## 1NC

### 1

#### You revive the legitimacy of the WTO

New 13

New, 3/26/2013 (William – Intellectual Property Watch, United States Chided As TRIPS Scofflaw at WTO, Intellectual Property Watch, p. <http://www.ip-watch.org/2013/03/26/united-states-chided-as-trips-scofflaw-at-wto/>)

“The conduct of the United States unscrupulously discredits the WTO dispute settlement system and also constitutes an affront to the intellectual property rights,” an ambassador from Cuba said today at the WTO. At a WTO Dispute Settlement Body meeting today, a number of WTO members fired shots at the US delegation for its continued failure to change its laws to comply with WTO rulings that found it out of compliance onintellectual property-related issues. This includes the case involving a rum trademark dating back over a decade, and a more recent case involving a US online gambling ban that led a WTO panel to authorise the Caribbean nation of Antigua and Barbuda to extract payment by not protecting US IP rights until it complies. The irony of the US as IP scofflaw was not lost on competitors like Antigua and Barbuda or Cuba, which said the US slackness discredits its IP rights enforcement campaign as well as the very WTO dispute settlement process itself. “It is very ironic to observe the United States projecting laws on intellectual property, despite keeping violations as egregious as Section 211,” under which the Bacardi Company continues to market rum labelled Havana Club, a mark which is otherwise owned by Cuba and partners. “This is one of the most famous cases of trademark counterfeiting and conducting misleading advertising by a company backed by the US legislation.” The lack of any substantive change by theUnited States in today’s report to the DSB “is irrefutable proof that this country has [done] nothing during more than 11 years to comply with the DSB recommendations and rulings, which ruled the incompatibility of ‘Section 211 of the Omnibus Appropriations Act of 1998′ with the TRIPS Agreement and the Paris Convention,” the Cuban ambassador to the WTO said in a translated statement. TRIPS is the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Cuba has interest in the rum case because it is a part owner of the rum trademark everywhere in the world except the United States. “The legislative projects to which the US delegation makes reference in their reports each month remain stagnant because it does not constitute a priority or real interest for the administration or the Congress of that country,” Cuba said. “However, by their displaying of incoherent foreign policy, we frequently observe how that Member promotes initiatives in terms of ‘enforcement of intellectual property rights.’” For instance, Cuba said the recently announced US-European Union trade agreement contains the goal of “maintaining and promoting a high level of protection” of IPRs, and said this bilateral trade agreement should be “critically question[ed].” Even the 27-member European Union weighed in on the Section 211 case, thanking the US for its report and adding the hope that “US authorities will very soon take steps towards implementing the DSB ruling and resolve this matter.” The EU also urged that the US comply with another IP case – Section 110(5) of the US Copyright Act – which involved the US commercial practice of playing music recordings, such as Irish music, aloud in bars without paying royalties. “We refer to our previous statements that we would like to resolve this case as soon as possible,” the EU said. Venezuela joined Cuba in condemning the United States for its failure to comply with the rum case, and raised deep concerns about a continued lack of action. “This situation is unacceptable, disappointing, and worrying, not only because it affects a developing country member of this organisation, but also for the grave repercussions against the credibility of DSB and the multilateral system of trade,” Venezuela said in its statement (unofficial translation).

#### That constrains Russia

Baldwin 08 Baldwin, 7/1/08 ~Richard Edward Baldwin has been Professor of International Economics at the Graduate Institute, Geneva, since 1991 and Policy Director of CEPR since 2006, "The WTO tipping point", <http://www.voxeu.org/index.php?q=node/1345~~>

No one knows what happens beyond the tipping point. My guess is that trade would continue to grow and the system would continue to function – but not equally well for all nations. Before the GATT was set up in 1947, the Great Powers settled trade disputes by gunboats or diplomats depending upon the parties involved. Only the naïve thought market access should be reciprocal or fair. A return to this “Belle Époque” extreme is unlikely, but a new Great Powers trade system is likely to emerge. Its core will be the US and EU networks of bilateral trade deals.¶ Domestic special-interest groups, newly freed from WTO constraints, would push the EU and US templates in divergent directions. Regional arrangements of the new trade powers and Russia could diverge even more markedly, since WTO norms have never fully been internalised by their domestic special-interest groups. This would be a world of “spheres of influence” and bare-knuckle bargaining.¶ All would lose in this post-tipping point world but not equally. The United States, European Union, Japan, China, and India have enough market leverage to defend their interests. Small nation would suffer much more as they benefit the most from the WTO’s consensus-based rules and negotiations.¶ Worse yet, moving towards a might-makes-right trade system would be extremely corrosive to global cooperation on the new century’s greatest governance challenges – climate change, pandemics, water scarcity, and the Millennium Development Goals.

#### nuclear war

**ELAND 2008** [Ivan, Nov, Sr. Fellow, Independent Inst., former Defense Analyst for Congressional Budget Office, The Independent Institute, http://www.independent.org/newsroom/article.asp?id=2363]

But **the bear is** now **coming out of** a long **hibernation** a bit rejuvenated. Using increased petroleum revenues from the oil price spike, the Russians will hike defense spending 26 percent next year to about $50 billion—the highest level since the collapse of the Soviet Union. Yet as the oil price declines from this historic high, Russia will have fewer revenues to increase defense spending and rebuild its military. Even the $50 billion a year has to be put in perspective. The United States is spending about $700 billion per year on defense and starting from a much higher plain of capability. After the collapse of the Soviet Union, the Russian military fell apart and was equivalent to that of a developing country. Even the traditionally hawkish U.S. military and defense leaders and analysts are not worried about Russia’s plans to buy modern arms, improve military living standards to attract better senior enlisted personnel, enhance training, and cut back the size of the bloated forces and officer corps. For example, Eugene B. Rumer of the U.S. National Defense University was quoted in the *Washington Post* as saying that Russian actions are “not a sign, really, of the Russian military being reborn, but more of a Russia being able to flex what relatively little muscle it has on the global scale, and to show that it actually matters.”[[1]](http://www.independent.org/newsroom/article.asp?id=2363" \l "_ftn1#_ftn1" \o ")In addition, the Russian military is very corrupt—with an estimated 40 percent of the money for some weapons and pay for personnel being stolen or wasted. This makes the amount of real defense spending far below the nominal $50 billion per year. U.S. analysts say, however, that increased military spending would allow Russia to have more influence over nations in its near abroad and Eastern Europe. Of course, throughout history, small countries living in the shadow of larger powers have had to make political, diplomatic, and economic adjustments to suit the larger power. Increased Russian influence in this sphere, however, should not necessarily threaten the security of the faraway United States. It does only because the United States has defined its security as requiring intrusions into Russia’s traditional sphere of influence. By expanding NATO into Eastern Europe and the former Soviet Union, the United States has guaranteed the security of these allied countries against a nuclear-armed power, in the worst case, by sacrificing its cities in a nuclear war. Providing this kind of guarantee for these non-strategic countries is not in the U.S. vital interest. Denying Russia the sphere of influence in nearby areas traditionally enjoyed by great powers (for example, the U.S. uses the Monroe Doctrine to police the Western Hemisphere) will only lead to unnecessary U.S.-Russian tension and possibly even cataclysmic war.

### 2

#### The United States federal government should:

#### deny products that contain stolen intellectual property access to the U.S. market

#### restrict the use of the U.S. financial system to foreign companies that repeatedly steal intellectual property

#### Reinforce existing capacity-building programs that strengthen the legal frameworks and practices for IP rights overseas.

#### Solves the IPR advantage – deters theft and counterfeit

Blair and Huntsman 13 - Adm. Dennis Blair was director of national intelligence from January 2009 to May 2010 and was head of the U.S. Pacific Command from February 1999 to May 2002. Jon Huntsman Jr. was governor of Utah from 2005 to 2009 and U.S. ambassador to China from 2009 to 2011. [“Protecting U.S. intellectual property rights” <http://articles.washingtonpost.com/2013-05-21/opinions/39419359_1_protecting-u-s-u-s-pacific-command-china>]

At a time when the U.S. economy is struggling to provide jobs, the hemorrhage of intellectual property (IP) — our most important international competitive advantage — is a national crisis. Nearly every U.S. business sector — advanced materials, electronics, pharmaceuticals and biotech, chemicals, aerospace, heavy equipment, autos, home products, software and defense systems — has experienced massive theft and illegal reproduction.¶ The individual stories are infuriating. In one recent instance, a foreign company counterfeited a high-tech product it had been purchasing from a U.S. manufacturer. The customer then became the U.S. company’s largest competitor, devastating its sales and causing its share price to plummet 90 percent within six months.¶ The scale is staggering. The [Commission on the Theft of American Intellectual Property](http://www.marketwatch.com/story/governor-jon-huntsman-and-the-honorable-dennis-blair-to-launch-a-report-on-the-theft-of-american-intellectual-property-2013-05-20), which we co-chaired, estimates that the total revenue loss to U.S. companies is comparable to the total value of U.S. exports to all of Asia. U.S. software manufacturers — a sector in which this country leads the world — lose tens of billions of dollars in revenue annually from counterfeiting just in China, where the problem is most rampant. The U.S. International Trade Commission [estimated in 2011](http://www.usitc.gov/publications/332/pub4226.pdf) that if IP protection in China improved substantially, U.S. businesses could add 2.1 million jobs.¶ We agree with [Gen. Keith Alexander](http://www.nsa.gov/about/leadership/bio_alexander.shtml), the head of U.S. Cyber Command, that the ongoing theft of U.S. intellectual property is “[the greatest transfer of wealth in history](http://www.aei.org/events/2012/07/09/cybersecurity-and-american-power/).”¶ Equally as important as the current situation is the potential for future damage. Our intellectual property is what provides the new ideas that will keep the U.S. economy vital and productive over the long term. If less innovative foreign companies can reap the profits of U.S. research and development and innovation, we will lose our competitive edge and eventually experience a decrease in incentives to innovate altogether.¶ Our concerns go beyond economic factors. [An investigation by the Senate Armed Services Committee](http://www.levin.senate.gov/newsroom/press/release/senate-armed-services-committee-releases-report_on-counterfeit-electronic-parts/) last May found “approximately 1,800 cases of suspect counterfeit electronic parts” in U.S. military equipment and weapons systems, with as many as 1 million individual counterfeit parts now embedded in our military aircraft. Even the security-conscious Defense Department has lost the capacity to verify the integrity of its supply chains.¶ So far, our national response to this crisis has been weak and disjointed. Our commission was advised by some experts who said the U.S. should simply wait until lesser-developed economies mature and then find it important to protect their own intellectual property. Others counsel against antagonizing countries such as China, whose buying power is strong but where IP protection is especially poor.¶ Many companies simply internalize the threats of IP theft by going on the defensive; in the process, they pay ever-greater sums for improved cybersecurity precautions without any real increases in security. The Obama administration has made some progress in raising this issue with foreign governments, but more needs to be done.¶ For nearly a year, the nonpartisan, independent commission we co-chaired has sought to document the causes, scale and national impact of international IP theft and to recommend robust policy solutions for the administration and Congress. Our report — which will be published Wednesday at [IPCommission.org](http://ipcommission.org/) — includes practical measures, both carrots and sticks, to change the cost-benefit calculus for foreign companies and their governments that illegally acquire U.S. intellectual property. The United States must make the theft of U.S. intellectual property both risky and costly for thieves.¶ We recommend immediately: denying products that contain stolen intellectual property access to the U.S. market; restricting use of the U.S. financial system to foreign companies that repeatedly steal intellectual property; and adding the correct, legal handling of intellectual property to the criteria for both investment in the United States under Committee for Foreign Investment in the United States (CFIUS) approval and for foreign companies that are listed on U.S. stock exchanges. All of these recommendations will require strengthening the capacity of the U.S. government in these areas.¶ In addition to these measures, which use the power of the U.S. market, we recommend reinforcing the capacity-building programs underway that strengthen the legal frameworks and practices for IP rights overseas. As these countries develop, their companies will want protection for their ideas. But the United States cannot afford to wait the many years this will take. We must help speed the process, and only when we make IP theft very costly for thieves can U.S. companies begin to realize a fair playing field.

### 3

#### Interpretation – Economic engagement includes trade and aid

Resnick 1 – Dr. Evan Resnick, Ph.D. in Political Science from Columbia University, Assistant Professor of Political Science at Yeshiva University, “Defining Engagement”, Journal of International Affairs, Spring, 54(2), Ebsco

Scholars have limited the concept of engagement in a third way by unnecessarily restricting the scope of the policy. In their evaluation of post-Cold War US engagement of China, Paul Papayoanou and Scott Kastner define engagement as the attempt to integrate a target country into the international order through promoting "increased trade and financial transactions."(n21) However, limiting engagement policy to the increasing of economic interdependence leaves out many other issue areas that were an integral part of the Clinton administration's China policy, including those in the diplomatic, military and cultural arenas. Similarly, the US engagement of North Korea, as epitomized by the 1994 Agreed Framework pact, promises eventual normalization of economic relations and the gradual normalization of diplomatic relations.(n22) Equating engagement with economic contacts alone risks neglecting the importance and potential effectiveness of contacts in noneconomic issue areas.

Finally, some scholars risk gleaning only a partial and distorted insight into engagement by restrictively evaluating its effectiveness in achieving only some of its professed objectives. Papayoanou and Kastner deny that they seek merely to examine the "security implications" of the US engagement of China, though in a footnote, they admit that "[m]uch of the debate [over US policy toward the PRC] centers around the effects of engagement versus containment on human rights in China."(n23) This approach violates a cardinal tenet of statecraft analysis: the need to acknowledge multiple objectives in virtually all attempts to exercise inter-state influence.(n24) Absent a comprehensive survey of the multiplicity of goals involved in any such attempt, it would be naive to accept any verdict rendered concerning its overall merits.

A REFINED DEFINITION OF ENGAGEMENT

In order to establish a more effective framework for dealing with unsavory regimes, I propose that we define engagement as the attempt to influence the political behavior of a target state through the comprehensive establishment and enhancement of contacts with that state across multiple issue-areas (i.e. diplomatic, military, economic, cultural). The following is a brief list of the specific forms that such contacts might include:

DIPLOMATIC CONTACTS

Extension of diplomatic recognition; normalization of diplomatic relations

Promotion of target-state membership in international institutions and regimes

Summit meetings and other visits by the head of state and other senior government officials of sender state to target state and vice-versa

MILITARY CONTACTS

Visits of senior military officials of the sender state to the target state and vice-versa

Arms transfers

Military aid and cooperation

Military exchange and training programs

Confidence and security-building measures

Intelligence sharing

ECONOMIC CONTACTS

Trade agreements and promotion

Foreign economic and humanitarian aid in the form of loans and/or grants

CULTURAL CONTACTS

Cultural treaties

Inauguration of travel and tourism links

Sport, artistic and academic exchanges (n25)

Engagement is an iterated process in which the sender and target state develop a relationship of increasing interdependence, culminating in the endpoint of "normalized relations" characterized by a high level of interactions across multiple domains. Engagement is a quintessential exchange relationship: the target state wants the prestige and material resources that would accrue to it from increased contacts with the sender state, while the sender state seeks to modify the domestic and/or foreign policy behavior of the target state. This deductive logic could adopt a number of different forms or strategies when deployed in practice.(n26) For instance, individual contacts can be established by the sender state at either a low or a high level of conditionality.(n27) Additionally, the sender state can achieve its objectives using engagement through any one of the following causal processes: by directly modifying the behavior of the target regime; by manipulating or reinforcing the target states' domestic balance of political power between competing factions that advocate divergent policies; or by shifting preferences at the grassroots level in the hope that this will precipitate political change from below within the target state.

This definition implies that three necessary conditions must hold for engagement to constitute an effective foreign policy instrument. First, the overall magnitude of contacts between the sender and target states must initially be low. If two states are already bound by dense contacts in multiple domains (i.e., are already in a highly interdependent relationship), engagement loses its impact as an effective policy tool. Hence, one could not reasonably invoke the possibility of the US engaging Canada or Japan in order to effect a change in either country's political behavior. Second, the material or prestige needs of the target state must be significant, as engagement derives its power from the promise that it can fulfill those needs. The greater the needs of the target state, the more amenable to engagement it is likely to be. For example, North Korea's receptivity to engagement by the US dramatically increased in the wake of the demise of its chief patron, the Soviet Union, and the near-total collapse of its national economy.(n28)

Third, the target state must perceive the engager and the international order it represents as a potential source of the material or prestige resources it desires. This means that autarkic, revolutionary and unlimited regimes which eschew the norms and institutions of the prevailing order, such as Stalin's Soviet Union or Hitler's Germany, will not be seduced by the potential benefits of engagement.

This reformulated conceptualization avoids the pitfalls of prevailing scholarly conceptions of engagement. It considers the policy as a set of means rather than ends, does not delimit the types of states that can either engage or be engaged, explicitly encompasses contacts in multiple issue-areas, allows for the existence of multiple objectives in any given instance of engagement and, as will be shown below, permits the elucidation of multiple types of positive sanctions.

#### increase means to make something greater—that’s a quote from

Buckley et al, 06 **-** attorney (Jeremiah, Amicus Curiae Brief, Safeco Ins. Co. of America et al v. Charles Burr et al,

http://supreme.lp.findlaw.com/supreme\_court/briefs/06-84/06-84.mer.ami.mica.pdf)

First, the court said that the ordinary meaning of the word “increase” is “to make something greater,” which it believed should not “be limited to cases in which a company raises the rate that an individual has previously been charged.” 435 F.3d at 1091. Yet the definition offered by the Ninth Circuit compels the opposite conclusion. Because “increase” means “to make something greater,” there must necessarily have been an existing premium, to which Edo’s actual premium may be compared, to determine whether an “increase” occurred. Congress could have provided that “ad-verse action” in the insurance context means charging an amount greater than the optimal premium, but instead chose to define adverse action in terms of an “increase.” That def-initional choice must be respected, not ignored. See Colautti v. Franklin, 439 U.S. 379, 392-93 n.10 (1979) (“[a] defin-ition which declares what a term ‘means’ . . . excludes any meaning that is not stated”).

Next, the Ninth Circuit reasoned that because the Insurance Prong includes the words “existing or applied for,” Congress intended that an “increase in any charge” for insurance must “apply to all insurance transactions – from an initial policy of insurance to a renewal of a long-held policy.” 435 F.3d at 1091. This interpretation reads the words “exist-ing or applied for” in isolation. Other types of adverse action described in the Insurance Prong apply only to situations where a consumer had an existing policy of insurance, such as a “cancellation,” “reduction,” or “change” in insurance. Each of these forms of adverse action presupposes an already-existing policy, and under usual canons of statutory construction the term “increase” also should be construed to apply to increases of an already-existing policy. See Hibbs v. Winn, 542 U.S. 88, 101 (2004) (“a phrase gathers meaning from the words around it”) (citation omitted).

#### Violation—they don’t increase engagement – the embargo still prevents meaningful exchanges – allowing them to “retain property rights” still doesn’t assume the embargo – that is only effective in a post embargo marketplace

**Pava – Aff author - 2011** (Mindy Pava, Executive Symposium Editor, Emory International Law Review; J.D. Candidate, Emory University School of Law (2011); B.S., Northwestern University (2004). "COMMENT: THE CUBAN CONUNDRUM: PROPOSING AN INTERNATIONAL TRADEMARK REGISTRY FOR WELL-KNOWN FOREIGN MARKS" LexisNexis 2011)

However, perhaps the United States can compromise in a way that allows ¶ for the condemnation of Cuba’s human rights record without sacrificing its ¶ international standing as an intellectual property leader. It is possible for the ¶ United States to repeal Section 211 without loosening the other restrictions ¶ inherent in the Cuba embargo. A full repeal of Section 211289—and not the ¶ narrow fix that would only rid Section 211 of its discriminatory language290¶ —¶ would allow the United States to become fully compliant with the provisions in ¶ the TRIPS agreement, and show the WTO’s Dispute Settlement Body that ¶ lawmakers have taken action to propose the changes requested in the appellate ¶ body’s ruling of more than seven years ago. The repeal of Section 211 would ¶ reestablish the same framework for the registration of foreign well-known ¶ marks that existed in the first four decades of the Cuban embargo. The Cuban ¶ government would possess the ability to register trademarks associated with ¶ nationalized businesses with the U.S. PTO, but only to the extent that those ¶ businesses would retain priority rights to the marks **in a post-embargo ¶ marketplace.** Because the embargo as a whole would still exist, no company ¶ associated with Cuba’s communist government would be able to sell its ¶ product within the United States; however, the companies would not lose their ¶ intellectual property rights to their well-known marks before the embargo is ¶ lifted. Furthermore, in conjunction with the repeal of Section 211, the United States should strongly condemn Cuba’s recent human rights abuses, such as ¶ the continued imprisonment of political opponents291 and the hunger-strike ¶ death.292 An intellectual property compromise from the United States is not a ¶ carte blanche for Cuba to behave however it wants in the human rights arena, ¶ and the United States should make that clear.

#### Voter for limits and ground—they allow any aff that changes a tiny statute without changing actual trade flows or transactions which makes neg prep impossible—also allows them to get out of every engagement DA because they don’t actually cause trade

### 4

#### the affirmative’s insistence on US led economic cooperation and integration reifies neoliberalism’s hegemonic grasp in Latin America – the impact is extinction – neoliberalism reduces existence itself to property to be exchanged - that causes massive structural violence and environmental destruction – the alternative is to vote negative to reject neoliberal knowledge production - de-linking from Latin America allows movements against neoliberalism to effectively manifest themselves

HARRIS 8 (Richard L Harris: Professor of Global Studies at California State University, Monterey Bay; Managing Editor of the Journal of Developing Societies (SAGE India); and Coordi­nating Editor of Latin American Perspectives (SAGE USA). “Latin America’s Response to Neoliberalism and Globalization,” http://www.nuso.org/upload/articulos/3506\_2.pdf)

The economic, political and social development of the Latin American and Caribbean countries is obstructed by the power relations and international structures that regulate the world capitalist system. The structures of this system provide a hierarchical political and economic exoskeleton that constrains all national efforts to pursue any significant degree of self-directed, inward-oriented, balanced and environmentally sustainable development. Indeed, the geopolitical power structures that preserve and support the world capitalist system have made it almost impossible for the governments of the core as well as the peripheral countries in this system to pursue a path of inward-oriented, equitable, democratically controlled and environmentally sustainable development (Amin 2001b:20). Since the 1980s, inter-American relations and the economic, political and social development of the Latin American and Caribbean states have been shaped by these geo­ political structures and the neoliberal strategic agenda put forward by the government of the United States of America (USA), the major transnational corporations and the three major international financial institutions (IFIs) that operate in the Latin American and Caribbean region (Harris and Nef, 2008). This later group of IFIs includes the International Monetary Fund (IMF), the World Bank, and the Inter-American Development Bank (IDB). The policies of these IFIs based in Washington generally follow the dictates of the government of the USA due to the controlling influence that it exercises over these institutions. Their agenda for the Latin American and Caribbean region gives priority to promoting and protecting the interests of the major investors and transnational corporations that are largely based in the USA and operate in the region. It also serves to maintain and strengthen the geopolitical hegemony of the USA over the Western Hemisphere (Harris and Nef). But conditions are changing. Washington’s neoliberal agenda for controlling the capi­ talist development of the Western Hemisphere and maintaining US hegemony over the region is increasingly threatened by a progressive alternative agenda for the regio­ nal integration of the Latin American and Caribbean countries that has begun to gain widespread support in the region. This alternative agenda for the region calls for the autonomous economic development of the region free of the hegemonic control and influence of the USA and the IFIs based in Washington. Not only does this type of development pose a fundamental threat to the hegemony of the USA in the region, it threatens the dominance of transnational capital throughout the Americas. Moreover, it also poses a significant threat to the global expansion and integration of the world capitalist system in general and to the global hegemonic coalition led by the government and transnational corporations of the USA. Today, political and economic strategies are being developed for moving from the prevailing export-oriented neoliberal model of economic development to new in­ ward-oriented models of sustainable development, tailored to the diverse conditions, economic capacities, political structures, natural endowments and cultural values of the societies involved. Moreover, a growing number of international and regional civil society organizations have emerged in recent years to create such alternatives. What the forums, networks, programs, and activities of these various types of organizations reveal is that there is a growing international network of organizations and social movements committed to promoting new, more equitable forms of international cooperation and regulation that support inward-oriented and sustainable development as well as genuine democracy at the regional and national levels. At the same time, these organizations argue that the present global trading regime that has been erected under the WTO should and can be replaced by a new global trading system that replaces the present system of so-called free but in fact unfair trade, with a sys­ tem that ensures «fair trade» and promotes South-South economic exchange and coo­ peration. Most of the progressive alternatives advocated by these organizations and the new left-leaning governments that have been elected to office in the region give priority to aligning the external relations of the countries in the region to the internal needs of the majority of the population. That is to say, decisions about what to export and what to import should be aligned with the needs of the population rather than the interests of transnational capitalists and transnational corporations or the hegemonic interests of the USA. Some of these alternative strategies involve what Walden Bello (2002) has referred to as «deglobalization.» That is to say, they involve unlinking the economies of these peripheral capitalist societies from the advanced capitalist centers of the world economy, particularly in the USA. They also involve throwing off the constraints that have been imposed upon the economic policies and structures of the­ se countries by the IFIs (IMF, World Bank, and IDB), the WTO and the other agents and regulatory regimes that regulate the world capitalist system. In fact, there appears to be growing interest throughout Latin America in revivifying the Pan-American ideal of unification, currently perhaps best expressed in Hugo Chávez’ Bolivarian dream of turning South America into a regional economic hegemon (DeLong, 2005). The governments of Bolivia, Cuba, Ecuador, Nicaragua and Uruguay have indicated they want to join the government of Venezuela in creating a regional union. It has been proposed that this coalescing continental confederation should shift the region’s extra-continental trade towards Europe, Asia and South Africa and away from North America. The prospect of this happening appears to have alarmed Washington more than the increasing number of electoral triumphs of leftist politicians in the region (Delong). There has also been considerable talk in the region about creating a single currency for the South American countries that would be modeled on and perhaps tied to the Euro rather than the US Dollar. This discussion is symptomatic of what appears to be an emerging desire to create an integrated economic and political community that is strikingly different from the type of hemispheric economic integration scheme being pursued by the Washington and its allies in the region (DeLong). Moreover, there is an increasing tendency in the region to find alternatives to trading with the USA. In particular, several Latin American nations (Brazil, Cuba, Venezuela and Chile) have been strengthening their economic relations with Asia, particularly with China. But the widespread popular opposition to neoliberalism and so-called globalization, and the shift to the Left in the region’s politics, represent much more than a serious challenge to US hegemony, they also represent a serious threat to the existing pattern of capitalist development in the region. Central to Washington’s strategy for the hemisphere has been the imposition of a neoliberal model of capitalist development on the region which involves the increasing integration of the region’s economies into a hemispheric ‘free trade’ area or rather a trade bloc that is dominated by the USA. This project is itself an essential part of the strategy of the USA for the domination of the global economy by its transnational corporations. The restructuring of the economies of the region under the mantra of neoliberalism and the banner of globalization has been aimed at giving the USA-based transnational corporations and investors free reign within the region and a strong hemispheric base from which to dominate the world economy In opposition to the neoliberal, polyarchical and globalizing model of development that has been imposed by the government of the USA and its allies in the region, the growing movement for an alternative form of development that is both genuinely democratic, equitable and environmentally sustainable appears to be gaining ground in various parts of Latin America and the Caribbean. This alternative model of development requires the reorganization and realignment of the existing economies in the region. It also requires the replacement of the existing political regimes, which serve the interests of the transnational bloc of social forces that are behind the integration of the region into the new global circuits of accumulation and production that the major trans­ national corporations and the IFIs have been constructing since the 1970s. In addition to fundamental economic changes, most of the existing pseudo-democratic political regimes in the region need to be thoroughly democratized so that they are responsive to and capable of serving the needs and interests of the majority of the people rather than the ruling polyarchies and the transnational corporations operating in the region. An essential requirement for realigning the region’s economies so that they produce people-centered and environmentally sustainable development is the integration of these economies into a regional economic and political union that has the resources, structures and the power to operate independently of the government of the USA and the transnational corporations based in the USA as well as in the European Union and Japan. If this type of regional integration takes place, it will enable the Latin American and Caribbean states to break free of the hegemonic influence of the USA, and reverse the denationalization (‘globalization’) of the Latin American and Caribbean economies. Instead of the corporate-driven hemispheric integration of the region under the hegemony of the USA, a new system of regional economic cooperation and both equitable as well as environmentally sustainable development is desperately needed to improve the lives of the vast majority of the people living in Latin America and the Caribbean. This type of regional, equitable and sustainable development can only be success­ fully carried out by truly democratically elected political leaders with broad-based popular support who are sincerely committed to achieving this alternative rather than the elitist neoliberal model. It probably will also require democratic socialist political institutions and structures of production and distribution. Regionalism has been the dream of the democratic left for some time. The European Union has its origins in the French socialist dream of ending Franco-German enmity through unifying Europe, and African regionalism was the vision of African socialists such as Julius Nyerere of Tanzania who saw regional integration as the only means to progress beyond tribalism and colonialism and create a united and democratic Africa (Faux, 2001:4). Viewed from the perspective of those who want to create a people-cen­ tered, democratic, equitable and environmentally sustainable social order in the Ame­ ricas, the corporate-dominated process of capitalist pseudo-globalization taking place in the region and around the world urgently needs to be replaced by what Samir Amin has referred to as a new system of «pluricentric regulated globalization» (Amin, 2001a). This alternative form of globalization requires the development of regional economic and political unions in Africa, Asia, Latin America, the Caribbean, the Middle East and elsewhere, which collaboratively promote people-centered, democratic and envi­ ronmentally sustainable forms of development on a regional basis. According to Amin, these regional unions of states are needed to collaborate as partners in collecti­ vely regulating the global restructuring of the world economy for the benefit of the vast majority of humanity rather than the transnational corporations and the northern centers of the world capitalist system in the USA, Europe and Japan. This type of regional-based regulative order is needed to regulate and redirect inter­ national economic, social, and political relations so that these relations serve the inte­ rests and needs of the vast majority of the world’s population. The present power structures and regulatory regime of the world capitalist system support the transna­ tional corporate-driven restructuring and denationalization of the economies of both the societies at the core and in the periphery of this system. The Latin American and Caribbean countries need to ‘de-link’ step-by-step from this exploitative and inequitable system. They need to redirect and restructure their eco­ nomies so that they serve the needs of the majority of their people while also protec­ ting their natural resources and ecosystems. The alternative policies of economic, poli­ tical and social development proposed and in some cases adopted by the new leftist leaders, the progressive civil society organizations and their supporters, combined with the project of regional integration associated with the new Unión de Naciones Suramericanas (UNASUR), are significant indications of unprecedented and pro­ found transformation unfolding in the Americas. A growing number of civil society organizations and social movements throughout the Americas are pressuring the governments of the region to follow what the pro­ gressive civil society networks such as the Alianza Social Continental/ Hemispheric Social Alliance (ASC/HSA) describes as a regional model of integration that supports the environmentally sustainable and democratic development of all the societies in the region (see ASC-HSA, 2006). The ASC/HSA also contends that the UNASUR pro­ ject and the Bolivarian dream of unification is threatened by the so-called free trade agreements that Washington has negotiated with Chile, Colombia, Peru, the Central American countries and the Dominican Republic. As the ASC/HSA makes clear in its documents and public information campaigns, these agreements compromise the national sovereignty, obstruct the local production of medicines, threaten public health, facilitate the profit-driven privatization of water and vital services such as health and sanitation, and threaten the survival of indigenous cultures, biodiversity, food sovereignty, and local control over natural resources. The «Alternatives for the Americas» proposal developed by this inter-American network of progressive civil society organizations and social movements calls on all governments in the region to subordinate trade and investments to sustainability and environmental protection as well as social justice and local democratic control over economic and social development (ASC/HSA 2002:5). The growing number and political influence of these kinds of networks, organizations and movements provide unquestionable evidence of the emergence of the social for­ ces and political conditions that Panitch (1996:89) and others (Harris, 1995:301-302; Jo­ nas and McCaughan, 1994) predicted in the 1990s would arise in opposition to neoli­ beralism, corporate-dominated pseudo globalization and the extension and consolida­ tion of the hegemony of the USA. It now seems increasingly possible that these forces and the political mobilization that they have helped to create will transform the politi­ cal regimes in the region as well as the nature of inter-American relations, bring about the regional integration of the Latin American countries and free these countries from US hegemony and the form of ‘turbo-capitalism’ to which they have been subjected. At this point, we can only speak in general terms about the new model(s) of develop­ ment that will replace the neoliberal model of uneven and inequitable development that has pillaged most of the region.

### Courts

**Multiple alt causes to Soft Power-**

* **Debt**
* **Lack of contributions to international institutions**
* **Domestic issues**

Neu 13 [C. Richard, a senior economist at the nonprofit, nonpartisan RAND Corporation. “U.S. 'Soft Power' Abroad Is Losing Its Punch” <http://www.rand.org/blog/2013/02/us-soft-power-abroad-is-losing-its-punch.html>]//BMitch

The way America flexes it economic muscle around the world is changing dramatically—and not necessarily for the better. In 1997, facing a wave of sovereign debt defaults, the International Monetary Fund asked its member states to pledge lines of credit to support Fund rescue efforts. The United States and other nations did as asked. In 2009, the United States responded again to a call for expanded credit lines. When the Fund sought yet another expansion of these credit lines last April, 39 countries, including China, Russia, Brazil, Mexico, India, and Saudi Arabia, stepped up. Even cash-strapped Italy and Spain pledged support. But the United States was conspicuously absent. A pledge from the United States requires congressional authorization. In the midst of last spring's contentious debate over U.S. government deficits and debts, support for an international body was a political nonstarter. Where the United States had previously demonstrated international leadership, other countries—some of them America's rivals for international influence—now make the running. This is a small example of what may be a troubling trend: America's fiscal predicament and the seeming inability of its political system to resolve these matters may be taking a toll on the instruments of U.S. “soft power” and on the country's ability to shape international developments in ways that serve American interests. The most potent instrument of U.S. soft power is probably the simple size of the U.S. economy. As the biggest economy in the world, America has a lot to say about how the world works. But the economics profession is beginning to understand that high levels of public debt can slow economic growth, especially when gross general government debt rises above 85 or 90 percent of GDP. The United States crossed that threshold in 2009, and the negative effects are probably mostly out in the future. These will come at a bad time. The U.S. share of global economic output has been falling since 1999—by nearly 5 percentage points as of 2011. As America's GDP share declined, so did its share of world trade, which may reduce U.S. influence in setting the rules for international trade. And it's not just the debt itself that may be slowing GDP growth. Economists at Stanford and the University of Chicago have demonstrated that uncertainty about economic policy—on the rise as a result of political squabbling over U.S. fiscal policy—typically foreshadows slower economic growth. Investors may be growing skittish about U.S. government debt levels and the disordered state of U.S. fiscal policymaking. From the beginning of 2002, when U.S. government debt was at its most recent minimum as a share of GDP, to the end of 2012, the dollar lost 25 percent of its value, in price-adjusted terms, against a basket of the currencies of major trading partners. This may have been because investors fear that the only way out of the current debt problems will be future inflation. The dollar has also given up a bit of its dominance as the preferred currency for international reserves among advanced economies. And the renminbi appears to have replaced the dollar as the “reference currency” for most of East Asia. (The good news is that in recent years U.S. banks have increased their share of deposits from foreigners, mostly at the expense of banks in London.) More troubling for the future is that private domestic investment—the fuel for future economic growth—shows a strong negative correlation with government debt levels over several business cycles dating back to the late 1950s. Continuing high debt does not bode well in this regard. But perhaps the worst consequences of U.S. debt are actions not taken. U.S. international leadership has been based, in part, on contributions—political and financial—to major institutions and initiatives—International Monetary Fund, World Bank, General Agreements on Tariffs and Trade (and later World Trade Organization), NATO, North America Free Trade Agreement, the Marshall Plan, and so on. These served U.S. interests and made the world better. But what have we done lately? The Doha round of trade negotiations has stalled. Ditto efforts at coordinated international action on climate change. Countries of the Arab Spring need rebuilding. Little progress is apparent on the Transpacific Partnership, a proposed new free-trade area. And warnings from the U.S. treasury secretary to his European counterparts about the dangers of failing to resolve the fiscal crisis in the eurozone met with public rebukes: Get your own house in order before you lecture us. Have U.S. fiscal problems undermined America's self confidence and external credibility to the extent that it can no longer lead? And what about unmet needs at home—healthcare costs, a foundering public education system, deteriorating infrastructure, and increasing inequality? A strained fiscal situation that limits resources for action and absorbs so much political energy cannot be helping with any of these matters. But without progress on such things, what becomes of the social cohesion necessary for unified action abroad or the moral authority to lead other nations by example? America's fiscal predicament is serious. The problem has become obvious in the last few years, but it has been building for decades, largely the result of promises of extensive social benefits without a corresponding willingness to pay for them. Putting U.S. government financing on a sustainable path will require painful adjustments over a number of years—increased government revenue and painful reductions in government outlays, almost certainly including outlays for defense and international affairs. During the necessary period of fiscal adjustment and constrained government resources, U.S. international influence may decline yet further. But there is no alternative to getting on with the task. The world has not yet found an acceptable substitute for U.S. leadership.

**Even if terrorists have fissile material, they can’t build the bomb and transport it**

Mueller 2012 (John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, *International Security*, Vol. 37, No. 1 (Summer 2012), pp. 81–110)

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. In 2005 an FBI report found that, despite years of well-funded sleuthing, the Bureau had yet to uncover a single true al-Qaida sleeper cell in the United States. The report was secret but managed to be leaked. Brian Ross, “Secret FBI Report Questions Al Qaeda Capabilities: No ‘True’ Al Qaeda Sleeper Agents Have Been Found in U.S.,” ABC News, March 9, 2005. Fox News reported that the FBI, however, observed that “just because there’s no concrete evidence of sleeper cells now, doesn’t mean they don’t exist.” “FBI Can’t Find Sleeper Cells,” Fox News, March 10, 2005. Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002. 47 By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” 48 Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000. 49 In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders. 50 If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs. Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones. 52

#### Customary international law disables the preemption doctrine

Yoo – Prof Law Berkeley – 2k

[John. Prof Law @ Cal Berkeley. “AEI Conference Trends in Global Governance: Do They Threaten American Sovereignty?” 1 Chi J Intl L 355, 2000. ln//GBS-JV]

US intervention raises a second, related question: whether the President has a constitutional duty to obey international law. It seems difficult to dispute that President Clinton violated international law--without domestic objection--by attacking a sovereign nation without Security Council approval. Under the UN Charter, a nation may not use force against another member state unless either it is acting in its self-defense or the action has received the authorization of the UN Security Council. **[50](https://www.lexis.com/research/retrieve?_m=e38f5a3be3de3c9072068a7c7b15fce1&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAz&_md5=f1406f228ba4c05f3aaa1c952dacdd77" \l "n50" \t "_self)** Unless one can make out the difficult claim that Serbian activities rose to the level of genocide and hence a crime against humanity that any nation has the right to stop, it initially seems that the tragedies in Kosovo represented internal Yugoslavian matters; the Charter forbids the resolution by force of these domestic matters. While one can make (and I might subscribe to) the argument that international law must recognize that a nation may use force to defend its vital national interests even if a cross-border invasion has not occurred, the UN Charter and most international legal scholars exclude this possibility. As Professor Henkin has argued: "By adhering to the Charter, the United States has given up the right to go to war at will. Under this approach, the Clinton administration's military attack upon Serbia violated international law. According to the views of many international lawyers, this should have made Kosovo presumptively unconstitutional. For example, many leading commentators argue that the President has a constitutional duty to enforce customary international law. [n52](http://www.lexisnexis.com.proxy2.cl.msu.edu:2047/us/lnacademic/frame.do?tokenKey=rsh-20.294409.24440070835&target=results_DocumentContent&reloadEntirePage=true&rand=1222469085254&returnToKey=20_T4671930008&parent=docview" \l "n52) While some admit that certain forms of constitutional or statutory authority might allow the President to violate international law, [n53](http://www.lexisnexis.com.proxy2.cl.msu.edu:2047/us/lnacademic/frame.do?tokenKey=rsh-20.294409.24440070835&target=results_DocumentContent&reloadEntirePage=true&rand=1222469085254&returnToKey=20_T4671930008&parent=docview" \l "n53) others go farther in  [\*371]  claiming that the President cannot violate certain forms of international law regardless of his domestic authority. [n54](http://www.lexisnexis.com.proxy2.cl.msu.edu:2047/us/lnacademic/frame.do?tokenKey=rsh-20.294409.24440070835&target=results_DocumentContent&reloadEntirePage=true&rand=1222469085254&returnToKey=20_T4671930008&parent=docview" \l "n54) Although the inclusion of customary international law as federal common law is open to potentially crippling doubts, [n55](http://www.lexisnexis.com.proxy2.cl.msu.edu:2047/us/lnacademic/frame.do?tokenKey=rsh-20.294409.24440070835&target=results_DocumentContent&reloadEntirePage=true&rand=1222469085254&returnToKey=20_T4671930008&parent=docview#n55) such arguments might be on firmer ground when it comes to treaties, which are explicitly mentioned in the Supremacy Clause. [n56](http://www.lexisnexis.com.proxy2.cl.msu.edu:2047/us/lnacademic/frame.do?tokenKey=rsh-20.294409.24440070835&target=results_DocumentContent&reloadEntirePage=true&rand=1222469085254&returnToKey=20_T4671930008&parent=docview" \l "n56) If foreign relations law scholars were correct about the binding nature of even customary international law on the Executive branch, then certainly courts could enjoin the President from violating a more concrete form of international law--namely the UN Charter--that had been adopted through the treaty process.

#### The threat of preemption is key to deterrence credibility

Payne ‘7

[Keith. President of the National Institute for Public Policy. “On Nuclear Deterrence and Assurance” Security Studies Quarterly, Summer 07. JSTOR//GBS-JV]

That officials and commentators in key allied countries perceive great value in US nuclear weapons for extended deterrence suggests strongly that these weapons do have unique assurance value. There is a direct connection between allied perceptions of the assurance value of US nuclear weapons for extended deterrence and nuclear nonproliferation. There may seem to be an incongruity between the US maintenance of its own nuclear arsenal for deterrence and its simultaneous advocacy of nuclear nonproliferation; a prominent member of Congress has likened this seeming incongruity to a drunkard advocating abstinence. However, given the obvious importance of US nuclear weapons for its extended deterrence responsibilities and the critical role which US extended nuclear deterrence plays in nonproliferation, there is no incongruity. Sustaining US capabilities for extended nuclear deterrence is critical for nuclear nonproliferation. Such allied commentary does not demonstrate directly the value of nuclear weapons for deterrence—again, it is US opponents who ultimately determine the deterrence value of US nuclear weapons. It is, however, significant evidence of the importance of US nuclear weapons for the assurance of allies via extended deterrence. It also is important to recognize that for North Korea’s closest neighbors, including Japan and South Korea, the question of the value of US nuclear weapons is not an academic or theoretical debate about preferred utopian futures. It is a most serious concern among these Asian leaders who undoubtedly understand North Korea at least as well as US commentators. They believe that US nuclear weapons are critical to the deterrence of North Korea and thus their own assurance. These are only perceptions; their perceptions, however, may be particularly well-informed, and both deterrence and assurance fundamentally are about perceptions. The apparent importance of US nuclear weapons for extended deterrence, assurance, and thus nonproliferation may distress US commentators who would prefer US deterrence threats to be largely or exclusively nonnuclear. Just as deterrent effect ultimately is determined by opponents, however, what does or does not assure allies is not decided by the preferences of US commentators, but by the allies themselves. The United States can decide what priority it places on the assurance of allies and how it will proceed to support that goal, but only the allies can decide whether they are assured. In the contemporary environment, available evidence suggests strongly that assurance is an important goal and that US nuclear weapons are critical to the assurance of key allies to a level they deem adequate. The United States could decide to withdraw the nuclear umbrella and provide only a nonnuclear commitment. As discussed above, however, it is likely that the US withdrawal of its nuclear extended deterrent coverage would create new and powerful incentives for nuclear proliferation among its friends and allies who, to date, have felt sufficiently secure under the US extended nuclear deterrent to remain nonnuclear.53 This linkage is not speculative; it is voiced by allies who feel increasingly at risk. Extreme care should be exercised before moving in a direction that carries the risk of unleashing a nuclear proliferation “cascade”—such as moving prematurely in the direction of a wholly nonnuclear force structure. As a 2007 report by the Department of State’s International Security Advisory Board concludes, There is clear evidence in diplomatic channels that US assurances to include the nuclear umbrella have been, and continue to be, the single most important reason many allies have foresworn nuclear weapons. This umbrella is too important to sacrifice on the basis of an unproven ideal that nuclear disarmament in the US would lead to a more secure world . . . a lessening of the US nuclear umbrella could very well trigger a cascade [of nuclear proliferation] in East Asia and the Middle East.

#### Extinction

Shuster ‘9

[Michael. Diplomatic Correspondent for NPR, quoting Josh Pollack, an Expert on Nuclear Proliferation. “Iran Prompts Debate Over Mideast Defense Umbrella” 26 Aug 2009. Lexis//GBS-JV]

Nuclear extended deterrence if it fails could embroil the United States or whoever else is providing this guarantee in a nuclear war that they otherwise could have avoided, these secondhand retaliatory threats that we're talking about may not be quite as credible as the retaliatory threats one would make on behalf of one's own country. MR. SHUSTER: In the case of the Middle East, greater reliance on American defense guarantee may already be a problem, a result of the mess in Iraq, but it's now President Obama's problem, says Michael Krepon. MR. KREPON: It's up to the Obama administration now to shore up the credibility of that guarantee.

#### Uncheckd commander in chief authority solves nuclear war

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16¶ The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22¶ [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation¶ Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.¶ (1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27¶ (2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28¶ (3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30¶ (4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32¶ (5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34¶ [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39¶ Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

### IPR

#### Maintaining section 211 key to the Patent and Trademark Office

Farhadian 12- Sarah, J.D. candidate, Benjamin N. Cardozo School of Law (2013); Editor in Chief, Cardozo Arts &  Ent. L.J. Vol. 31; B.A., magna cum laude, Brandeis University (2007), STEALING BACARDI’S THUNDER:WHY THE PATENT AND TRADEMARK OFFICE SHOULD STOP REGISTERING STOLEN TRADEMARKS NOW, <http://www.cardozoaelj.com/wp-content/uploads/2012/07/Farhadian.pdf>, 10/9/13

Section 211 has proven to be important in the face of a PTO that ¶ is reluctant to apply even well settled non-statutory doctrines that ¶ relate to trademark registration.158 This may be due to the nature of ¶ the precedent that is binding on PTO. While matters purely ¶ concerning federal registration of trademarks are within the ¶ jurisdiction of the PTO and the federal courts which review its ¶ trademark decisions (principally, but not always, the Court of Appeals ¶ for the Federal Circuit); the federal and state courts of general ¶ jurisdiction hear the trials and appeals of infringement suits, in which ¶ they pass upon the right to use a contested trademark.¶ 159 In other ¶ words, any case law that comes out of trademark infringement suits, ¶ such as the case law carving out an exception to the Act of State ¶ Doctrine for trademarks registered in the United States,160 is at best ¶ persuasive authority upon the PTO, and at worst, ignorable authority ¶ (unless the decision is from the United States Supreme Court).161 ¶ Section 211—the only statute that protects United States trademarks ¶ and their legitimate owners from the effects of confiscations without ¶ adequate compensation—provides statutory authority which is binding ¶ upon the PTO, and therefore requires the PTO to deny the registration ¶ of a stolen trademark. ¶ In fact, the need for Section 211 as a rule of decision that is ¶ binding on the PTO has already proven to be true for the Trinidad ¶ U.S.A. Corporation.162 TTT Trinidad is a tobacco brand used by the ¶ Trinidad family company whose assets were also confiscated by the ¶ Castro government.163 When Trinidad U.S.A. Corporation discovered ¶ that the Cuban government registered its trademarks in the United ¶ States, Trinidad filed a petition to cancel the Cuban government’s ¶ registrations with the U.S. Trademark Trial and Appeal Board ¶ (TTAB).164 While their petition was pending, Section 211 became ¶ law.165 On July 16, 2001, the TTAB cancelled Cuba’s registration.166 ¶ As Diego Trinidad wrote to the Chairman of the Senate Judiciary ¶ Committee in 2004: “[d]ue to Section 211, my family has been able to ¶ hold onto our trademarks in the United States and enter into a ¶ productive license agreement to produce our products.”167 Section 211 ¶ saved Diego Trinidad and his family from having to endure what the ¶ Bacardis and Arechabalas are all too familiar with: decades of ¶ expensive domestic and international litigation in an as-of-yet ¶ unsuccessful attempt to reclaim from Castro a trademark they ¶ rightfully own.168 Simply stated, Section 211 brings the effect of ¶ Cuban confiscations to a screeching halt at the U.S. border and ¶ preserves the original owners’ rights to their U.S. trademarks. Make ¶ no mistake, the law does not prohibit or interfere with the Cuban ¶ government’s registration of trademarks that it legitimately owns, as ¶ distinguished from those it has acquired through confiscation.169

#### Key to the Memorandum of Understanding - Solves the economy, manufacturing, and PPPs

USPTO 13 – United States Patent and Trademark Office [“USPTO Partnership Aims to Spur Innovation and Generate Jobs” <http://www.ipwatchdog.com/2013/03/05/uspto-partnership-aims-to-spur-innovation-and-generate-jobs/id=36696/>]

Washington — The U.S. Department of Commerce’s United States Patent and Trademark Office (USPTO) and the AutoHarvest Foundation today announced the signing of a Memorandum of Understanding (MOU) to work together to spur innovation and generate jobs in advanced manufacturing. The two organizations will collaborate on the creation of an online environment for innovators to exchange information, facilitate technical discussions, and encourage the growth of entrepreneurial activities. The USPTO opened its first-ever satellite office in Detroit in [July 2012](http://www.uspto.gov/news/pr/2012/12-41.jsp), and the MOU is part of the agency’s outreach into the community.¶ Through the MOU, entrepreneurs and corporate executives will have direct access to a centralized online collection of databases, information resources, software and analytical tools designed to help inventors better understand the process of obtaining, maintaining and commercializing their intellectual property (IP). Through a series of actionable interfaces, innovators will also have the ability to view, directly respond to and potentially enter into business transactions to commercialize their IP or provide their technologies to emerging companies seeking advanced manufacturing solutions.¶ “This partnership will help advanced manufacturing businesses and individual inventors in Detroit and the surrounding region obtain patent protection and commercialize their inventions,” said Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the USPTO, Teresa Stanek Rea.¶ The MOU marks yet another step the USPTO has taken to help grow businesses by establishing partnerships with regional economic development commissions and general public-private partnerships in order to offer a tailored suite of IP support services to local start-ups, incubators, and job accelerators.¶ “The importance of the Midwest as a global engineering center is reinforced by this alliance,” said AutoHarvest president and CEO, Jayson Pankin. “AutoHarvest members will benefit from information and databases sourced and potentially co-developed with the United States Patent and Trademark Office that will help inventors better understand the process of obtaining, maintaining and commercializing intellectual property, leading to real economic impact.”¶ AutoHarvest Foundation is a 501 (c) 3 non-profit organization led by some of the most highly respected figures in the automotive industry. AutoHarvest is designing and planning to launch a marketplace-driven e-collaboration system that accelerates innovation in advanced manufacturing. For more information on AutoHarvest visit [www.autoharvest.org](http://www.autoharvest.org/).

#### Advanced manufacturing checks every war

**Paone 9** (Chuck, 66th Air Base Wing Public Affairs for the US Air Force, 8-10-09, “Technology convergence could prevent war, futurist says,” http://www.af.mil/news/story.asp?id=123162500)

The convergence of "exponentially advancing technologies" will form a "super-intelligence" so formid able that it could avert war, according to one of the world's leading futurists. Dr. James Canton, CEO and chairman of the Institute for Global Futures, a San Francisco-based think tank, is author of the book "The Extreme Future" and an adviser to leading companies, the military and other government agencies. He is consistently listed among the world's leading speakers and has presented to diverse audiences around the globe. He will address the Air Force Command and Control Intelligence, Survelliance and Reconnaissance Symposium, which will be held Sept. 28 through 30 at the MGM Grand Hotel at Foxwoods in Ledyard, Conn., joining Air Force Chief of Staff Gen. Norton Schwartz and a bevy of other government and industry speakers. He offered a sneak preview of his symposium presentation and answered various questions about the future of technology and warfare in early August. "The superiority of convergent technologies will prevent war," Doctor Canton said, claiming their power would present an overwhelming deterrent to potential adversaries. While saying that the U.S. will build these super systems faster and better than other nations, he acknowledged that a new arms race is already under way. "It will be a new MAD for the 21st century," he said, referring to the Cold War-era acronym for Mutually Assured Destruction, the idea that a nuclear first strike would trigger an equally deadly response. It's commonly held that this knowledge has essentially prevented any rational state from launching a nuclear attack. Likewise, Doctor Canton said he believes rational nation states, considering this imminent technology explosion, will see the futility of nation-on-nation warfare in the near future. Plus there's the "socio-economic linking of the global market system." "The fundamental macroeconomics on the planet favor peace, security, capitalism and prosperity," he said. Doctor Canton projects that nations, including those not currently allied, will work together in using these smart technologies to prevent non-state actors from engaging in disruptive and deadly acts. As a futurist, Doctor Canton and his team study and predict many things, but their main area of expertise -- and the one in which he's personally most interested -- is advanced and emerging technology. "I see that as the key catalyst of strategic change on the planet, and it will be for the next 100 years," he said. He focuses on six specific technology areas: "nano, bio, IT, neuro, quantum and robotics;" those he expects to converge in so powerful a way. Within the information technology arena, Doctor Canton said systems must create "meaningful data," which can be validated and acted upon. "Knowledge engineering for the analyst and the warfighter is a critical competency that we need to get our arms around," he said. "Having an avalanche of data is not going to be helpful." Having the right data is. "There's no way for the human operator to look at an infinite number of data streams and extract meaning," he said. "The question then is: How do we augment the human user with advanced artificial intelligence, better software presentation and better visual frameworks, to create a system that is situationally aware and can provide decision options for the human operator, faster than the human being can?" He said he believes the answers can often be found already in what he calls 'edge cultures.' "I would look outside of the military. What are they doing in video games? What are they doing in healthcare? What about the financial industry?" Doctor Canton said he believes that more sophisticated artificial intelligence applications will transform business, warfare and life in general. Many of these are already embedded in systems or products, he says, even if people don't know it.

#### IPR fine now and the aff isn’t large enough to solve

**Blair and Huntsman 13** - Dennis and Jon are co-chairs of The Commission on the Theft of American Intellectual Property. Jon is also an American politician, businessman, and diplomat who served as the 16th Governor of Utah from 2005 to 2009, and as United States Ambassador to Singapore from 1992 to 1993, and China from 2009 to 2011. ("The IP Commission Report: The Report of the Commission on the Theft of American Intellectual Property", May 2013, <http://ipcommission.org/report/IP_Commission_Report_052213.pdf>)

In addition to participating in WTO dispute mechanisms such as TRIPS, the United States has ¶ relied on a series of other measures to deal with IP theft, none of which has solved the problem. ¶ First, the United States has attempted to hector China and other foreign countries into doing a ¶ better job of protecting IP. The mechanism utilized annually is the USTR Special 301 Report. As ¶ discussed earlier, the report assesses foreign countries on their ability to protect intellectual property ¶ and identifies actions taken or anticipated by the U.S. government. In the recently released 2013 ¶ report, the USTR notes a grave concern with cyber-enabled trade-secret theft from China. Top ¶ administration officials have more frequently decried foreign theft of American IP amid promises ¶ to get tough. In March 2013, Thomas Donilon, President Obama’s national security advisor, ¶ specifically called attention to the problem of Chinese cyber-enabled theft of confidential American ¶ proprietary information.43¶ A second U.S. government approach has been to increase enforcement and prosecution initiatives. ¶ The Office of the Intellectual Property Enforcement Coordinator was established in 2008 in the Office ¶ of Management and Budget. Improved legislation and increased enforcement of foreign theft have ¶ resulted in the arrest and prosecution of Chinese and other foreign nationals at rates greater than in ¶ the past.44 Seizures by U.S. Customs and Border Protection are also on the rise in many categories.45 ¶ As important as these efforts are, they just do not have sufficient “teeth” and do not catch ¶ perpetrators often enough to make a difference. Theft is increasing, and cyber-enabled forms, in ¶ particular, are proving ever more deleterious.¶ Despite the inadequacy of U.S. government policy and action, many U.S. and other international ¶ companies large and small have made the calculation that they can mitigate the risk or absorb ¶ the lost revenues and profits. Some U.S. corporate actors are also pursuing their own solutions. ¶ Companies such as IBM are supporting the proposed Cyber Intelligence Sharing and Protection ¶ Act to allow for greater information sharing between the government and the private sector. Many ¶ companies support programs that encourage the rule of law abroad. Others, such as the Center for ¶ Responsible Enterprise and Trade (CREATe), seek to standardize best practices for corporate IP ¶ policy by enhancing supply-chain accountability on behalf of multinational companies. A final set ¶ of actors is increasingly looking to “take matters into its own hands” and pursue unilateral actions, ¶ particularly in the cyber domain, against foreign entities that steal their IP.¶ These conditions cannot be allowed to fester. China has taken aggressive private and public ¶ actions that are inflicting major damage to the American economy and national security. Robust ¶ and swift action must be taken by the U.S. government. IP thieves must rapidly discover that the ¶ costs of stealing American IP greatly exceed the benefits, and several changes are needed to make ¶ that happen. This report contains a series of recommendations that will reverse the negative trends ¶ of the past and make immediate improvements in the protection of American IP.

#### Won’t solve IP rights – cases that matter don’t go to the WTO

PAUWELYN 10 - \* Joost Pauwelyn is Professor of International Law at the Graduate Institute of International and¶ Development Studies, Geneva. [“The Dog That Barked But Didn’t Bite:¶ 15 Years of Intellectual Property¶ Disputes at the WTO” <http://jids.oxfordjournals.org/content/1/2/389.full.pdf#page=1&view=FitH>]

Many of the results described in this article can, at least partially, be explained¶ by the broader features of WTO dispute settlement. First, the fact that only¶ states have standing to file a complaint (not, say, Novartis or Microsoft itself)¶ and that only state laws or conduct (not, eg IP infringement by private¶ operators) is subject to challenge, goes a long way in explaining the relatively¶ low number of TRIPS complaints (27 out of 402 WTO complaints; 3% of all¶ claims under WTO agreements; only nine Panels and three Appellate Body¶ reports).¶ Secondly, given this purely state-to-state nature of WTO dispute settlement¶ and the general rules TRIPS imposes on member countries, it should come as¶ no big surprise either that almost all TRIPS disputes involved laws or¶ legislation (not specific commercial incidents) and are systemic in nature,¶ aimed at ‘signalling’ the WTO membership as a whole as much as attacking¶ specific rules in a particular country.¶ Thirdly, both the low numbers and the systemic type of TRIPS disputes are¶ further explained by the limited remedies the WTO offers to winning¶ complainants. The remedies in WTO dispute settlement are purely prospective,¶ namely, implementation or cessation of the violation by the end of a¶ ‘reasonable’ implementation period and, in the absence of that, mutually¶ agreed, prospective trade compensation or WTO-authorized retaliation until¶ rulings are implemented. Private IP right holders, albeit through their national¶ government, do not obtain reparation for past harm nor do they get¶ compensation for continued violation subsequent to a WTO ruling. At best,¶ they see prospective changes in legislation or other general rules. If not, the¶ government representing them may impose trade restrictions or suspend the IP¶ rights of other people (retaliation) or obtain market access for goods or services¶ abroad (compensation). Yet, neither retaliation nor trade compensation is of¶ any direct help to these right holders (which may explain why the EC is not¶ pushing these options in US—Copyright). Moreover, both compensation and¶ retaliation are subject to the original TRIPS violation actually causing harm¶ (which clarifies why the EC is not seeking these options in US—Havana Club¶ where US violations are not having a commercial impact for as long as the¶ United States maintains its embargo on Cuba). For right holders, the only¶ alternative to implementation may be monetary compensation (that is probably¶ why in US—Copyright a cash arrangement was agreed, at least for 3 years).¶ Given this remedy structure, private right holders, even if they have sufficient¶ clout to convince a government to bring their case, have no incentive to push¶ short-time, commercial disputes all the way to the WTO. Only politically¶ sensitive cases (think of US—Havana Club or EC—Trademarks & GIs) or¶ matters with a systemic, long-term impact (such as the TRIPS phase-in¶ disputes or Canada—Pharmaceutical Patents and China—IP Rights cases) will be¶ filed. As one comment put it, ‘[t]he TRIPS Agreement was presumably¶ designed to address systemic IP enforcement issues, and not to serve as a court¶ of appeals on individual cases or controversies’.93

#### TRIPS causes IP skepticism

PAUWELYN 10 - \* Joost Pauwelyn is Professor of International Law at the Graduate Institute of International and¶ Development Studies, Geneva. [“The Dog That Barked But Didn’t Bite:¶ 15 Years of Intellectual Property¶ Disputes at the WTO” <http://jids.oxfordjournals.org/content/1/2/389.full.pdf#page=1&view=FitH>]

The TRIPS agreement inspired both exaggerated hopes in the minds of the¶ IP lobby, and overblown fears in the hearts of NGOs and developing countries.¶ This is confirmed in the number and types of disputes filed before the WTO¶ dispute settlement system as well as the decisions reached by WTO Panels and¶ the Appellate Body and their subsequent implementation record. Relatively few¶ substantive IP disputes have been filed. Rather than developing countries, the¶ main target so far has been the EC. Moreover, the two non-implemented¶ TRIPS rulings to date are not against India or China, but the United States,¶ the main demandeur of TRIPS. Not once did the WTO authorize trade¶ sanctions to back-up TRIPS enforcement, a novelty that was nonetheless much¶ advertised when TRIPS was concluded. On the contrary, and quite ironically,¶ it is developing countries that cross-retaliated in TRIPS to enforce GATT and¶ GATS rulings against the EC and the United States. Contrary to some¶ expectations, WTO Panels and the Appellate Body have demonstrated that¶ they can deal with complex IP disputes and gained the general trust and¶ respect of the IP community in no small part by working very closely with¶ WIPO. Substantive Panel and Appellate Body findings, in turn, illustrate that¶ TRIPS does, indeed, only impose minimum standards, that TRIPS’ exceptions¶ provide for ample ‘wiggle room’ and that TRIPS disciplines on domestic IP¶ enforcement are largely procedural focused on imports (not domestic production) rather than obligations of result. The Doha Declaration on TRIPS and¶ Public Health drove TRIPS flexibility home and triggered a broader cycle of IP¶ scepticism which, rather than drowning, reinvigorated WIPO and IP activity in¶ other fora.¶ TRIPS, therefore, was not the beginning of a unidirectional strengthening of¶ worldwide IP protection. On the contrary, it turned out to be the beginning of¶ a global wave of IP scepticism. What, indeed, if, contrary to conventional¶ wisdom, developing countries were not simply forced or lured into signing¶ TRIPS with the threat of US, unilateral trade sanctions or in exchange for¶ uncertain market access benefits in agriculture and textiles? What if, instead,¶ developing countries considered that TRIPS, in and of itself, was actually not¶ such a bad deal: First, because of the many TRIPS flexibilities and loopholes¶ they were able to negotiate; Second, since, in any event, many developing¶ countries were planning to beef up IP protection in their economies’ own¶ interest anyhow and could use the helping hand of TRIPS as a scapegoat to¶ push through unpopular reforms at home?¶ What lies ahead for TRIPS dispute settlement is difficult to predict. Business as¶ usual with around one, systemic TRIPS case per year? Even less cases given¶ disappointment in earlier disputes? Or, at some point, a renewed increase in¶ TRIPS disputes? Though not likely given the systemic features of TRIPS and¶ WTO dispute settlement pointed out earlier, the last possibility could materialize¶ under different scenarios such as entry into force of TRIPS for least-developed¶ countries (partly in 2013, fully in 2016); discrimination complaints before the¶ WTO against favourable IP treatment granted in preferential trade agreements¶ (unlike GATT Article XXIV, TRIPS does not have an exception for preferential¶ arrangements) or South-South cases where larger developing countries with an¶ increasing interest in IP protection start to sue smaller developing countries.¶ The most recent TRIPS dispute is, in any event, telling. It does not concern¶ a developed country suing a developing country for lack of IP protection or¶ weak IP enforcement. It is a complaint by India and Brazil against the EC,¶ arguing that the EC violates GATT and TRIPS by enforcing IP rights too¶ strictly, in particular, as against generic drugs in transit, patented within the¶ EC, but on their way from India to Brazil where they are not¶ patent-protected.103 This is not a case brought by big pharma or the IP¶ lobby. It is a case filed on behalf of the generic drug industry against IP¶ protection beyond minimum standards, a revenge of the IP sceptics. Man¶ bites dog.

#### IPR impossible – coordination and permanence

Yager 08 - Loren Yager, Director, International Affairs and Trade [“INTELLECTUAL ¶ PROPERTY ¶ Leadership and ¶ Accountability Needed to ¶ Strengthen Federal ¶ Protection and ¶ Enforcement” <http://www.gao.gov/assets/130/120379.pdf>]

The coordinating structure that has evolved for protecting U.S. intellectual ¶ property rights lacks leadership and permanence, presenting challenges for ¶ effective long-term coordination. The National Intellectual Property Law ¶ Enforcement Coordination Council (NIPLECC), created by Congress in 1999, ¶ serves to coordinate IP protection and enforcement across agencies; and ¶ STOP, initiated by the White House in 2004, is the strategy that guides the ¶ council. NIPLECC has struggled to define its purpose and has an image of ¶ inactivity within the private sector. It continues to have leadership problems ¶ despite enhancements made by Congress in 2004 to strengthen its role. STOP, ¶ which is led by the National Security Council, has a more positive image ¶ compared to NIPLECC, but lacks permanence since its authority and ¶ influence could disappear after the current administration. While NIPLECC ¶ adopted STOP in 2006 as its strategy for protecting IP overseas, its ¶ commitment to implementing STOP as a national strategy remains unclear, ¶ creating challenges for accountability and long-term viability. ¶ ¶ Agencies within the Departments of Justice, Homeland Security, and Health ¶ and Human Services that play a role in fighting IP crimes through seizures, ¶ investigations, and prosecutions need to improve their collection and analysis ¶ of IP enforcement data. IP enforcement is generally not the highest priority ¶ for these agencies, given their broad missions, but addressing IP crimes with a ¶ public health and safety risk, such as counterfeit pharmaceuticals, is an ¶ important activity at each agency. Federal IP enforcement actions generally ¶ increased during fiscal years 2001–2006, but the agencies have not taken steps ¶ to assess their achievements. For example, despite the importance assigned to ¶ targeting IP crimes that affect public health and safety, most agencies lack ¶ data on their efforts to address these types of crimes. Also, most have not ¶ systematically analyzed their IP enforcement statistics to inform management ¶ and resource allocation decisions or established IP-related performance ¶ measures or targets. In addition, the National Intellectual Property Rights ¶ Coordination Center, created to coordinate federal IP investigative efforts, has ¶ not achieved its mission. Participating agencies have lacked a common ¶ understanding of the center’s purpose and their roles in relation to it, and staff ¶ levels have declined.

**Won’t mutate to kill hosts**

**Understanding evolution 07 –** Website on Evolution from UC Berkeley (December, "Evolution from a virus's view," http://evolution.berkeley.edu/evolibrary/news/071201\_adenovirus)

Since transmission is a matter of life or death for pathogen lineages, some evolutionary biologists have focused on this as the key to understanding why some have evolved into killers and others cause no worse than the sniffles. The idea is that there may be an evolutionary trade-off between virulence and transmission. Consider a virus that exploits its human host more than most and so produces more offspring than most. This virus does a lot of damage to the host — in other words, is highly virulent. From the virus's perspective, this would, at first, seem like a good thing; extra resources mean extra offspring, which generally means high evolutionary [fitness](http://evolution.berkeley.edu/evolibrary/glossary/glossary_popup.php?word=fitness). However, if the viral reproduction completely incapacitates the host, the whole strategy could backfire: the illness might prevent the host from going out and coming into contact with new hosts that the virus could jump to. A victim of its own success, the viral lineage could go extinct and become an evolutionary dead end. This level of virulence is clearly not a good thing from the virus's perspective.

**No impact---mitigation and adaptation will solve---no tipping point or “1% risk” args**

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

## 2NC

### CP OV

#### Counterplan solves the IP advantage –

**Making IP theft and counterfeit more costly to thieves is a sufficient deterrent to solve the advantage – denying products that contain stolen intellectual property access to the U.S. market and restricting the use of the U.S. financial system to foreign companies that repeatedly steal intellectual property strengthens the capacity of the US to deter theft and counterfeit**

**And, Reinforcing capacity-building programs overseas ensures that developing countries have the framework to allow companies to protect their intellectual property**

**Sufficient v. Necessary**

### 2NC Solvency – Plank #3

#### Capacity building creates a *systemic change* to rule of law overseas

**Blair and Huntsman 13** - Dennis and Jon are co-chairs of The Commission on the Theft of American Intellectual Property. Jon is also an American politician, businessman, and diplomat who served as the 16th Governor of Utah from 2005 to 2009, and as United States Ambassador to Singapore from 1992 to 1993, and China from 2009 to 2011. ("The IP Commission Report: The Report of the Commission on the Theft of American Intellectual Property", May 2013, <http://ipcommission.org/report/IP_Commission_Report_052213.pdf>)

Help build institutions in priority countries that contribute toward a “rule of law” environment in ¶ ways that protect intellectual property.¶ Currently, there is a range of efforts, both public and private, that contributes to the development ¶ of rule of law in China and other foreign countries that do not protect intellectual property. These ¶ should be encouraged and endorsed by Congress and the administration as extremely cost-effective ¶ ways to bring about systemic change.¶ In particular, the U.S. Patent and Trademark Office organizes a range of capacity-building efforts, ¶ such as U.S.-China legal exchanges, which include the participation of sitting American judges. These ¶ efforts are largely cost-free to taxpayers—being funded by the fees that the USPTO collects—and ¶ have been enormously effective. Of particular importance are efforts that demonstrate the purposes ¶ and value of an independent judiciary.

#### Capacity-building is sufficient to solve

**Blair and Huntsman 13** - Dennis and Jon are co-chairs of The Commission on the Theft of American Intellectual Property. Jon is also an American politician, businessman, and diplomat who served as the 16th Governor of Utah from 2005 to 2009, and as United States Ambassador to Singapore from 1992 to 1993, and China from 2009 to 2011. ("The IP Commission Report: The Report of the Commission on the Theft of American Intellectual Property", May 2013, <http://ipcommission.org/report/IP_Commission_Report_052213.pdf>)

U.S. Capacity-Building Efforts in Foreign Countries¶ The May 2013 Special 301 Report by the U.S. Trade Representative also notes some important IP ¶ capacity-building efforts undertaken by the U.S. government:4¶ • The Global Intellectual Property Academy (GIPA) in the Office of Policy and External Affairs ¶ at the U.S. Patent and Trademark Office (USPTO) “offers programs in the United States and ¶ around the world to provide education, training, and capacity-building on IPR protection and ¶ enforcement. These programs are offered to patent, trademark, and copyright officials, judges ¶ and prosecutors, police and customs officials, foreign policymakers, and U.S. rights holders.” ¶ The report adds that in 2012 “GIPA provided training to 9,217 foreign IPR officials from 130 ¶ countries, through 140 separate programs.”¶ • The report notes that U.S. government agencies, such as the Department of State and the U.S. ¶ Copyright Office, “conduct conferences and training symposia in Washington, D.C. In March ¶ 2012, for example, the Copyright Office, with co-sponsorship from the World Intellectual ¶ Property Organization, hosted an international training symposium for representatives from ¶ 17 developing countries and countries in transition on emerging issues in copyright and related ¶ rights.” ¶ • In addition, “the USPTO’s Office of Policy and External Affairs provides capacity building in ¶ countries around the world, and has concluded agreements with more than 40 national, regional, ¶ and international IPR organizations.” ¶ • Further, “the Department of Commerce’s International Trade Administration (ITA) collaborates ¶ with the private sector to develop programs to heighten the awareness of the dangers of counterfeit ¶ products and of the economic value of IPR to national economies."¶ • In 2012, the Immigration and Customs Enforcement’s Homeland Security Investigations ¶ conducted training programs overseas through the National IPR Coordination Center and in ¶ conjunction with INTERPOL. ¶ • The Department of State “provides training funds each year to U.S. Government agencies that ¶ provide IPR enforcement training and technical assistance to foreign governments.” ¶ • The “government-to-government technical assistance” provided by the Commerce Department’s ¶ Commercial Law Development Program is in large part focused on IPR protection. ¶ • The Department of Justice’s Criminal Division, which is funded by the Department of State, ¶ provided IPR-enforcement training to foreign officials in cooperation with other U.S. agencies.

#### The CP is also necessary – we need capacity building abroad – if we kick the CP it’s still an alt cause

**Blair and Huntsman 13** - Dennis and Jon are co-chairs of The Commission on the Theft of American Intellectual Property. Jon is also an American politician, businessman, and diplomat who served as the 16th Governor of Utah from 2005 to 2009, and as United States Ambassador to Singapore from 1992 to 1993, and China from 2009 to 2011. ("The IP Commission Report: The Report of the Commission on the Theft of American Intellectual Property", May 2013, <http://ipcommission.org/report/IP_Commission_Report_052213.pdf>)

The USTR’s 2013 Special 301 Report reviews the state of IPR protection and enforcement across ¶ the globe. In its most recent report on U.S. trading partners, the USTR identifies 1 priority country ¶ (Ukraine), while including 10 countries on its “priority watch list” and 30 on its “watch list.” Most of ¶ these 41 countries are the subject of a sternly worded paragraph on problems in their IPR protection ¶ and enforcement. Beyond the special focus on Ukraine, however, 3 countries on the priority watch ¶ list warrant more extensive comments: India, Russia, and China.¶ According to the USTR, the outlook for Indian protection of IP is discouraging, so much so that ¶ “there are serious questions about the future condition of the innovation climate across multiple ¶ sectors and disciplines.” Companies, for example, are challenged to patent and defend already ¶ patented pharmaceuticals. If a recent case serves as a precedent, companies from many sectors may ¶ be forced into compulsory licensing if they wish to sell in the country but do not manufacture the ¶ product there.¶ Russia frequently ranks among the worst-offending countries in the USTR’s Special 301 reports, ¶ and this year’s assessment finds an overall decline in IPR enforcement. However, with Russia’s ¶ accession to the WTO, some improvement in the piracy rate of software, and the introduction of a ¶ new special court, the report is hopeful about the future. ¶ China receives the lion’s share of attention in the 2013 report, which notes that according ¶ to the U.S. National Counterintelligence Executive, “Chinese actors are the world’s most active ¶ and persistent perpetrators of economic espionage.” The USTR also cites evidence from privately ¶ sponsored studies suggesting that entities “affiliated with the Chinese military and Chinese ¶ Government” have obtained “all forms of trade secrets.” Overall, the report describes Chinese ¶ companies and entities as “escalating” infringement of trade secrets and continuing infringement ¶ of trademarks, copyrights, and patents. In addition, it notes that “central, provincial, and local level ¶ Chinese agencies inappropriately require or pressure rights holders to transfer IPR from foreign to ¶ domestic entities.”19¶ The indicators of China’s complex role in IPR infringement come from a host of other studies ¶ over the years. Of the counterfeit or pirated goods seized by U.S. Customs and Border Protection in ¶ 2012, 72% were Chinese in origin.20 Seven of the eleven cases brought under the Economic Espionage ¶ Act since 2010 concern stolen IP destined for Chinese entities. For almost all categories of IP theft, ¶ currently available evidence and studies suggest that between 50% and 80% of the problem, both ¶ globally and in the United States, can be traced back to China.¶ By legal as well as illegal means, China has done a Herculean job of absorbing American and ¶ other countries’ technology. China now manufactures more cars than any other country, in 2012 ¶ producing almost as many as the United States and Japan combined;21 launches astronauts into orbit; ¶ assembles and makes many components for sophisticated consumer products like the iPad; leads ¶ the world in many green industries; builds most of the world’s new nuclear power plants; is rapidly ¶ advancing its military technology, often at a quicker pace than most experts predict; and makes ¶ some of the world’s fastest supercomputers. China is projected to pass the United States in total ¶ economic output between 2016 and 2030, depending on the source and methodology used.22 At the ¶ point of GDP parity, each of the two economies will account for an estimated 18% of world product. ¶ Beyond these accomplishments, which suggest extraordinary inputs, are factors that make China ¶ the biggest IP offender in the world. In the first major study on China and IPR, Michel Oksenberg¶ and colleagues noted in 1996 that the problem in China begins with historical and cultural factors, ¶ which are then exacerbated by leadership priorities, bureaucracies competing for authority, an ¶ immature legal system, and local-level leaders motivated first and foremost by short-term economic ¶ and political interests. “This widespread disregard for intellectual property rights,” they wrote, “is ¶ an area of great concern for all high-technology firms operating in the Chinese market…. and won’t ¶ be easily solved.”23 ¶ Nearly two decades later, IPR still suffers from lax enforcement by a judicial system that, despite ¶ extraordinary reforms, does not deter IP theft. In fact, the most recent member surveys by AmCham ¶ China suggest that the situation is deteriorating. In 2012 the percentage of responding companies that ¶ classified IPR enforcement as “ineffective” and “totally ineffective” rose to 72%.24 Doing business in ¶ China entails navigating a system that defies the outsider’s full apprehension, and IP theft represents ¶ a special risk.25

### a/t: hr cred addon

Alt causes to human rights cred

Burgsdorff 9(Ph. D in Political Science from Freiburg University, EU Fellow at the University of Miami (Sven Kühn von, “Problems and Opportunities for the Incoming Obama Administration”, http://aei.pitt.edu.proxy.lib.umich.edu/11047/1/vonBurgsdorfUSvsCubalong09edi.pdf)

As a matter of fact, **together with** other measures such as closing **Guantanamo**, signing up to the **Kyoto Protocol** and putting into practice the succeeding agreement under the **Bali conference**, and possibly, joining the **International Criminal Court** as well as ratifying further international human rights treaties such as the **1990 Convention on the Rights of the Child**, it would be interpreted by the international community as steps towards effective multilateralism.

**Gitmo means they don’t solve HR**

**Van Veeren 1-10** – phd Esrc Postdoctoral Research Fellow (International Relations) Reported by: Maggie Clune (Elspeth, Guantánamo ten years on – necessity or troublesome legacy? <http://www.sussex.ac.uk/ir/newsandevents/?id=11379>) Jacome

What is Guantánamo’s global political significance?

Dr Van Veeren: Guantánamo has been significant in several ways. There are suggestions that it has actually been counter-productive in that, like Abu Ghraib (where US soldiers abused prisoners in their care in Iraq), it has acted as a recruiting tool for Al Qaeda and those opposed to US operations. Apologists argue that Guantánamo has provided essential intelligence in the war on terror, including information leading to the capture of high-profile terrorists and killing of others, including Osama bin Laden.

Most importantly, because of the human rights violations associated with Guantánamo, including allegations of torture, its existence has had a profound impact on perceptions of the US and its values. Guantánamo was established as a high-profile ‘front-line’ of the War on Terror, where gathering intelligence was considered a cornerstone of prosecuting a successful war.

However, Guantánamo, along with rendition, Abu Ghraib, and failures in Iraq and Afghanistan, has undermined American ‘soft power’ and the general discourse of the US as a defender of human rights and justice.

Despite efforts by the US military and the Bush administration to change perceptions of the camp as a safe, humane, legal and transparent facility through extensive media relations, including numerous private tours of the facilities for dignitaries from around the world (from Members of the British House of Commons to Miss Universe), internationally it remains an embarrassment for the US government.

Q  Has the world forgotten about Guantánamo? Dr Van Veeren: Guantanamo continues to make headlines, but since Obama’s election, protests against the camp have diminished in size and scope. Presidential candidates, nevertheless, must still position themselves with regard to Guantánamo’s continued existence and it remains a measure of Obama’s success (or failure) as a President. More tragic is the way other detention facilities, such as Bagram in Afghanistan, remain relatively forgotten. In the same space of time Bagram has housed hundreds of thousands of individuals. Many of these men are similarly detained indefinitely, have been subjected to harsh interrogations and have, as yet, no legal recourse. Q Are there any enduring implications of Guantánamo Bay, Cuba, on US citizens? Professor Weber: When most people think about Guantánamo, they tend to think of it as a place where US citizens do things to non-US citizens – indefinitely detain them, interrogate them, torture them, strip them of their human and legal rights. What they generally know about ‘Gitmo’ is that all of the detainees are ‘foreigners’ and Muslims and all of the staff are US citizens. And this has been and remains true to this day. Indeed, until recently, it was illegal to indefinitely detain a US citizen at Gitmo or a place like Gitmo. This is why the US military transferred Yaser Hamdi, who was detained in Afghanistan and shipped to Gitmo, out of Gitmo to a US military detention facility when they learned he was a birthright US citizen. This is also why [US Army Muslim Chaplin James Yee](http://www.youtube.com/watch?v=6LuIWFPxjvo), who had been serving at Gitmo giving religious counsel to Muslim staff and detainees and who was wrongly suspected of aiding the enemy, was only arrested by the US military and held at a US military facility after he left Gitmo (the charges against him were dropped and his record was cleared, but only after he had spent 76 days in solitary confinement in a US military detention facility and was threatened by military prosecutors with the death penalty). Yet since the recent passage of the National Defence Authorization Act of 2012, it is now legal not only to hold non-US citizens indefinitely at Gitmo or places like it; it is also possible to indefinitely detain US citizens at such places. What this means is that if Gitmo has long been about (as already noted here) making the extra-legal (appear to be) legal or making the exceptional appear to be ordinary, the US government has authorised itself to do the same for US citizens at Gitmo and beyond. This is not to suggest that it was ever acceptable for the US government to do this to non-US citizens, or that these practices have only becomes problematic because they can now be extended to non-US citizens. The US government has been creeping up to something like the National Defence Authorization Act since September 11, 2001. Just think of ‘Guantánamo North’, a US prison facility which many see as virtually akin to the facilities in Guantánamo Bay, Cuba. So it is not surprising, then, that the US government has come to the point it has with the National Defence Authorization Act, which extends power of the US executive branch so dramatically that this power now contradicts what US citizenship is supposed to stand for – having the inalienable rights to life, liberty, and the pursuit of happiness. Certainly, liberty is no longer an inalienable right for a US citizen. We can only hope that, as US citizens come to experience this contradiction in their own lives, they might reconsider Gitmo and its legacy of indefinite detention for not only US citizens but for all people held by the US military. **Q Are there any other Guantánamo-style camps elsewhere in the world?** **Dr Van Veeren:** Guantánamo is a one and only camp in the world of its kind – it has functioned as a detention, interrogation and trial facility, but most importantly as a public spectacle of detention. It has a public profile as a military facility connected to counter-terrorism. In practice, Guantánamo bears close resemblance to a number of detention facilities. In its Camp X-Ray incarnation it was not too dissimilar to the way that illegal immigrants are still detained at ‘Tent City’ in Arizona. In its more recent guise, Guantánamo resembles more closely modern supermax prisons within the US, including adopting many of their practices such as solitary confinement and colour-labelling detainees according to behaviour. Bagram in Afghanistan continues to hold terrorist suspects indefinitely and without trial, and the CIA has used ‘ghost sites’ and more recently, a site in Somalia to detain and interrogate. Within the US, the federal government has created ‘Guantánamo North’ to hold mostly Mulsim individuals convicted of terrorism, so in that sense there are many Guantánamo-style camps. **Q What is Guantánamo’s legacy? Dr Van Veeren:** In addition to having a profound and lasting legacy for the men detained there (many released detainees have been traumatised and stigmatised by their time at the site), it has facilitated a militarisation of counter-terrorism, it has altered international perceptions of the US, and it has resulted in the production of a cultural and political icon. Where countering and responding to terrorism was once the domain of the FBI and CIA, Guantánamo has for some proved that the US military can be used to detain and prosecute terrorists – a first for the US military, and a function that goes against centuries of US law. Paradoxically, this transformation means that President Obama may be less likely to detain terrorists and more likely to resort to targeted killing, as occurred for example with the recent assassination of US citizen Anwar al- Awlak using unmanned aerial vehicles operated by the CIA.

Guantánamo’s existence has had a profound impact on perceptions of the US and its values, undermining American ‘soft power’.

Finally. the orange-clad, hooded Guantánamo detainee is a globally recognised figure used to symbolise abuse and torture.  This image has become visual shorthand for any manner of practices and locations where abuse is alleged, and will be with us for a while.

**Human rights cred doesn’t solve Human rights abuses ever – Sudan proves – that was cross ex – we can stop dictators from abusing HR law**

### IPR Adv

**Disad outweighs and turns the case –**

**Advanced manufacturing deters all wars- the superiority of convergent technologies puts us well ahead of our adversaries and puts a cap on conflict – the more specific their scenario is, the less probable – we don’t know when or where the next attack is coming from, but we do know that deterrence is the only structural disincentive for conflict – probability is 100% - hot spot escalation is inevitable it’s only a question of if we have tech to stop it**

**The Disad solves the second advantage – the MOU allows entrepreneurs to have direct to a databases, and analytical tools designed to help inventors better understand the process commercializing intellectual property**

### A2:: Case Turns the DA

**Section 211 doesn’t disprove the DA You’re just wrong – the problem with your aff is that section 211 was passed in the 90’s – the fact that the PTO has *since then* been able to promote IP it disproves the “turns the DA” argument**

### Trips doesn’t solve

**TRIPS doesn’t solve anything – IPR disputes never make it to the WTO for 2 reasons**

**1. disputes are state-to-state – private companies that are wronged don’t have the opportunity to take the dispute to the WTO so they need to lobby with the state government – this almost never works**

**2. Rewards are minor – winning a dispute doesn’t earn reparations or compensation – it only opens up the prospect for future legislation changes in the losing country – this means private companies don’t have an incentive to win disputes**

**Private companies find purusing WTO action too costly to warrant a dispute**

**That’s** PAUWELYN

**If we win either of these, they cant solve IP – TRIPS doesn’t provide sufficnet protection to prevnte counterfeit**

### Exts – IPR impossible

**IPR is impossible – too many alt causes – even if they send the signal of IP leadership, combating crimes is near impossible for a few reasons –**

**1. Resource and Aegis decline – internal agencies lack the proper data to inform management what resources are necessary to combat theft**

**2. Inter-agency data collection – the need to improve data and analysis on IP enforcement makes combating theft impossible**

**3. lack of permanence – uncertain commitment to the STOP initiative and overall uncoordinatino sends a signal of inactivity to the private sector – short-circtuits solvency**

IPR fails – punishment isn’t credible, China is an alt cause, and CBP doesn’t have data

Yager 07 - Loren Yager, Director, International Affairs and Trade [“INTELLECTUAL ¶ PROPERTY ¶ Risk and Enforcement ¶ Challenges” <http://www.gao.gov/assets/120/118166.pdf>]

U.S. intellectual property faces increasing risk of theft as U.S. firms ¶ integrate into the world economy and the production of more ¶ sophisticated processes and investments move overseas. For example, as ¶ the technological and manufacturing capability in Asia increases, such as ¶ in the semiconductor industry, more complex parts of the production ¶ process are being carried out in countries like China. High profits and ¶ technological advances have also raised the risk of IP infringements by ¶ encouraging and facilitating counterfeiting and piracy, while the ¶ deterrents, such as penalties and other measures, fall short. Economic ¶ incentives for counterfeiting and piracy include low barriers to entry, high ¶ profits, and limited or low legal sanctions if caught. At the same time, ¶ technology has allowed accessible reproduction and distribution in some ¶ industries. The severity of these risks has been intensified by weak ¶ enforcement in some countries, particularly China, whose enforcement ¶ challenges have persisted despite U.S. efforts. The United States faces significant obstacles to both providing effective IP protection abroad while coordinating domestic efforts and ensuring that strong intellectual property protection remains a priority. The cross-cutting nature of the issue and the necessity for coordination is evident given the large number of agencies involved in IP protection. However, we recently reported on the law enforcement coordinating council and found that the effectiveness and the long-term viability of the current IP enforcement coordinating structure is uncertain and made particularly challenging by agencies’ multiple missions. Our report on the efforts of the Customs and Border Patrol (CBP) to interdict counterfeit goods at the border found that the bulk of CBP’s enforcement outcomes in recent years have been accomplished within certain modes of transport and product types and have been restricted to a limited number of ports. For example, 10 ports are responsible for three fourths of the value of the goods seized. Despite recent increases in seizure outcomes, CBP lacks on approach to make further improvements in its level of seizures. We found that CVP has focused on efforts that have had limited results and has not taken the initiative to understand and address the variations in seizure outcomes among ports. For instance, CBP lacks data with which to analyze IP enforcement trends across transport modes and has not tried to determine whether certain ports have been relatively more successful in capturing IP-infringing goods.

#### STOP, the only organizing structure, is an absolute mess

Yager 07 - Loren Yager, Director, International Affairs and Trade [“INTELLECTUAL ¶ PROPERTY ¶ National Enforcement ¶ Strategy Needs Stronger ¶ Leadership and More ¶ Accountability” <http://www.gao.gov/assets/120/116156.pdf>]

The current coordinating structure that has evolved for protecting and ¶ enforcing U.S. intellectual property rights lacks leadership and permanence, ¶ presenting challenges for effective and viable coordination for the long term. ¶ NIPLECC has struggled to define its purpose and retains an image of ¶ inactivity among the private sector. It continues to have leadership problems ¶ despite enhancements made by Congress in December 2004 to strengthen its ¶ role. In contrast, the presidential initiative called STOP, which is led by the ¶ National Security Council, has a positive image compared to NIPLECC, but ¶ lacks permanence since its authority and influence could disappear after the ¶ current administration leaves office. While NIPLECC adopted STOP in ¶ February 2006 as its strategy for protecting IP overseas, its commitment to ¶ implementing STOP as a an effective national strategy remains unclear, ¶ creating challenges for accountability and long-term viability. ¶ ¶ While STOP has energized agency efforts for protecting and enforcing ¶ intellectual property, its potential as a national strategy is limited since it ¶ does not fully address the desirable characteristics of an effective ¶ national strategy. For example, its performance measures lack baselines ¶ and targets to assess how well the activities are being implemented. In ¶ addition, STOP is missing key elements such as a discussion of risk ¶ management and designation of oversight responsibility. For instance, ¶ the strategy lacks a discussion of current or future costs, the types or ¶ sources of investments needed to target organized piracy, and processes ¶ to effectively balance the threats from counterfeit products with the ¶ resources available. While STOP partially addresses organizational roles ¶ and responsibilities, it does not discuss a framework for accountability ¶ among the STOP agencies, such as designating responsibility for ¶ oversight. Agency documents clarify some of the key elements of an ¶ effective national strategy that were not incorporated into STOP directly; ¶ however, the need to consult multiple documents underscores the ¶ strategy’s lack of integration and limited usefulness as a management ¶ tool for effective oversight and accountability.

**If we win this, they can’t solve IP protection – even if they send the signal of leadership, domestic protections aren’t strong enough to protect from theft and counterfeit**

### Exts – link turn

#### TRIPS effectiveness turns IP – of the 9 trips cases that have happened, not once did the WTO impose sanctions to back up the agreement – this lack of a credible dispute mechanism settlement proves to private companies that TRIPS is only effective in Cross-retaliated trade disputes and has low rewards

#### Causes IP skepticism – the evidentiary burden is too large

PAUWELYN 10 - \* Joost Pauwelyn is Professor of International Law at the Graduate Institute of International and¶ Development Studies, Geneva. [“The Dog That Barked But Didn’t Bite:¶ 15 Years of Intellectual Property¶ Disputes at the WTO” <http://jids.oxfordjournals.org/content/1/2/389.full.pdf#page=1&view=FitH>]

A final way in which WTO jurisprudence to date may have shattered the hopes¶ of IP enthusiasts—but alleviated the fear of critics especially in developing¶ countries—is in rulings on the extent of TRIPS obligations in the field of IP enforcement. In both US—Havana Club and China—IP Rights, Panels¶ highlighted that TRIPS obligations in respect of domestic IP enforcement¶ are generally limited to having certain rules and procedures in place or¶ providing ‘access’ or ‘authority’ to do things at the request of right holders; not¶ substantive obligations of result or active ‘policing’ on behalf of the government¶ itself.¶ In US—Havana Club, the US law at issue prevented US courts from¶ recognizing, enforcing or otherwise validating certain assertions of IP rights.¶ The Panel found this to be contrary to TRIPS Article 42 which obliges WTO¶ members to ‘make available to right holders civil judicial procedures concerning¶ the enforcement of any intellectual property right covered’ by TRIPS and to¶ ensure that ‘[a]ll parties to such procedure [are] duly entitled to substantiate their¶ claims and to present all relevant evidence’. The Panel did not ‘see how a right¶ holder would be able effectively to assert its rights under these circumstances’ or¶ be ‘entitled to effective procedures as the court is ab initio not permitted to¶ recognize its assertion of rights’.75 The Appellate Body reversed this conclusion.¶ It agreed with the Panel that right holders must ‘have access to civil judicial¶ procedures that are effective in bringing about the enforcement of their rights¶ covered by’ TRIPS.76 However, it found that ‘the rights which Article 42 obliges¶ Members to make available to right holders are procedural in nature’.77 On that¶ ground, the Appellate Body concluded that the US law in question¶ does not prohibit courts from giving right holders access to fair and equitable civil¶ judicial procedures and the opportunity to substantiate their claims and to present all¶ relevant evidence. Rather, [it] only requires the United States courts not to recognize,¶ enforce or otherwise validate any assertion of rights by [certain persons] who have¶ been determined, after applying [relevant US rules of civil procedure], not to own the¶ trademarks referred to... [the US law in question] deals with the substance of ownership.¶ Therefore, we do not believe that [it] denies the procedural rights that are guaranteed by¶ Article 42.¶ 78¶ In China—IP Rights, the United States argued that China’s procedures for¶ the disposal or destruction of IP infringing goods confiscated by Chinese¶ customs violate TRIPS Article 59. Article 59 provides, in relevant part, that¶ WTO members ‘shall have the authority to order the destruction or disposal of¶ infringing goods in accordance with the principles set out in Article 46’. Article¶ 46, in turn, provides, in relevant part, that ‘the judicial authorities shall have¶ the authority to order that goods that they have found to be infringing be...¶ disposed of outside the channels of commerce in such a manner as to avoid any¶ harm to the right holder or...destroyed. In a first, crucial ruling the Panel found that TRIPS Article 59 only applies¶ to imported goods and not to goods destined for exportation. In the case of¶ China, a major exporter, infringing imports represent only 0.15 percent by value¶ of the goods disposed of or destroyed, with the rest being goods destined for¶ export.79 Put differently, whatever Article 59 prescribes in terms of combating¶ IP infringement, China only needs to worry about it in respect of imports from¶ other countries; not in respect of goods produced within China itself destined¶ either for exportation or domestic consumption.¶ Secondly, in respect of China’s procedures for IP infringing imports—which¶ provide for, in this order: first, donation to social welfare bodies, second, sale¶ to the right holder and, third, auction—the Panel found that the United States¶ had failed to establish that any of these steps or options precluded or took away¶ China’s ‘authority’ to dispose of the goods without harm to the right holder in¶ line with Article 46, first sentence.80 Put differently, the United States was put¶ in the rather difficult situation of having to prove a negative, namely: that any¶ of China’s options provided for precluded appropriate ‘disposal’, thereby taking¶ away China’s ‘authority’ to appropriately ‘dispose’ of or ‘destroy’ infringing¶ goods.¶ In one respect, however, the Panel did find a violation of Article 59 on the¶ ground that Chinese law stipulates that, under certain conditions, China’s¶ customs authorities ‘can, after eradicating the infringing features, auction [the¶ infringing goods] off according to law’. The Panel found that this is contrary to¶ TRIPS Article 46, fourth sentence, and consequently a violation of Article 59.¶ Article 46, fourth sentence, provides that ‘[i]n regard to counterfeit trademark¶ goods, the simple removal of the trademark unlawfully affixed shall not be¶ sufficient, other than in exceptional circumstances, to permit release of the¶ goods into the channels of commerce’.81 Finally, the United States also lost on what was no doubt its most important¶ claim in this dispute, namely, that Chinese volume and value ‘thresholds’ (eg¶ minimum 500 pirated CDs or DVDs) before criminal procedures and penalties¶ are triggered violate TRIPS Article 61. Article 61 states: ‘Members shall¶ provide for criminal procedures and penalties to be applied at least in cases of¶ wilful trademark counterfeiting or copyright piracy on a commercial scale’. The¶ US claim failed under the last prong of ‘commercial scale’. For the Panel, a¶ ‘commercial scale’ is ‘the magnitude or extent of typical or usual commercial¶ activity’ and ‘counterfeiting or piracy ’on a commercial scale’ refers to¶ counterfeiting or piracy carried on at the magnitude or extent of typical or usual¶ commercial activity with respect to a given product in a given market’.82 The¶ Panel then reviewed China’s thresholds and agreed that ‘on their face, they do exclude certain commercial activity from criminal procedures and penalties’¶ (think of a shop displaying 499 DVDs, that is, just one DVD below the¶ threshold for criminal prosecution). However, the Panel said, ‘based solely on¶ the measures on their face, the Panel cannot distinguish between acts that, in¶ China’s marketplace, are on a commercial scale, and those that are not’.83¶ Ultimately the US claim was rejected for lack of evidence specific to China’s¶ market. This puts a rather heavy evidentiary burden on complainants especially¶ when dealing with opaque markets such as the Chinese market where obtaining¶ reliable information, or even convincing people to submit it (without fear of¶ some form of governmental retaliation) may be difficult.¶ In conclusion, as one commentary pointed out well before China—IP Rights,¶ ‘[i]t is important to note...that the TRIPS Agreement generally establishes a¶ regime under which private IPRs holders are responsible for taking steps to¶ enforce their rights. With limited exception, Members are not obligated to¶ ‘police’ the private interests of IPRs holders’.84 The ‘limited exception’ referred¶ to was TRIPS Article 61. The China—IP Rights findings above, in combination¶ with the Appellate Body’s reversal under TRIPS Article 42 in US—Havana¶ Club, put a further question mark behind TRIPS as a forceful tool to achieve¶ IP enforcement within WTO member countries. At the very least, this¶ jurisprudence cannot be called biased, pro-IP activism.

**Diseases can’t both be contagious and deadly**

**Gladwell 95** (graduated from the University of Toronto, Trinity College, with a degree in history, named one of Time Magazine's 100 Most Influential People, New York bureau chief of The Washington Post (Malcom, July 17, “Epidemics: Opposing Viewpoints”)

This is what is wrong with the Andromeda Strain argument. Every infectious agent that has ever plagued humanity has had to adopt a specific strategy, but every strategy carries a corresponding cost, and this makes human counterattack possible. Malaria is vicious and deadly, but it relies on mosquitoes to spread from one human to the next, which means that draining swamps and putting up mosquito netting can all but halt endemic malaria. Smallpox is extraordinarily durable, remaining infectious in the environment for years, but its very durability, its essential rigidity, is what makes it one of the easiest microbes to create a vaccine against. aids is almost invariably lethal because its attacks the body at its point of great vulnerability, that is, the immune system, but the fact that it targets blood cells is what makes it so relatively uninfectious.

I could go on, but the point is obvious. Any microbe capable of wiping us all out would have to be everything at once: as contagious as flu, as durable as the cold, as lethal as Ebola, as stealthy as HIV and so doggedly resistant to mutation that it would stay deadly over the course of a long epidemic. But **viruses are not**, well, **superhuman.** They cannot do everything at once. It is one of the ironies of the analysis of alarmists such as Preston that they are all too willing to point out the limitations of human beings, but they neglect to point out the limitations of microscopic life forms.

**Tech and adaptive advances prevent all climate impacts---warming won’t cause war**

Dr. S. Fred Singer et al 11, Research Fellow at The Independent Institute, Professor Emeritus of Environmental Sciences at the University of Virginia, President of the Science and Environmental Policy Project, a Fellow of the American Association for the Advancement of Science, and a Member of the International Academy of Astronautics; Robert M. Carter, Research Professor at James Cook University (Queensland) and the University of Adelaide (South Australia), palaeontologist, stratigrapher, marine geologist and environmental scientist with more than thirty years professional experience; and Craig D. Idso, founder and chairman of the board of the Center for the Study of Carbon Dioxide and Global Change, member of the American Association for the Advancement of Science, American Geophysical Union, American Meteorological Society, Arizona-Nevada Academy of Sciences, and Association of American Geographers, et al, 2011, “Climate Change Reconsidered: 2011 Interim Report,” online: <http://www.nipccreport.org/reports/2011/pdf/FrontMatter.pdf>

Decades-long empirical trends of climate-sensitive measures of human well-being, including the percent of developing world population suffering from chronic hunger, poverty rates, and deaths due to extreme weather events, reveal dramatic improvement during the twentieth century, notwithstanding the historic increase in atmospheric CO2 concentrations.

The magnitude of the impacts of climate change on human well-being depends on society's adaptability (adaptive capacity), which is determined by, among other things, the wealth and human resources society can access in order to obtain, install, operate, and maintain technologies necessary to cope with or take advantage of climate change impacts. The IPCC systematically underestimates adaptive capacity by failing to take into account the greater wealth and technological advances

that will be present at the time for which impacts are to be estimated.

Even accepting the IPCC's and Stern Review's worst-case scenarios, and assuming a compounded annual growth rate of per-capita GDP of only 0.7 percent, reveals that net GDP per capita in developing countries in 2100 would be double the 2006 level of the U.S. and triple that level in 2200. Thus, even developing countries' future ability to cope with climate change would be much better than that of the U.S. today.

The IPCC's embrace of biofuels as a way to reduce greenhouse gas emissions was premature, as many researchers have found "even the best biofuels have the potential to damage the poor, the climate, and biodiversity" (Delucchi, 2010). Biofuel production consumes nearly as much energy as it generates, competes with food crops and wildlife for land, and is unlikely to ever meet more than a small fraction of the world's demand for fuels.

The notion that global warming might cause war and social unrest is not only wrong, but even backwards - that is, global cooling has led to wars and social unrest in the past, whereas global warming has coincided with periods of peace, prosperity, and social stability.

## 1NR

### Deterrence

#### Incorporation of international law destroys the US deterrence doctrine—makes it impossible to create the threat of first strike because we’re constrained by the precedent that the plan sets

#### Concession of the internal link means there’s a very large risk of this impact—checks all conflict because the doctrine of preemption means no one wants to challenge us but the plan constrains that—that’s Yoo and Payne

#### The threat of a preemptive strike’s key to deterrence – conventional superiority is insufficient

Krauthammer ‘2

[Charles-, Winner of the ‘87 Pulitzer Prize, Commonwealth Scholar in Politics @ Oxford, Dec. 9, The Weekly Standard, “The Obsolescence of Deterrence”, Vol. 8 #13, <http://www.weeklystandard.com/>Utilities/printer\_preview.asp?idArticle=1964& R //GBS-JV]

The current deterrence school starts with the assumption that there is no stopping the proliferation of weapons of mass destruction, but there is no great need to worry because deterrence can deal with the problem. It takes the model of the bipolar late 20th century--two superpowers deterring each other and keeping the peace--and applies it to the 21st century. But the 21st century is not bipolar. WMD technology is spreading and coming within the reach of dozens of countries. Under such circumstances, the logic of deterrence argues perversely for increased proliferation--if everyone has nukes, everyone is deterred, and no one will use them. Safety through deterrence; universal safety through universal deterrence.¶ There's no escaping this logic. Yet it is plainly a huge bet against everything we know about human nature. It is also a terrible tempting of statistics. The proliferation of weapons of mass destruction will certainly include increasingly unstable and unbalanced characters. It will mean that even such inherently undeterrable substate groups as al Qaeda will in time get these weapons. The result will inevitably be a deeply unstable international structure that promises to break down at myriad points in the future, even the near future.¶ The case for deterrence, drawing on the bipolar Cold War, leads inexorably to a world of hyperproliferation. This is madness. As the era of weapons of mass destruction dawns, the better approach is to deny them--forcibly if necessary--to very bad actors. Starting with Saddam. Indeed, making an example of Saddam.¶ Ironically, the preemption option, if adopted, will serve as a higher form of deterrence. The idea of preemption is to deter states not from using weapons of mass destruction but from acquiring them in the first place. If you are merely deterring WMD use in war, it is already too late. You become open to precisely the kind of nuclear blackmail to which North Korea is today subjecting the United States (and Japan and South Korea). Preemption is a kind of pre-deterrence that stops the threat at an earlier, safer stage.¶ Overthrowing Saddam because of his refusal to relinquish these weapons would be a clear demonstration to other tyrants that attempting to acquire WMD is a losing proposition: Not only do they not purchase you immunity (as in classical deterrence), they purchase you extinction. You will be not only disarmed but dethroned. A death penalty (political or literal) for the attempted acquisition of these weapons should concentrate the mind of those contemplating acquiring them. Taken together with other nonproliferation measures, such as export controls, preemption can be the most potent deterrent to proliferation.¶ There are good reasons to oppose war on Iraq. Nostalgia for deterrence is not one of them. War with Iraq might indeed be costly; the risks need to be carefully weighed. But the case for preemptive war cannot be dismissed with the easy and unexamined invocation of deterrence. Yes, deterrence worked in the past. But in the past it was a play with very few actors. And even under those circumstances, the best of circumstances, deterrence was psychologically debilitating, inherently unstable, and highly dangerous. To voluntarily choose it as the principle on which to rest our safety in this age of weapons of mass destruction is sheer folly.

#### More evidence – abandoning the preemption doctrine’s a concession to the left – makes rogue lashout more likely

Schneider ‘9

[Mark. Fellow @ National Institute for Public Policy. “Prevention Through Strength: Is Nuclear Superiority Enough” Comparative Strategy, April 2009. EBSCO//GBS-JV]

Western nuclear powers—the United States, Britain, and France—vastly outgun the rogue states in every measurable respect. However, this alone may not be enough to ensure deterrence. The problem, as Dr. Keith B. Payne has observed, is that, “Effective deterrence threats must be credible to the opponents. Unfortunately, leaders of terrorist states and tyrants who recognize the appropriate priority we place on avoiding civilian casualties may not believe U.S. deterrent threats that would produce the high yields and moderate accuracies of the remaining Cold War arsenal.”36 The problem is complicated by the ceaseless efforts of the political left to delegitimize nuclear deterrence. In the pre–World War II era, or even during the late Cold War, the use of chemical and biological agents by a minor nation against a great power would have been suicidal. Today, however, we have to take the threat ofWMDattacks, even by a much weaker nation, very seriously in significant part because of the delegitimization of nuclear deterrence in the Western world. In my view, the delegitimization of nuclear deterrence by the political left is one of the most serious problems we face in dealing with WMD proliferation. The left-wing view of nuclear weapons in the United States has moved, to some degree, into the mainstream. Distinguished former American leaders such a George P. Shultz, William J. Perry, Henry A. Kissinger, and Sam Nunn, despite the manifest failure of arms control to constrain the WMD threat, call for “A world free of NuclearWeapons” because “ . . . the United States can address almost all of its military objectives by non-nuclear means.”37 This view ignores the complete lack of plausibility of creating a verification regime involving the abolition of nuclear weapons with acceptable risk, the consequences of cheating and the lack of any credible response option if it is actually discovered that an authoritarian regime had retained a sizable nuclear stockpile, and the military implication of the other types of weapons of mass destruction—chemical and biological (CBW) attack, including the advanced agents now available to potential enemies of the United States and our allies. A credible U.S. nuclear deterrent is necessary to deal with existing threats to the very survival of the U.S., its allies, and its armed forces if they are subject to an attack using WMD. As former Secretary of Defense Harold Brown and former Deputy Secretary of Defense John Deutch wrote in The Wall Street Journal, “However, the goal, even the aspirational goal, of eliminating all nuclear weapons is counterproductive. It will not advance substantive progress on nonproliferation; and it risks compromising the value that nuclear weapons continue to contribute, through deterrence, to U.S. security and international stability.”38 If WMD attacks were actually made against Western cities, the reaction to them by civilian populations would likely be extreme but it would be too late to impact deterrence. There would likely be overwhelming demand by the affected populations to make the attacks stop. The U.S. National Strategy for Combating the Proliferation of Weapons of Mass Destruction recognized that we must respond to WMD attack rapidly and that, “The primary objective of a response is to disrupt an imminent attack or an attack in progress, and eliminate the threat of future attacks.”39 In the words of Dr. William Graham, Chairman of the Congressional Electromagnetic Pulse (EMP) Commission: Failure to provide a credible deterrent will result in a wave of nuclear proliferation with serious national security implications. When dealing with the rogue states the issue is not the size of the U.S. nuclear deterrent but the credibility of its use in response to chemical or biological weapons use and its ability to conduct low collateral damage nuclear attacks against WMD capabilities and delivery systems including very hard underground facilities for purposes of damage limitation. We must also have the capability to respond promptly. The United States nuclear guarantee is a major deterrent to proliferation. If we do not honor that guarantee, or devalue it, many more nations will obtain nuclear weapons.40 There are only two ways to achieve a rapid end to a conflict: surrender or, alternatively, prompt and effective counterforce strikes designed to limit damage by destroying the adversary’s offensive capability. In such a charged atmosphere there likely would be demands in many states for massive retaliation against the attacker. Prewar debates about nuclear strategy, proportionality, and international law may vanish once the scope of the tragedy was fully appreciated.

#### Deterrence is good – maintaining the arsenal is not enough – it has to be credible otherwise war’s inevitable

Schneider ‘8

[Mark. National Institute for Public Policy. “The Future of the US Nuclear Deterrent” Comparative Strategy, Vol 27 No 2. JSTOR//GBS-JV]

According to the Pentagon’s Quadrennial Defense Review, the United States must maintain a “robust nuclear deterrent, which remains a keystone of U.S. national power.”98 The reason should be self evident—without a nuclear deterrent the United States could be destroyed as an industrial civilization and our conventional forces could be defeated by a state with grossly inferior conventional capability but powerful WMD. We cannot afford to ignore existing and growing threats to the very existence of the United States as a national entity. Missile defenses and conventional strike capabilities, while critically important elements of deterrence and national power, simply can’t substitute for nuclear deterrence. In light of the emerging “strategic partnership” between Russia and China and their emphasis on nuclear weapons it would be foolish indeed to size U.S. strategic nuclear forces as if the only threat we face is that of rogue states and discard the requirement that the U.S. nuclear deterrent be “second to none.” Ignoring the PRC nuclear threat because of Chinese “no first use” propaganda is just as irresponsible. Absent a nuclear deterrent to their WMD use, rogue states could defeat our forces by the combination of few nuclear EMP weapons and large chemical and biological attacks. The situation would be much worse if they build a more extensive nuclear strike capability as has been reported. Freezing U.S. nuclear forces at the technical level of the Reagan administration will assure that, within two decades, Russia, China, India, and probably others will be technically superior and U.S. deterrence ability against CBW attack will be reduced. United States nuclear forces must be modernized and tailored to enhance deterrence and damage limitation against the rogue WMD threat. WMD capabilities have given otherwise inconsequential states the ability to kill millions of people. The right combination of missile defense and conventional and nuclear strike capabilities provide the best deterrent and damage limiting capability against the rogue state threat. We must not ignore the requirement to provide extended deterrence to our allies. British and French nuclear forces are not large enough, and these nations are not perceived as tough enough, to provide a deterrent for NATO Europe against Russia. In the Far East, there is literally no nuclear deterrent capability against China other than that provided by the United States. Failure to provide a credible deterrent will result in a wave of nuclear proliferation with serious national security implications. When dealing with the rogue states, the issue is not the size of the U.S. nuclear deterrent but the credibility of its use in response to chemical or biological weapons use and its ability to conduct low collateral damage nuclear attacks against WMD capabilities and delivery systems including very hard underground facilities for purposes of damage limitation. We must also have the capability to respond promptly. The United States nuclear guarantee is a major deterrent to proliferation. If we do not honor that guarantee, or devalue it, many more nations will obtain nuclear weapons. If arms control really becomes a substitute for nuclear deterrence and defense, it may very well precipitate the most destructive war in history. Effective verification is essentially impossible, and verification is not a substitute for compliance. Today, arms control has become part of the problem rather than a solution to the problem. The abolition of the in-kind deterrent to CBW use—which deterred CBW use in World War II—is making the world more unsafe almost on a daily basis. The START and Intermediate-Range Nuclear Forces (INF) Treaties prevent or inhibit the development of conventional strike capabilities with enhanced ability to counter WMD. The demise of the ABM Treaty, while very useful, does not completely address the problem of legacy arms control and its constraints upon U.S. conventional capabilities.

### Presidential powers

#### Presidential powers solve extinction—constraining the executive’s ablity to wage war makes it impossible to check asymmetrical threats like terrorism and proliferation—the uncertainty of those threats makes flexibility key—that’s the Blomquist evidence—turns their terrorism advantage and emboldens proliferation which makes nuclear war inevitable

#### Even the signal of the plan would embolden rivals

John Yoo 6, Professor of Law, University of California at Berkeley School of Law, Courts At War, 91 Cornell L. Rev. 573

Article III itself also significantly limits the role of federal courts in performing certain functions. Once the President and Congress have enacted a statute or the President and Senate have made a treaty, the judiciary's constitutional responsibility is to execute those goals in the context of Article III cases or controversies, subject to any policymaking discretion implicitly given to the courts by Congress in areas [\*594] of statutory ambiguity or of federal common law. n117 Federal judges cannot alter or refuse to execute laws, even if the original circumstances that gave rise to the statute or treaty have changed. If a federal court, for example, finds that a defendant has violated the Helms-Burton Act by "trafficking" in property confiscated by the Cuban government, it is obligated to render judgment for an American plaintiff who once owned that property. n118 Article III requires a federal court to reach that decision even if the effects of the judgment in that particular case would harm the national interest. n119¶ Judicial decisions may harm the national interest because courts cannot control the timing of their proceedings or coordinate their judgments with the actions of the other branches of government. For example, the President might be engaged in a diplomatic campaign to pressure a Middle Eastern country into terminating its support for terrorism at the time that a judicial decision freed a suspected al Qaeda operative. A judicial decision along these lines could undermine the appearance of unified resolve on the part of the United States, or it might suggest to the Middle Eastern country that the executive branch cannot guarantee that it could follow through on its own counterterrorism policies. A court cannot take account of such naked policy considerations in deciding whether a federal statute has been violated or whether to grant relief, while the political branches can constantly modify policy in reaction to ongoing events. Even if the judiciary seeks guidance from the executive branch, such deference may undermine any appearance of judicial independence.

### a/t: prez powers bad

#### no impact to presidential powers—Syria proves that Obama will default to Congress because of too much public backlash—but the ABILITY to act without constraints its key

#### here’smore evidence for that

Mandelbaum 11 (Michael Mandelbaum, A. Herter Professor of American Foreign Policy, the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University, Washington DC; and Director, Project on East-West Relations, Council on Foreign Relations, “CFR 90th Anniversary Series on Renewing America: American Power and Profligacy,” Jan 2011) <http://www.cfr.org/publication/23828/cfr_90th_anniversary_series_on_renewing_america.html?cid=rss-fullfeed-cfr_90th_anniversary_series_on-011811&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+cfr_main+(CFR.org+-+Main+Site+Feed>

MANDELBAUM: I think it is, Richard. And I think that this period really goes back two decades. I think the wars or the interventions in Somalia, in Bosnia, in Kosovo, in Haiti belong with the interventions in Afghanistan and Iraq, although they were undertaken by different administrations for different reasons, and had different costs. But all of them ended up in the protracted, unexpected, unwanted and expensive task of nation building. Nation building has never been popular. The country has never liked it. It likes it even less now. And I think we're not going to do it again. We're not going to do it because there won't be enough money. We're not going to do it because there will be other demands on the public purse. We won't do it because we'll be busy enough doing the things that I think ought to be done in foreign policy. And we won't do it because it will be clear to politicians that the range of legitimate choices that they have in foreign policy will have narrowed and will exclude interventions of that kind. So I believe and I say in the book that the last -- the first two post-Cold War decades can be seen as a single unit. And that unit has come to an end.

#### if they cannot give you a warrant of what the president would do, you should have a high threshold for their iimpact turns-the only warrant in their evidence is about diversionarty theory

**Econ decline fragments politics – no external aggression**

**Royal 10** – director of Cooperative Threat Reduction at the U.S. Department of Defense (Jedediah, “Economic Integration, Economic Signaling and the Problem of Economic Crises”, published in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 217, google books)

There is, however, another trend at play. Economic crises tend to fragment regimes and divide polities. A decrease in cohesion at the political leadership level and at the electorate level reduces the ability of the state to coalesce a sufficiently strong political base required to undertake costly balancing measures such as economic costly signals. Schweller (2006) builds on earlier studies (sec, e.g., Christensen, 1996; Snyder, 2000) that link political fragmentation with decisions not to balance against rising threats or to balance only in minimal and ineffective ways to demonstrate a tendency for states to 'underbalance'. Where political and social cohesion is strong, states are more likely to balance against rising threats in effective and costly ways. However, unstable and fragmented regimes that rule over divided polities will be significantly constrained in their ability to adapt to systemic incentives; they will be least likely to enact bold and costly policies even when their nation's survival is at stake and they are needed most' (Schweller, 2006, p. 130).

**More evidence—no empricial support**

**Tir 10** [Jaroslav Tir - Ph.D. in Political Science, University of Illinois at Urbana-Champaign and is an Associate Professor in the Department of International Affairs at the University of Georgia, “Territorial Diversion: Diversionary Theory of War and Territorial Conflict”, The Journal of Politics, Vol. 72, No. 2, April 2010, Pp. 413–425]

According to the diversionary theory of war, the cause of some militarized conflicts is not a clash of salient interests between countries, but rather problematic domestic circumstances. Under conditions such as economic adversity or political unrest, the country’s leader may attempt to generate a foreign policy crisis in order both to divert domestic discontent and bolster their political fortunes through a rally around the flag effect (Russett 1990). Yet, despite the wide-ranging popularity of this idea and some evidence of U.S. diversionary behavior (e.g., DeRouen 1995, 2000; Fordham 1998a, 1998b; Hess and Orphanides 1995; James and Hristolouas 1994; James and Oneal 1991; Ostrom and Job 1986), after **five decades** of research broader empirical support for the theory remains elusive (e.g., Gelpi 1997; Gowa; 1998; Leeds and Davis 1997; Levy 1998; Lian and Oneal 1993; Meernik and Waterman 1996). This has prompted one scholar to conclude that ‘‘seldom has so much common sense in theory found so little support in practice’’ (James 1987, 22), a view reflected in the more recent research (e.g., Chiozza and Goemans 2003, 2004; Meernick 2004; Moore and Lanoue 2003; Oneal and Tir 2006). I argue that this puzzling lack of support could be addressed by considering the possibility that the embattled leader may anticipate achieving their diversionary aims specifically through the initiation of territorial conflict2—a phenomenon I call territorial diversion.

### Soft power

#### Too many alt causes to soft power—the constant debt crises have DECKED our credibility internationally—makes people believe we’re not a reliable partner and scares away investors that are the foundation of American economic influence—that’s the Neu evidence

#### Can’t change perceptions of America

**Gray 11** – Professor of International Politics and Strategic Studies at the University of Reading, England, (Colin S., April, “HARD POWER AND SOFT POWER: THE UTILITY OF MILITARY FORCE AS AN INSTRUMENT OF POLICY IN THE 21ST CENTURY.” Published by Strategic Studies Institute)

Moreover, no contemporary U.S. government owns all of America’s soft power—a considerable understatement. Nor do contemporary Americans and their institutions own all of their country’s soft power. America today is the product of America’s many yesterdays, and the worldwide target audiences for American soft power respond to the whole of the America that they have perceived, including facts, legends, and myths.41 Obviously, what they understand about America may well be substantially untrue, certainly it will be incomplete. At a minimum, foreigners must react to an American soft power that is filtered by their local cultural interpretation. America is a futureoriented country, ever remaking itself and believing that, with the grace of God, history moves forward progressively toward an ever-better tomorrow. This optimistic American futurism both contrasts with foreigners’ cultural pessimism—their golden ages may lie in the past, not the future—which prevails in much of the world and is liable to mislead Americans as to the reception our soft power story will have.42 **Many people indeed, probably most people, in the world beyond the United States have a fairly settled view of America, American purposes, and Americans**. This locally held view derives from their whole experience of exposure to things American as well as from the features of their own “cultural thoughtways” and history that shape their interpretation of American-authored words and deeds, past and present.43

#### Recent budget cuts on the state department and over-focus on the military decimates soft power

**Nye 11** – he’s Nye!! (Joseph, “[The War on Soft Power](http://www.foreignpolicy.com/articles/2011/04/12/the_war_on_soft_power)” <http://www.foreignpolicy.com/articles/2011/04/12/the_war_on_soft_power>) Jacome

\*“the referenced ‘occupation’ (at the bottom) is in the context of Iraq” – Marc

The War on Soft Power

Last week, U.S. President Barack Obama and Congress struggled until the 11th hour to agree on budget cuts that would avert a government shutdown. The United States' budget deficit is a serious problem, and there have been serious proposals to deal with it, such as those by the bipartisan [Bowles-Simpson Commission](http://www.fiscalcommission.gov/). But last week's efforts were not a serious solution. They were focused solely on the 12 percent of the budget that is non-military discretionary expenditure, rather than the big-ticket items of entitlements, military expenditure, and tax changes that increase revenue. Yet while last week's cuts failed to do much about the deficit, they could do serious damage to U.S. foreign policy. On Tuesday, the axe fell: The State Department and foreign operations budget was slashed by $8.5 billion -- a pittance when compared to military spending, but one that could put a serious dent in the United States' ability to positively influence events abroad.

The sad irony is that the Obama administration had been moving things in the right direction. When Hillary Clinton became secretary of state, she spoke of the importance of a "smart power" strategy, combining the United States' hard and soft-power resources. Her [Quadrennial Diplomacy and Development Review](http://www.state.gov/s/dmr/qddr/), and her efforts (along with USAID chief Rajiv Shah) to revamp the United States' aid bureaucracy and budget were important steps in that direction. Now, in the name of an illusory contribution to deficit reduction (when you're talking about deficits in the trillions, $38 billion in savings is a drop in the bucket), those efforts have been set back. Polls consistently show a popular misconception that aid is a significant part of the U.S. federal budget, when in fact it amounts to less than 1 percent. Thus, congressional cuts to aid in the name of deficit reduction are an easy vote, but a cheap shot.

In 2007, Richard Armitage and I co-chaired a bipartisan Smart Power Commission of members of Congress, former ambassadors, retired military officers, and heads of non-profit organizations at the Center for Strategic and International Studies in Washington. We concluded that **America's image and influence had declined** inrecent years and that the United States had to move from exporting fear to inspiring optimism and hope.

The Smart Power Commission was not alone in this conclusion. Even when he was in the George W. Bush administration, Defense Secretary Robert Gates [called](http://www.defense.gov/speeches/speech.aspx?speechid=1199) on Congress to commit more money and effort to soft-power tools including diplomacy, economic assistance, and communications because the military alone cannot defend America's interests around the world. He pointed out that military spending then totaled nearly half a trillion dollars annually, compared with a State Department budget of just $36 billion. In his words, "I am here to make the case for strengthening our capacity to use soft power and for better integrating it with hard power." He acknowledged that for the secretary of defense to plead for more resources for the State Department was as odd as a man biting a dog, but these are not normal times. Since then, the ratio of the budgets has become even more unbalanced.

This is not to belittle the Pentagon, where I once served as an assistant secretary. Military force is obviously a source of hard power, but the same resource can sometimes contribute to soft-power behavior. A well-run military can be a source of prestige, and military-to-military cooperation and training programs, for example, can establish transnational networks that enhance a country's soft power. The U.S. military's impressive performance in providing humanitarian relief after the Indian Ocean tsunami and the South Asian earthquake in 2005 helped restore the attractiveness of the United States; the military's role in the aftermath of the recent Japanese earthquake and tsunami is having a similar effect.

Of course, misusing military resources can also undercut soft power. The Soviet Union had a great deal of soft power in the years after World War II, but destroyed it by using hard power against Hungary and Czechoslovakia. Brutality and indifference to just-war principles of discrimination and proportionality can also eviscerate legitimacy. Whatever admiration the crisp efficiency of the Iraq invasion inspired in the eyes of some foreigners, it was undercut by the subsequent inefficiency of the occupation and the scenes of mistreatment of prisoners at Abu Ghraib.

### Terrorism

#### There is no way for terrorists to attack the US—they just assert that they can but there are too many barriers—Al Qaeda isn’t spending any money on nuclear weapons and there is no expertise, no technology, and no way to transport it

There are so many barriers and they are so incompetant that there’s virtually no risk

Mueller 2012 (John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, *International Security*, Vol. 37, No. 1) BW

In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots dur- ing the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8

This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme. In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as incompetent, ineffective, unintelligent, idiotic, ignorant, inadequate, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.”

In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics.

**Vanishingly low risk of terrorism – prefer holistic risk calculation rather than snapshots and alarmist threat inflation**

Mueller 2012 (John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, *International Security*, Vol. 37, No. 1) BW

We have argued that terrorism is a limited problem with limited consequences and that the reaction to it has been excessive, and even delusional. Some degree of effort to deal with the terrorism hazard is, however, certainly appropriate—and is decidedly not delusional. The issue then is a quantitative one: At what point does a reaction to a threat that is real become excessive or even delusional?

At present rates, as noted earlier, an American’s chance of being killed by terrorism is one in 3.5 million in a given year. This calculation is based on history (but one that includes the September 11 attacks in the count), and things could, of course, become worse in the future. The analysis here, however, suggests that terrorists are not really all that capable, that terrorism tends to be a counterproductive exercise, and that September 11 is increasingly standing out as an aberration, not a harbinger. Moreover, it has essentially become officially accepted that the likelihood of a large-scale organized attack such as September 11 has declined and that the terrorist attacks to fear most are ones that are small scale and disorganized.66 Attacks such as these can inflict painful losses, of course, but they are quite limited in their effect and, even if they do occur, they would not change the fatality risk for the American population very much.

The key question, then, is not “Are we safer?” but rather one posed shortly after September 11 by risk analyst Howard Kunreuther, “How much should we be willing to pay for a small reduction in probabilities that are already extremely low?”67 That such questions are not asked, and that standard considerations of acceptable risk are never broached, suggests denial at best and delusion at worst.

Since September 11, expenditures in the United States on domestic homeland security alone—that is, excluding overseas expenditures such as those on the wars in Iraq and Afghanistan—have expanded by more than $1 trillion.68 According to a careful assessment by a committee of the National Academy of Sciences in a 2010 report, these massive funds have been expended without any serious analysis of the sort routinely carried out by DHS for natural hazards such as floods and hurricanes. The committee could not and “any DHS risk analysis capabilities and methods” adequate for supporting the decisions made, noted that “little effective attention” was paid to “fundamental” issues, was (with one exception) never shown “any document” that could explain “exactly how the risk analyses are conducted,” and looked over reports in which it was not clear “what problem is being addressed.”69

The risk of terrorism is so low its irrelevant – prefer our evidence, theirs is artificially inflated due to elimination of contradictory evidence in academic spheres

Mueller 2012 (John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, *International Security*, Vol. 37, No. 1) BW

Applying the extensive datasets on terrorism that have been generated over the last decades, we conclude that the chances of an American perishing at the hands of a terrorist at present rates is one in 3.5 million per year—well within the range of what risk analysts hold to be “acceptable risk.”40 Yet, despite the importance of responsibly communicating risk and despite the costs of irresponsible fearmongering, just about the only official who has ever openly put the threat presented by terrorism in some sort of context is New York’s Mayor Michael Bloomberg, who in 2007 pointed out that people should “get a life” and that they have a greater chance of being hit by lightning than of being a victim of terrorism—an observation that may be a bit off the mark but is roughly accurate.41 (It might be noted that, despite this unorthodox outburst, Bloomberg still managed to be re-elected two years later.)

Indeed, much of the reaction to the September 11 attacks calls to mind Hans Christian Andersen’s fable of delusion, “The Emperor’s New Clothes,” in which con artists convince the emperor’s court that they can weave stuffs of the most beautiful colors and elaborate patterns from the delicate silk and purest gold thread they are given. These stuffs, they further convincingly explain, have the property of remaining invisible to anyone who is unusually stupid or unfit for office. The emperor finds this quite appealing because not only will he have splendid new clothes, but he will be able to discover which of his officials are unfit for their posts—or in today’s terms, have lost their effectiveness. His courtiers, then, have great professional incentive to proclaim the stuffs on the loom to be absolutely magnificent even while mentally justifying this conclusion with the equivalent of “absence of evidence is not evidence of absence.”

Unlike the emperor’s new clothes, terrorism does of course exist. Much of the reaction to the threat, however, has a distinctly delusionary quality. In Carle’s view, for example, the CIA has been “spinning in self-referential circles” in which “our premises were flawed, our facts used to fit our premises, our premises determined, and our fears justified our operational actions, in a self-contained process that arrived at a conclusion dramatically at odds with the facts.” The process “projected evil actions where there was, more often, muddled indirect and unavoidable complicity, or not much at all.” These “delusional ratiocinations,” he further observes, “were all sincerely, ardently held to have constituted a rigorous, rational process to identify terrorist threats” in which “the avalanche of reporting confirms its validity by its quantity,” in which there is a tendency to “reject incongruous or contradictory facts as erroneous, because they do not conform to accepted reality,” and in which potential dissenters are not-so-subtly reminded of career dangers: “Say what you want at meetings. It’s your decision. But you are doing yourself no favors.”42

Consider in this context the alarming and profoundly imaginary estimates of U.S. intelligence agencies in the year after the September 11 attacks that the number of trained al-Qaida operatives in the United States was between 2,000 and 5,000.43 Terrorist cells, they told reporters, were “embedded in most U.S. cities with sizable Islamic communities,” usually in the “run-down sections,” and were “up and active” because electronic intercepts had found some of them to be “talking to each other.”44 Another account relayed the view of “experts” that Osama bin Laden was ready to unleash an “11,000 strong terrorist army” operating in more than sixty countries “controlled by a Mr. Big who is based in Europe,” but that intelligence had “no idea where thousands of these men are.”45 Similarly, FBI Director Robert Mueller assured the Senate Intelligence Committee on February 11, 2003, that, although his agency had yet to identify even one al-Qaida cell in the United States, “I remain very concerned about what we are not seeing,” a sentence rendered in bold lettering in his prepared text. Moreover, he claimed that such unidentified entities presented “the greatest threat,” had “developed a support infrastructure” in the country, and had achieved both the “ability” and the “intent” to inflict “significant casualties in the US with little warning.”46