAA does not pose any problems to the United States continuing to provide assurances to her European allies** that terror suspects will receive humane treatment and a fair trial**. But it remains imperative that the current and future administrations understand that affording anything less than a fair trial to these terror suspects in the federal justice system will likely result in terrorists** ***evading justice altogether. The U.S. government should not underestimate its allies' doubt regarding the fairness of the military tribunal system***, substantiated or not, when evaluating whether to provide and uphold assurances that terror suspects will go to trial in regularly constituted courts to ensure their extradition. **It is clear that the European approach to human rights, even as it affects extradition, includes the right to a fair trial that does not include trial by military tribunal.** n131 As history demonstrates, "**the right to a fair trial is one of the most litigated of all human rights. It is also perhaps one of the most important because without it a violation of a human right is unlikely to be remedied in domestic procedures.**" n132 Moreover, many international cases have highlighted "the importance of independence and impartiality" as a key feature of a fair trial. n133 For instance, **the European Court** in Weeks v. United Kingdom **noted that the most important, fundamental feature of court is the "independence of the executive and of the parties involved.**" n134 As one scholar noted in Lamy v. Belgium, "the European Court of Human Rights noted that a fair hearing is not possible when detainees are denied access to those documents in the investigation file which are essential to effectively challenge the lawfulness of [one's] [\*591] detention." n135 And more recently, the U.K. House of Lords stated in A. v. Secretary of State for the Home Department that "neither the common law . . . nor international human rights law allows indefinite detention at the behest of the executive, however well-intentioned." n136 Thus, **the hotly contested and highly publicized deficiencies within the military commission process certainly create, at the minimum, the appearance that a fair trial by an independent and impartial tribunal will be incredibly difficult to obtain for any terror suspect extradited to the United States** without the assurance of trial by a civilian court. **Additionally, the promise of indefinite detention until the end of hostilities will likely bolster claims of Article 3 violations and add to the likelihood of Article 6 claims**. **Either one can work to the disadvantage of the** U**nited** S**tates as it seeks to bring to justice those terror suspects who await extradition from the U.K. and Europe.** Thus, the current administration should set a strict plan to execute the waiver in all cases regarding extradition from America's European allies. Doing so will make the waiver the norm rather than the exception. Regular use of the waiver will override the presumption in favor of military trials that Section 1022 n137 creates and take the political aspect out of any future executive decision to provide a waiver. IV. Conclusion **The right to a fair trial is one of the most expansive and complicated of all the human rights protected under international law**. n138 And even though individual countries bear the burden to defend their citizenry against terrorism, "in cases where action is being taken against terrorism, states must ensure that international human rights norms are respected. The foremost role of international human rights in cases involving terrorists is the protection of the accused terrorist's human rights." n139 **With this in mind, the United States** ***should interpret the NDAA to provide assurances to the U.K. and her European allies that all extradited terror suspects will defend their case in regularly constituted courts and will be detained in civilian criminal facilities*** without threat of the death penalty. **In doing so, the United States will signify support for the rule of** [\*592] **law as it seeks to defeat terrorism.** Moreover, and perhaps equally important, **this continuation of assurances will demonstrate that the United States stands with her allies in the protracted struggle against terrorism.**

#### No disads – law enforcement and criminal trials solve, plus the president would never detain domestic captures anyway

The idea that we have to keep the option of military detention available is an outdated view of law enforcement – Current criminal trials provide ample security – and even if it could technically be better to use military detention – it wouldn’t be used

Robert M. **Chesney**, Nonresident Senior Fellow, Governance Studies @ Brookings and Benjamin Wittes, Senior Fellow, Governance Studies @ Brookings, “Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Testimony To Congress, May 22nd 20**13**, http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes (BJN)

**It is** certainly **possible that we will one day again confront a case in which strong evidence exists that an individual member of an AUMF-covered group poses a huge threat within the United States, but** in which **the evidence supporting this view is** either **too sensitive to disclose** or inadmissible for any of several reasons. In such a situation, **legislation *prohibiting* the military detention of suspects captured in the** U**nited** S**tates in theory could precipitate an outcome** like the one that Comey **feared** in 2002. **From that perspective, the option of at least attempting to sustain military detention, despite the legal uncertainty we described above, would be attractive. For a variety of reasons, however, we believe that situation is** ***far less likely to develop today than it was in 2002.*** **Law enforcement practice has improved substantially** in this space. **The FBI and Justice Department have developed significant expertise in handling suspects like Padilla. And** as we mentioned before, **one of the reasons the information developed against Padilla was unusable by Comey was that it had been obtained by the CIA using highly-coercive means; those means are no longer in use**. None of this eliminates the possibility of a case like Padilla’s developing in the future, of course, but it does suggest that such scenarios are unlikely to arise. Indeed, **such a situation has not arisen since the earliest years of the war on terror.** Aside from a Padilla-like scenario, **a *ban* on military detention in domestic capture scenarios thus would foreclose no course of action that is realistically available to the executive branch** at this stage given its own preferences**. It would**, rather, ***merely codify the existing understanding reflected in executive branch policy and practice***—policy and practice reinforced over the years by well-informed expectations about the likely views of the justices on the underlying legal issues. Adopting such a change, it is worth emphasizing, would run with the grain of America’s traditional wariness when it comes to a domestic security role for the U.S. military. **There have unfortunately been times in our nation’s history when it has been necessary and proper for the military to play such a role. It is far from clear that this is the case today,** however, **given the demonstrated capacity of the criminal justice system in the counterterrorism context.** In the final analysis, we conclude that **the manifest legal uncertainty and political friction overhanging the domestic military detention option entail costs that,** in our view, **outweigh the hypothetical benefits** of continuing to leave that option open as a statutory matter. **We therefore favor legislation that would clarify that military detention in counterterrorism under the AUMF is not available with respect to any persons--whether United States citizens or aliens--arrested within the United States.**

## 1AC Cards I Took Out (That You Might Want To Add to 2AC Blocks)

***Use of detention authority hinders effective intelligence gathering and extraditions internationally – recent history proves.***

**Hathaway, et al, ‘13**

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

**Many *key U.S. allies*** **have been unwilling to cooperate in cases involving ¶ law-of-war detention or prosecution but have cooperated in criminal 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**.252 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**.253 **Two similar cases arose in 2007.254 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 ¶ 2012.255 The extradition was made on the express condition that they would be ¶ tried in civilian federal criminal courts rather than in the military ¶ commissions.256 And, **indeed, both the European Court of Human Rights and ¶ the British courts allowed the extradition to proceed a¶ ctions offered by the U.S. federal criminal justice system and finding they ¶ fully met all relevant standards.257 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.**

# Old plans

### Plan

#### The United States Congress should restrict the indefinite detention authority under the AUMF and NDAA to cases involving persons arrested and/or captured outside the territory of the United States.

**Plan V 1.0**

***The United States Congress should state explicitly that detention authority under the AUMF and the NDAA does not extend to any persons arrested and/or captured within the territory of the United States.***

The United States Congress should state explicitly that indefinite detention authority under the AUMF and the NDAA does not extend to any persons arrested and/or captured within the territory of the United States.

#### State?

**Plan V 1.1**

***The United States Congress should state explicitly that neither the AUMF nor the NDAA should be read to confer military detention authority over persons arrested and/or captured within the United States.***

**Plan V 1.2**

***The United States Congress should state explicitly that neither the AUMF nor the NDAA should be read to deny persons captured and/or arrested within the United States their due process rights***